
WEST VIRGINIA CODE CHAPTER 22
ARTICLE 9

WV Legislature

§22-9-1. Definitions.

In this article unless the context otherwise requires:

(1) The term "coal mine" means those operations in a coal seam which include the excavated and abandoned portions as well as the places actually being worked; also all underground workings and shafts, slopes, tunnels, and other ways and openings and all such shafts, slopes, tunnels and other openings in the course of being sunk or driven, together with all roads and facilities connected with them below the surface.

(2) The term "operating coal mine" means: (a) A coal mine which is producing coal or has been in production of coal at any time during the twelve months immediately preceding the date its status is put in question under this article and any worked out or abandoned coal mine connected underground with or contiguous to such operating coal mine as herein defined; and (b) any coal mine to be established or reestablished as an operating coal mine in the future pursuant to section four of this article.

(3) The term "outside coal boundaries" when used in conjunction with the term "operating coal mine" means the boundaries of the coal acreage assigned to such coal mine and which can be practicably and reasonably expected to be mined through such coal mine.

(4) The term "well" means a borehole drilled or proposed to be drilled within the storage reservoir boundary or reservoir protective area for the purpose of or to be used for producing, extracting or injecting any gas, petroleum or other liquid but excluding boreholes drilled to produce potable water to be used as such.

(5) The term "gas" means any gaseous substance.

(6) The term "storage reservoir" means that portion of any subterranean sand or rock stratum or strata into which gas is or may be injected for the purpose of storage or for the purpose of testing whether said stratum is suitable for storage.

(7) The term "bridge" means an obstruction placed in a well at any specified depth.

(8) The term "linear foot" means a unit of measurement in a straight line on a horizontal plane.

(9) The term "person" means any individual, association, partnership or corporation.

(10) The term "reservoir protective area" means all of that area outside of and surrounding the storage reservoir boundary but within two thousand linear feet thereof.

(11) The term "retreat mining" means the removal of such coal, pillars, ribs and stumps as remain after the development mining has been completed in that section of a coal mine.

(12) The term "pillar" means a solid block of coal surrounded by either active mine workings

or a mined out area.

(13) The term "inactivate" means to shut off all flow of gas from a well by means of a temporary plug, or other suitable device or by injecting aquagel or other such equally nonporous material into the well.

(14) The term "storage operator" means any person as herein defined who proposes to or does operate a storage reservoir, either as owner or lessee.

(15) The term "workable coal seam" has the same meaning as the term "workable coal bed" as set out in section one, article six of this chapter.

(16) The terms "owner", "coal operator", "well operator", "plat", "casing", "oil" and "cement" shall have the meanings set out in section one, article six of this chapter.

§22-9-2. Filing of maps and data by persons operating or proposing to operate gas storage reservoirs.

(a) Any person who, on June 8, 1955, is injecting gas into or storing gas in a storage reservoir which underlies or is within three thousand linear feet of an operating coal mine which is operating in a coal seam that extends over the storage reservoir or the reservoir protective area shall, within sixty days thereafter, file with the division a copy of a map and certain data in the form and manner provided in this subsection.

Any person who, on June 8, 1955, is injecting gas into or storing gas in a storage reservoir which is not at such date under or within three thousand linear feet, but is less than ten thousand linear feet from an operating coal mine which is operating in a coal seam that extends over the storage reservoir or the reservoir protective area, shall file such map and data within such time in excess of sixty days as the director may fix.

Any person who, after June 8, 1955, proposes to inject or store gas in a storage reservoir located as above shall file the required map and data with the director not less than six months prior to the starting of actual injection or storage.

The map provided for herein shall be prepared by a competent engineer or geologist. It shall show the stratum or strata in which the existing or proposed storage reservoir is or is to be located, the geographic location of the outside boundaries of the said storage reservoir and the reservoir protective area, the location of all known oil or gas wells which have been drilled into or through the storage stratum within the reservoir or within three thousand linear feet thereof, indicating which of these wells have been, or are to be cleaned out and plugged or reconditioned for storage and also indicating the proposed location of all additional wells which are to be drilled within the storage reservoir or within three thousand linear feet thereof.

The following information, if available, shall be furnished for all known oil or gas wells which have been drilled into or through the storage stratum within the storage reservoir or within three thousand linear feet thereof; name of the operator, date drilled, total depth, depth of production if the well was productive of oil or gas, the initial rock pressure and volume, the depths at which all coal seams were encountered and a copy of the driller's log or other similar information. At the time of the filing of the aforesaid maps and data such person shall file a detailed statement of what efforts have been made to determine, (1) that the wells shown on said map are accurately located thereon, and (2) that to the best of such person's knowledge the wells are all the oil or gas wells which have ever been drilled into or below the storage stratum within the proposed storage reservoir or within the reservoir protective area. This statement shall also include information as to whether or not the initial injection is for testing purposes, the maximum pressures at which injection and storage of gas is contemplated, and a detailed explanation of the methods to be used or which theretofore have been used in drilling, cleaning out, reconditioning or plugging wells in the storage reservoir or within the reservoir protective area. The map and data required to be filed hereunder shall be amended or supplemented semiannually in case any material changes

have occurred: Provided, That the director may require a storage operator to amend or supplement such map or data at more frequent intervals if material changes have occurred justifying such earlier filing.

At the time of the filing of the above maps and data, and the filing of amended or supplemental maps or data, the director shall give written notice of said filing to all persons who may be affected under the provisions of this subsection by the storage reservoir described in such maps or data. Such notices shall contain a description of the boundaries of such storage reservoir. When a person operating a coal mine or owning an interest in coal properties which are or may be affected by the storage reservoir, requests in writing a copy of any map or data filed with the director such copy shall be furnished by the storage operator.

(b) Any person who, on June 8, 1955, is injecting gas into or storing gas in any other storage reservoir in this state not subject to subsection (a) of this section shall, on or before July 1, 1983, file with the division a map in the same detail as the map required for a storage reservoir subject to subsection (a) of this section; and, if the initial injection of gas into the storage reservoir by such person or any predecessor occurred after December 31, 1970, data in the same detail as the data required for a storage reservoir shall be filed subject to subsection (a) of this section: Provided, That in the case of a storage reservoir the operation of which has been certified by the federal power commission or the federal energy regulatory commission under section seven of the federal Natural Gas Act, the person may, in lieu of the data, submit copies of the application and all amendments and supplements of record in the federal docket, together with the certificate of public convenience and necessity and any amendments thereto.

Any person who, after June 8, 1955, proposes to inject or store gas in any other storage reservoir in this state not subject to subsection (a) of this section shall file with the division a map and data in the same detail as the map and data required for a storage reservoir subject to subsection (a) of this section not less than six months prior to the starting of actual injection or storage: Provided, That in the case of a storage reservoir the operation of which will be required to be certificated by the federal energy regulatory commission, the person may, in lieu of the data, submit copies of the application and all amendments and supplementals filed in the federal docket, together with the certificate of public convenience and necessity and any amendments thereto, within twenty days after the same have been filed by such person or issued by the federal energy regulatory commission.

At the time of the filing of the above maps and data or documents in lieu of data and filing of amended or supplemental maps or data or documents in lieu of data, or upon receipt of an application filed with the federal energy regulatory commission for a new storage reservoir, the director shall give notice of said filing by a Class II legal advertisement in accordance with the provisions of article three, chapter fifty-nine of this code, the publication area for which shall be the county or counties in which the storage reservoir is located. Such legal advertisements shall contain a description of the boundaries of such storage reservoir. The storage operator shall pay for the legal advertisement upon receipt of the invoice therefor

from the division. When any person owning an interest in land which is or may be affected by the storage reservoir requests in writing a copy of any map or data or documents in lieu of data filed with the division, such copy shall be furnished by the storage operator.

(c) The director shall also intervene in the federal docket, and participate in the proceedings for the purpose of assuring that the certificate of public convenience and necessity issued by the federal energy regulatory commission does not authorize operations or practices in conflict with the provisions of this article. The director may cooperate with the Public Service Commission if the commission also intervenes. The Attorney General is hereby directed to provide legal representation to the director to achieve the purposes of this subsection.

(d) For all purposes of this article, the outside boundaries of a storage reservoir shall be defined by the location of those wells around the periphery of the storage reservoir which had no gas production when drilled in said storage stratum: Provided, That the boundaries as thus defined shall be originally fixed or subsequently changed where, based upon the number and nature of such wells, upon the geological and production knowledge of the storage stratum, its character, permeability, and distribution, and operating experience, it is determined in a conference or hearing under section ten of this article that modification should be made.

§22-9-3. Filing of maps and data by persons operating coal mines.

(a) Any person owning or operating a coal mine, who has not already done so pursuant to the former provisions of article four, chapter twenty-two-b of this code, shall, within thirty days from the effective date of this article, file with the director a map, prepared by a competent engineer, showing the outside coal boundaries of the said operating coal mine, the existing workings and exhausted areas and the relationship of said boundaries to identifiable surface properties and landmarks. Any person who is storing or contemplating the storage of gas in the vicinity of such operating coal mines shall, upon written request, be furnished a copy of the aforesaid map by the coal operator and such person and the director shall thereafter be informed of any boundary changes at the time such changes occur. The director shall keep a record of such information and shall promptly notify both the coal operator and the storage operator if it is found that the coal mine and the storage reservoir are within ten thousand linear feet of each other.

(b) Any person owning or operating any coal mine which, on March 10, 1955, is or which thereafter comes within ten thousand linear feet of a storage reservoir, and where the coal seam being operated extends over the storage reservoir or the reservoir protective area, shall within forty-five days after such person has notice from the director of such fact, file with the director and furnish to the person operating such storage reservoir, a map in the form hereinabove provided and showing in addition, the existing and projected excavations and workings of such operating coal mine for the ensuing eighteen-month period, and also the location of any oil or gas wells of which said coal operator has knowledge. Such person owning or operating said coal mine shall each six months thereafter file with the director and furnish to the person operating such storage reservoir a revised map showing any additional excavations and workings, together with the projected excavations and workings for the then ensuing eighteen-month period which may be within ten thousand linear feet of said storage reservoir: Provided, That the director may require a coal operator to file such revised map at more frequent intervals if material changes have occurred justifying such earlier filing. Such person owning or operating said coal mine shall also file with the director and furnish the person operating said reservoir prompt notice of any wells which have been cut into, together with all available pertinent information.

§22-9-4. Notice by persons operating coal mines.

(a) Any person owning or operating a coal mine on June 8, 1955, and having knowledge that it overlies or is within two thousand linear feet of a gas storage reservoir, shall within thirty days notify the director and the storage operator of such fact unless such notification has already been provided to the director pursuant to the provisions of former article four, chapter twenty-two-b of this code.

(b) When any person owning or operating a coal mine hereafter expects that within the ensuing nine-month period such coal mine will be extended to a point which will be within two thousand linear feet of any storage reservoir, such person shall notify the director and the storage operator in writing of such fact.

(c) Any person hereafter intending to establish or reestablish an operating coal mine which when established or reestablished will be over a storage reservoir or within two thousand linear feet of a storage reservoir, or which upon being established or reestablished may within nine months thereafter be expected to be within two thousand linear feet of a storage reservoir, shall notify the director and the storage operator in writing before doing so and such notice shall include the date on which it is intended the operating coal mine will be established or reestablished.

Any person who serves such notice of an intention to establish or reestablish an operating coal mine under this subsection, without intending in good faith to establish or reestablish such mine, shall be liable for continuing damages to any storage operator injured by the serving of such improper notice and shall be guilty of a misdemeanor under this article and subject to the same penalties as set forth in section twelve of this article.

§22-9-5. Obligations to be performed by persons operating storage reservoirs.

(a) Any person who, on or after June 8, 1955, is operating a storage reservoir which underlies or is within two thousand linear feet of an operating coal mine which is operating in a coal seam that extends over the storage reservoir or the reservoir protective area, shall:

(1) Use every known method which is reasonable under the circumstances for discovering and locating all wells which have or may have been drilled into or through the storage stratum in that acreage which is within the outside coal boundaries of such operating coal mine and which overlies the storage reservoir or the reservoir protective area;

(2) Plug or recondition, in the manner provided by sections twenty-three and twenty-four, article six of this chapter and subsection (e) of this section, all known wells (except to the extent otherwise provided in subsections (e), (f), (g) and (h) of this section) drilled into or through the storage stratum and which are located within that portion of the acreage of the operating coal mine overlying the storage reservoir or the reservoir protective area: Provided, That where objection is raised as to the use of any well as a storage well, and after a conference or hearing in accordance with section ten of this article it is determined, taking into account all the circumstances and conditions, that such well should not be used as a storage well, such well shall be plugged: Provided, however, That if, in the opinion of the storage operator, the well to which such objection has been raised may at some future time be used as a storage well, the storage operator may recondition and inactivate such well instead of plugging it, if such alternative is approved by the director after taking into account all of the circumstances and conditions.

The requirements of subdivision (2) of this subsection shall be deemed to have been fully complied with if, as the operating coal mine is extended, all wells which, from time to time, come within the acreage described in said subdivision (2) are reconditioned or plugged as provided in subsection (e) or (f) of this section and in section twenty-four, article six of this chapter so that by the time the coal mine has reached a point within two thousand linear feet of any such wells, they will have been reconditioned or plugged so as to meet the requirements of said subsection (e) or (f) and of said section twenty-four of article six.

(b) Any person operating a storage reservoir referred to in subsection (a) of this section who has not already done so pursuant to the provisions of former article four, chapter twenty-two-b of this code, shall within sixty days after the effective date of this article file with the director and furnish a copy to the person operating the affected operating coal mine, a verified statement setting forth:

(1) That the map and any supplemental maps required by subsection (a), section two of this article have been prepared and filed in accordance with section two;

(2) A detailed explanation of what the storage operator has done to comply with the requirements of subdivisions (1) and (2), subsection (a) of this section and the results thereof;

(3) Such additional efforts, if any, as the storage operator is making and intends to make to locate all oil and gas wells; and

(4) Any additional wells that are to be plugged or reconditioned to meet the requirements of subdivision (2), subsection (a) of this section.

If such statement is not filed by the storage reservoir operator within the time specified herein, the director shall summarily order such operator to file such statement.

(c) Within one hundred twenty days after the receipt of any such statement, the director may, and shall, if so requested by either the storage operator or the coal operator affected, direct that a conference be held in accordance with section ten of this article to determine whether the information as filed indicates that the requirements of section two of this article and of subsection (a) of this section have been fully complied with. At such conference, if any person shall be of the opinion that such requirements have not been fully complied with, the parties shall attempt to agree on what additional things are to be done and the time within which they are to be completed, subject to the approval of the director, to meet the said requirements.

If such agreement cannot be reached, the director shall direct that a hearing be held in accordance with section ten of this article. At such hearing the director shall determine whether the requirements of said section two of this article and of subsection (a) of this section have been met and shall issue an order setting forth such determination. If the director shall determine that any of the said requirements have not been met, the order shall specify, in detail, both the extent to which such requirements have not been met, and the things which the storage operator must do to meet such requirements. The order shall grant to the storage operator such time as is reasonably necessary to complete each of the things which such operator is directed to do. If, in carrying out said order, the storage operator encounters conditions which were not known to exist at the time of the hearing and which materially affect the validity of said order or the ability of the storage operator to comply with the order, the storage operator may apply for a rehearing or modification of said order.

(d) Whenever, in compliance with subsection (a) of this section, a storage operator, after the filing of the statement provided for in subsection (b) of this section, plugs or reconditions a well, such operator shall so notify the director and the coal operator affected in writing, setting forth such facts as will indicate the manner in which the plugging or reconditioning was done. Upon receipt thereof, the coal operator affected or the director may request a conference or hearing in accordance with section ten of this article.

(e) In order to meet the requirements of subsection (a) of this section, wells which are to be plugged shall be plugged in the manner specified in section twenty-four, article six of this chapter. When a well located within the storage reservoir or the reservoir protective area has been plugged prior to March 10, 1955, and on the basis of the data, information and other evidence submitted to the director, it is determined that: (1) Such plugging was done in the manner required in section twenty-four, article six of this chapter; and (2) said

plugging is still sufficiently effective to meet the requirements of this article, the obligations imposed by subsection (a) of this section as to plugging said well shall be considered fully satisfied.

(f) In order to meet the requirements of subsection (a) of this section, wells which are to be reconditioned shall be cleaned out from the surface through the storage horizon and the following casing strings shall be pulled and replaced with new casing, using the same procedure as is applicable to drilling a new well as provided for in sections eighteen, nineteen and twenty, article six of this chapter: (1) The producing casing; (2) the largest diameter casing passing through the lowest workable coal seam unless such casing extends at least twenty-five feet below the bottom of such coal seam and is determined to be in good physical condition: Provided, That the storage operator may, instead of replacing the largest diameter casing, replace the next largest casing string if such casing string extends at least twenty-five feet below the lowest workable coal seam; and (3) such other casing strings which are determined not to be in good physical condition. In the case of wells to be used for gas storage, the annular space between each string of casing, and the annular space behind the largest diameter casing to the extent possible, shall be filled to the surface with cement or aquagel or such equally nonporous material as is approved by the director pursuant to section eight of this article. At least fifteen days prior to the time when a well is to be reconditioned the storage operator shall give notice thereof to the coal operator or owner and to the director setting forth in such notice the manner in which it is planned to recondition such well and any pertinent data known to the storage operator which will indicate the then existing condition of such well. In addition the storage operator shall give the coal operator or owner and such representative of the director as the director shall have designated at least seventy-two hours notice of the time when such reconditioning is to begin. The coal operator or owner shall have the right to file, within ten days after the receipt of the first notice required herein, objections to the plan of reconditioning as submitted by the storage operator. If no such objections are filed or if none is raised by the director within such ten-day period, the storage operator may proceed with the reconditioning in accordance with the plan as submitted. If any such objections are filed by the coal operator or owner or are made by the director, the director shall fix a time and place for a conference in accordance with section ten of this article at which conference the well operator and the person who has filed such objections shall endeavor to agree upon a plan of reconditioning which meets the requirements herein and which will satisfy such objections. If no plan is approved at such conference, the director shall direct that a hearing be held in accordance with section ten of this article and, after such hearing, shall by an appropriate order determine whether the plan as submitted meets the requirements set forth herein, or what changes, if any, should be made to meet such requirements. If, in reconditioning a well in accordance with said plan, physical conditions are encountered which justify or necessitate a change in said plan, the storage operator or the coal operator may request that the plan be changed. If the storage operator and the coal operator cannot agree upon such change, the director shall arrange for a conference or hearing in accordance with section ten of this article to determine the matter in the same manner as set forth herein in connection with original objections to said plan. Application may be made

to the director in the manner prescribed in section eight of this article for approval of an alternative method of reconditioning a well. When a well located within the storage reservoir or the reservoir protective area has been reconditioned prior to March 10, 1955, or was so drilled and equipped previously and on the basis of the data, information and other evidence submitted to the director, it is determined that: (1) Such reconditioning or previous drilling and equipping was done in the manner required in this subsection, or in a manner approved as an alternative method in accordance with section eight of this article and (2) such reconditioning or previous drilling and equipping is still sufficiently effective to meet the requirements of this article, the obligations imposed by subsection (a) as to reconditioning said well shall be considered fully satisfied. Where a well requires emergency repairs this subsection shall not be construed to require the storage operator to give the notices specified herein before making such repairs.

(g) When a well located within the reservoir protective area is a producing well in a stratum below the storage stratum the obligations imposed by subsection (a) of this section shall not begin until such well ceases to be a producing well.

(h) When a well within a storage reservoir or the reservoir protective area penetrates the storage stratum but does not penetrate the coal seam being mined by an operating coal mine the director may, upon application of the operator of such storage reservoir, exempt such well from the requirements of this section. Either party affected may request a conference and hearing with respect to the exemption of any such well in accordance with section ten of this article.

(i) In fulfilling the requirements of subdivision (2), subsection (a) of this section with respect to a well within the reservoir protective area, the storage operator shall not be required to plug or recondition such well until he has received from the coal operator written notice that the mine workings will within the period stated in such notice, be within two thousand linear feet of such well. Upon the receipt of such notice the storage operator shall use due diligence to complete the plugging or reconditioning of such well in accordance with the requirements of this section and of section twenty-four, article six of this chapter. If the said mine workings do not, within a period of three years after said well has been plugged, come within two thousand linear feet of said well, the coal operator shall reimburse the storage operator for the cost of said plugging, provided such well is still within the reservoir protective area as of that time.

(j) When retreat mining approaches a point where within ninety days it is expected that such retreat work will be at the location of the pillar surrounding an active storage well the coal operator shall give written notice of such approach to the storage operator and by agreement said parties shall determine whether it is necessary or advisable to inactivate effectively said well temporarily. The well shall not be reactivated until a reasonable period has elapsed, such reasonable period to be determined by the said parties. In the event that the said parties cannot agree upon either of the foregoing matters, such question shall be submitted to the director for decision in accordance with section ten of this article. The number of wells required to be temporarily inactivated during the retreat period shall not be

such as to materially affect the efficient operation of such storage pool. This provision shall not preclude the temporary inactivation of a particular well where the practical effect of inactivating such well is to render the pool temporarily inoperative.

(k) The requirements of subsections (a), (l) and (m) of this section shall not apply to the injection of gas into any stratum when the sole purpose of such injection (such purpose being herein referred to as testing) is to determine whether the said stratum is suitable for storage purposes: Provided, That such testing shall be conducted only in compliance with the following requirements:

(1) The person testing or proposing to test shall comply with all the provisions and requirements of section two of this article and shall verify the statement required to be filed thereby;

(2) If any part of the proposed storage reservoir is under or within two thousand linear feet of an operating coal mine which is operating in a coal seam that extends over the proposed storage reservoir or the reservoir protective area, the storage operator shall give at least six months' written notice to the director and to the coal operator of the fact that injection of gas for testing purposes is proposed;

(3) The coal operator affected may at any time file objections with the director in accordance with subsection (d), section nine of this article. If any such objections are filed by the coal operator or if the director shall have any objections, the director shall fix a time and place for a conference in accordance with section ten of this article, not more than ten days from the date of the notice to the storage operator, at which conference the storage operator and the person who has filed such objections shall attempt to agree, subject to the approval of the director, on the questions involved. If such agreement cannot be reached at such conference, the director shall direct that a hearing be held in accordance with section ten of this article. At such hearing the director shall determine and set forth in an appropriate order the conditions and requirements which the director shall deem necessary or advisable in order to prevent gas from such storage reservoir from entering any operating coal mine. The storage operator shall comply with such conditions and requirements throughout the period of the testing operations. In determining such conditions and requirements the director shall take into account the extent to which the matters referred to in subsection (a) of this section have been performed. If, in carrying out said order, either the storage operator or the coal operator encounters or discovers conditions which were not known to exist at the time of the hearing and which materially affect said order or the ability of the storage operator to comply with the order, either operator may apply for a rehearing or modification of said order;

(4) Where, at any time, a proposed storage reservoir being tested comes under or within two thousand linear feet of an operating coal mine either because of the extension of the storage reservoir being tested or because of the extension or establishment or reestablishment of the operating coal mine, then and at the time of any such event the requirements of this subsection shall become applicable to such testing.

(l) Any person who proposes to establish a storage reservoir under, or within two thousand linear feet of an operating coal mine which is operating in a coal seam that extends over the storage reservoir or the reservoir protective area, shall, prior to establishing such reservoir, in addition to complying with the requirements of section two of this article and subsection (a) of this section, file the verified statement required by subsection (b) of this section and fully comply with such order or orders, if any, as the director may issue in the manner provided for under subsection (b) or (c) of this section before beginning the operation of such storage reservoir. After the person proposing to operate such storage reservoir shall have complied with such requirements and shall have thereafter begun to operate such reservoir, such person shall continue to be subject to all of the provisions of this article.

(m) When a gas storage reservoir, (1) was in operation on June 8, 1955, and at any time thereafter it is under or within two thousand linear feet of an operating coal mine, or (2) when a gas storage reservoir is put in operation after June 8, 1955, and at any time after such storage operations begin it is under or within two thousand linear feet of an operating coal mine, then and in either such event, the storage operator shall comply with all of the provisions of this section except that the time for filing the verified statement under subsection (b) shall be sixty days after the date stated in the notice filed by the coal operator under subsection (b) or (c), section four of this article as to when the operating coal mine will be at a point within two thousand linear feet of such reservoir: Provided, That if the extending of the projected workings or the proposed establishment or reestablishment of the operating coal mine is delayed after the giving of the notice provided in subsections (b) and (c), section four of this article, the coal operator shall give notice of such delay to the director and the director shall, upon the request of the storage operator, extend the time for filing such statement by the additional time which will be required to extend or establish or reestablish such operating coal mine to a point within two thousand linear feet of such reservoir. Such verified statement shall also indicate that the map referred to in subsection (a), section two of this article has been currently amended as of the time of the filing of such statement. The person operating any such storage reservoir shall continue to be subject to all of the provisions of this article.

(n) If, in any proceeding under this article, the director shall determine that any operator of a storage reservoir has failed to carry out any lawful order of the director issued under this article, the director shall have authority to require such storage operator to suspend the operation of such reservoir and to withdraw the gas therefrom until such violation is remedied. In such an event the gas shall be withdrawn under the following conditions. The storage operator shall remove the maximum amount of gas which is required by the director to be removed from the storage reservoir that can be withdrawn in accordance with recognized engineering and operating procedures and shall proceed with due diligence insofar as existing facilities used to remove gas from the reservoir will permit.

(o) In addition to initial compliance with the other provisions of this article and any lawful orders issued thereunder, it shall be the duty at all times of the person owning or operating any storage reservoir which is subject to the provisions of this article to keep all wells drilled into or through the storage stratum in such condition and to operate the same in such

manner as to prevent the escape of gas into any coal mine therefrom, and to operate and maintain such storage reservoir and its facilities in such manner and at such pressures as will prevent gas from escaping from such reservoir or its facilities into any coal mine: Provided, That this duty shall not be construed to include the inability to prevent the escape of gas where such escape results from an act of God or an act of any person not under the control of the storage operator other than in connection with any well which the storage operator has failed to locate and to make known to the director: Provided, however, That if any escape of gas into a coal mine does result from an act of God or an act of any person not under the control of the storage operator, the storage operator shall be under the duty of taking such action thereafter as is reasonably necessary to prevent further escape of gas into the coal mine.

§22-9-6. Inspection of facilities and records; reliance on maps; burden of proof.

(a) In determining whether a particular coal mine or operating coal mine is or will be within any distance material under this article from any storage reservoir, the owner or operator of such coal mine and the storage operator may rely on the most recent map of the storage reservoir or coal mine filed by the other with the director.

(b) In any proceeding under this article where the accuracy of any map or data filed by any person pursuant to the requirements of this article is in issue, the person filing the same shall at the request of any party to such proceeding be required to disclose the information and method used in compiling such map and data and such information as is available to such person that might affect the current validity of such map or data. If any material question is raised in such proceeding as to the accuracy of such map or data with respect to any particular matter or matters contained therein, the person filing such map or data shall then have the burden of proving the accuracy of the map or data with respect to such matter or matters.

(c) The person operating any storage reservoir affected by the terms of this article shall, at all reasonable times, be permitted to inspect the applicable records and facilities of any coal mine overlying such storage reservoir or the reservoir protective area, and the person operating any such coal mine affected by the terms of this article, shall similarly, at all reasonable times, be permitted to inspect the applicable records and facilities of any such storage reservoir underlying any such coal mine. In the event that either such storage operator or coal operator shall refuse to permit any such inspection of records or facilities, the director shall, on the director's own motion, or on application of the party seeking the inspection after reasonable written notice, and a hearing thereon, if requested by either of the parties affected, make an order providing for such inspection.

§22-9-7. Exemptions.

(a) The provisions of this article shall not apply to strip mines and auger mines operating from the surface.

(b) Injection of gas for storage purposes in any workable coal seam, whether or not such seam is being or has been mined, shall be prohibited. Nothing in this article shall be construed to prohibit the original extraction of natural gas, crude oil or coal. No storage operator shall have authority to appropriate any coal or coal measure whether or not being mined, or any interest therein.

§22-9-8. Alternative method.

(a) Whenever provision is made in this article by reference to this section for using an alternative method or material in carrying out any obligation imposed by the article, the person seeking the authority to use such alternative method or material shall file an application with the director describing such proposed alternative method or material in reasonable detail. Notice of filing of any such application shall be given by registered mail to any coal operator or operators affected. Any such coal operator may within ten days following such notice, file objections to such proposed alternative method or material. If no objections are filed within said ten-day period or if none is raised by the director, the director shall forthwith issue a permit approving such proposed alternative method or material.

(b) If any such objections are filed by any coal operator or are raised by the director, the director shall direct that a conference be held in accordance with section ten of this article within the ten days following the filing of such objections. At such conferences the person seeking approval of the alternative method or material and the person who has filed such objections shall attempt to agree on such alternative method or material or any modification thereof, and if such agreement is reached and approved by the director, the director shall forthwith issue a permit approving the alternative method or material. If no such agreement is reached and approved, the director shall direct that a hearing be held in accordance with section ten of this article: Provided, That if the alternative method or material involves a new development in technology or technique the director may, before such a hearing is held, grant such affected parties a period not to exceed ninety days to study and evaluate said proposed alternative method or material. Following such hearing, if the director shall find that such proposed alternative method or material will furnish adequate protection to the workable coal seams, the director shall by order approve such alternative method or material; otherwise the director shall deny the said application.

§22-9-9. Powers and duties of director.

(a) The director may review the maps and data filed under sections two and three hereof for the purpose of determining the accuracy thereof. Where any material question is raised by any interested storage operator or coal operator or owner as to the accuracy of any such map or data, the director shall hold hearings thereon and shall by an appropriate order require the person filing such map or data to correct the same if they are found to be erroneous.

(b) It shall be the duty of the director to receive and keep in a safe place for public inspection any map, data, report, well log, notice or other writing required to be filed with it pursuant to the provisions of this article. The director shall keep such indices of all such information as will enable any person using the same to readily locate such information either by the identity of the person who filed the same or by the person or persons affected by such filing or by the geographic location of the subject matter by political subdivision. The director shall also keep a docket for public inspection of all proceedings, in which shall be entered the dates of any notices, the names of all persons notified and their addresses, the dates of hearings, conferences and all orders, decrees, decisions, determinations, rulings or other actions issued or taken by the director and such docket shall constitute the record of each and every proceeding before the director.

(c) The director shall have authority to make any inspections and investigations of records and facilities which are deemed necessary or desirable to perform the director's functions under this article.

(d) Where in any section of this article provision is made for the filing of objections, such objections shall be filed in writing with the director, by the person entitled to file the same or by the director, and shall state as definitely as is reasonably possible the reasons for such objections. The person filing such objections shall send a copy thereof by registered mail to the person or persons affected thereby.

§22-9-10. Conferences, hearings and appeals.

(a) The director or any person having a direct interest in the subject matter of this article may at any time request that a conference be held for the purpose of discussing and endeavoring to resolve by mutual agreement any matter arising under the provisions of this article. Prompt notice of any such conference shall be given by the director to all such interested parties. At such conference a representative of the director shall be in attendance, and the director may make such recommendations as are deemed appropriate. Any agreement reached at such conference shall be consistent with the requirements of this article and, if approved by such representative of the director, it shall be reduced to writing and shall be effective unless reviewed and rejected by the director within ten days after the close of the conference. The record of any such agreement approved by the director shall be kept on file by the director with copies furnished to the parties. The conference shall be deemed terminated as of the date any party refuses to confer thereafter. Such a conference shall be held in all cases prior to conducting any hearing under this section.

(b) Within ten days after termination of the conference provided for in this section at which no approved agreement has been reached or within ten days after the rejection by the director of any agreement approved at any such conference, any person who has a direct interest in the subject matter of the conference may submit the matter or matters, or any part thereof, considered at the conference, to the director for determination at a public hearing. The hearing procedure shall be formally commenced by the filing of a petition with the director upon forms prescribed by the director or by specifying in writing the essential elements of the petition, including name and address of the petitioner and of all other persons affected thereby, a clear and concise statement of the facts involved, and a specific statement of the relief sought. The hearing shall thereafter be conducted in accordance with the provisions of article five, chapter twenty-nine-a of this code and with such rules and such provisions as to reasonable notice as the director may prescribe. Consistent with the requirements for reasonable notice all hearings under this article shall be held by the director promptly. All testimony taken at such hearings shall be under oath and shall be reduced to writing by a reporter appointed by the director, and the parties shall be entitled to appear and be heard in person or by attorney. The director may present at such hearing any evidence which is material to the matter under consideration and which has come to the director's attention in any investigation or inspection made pursuant to provisions of this article.

(c) After the conclusion of hearings, the director shall make and file the director's findings and order with the director's opinion, if any. A copy of such order shall be served by registered mail upon the person against whom it runs, or such person's attorney of record, and notice thereof shall be given to the other parties to the proceedings, or their attorney of record.

(d) The director may, at any time after notice and after opportunity to be heard as provided in this section, rescind or amend any approved agreement or order made by the director. Any order rescinding or amending a prior agreement or order shall, when served upon the

person affected, and after notice thereof is given to the other parties to the proceedings, have the same effect as is herein provided for original orders; but no such order shall affect the legality or validity of any acts done by such person in accordance with the prior agreement or order before receipt by such person of the notice of such change.

(e) The director shall have power, either personally or by any of the director's authorized representatives, to subpoena witnesses and take testimony, and administer oaths to any witness in any hearing, proceeding or examination instituted before the director or conducted by the director with reference to any matter within the jurisdiction of the director. In all hearings or proceedings before the director the evidence of witnesses and the production of documentary evidence may be required at any designated place of hearing; and in case of disobedience to a subpoena or other process the director or any party to the proceedings before the director may invoke the aid of any circuit court in requiring the evidence and testimony of witnesses and the production of such books, records, maps, plats, papers, documents and other writings as the director may deem necessary or proper in and pertinent to any hearing, proceeding or investigation held or had by the director. Such court, in case of the refusal of any such person to obey the subpoena, shall issue an order requiring such person to appear before the director and produce the required documentary evidence, if so ordered, and give evidence touching the matter in question. Any failure to obey such order of the court may be punished by such court as contempt thereof. A claim that any such testimony or evidence may tend to incriminate the person giving the same shall not excuse such witness from testifying, but such witness shall not be prosecuted for any offense concerning which the witness compelled hereunder to testify.

(f) With the consent of the director, the testimony of any witness may be taken by deposition at the instance of a party to any hearing before the director at any time after hearing has been formally commenced. The director may, of the director's own motion, order testimony to be taken by deposition at any stage in any hearing, proceeding or investigation pending before the director. Such deposition shall be taken in the manner prescribed by the laws of West Virginia for taking depositions in civil cases in courts of record.

(g) Whether or not it be so expressly stated, an appeal from any final order, decision or action by the director in administering the provisions of this article may be taken by any aggrieved person within ten days of notice of such order, decision or action, to the circuit court of the county in which the subject matter of such order, decision or action is located, and in all cases of appeals to the circuit court, that court shall certify its decisions to the director. The circuit court to which the appeal is taken shall hear the appeal without a jury on the record certified by the director. In any such appeal the findings of the director shall, if supported by substantial evidence, be conclusive. If the order of the director is not affirmed, the court may set aside or modify it, in whole or in part, or may remand the proceedings to the director for further disposition in accordance with the order of the court. From all final decisions of the circuit court an appeal shall lie to the Supreme Court of Appeals as is now provided by law in cases in equity, by the director as well as by any other party of record before the circuit court.

Any party feeling aggrieved by the final order of the circuit court affecting him may present his petition in writing to the Supreme Court of Appeals, or to a judge thereof in vacation, within twenty days after the entry of such order, praying for the suspension or modification of such final order. The applicant shall deliver a copy of such petition to the director and to all other parties of record before presenting the same to the court or judge. The court or judge shall fix a time for the hearing on the application, but such hearing shall not be held sooner than seven days after its presentation unless by agreement of the parties, and notice of the time and place of such hearing shall be forthwith given to the director and to all other parties of record. If the court or judge, after such hearing, be of opinion that such final order should be suspended or modified, the court or the judge may require bond, upon such conditions and in such penalty, and impose such terms and conditions upon the petitioner as are just and reasonable. For such hearing the entire record before the circuit court, or a certified copy thereof, shall be filed in the supreme court, and that court, upon such papers, shall promptly decide the matter in controversy as may seem to it to be just and right, and may award costs in each case as to it may seem just and equitable.

§22-9-11. Enforcement.

(a) The director or any person having a direct interest in the subject matter of this article may complain in writing setting forth that any person is violating or is about to violate, any provisions of this article, or has done, or is about to do, any act, matter or thing therein prohibited or declared to be unlawful, or has failed, omitted, neglected or refused, or is about to fail, omit, neglect or refuse, to perform any duty enjoined upon him by this article. Upon the filing of a complaint against any person, the director shall cause a copy thereof to be served upon such person by registered mail accompanied by a notice from the director setting such complaint for hearing at a time and place specified in such notice. At least five days' notice of such hearing shall be given to the parties affected and such hearing shall be held in accordance with the provisions of section ten of this article. Following such hearing, the director shall, if the director finds that the matter alleged in the complaint is not in violation of this article, dismiss the complaint, but if the director shall find that the complaint is justified, the director shall by appropriate order compel compliance with this article.

(b) Whenever the director shall be of the opinion that any person is violating, or is about to violate, any provisions of this article, or has done, or is about to do, any act, matter or thing therein prohibited or declared to be unlawful, or has failed, omitted, neglected or refused, or is about to fail, omit, neglect or refuse, to perform any duty enjoined upon the director by this article, or has failed, omitted, neglected or refused, or is about to fail, omit, neglect or refuse to obey any lawful requirement or order made by the director, or any final judgment, order or decree made by any court pursuant to this article, then and in every such case the director may institute in the circuit court of the county or counties wherein the operation is situated, injunction, mandamus or other appropriate legal proceedings to restrain such violations of the provisions of this article or of orders of the director to enforce obedience therewith. No injunction bond shall be required to be filed in any such proceeding. Such persons or corporations as the court may deem necessary or proper to be joined as parties in order to make its judgment, order or writ effective may be joined as parties. The final judgment in any such action or proceeding shall either dismiss the action or proceeding or direct that the writ of mandamus or injunction or other order, issue or be made permanent as prayed for in the petition or in such modified or other form as will afford appropriate relief. An appeal may be taken as in other civil actions.

(c) In addition to the other remedies herein provided, any storage operator or coal operator affected by the provisions of this article may proceed by injunction or other appropriate remedy to restrain violations or threatened violations of the provisions of this article or of orders of the director or the judgments, orders or decrees of any court or to enforce obedience therewith.

(d) Each remedy prescribed in this section shall be deemed concurrent or contemporaneous with any other remedy prescribed herein and the existence or exercise of any one such remedy shall not prevent the exercise of any other such remedy.

§22-9-12. Penalties.

Any person who shall willfully violate any order of the director issued pursuant to the provisions of this article shall be guilty of a misdemeanor, and, on conviction thereof, shall be punished by a fine not exceeding \$2,000, or imprisoned in jail for not exceeding twelve months, or both, in the discretion of the court, and prosecutions under this section may be brought in the name of the State of West Virginia in the court exercising criminal jurisdiction in the county in which the violation of such provisions of the article or terms of such order was committed, and at the instance and upon the relation of any citizen of this state.

§22-9-13. Orders remain in effect.

All orders in effect upon the effective date of this article pursuant to the provisions of former article four, chapter twenty-two-b of this code, shall remain in full force and effect as if such orders were adopted by the division established in this chapter but all such orders shall be subject to review by the director to ensure they are consistent with the purposes and policies set forth in this chapter.

WV Legislature