WEST VIRGINIA CODE CHAPTER 22C ARTICLE 8

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§22C-8-1. Declaration of public policy; legislative findings.

(a) It is hereby declared to be the public policy of this state and in the public interest to:

(1) Ensure the safe recovery of coal and gas;

(2) Foster, encourage and promote the fullest practical exploration, development, production, recovery and utilization of this state's coal and gas, where both are produced from beneath the same surface lands, by establishing procedures, including procedures for the establishment of drilling units, for the location of shallow gas wells without substantially affecting the right of the gas operator proposing to drill a shallow gas well to explore for and produce gas; and

(3) Safeguard, protect and enforce the correlative rights of gas operators and royalty owners in a pool of gas to the end that each such gas operator and royalty owner may obtain a just and equitable share of production from such pool of gas.

(b) The Legislature hereby determines and finds that gas found in West Virginia in shallow sands or strata has been produced continuously for more than one hundred years; that the placing of shallow wells has heretofore been regulated by the state for the purpose of ensuring the safe recovery of coal and gas, but that regulation should also be directed toward encouraging the fullest practical recovery of both coal and gas because modern extraction technologies indicate the desirability of such change in existing regulation and because the energy needs of this state and the United States require encouragement of the fullest practical recovery of both coal and gas; that in order to encourage and ensure the fullest practical recovery of coal and gas in this state and to further ensure the safe recovery of such natural resources, it is in the public interest to enact new statutory provisions establishing a shallow gas well review board which shall have the authority to regulate and determine the appropriate placing of shallow wells when gas well operators and owners of coal seams fail to agree on the placing of such wells, and establishing specific considerations, including minimum distances to be allowed between certain shallow gas wells, to be utilized by the shallow gas well review board in regulating the placing of shallow wells; that in order to encourage and ensure the fullest practical recovery of coal and gas in this state and to protect and enforce the correlative rights of gas operators and royalty owners of gas resources, it is in the public interest to enact new statutory provisions establishing a shallow gas well review board which shall also have authority to establish drilling units and order the pooling of interests therein to provide all gas operators and royalty owners with an opportunity to recover their just and equitable share of production.

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§22C-8-2. Definitions.

As used in this article:

(1) "Board" means the Shallow Gas Well Review Board provided for in section four of this article;

(2) "Chair" means the chair of the Shallow Gas Well Review Board provided for in section four of this article;

(3) "Coal operator" means any person who proposes to or does operate a coal mine;

(4) "Coal seam" and "workable coal bed" are interchangeable terms and mean any seam of coal twenty inches or more in thickness, unless a seam of less thickness is being commercially worked, or can in the judgment of the division foreseeably be commercially worked and will require protection if wells are drilled through it;

(5) "Commission" means the Oil and Gas Conservation Commission provided for in section four, article nine of this chapter;

(6) "Commissioner" means the Oil and Gas Conservation Commissioner provided for in section four, article nine of this chapter;

(7) "Correlative rights" means the reasonable opportunity of each person entitled thereto to recover and receive without waste the gas in and under a tract or tracts, or the equivalent thereof;

(8) "Deep well" means any well other than a shallow well or coalbed methane well, drilled to a formation below the top of the uppermost member of the "Onondaga Group";

(9) "Division" means the state Department of Environmental Protection provided for in chapter twenty-two of this code;

(10) "Director" means the Secretary of the Department of Environmental Protection as established in article one, chapter twenty-two of this code or other person to whom the secretary delegates authority or duties pursuant to sections six or eight, article one, chapter twenty-two of this code;

(11) "Drilling unit" means the acreage on which the board decides one well may be drilled under section ten of this article;

(12) "Gas" means all natural gas and all other fluid hydrocarbons not defined as oil in subdivision (15) of this section;

(13) "Gas operator" means any person who owns or has the right to develop, operate and produce gas from a pool and to appropriate the gas produced therefrom either for that

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person or for that person and others. In the event that there is no gas lease in existence with respect to the tract in question, the person who owns or has the gas rights therein is considered a "gas operator" to the extent of seven-eights of the gas in that portion of the pool underlying the tract owned by such person, and a "royalty owner" to the extent of one-eighth of the gas;

(14) "Just and equitable share of production" means, as to each person, an amount of gas in the same proportion to the total gas production from a well as that person's acreage bears to the total acreage in the drilling unit;

(15) "Oil" means natural crude oil or petroleum and other hydrocarbons, regardless of gravity, which are produced at the well in liquid form by ordinary production methods and which are not the result of condensation of gas after it leaves the underground reservoir;

(16) "Owner" when used with reference to any coal seam, includes any person or persons who own, lease or operate the coal seam;

(17) "Person" means any natural person, corporation, firm, partnership, partnership association, venture, receiver, trustee, executor, administrator, guardian, fiduciary or other representative of any kind, and includes any government or any political subdivision or any agency thereof;

(18) "Plat" means a map, drawing or print showing the location of one or more wells or a drilling unit;

(19) "Pool" means an underground accumulation of gas in a single and separate natural reservoir (ordinarily a porous sandstone or limestone). It is characterized by a single natural-pressure system so that production of gas from one part of the pool tends to or does affect the reservoir pressure throughout its extent. A pool is bounded by geologic barriers in all directions, such as geologic structural conditions, impermeable strata, and water in the formation, so that it is effectively separated from any other pools which may be present in the same district or in the same geologic structure;

(20) "Royalty owner" means any owner of gas in place, or gas rights, to the extent that such owner is not a gas operator as defined in subdivision (13) of this section;

(21) "Shallow well" means any gas well other than a coalbed methane well, drilled no deeper than one hundred feet below the top of the "Onondaga Group": Provided, That in no event may the "Onondaga Group" formation or any formation below the "Onondaga Group" be produced, perforated or stimulated in any manner;

(22) "Tracts comprising a drilling unit" means that all separately owned tracts or portions thereof which are included within the boundary of a drilling unit;

(23) "Well" means any shaft or hole sunk, drilled, bored or dug into the earth or into underground strata for the extraction, injection or placement of any liquid or gas, or any

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shaft or hole sunk or used in conjunction with the extraction, injection or placement. The term "well" does not include any shaft or hole sunk, drilled, bored or dug into the earth for the sole purpose of core drilling or pumping or extracting therefrom potable, fresh or usable water for household, domestic, industrial, agricultural or public use; and

(24) "Well operator" means any person who proposes to or does locate, drill, operate or abandon any well.

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§22C-8-3. Application of article; exclusions.

(a) Except as provided in subsection (b) of this section, the provisions of this article shall apply to all lands located in this state, under which a coal seam as defined in section two of this article and section one, article six, chapter twenty-two of this code, is located, however owned, including any lands owned or administered by any government or any agency or subdivision thereof, over which the state has jurisdiction under its police power. The provisions of this article are in addition to and not in derogation of or substitution for the provisions of this chapter or chapter twenty-two of this code.

(b) This article shall not apply to or affect:

(1) Deep wells;

(2) Oil wells and enhanced oil recovery wells associated with oil wells;

(3) Any shallow well as to which no objection is made under section seventeen, article six, chapter twenty-two of this code;

(4) Wells as defined in subdivision (4), section one, article nine, chapter twenty-two of this code; or

(5) Free gas rights.

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§22C-8-4. Shallow gas well review board; membership; method of appointment; vacancies; compensation and expenses; staff.

(a) There is hereby continued the "Shallow Gas Well Review Board" which shall be composed of three members, two of whom shall be the commissioner and the chief of the office of oil and gas. The remaining member of the board shall be a registered professional who has been successfully tested in mining engineering, with at least ten years practical experience in the coal mining industry and shall be appointed by the Governor, by and with the advice and consent of the Senate: Provided, That any person so appointed while the Senate of this state is not in session shall be permitted to serve in an acting capacity for one year from appointment or until the next session of the Legislature, whichever is less. As soon as practical after appointment and qualification of the member appointed by the Governor, the Governor shall convene a meeting of the board for the purpose of organizing and electing a chair, who serves as such until a successor is elected by the board.

(b) A vacancy in the membership appointed by the Governor shall be filled by appointment by the Governor within sixty days after the occurrence of such vacancy. Before performing any duty hereunder, each member of the board shall take and subscribe to the oath required by section 5, article IV of the Constitution of West Virginia, and serves thereafter until a successor has been appointed and qualified.

(c) The member of the board appointed by the Governor shall be paid the same compensation, and each member of the board shall be paid the expense reimbursement, as is paid to members of the Legislature for their interim duties as recommended by the citizens legislative compensation commission and authorized by law for each day or portion thereof engaged in the discharge of official duties. Each member of the board shall also be reimbursed for all reasonable and necessary expenses actually incurred in the performance of the duties as a member of the board.

(d) The division shall furnish office and clerical staff and supplies and services, including reporters for hearings, as required by the board.

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§22C-8-5. Same -- Meetings; notice; general powers and duties.

(a) The board shall meet and hold conferences and hearings at such times and places as shall be designated by the chair. The chair may call a meeting of the board at any time. The chair shall call a meeting of the board (1) upon receipt of a notice from the director that an objection to the proposed drilling or deepening of a shallow well has been filed by a coal seam owner pursuant to section seventeen, article six of chapter twenty-two of this code or that an objection has been made by the director, (2) upon receipt of an application to establish a drilling unit filed with the board pursuant to section nine of this article, or (3) within twenty days upon the written request by another member of the board. Meetings called pursuant to subdivisions (1) and (2) of this subsection shall be scheduled not less than ten days nor more than twenty days from receipt by the chair of the notice of objection or the application to establish a drilling unit. Notice of all meetings shall be given to each member of the board by the chair at least ten days in advance thereof, unless otherwise agreed by the members.

(b) At least ten days prior to every meeting of the board called pursuant to the provisions of subdivisions (1) and (2), subsection (a) of this section, the chair shall also notify (1) in the case of a notice of objection, the well operator and all objecting coal seam owners, and (2) in the case of an application to establish a drilling unit, the applicant, all persons to whom copies of the application were required to be mailed pursuant to the provisions of subsection (d), section nine of this article and all persons who filed written protests or objections with the board in accordance with the provisions of subsection (c), section nine of this article.

(c) A majority of the members of the board shall constitute a quorum for the transaction of any business. A majority of the members of the board shall be required to determine any issue brought before it.

(d) The board is hereby empowered and it shall be its duty to execute and carry out, administer and enforce the provisions of this article in the manner provided herein. Subject to the provisions of section three of this article, the board shall have jurisdiction and authority over all persons and property necessary therefor: Provided, That the provisions of this article shall not be construed to grant to the board authority or power to (1) limit production or output from or prorate production of any gas well, or (2) fix prices of gas.

(e) The board shall have specific authority to:

(1) Take evidence and issue orders concerning applications for drilling permits and drilling units in accordance with the provisions of this article;

(2) Promulgate, pursuant to the provisions of chapter twenty-nine-a of this code, and enforce reasonable rules necessary to govern the practice and procedure before the board;

(3) Make such relevant investigations of records and facilities as it deems proper; and

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(4) Issue subpoenas for the attendance of and sworn testimony by witnesses and subpoenas duces tecum for the production of any books, records, maps, charts, diagrams and other pertinent documents, and administer oaths and affirmations to such witnesses, whenever, in the judgment of the board, it is necessary to do so for the effective discharge of its duties under the provisions of this article.

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§22C-8-6. Rules; notice requirements.

(a) The board may promulgate, pursuant to the provisions of chapter twenty-nine-a of this code, such reasonable rules as are deemed necessary or desirable to implement and make effective the provisions of this article.

(b) Notwithstanding the provisions of section two, article seven, chapter twenty-nine-a of this code, any notice required under the provisions of this article shall be given at the direction of the chair by (1) personal or substituted service and if such cannot be had then by (2) certified United States mail, addressed, postage and certification fee prepaid, to the last known mailing address, if any, of the person being served, with the direction that the same be delivered to addressee only, return receipt requested, and if there be no known mailing address or if the notice is not so delivered then by (3) publication of such notice as a Class II legal advertisement in compliance with the provisions of article three, chapter fifty-nine of this code, and the publication area for such publication shall be the county or counties wherein any land which may be affected by the order of the board is situate. The chair shall also mail a copy of such notice to all other persons who have specified to the chair an address to which all such notices may be mailed. All notices shall issue in the name of the state, shall be signed by the chair, shall specify the style and number of the proceeding, the date, time and place of any meeting, conference or hearing, and shall briefly state the purpose of the proceeding. Proof of service or publication of such notice shall be made to the board promptly and in any event within the time during which the person served must respond to the notice. If service is made by a person other than the sheriff or the chair, such person shall make proof thereof by affidavit. Failure to make proof of service or publication within the time required shall not affect the validity of the service of the notice.

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§22C-8-7. Objections to proposed drilling; conferences; agreed locations and changes on plats; hearings; orders.

(a) At the time and place fixed by the chair for the meeting of the board and for consideration of the objections to proposed drilling filed by coal seam owners pursuant to section seventeen, article six, chapter twenty-two of this code, the well operator and the objecting coal seam owners present or represented shall hold a conference with the board to consider the objections. Such persons present or represented at the conference may agree upon either the drilling location as proposed by the well operator or an alternate location. Any change in the drilling location from the drilling location proposed by the well operator shall be indicated on the plat enclosed with the notice of objection filed with the chair by the director in accordance with the provisions of section seventeen, article six, chapter twenty-two of this code, and the distance and direction to the new drilling location from the proposed drilling location shall also be shown on such plat. If agreement is reached at the conference by the well operator and such objecting coal seam owners present or represented at the conference, the board shall issue a written order stating that an agreement has been reached, stating the nature of such agreement, and directing the director to grant the well operator a drilling permit for the location agreed upon. The original of such order shall be filed with the division within five days after the conference of the board at which the drilling location was agreed upon and copies thereof shall be mailed by registered or certified mail to the well operator and the objecting coal seam owners present or represented at such conference.

(b) If the well operator and the objecting coal seam owners present or represented at the conference with the board are unable to agree upon a drilling location, then, unless they otherwise agree, the board shall, without recess for more than one business day, hold a hearing to consider the application for a drilling permit. All of the pertinent provisions of article five, chapter twenty-nine-a of this code shall apply to and govern such hearing. Within twenty days after the close of a hearing, the board shall issue and file with the director a written order directing him or her, subject to other matters requiring approval of the director, to:

(1) Refuse a drilling permit;

(2) Issue a drilling permit for the proposed drilling location;

(3) Issue a drilling permit for an alternate drilling location different from that requested by the well operator; or

(4) Issue a drilling permit either for the proposed drilling location or for an alternate drilling location different from that requested by the well operator, but not allow the drilling of the well for a period of not more than one year from the date of issuance of such permit.

(c) The written order of the board shall contain findings of fact and conclusions based thereon concerning the following safety aspects, and no drilling permit shall be issued for

any drilling location where the board finds from the evidence that such drilling location will be unsafe:

(1) Whether the drilling location is above or in close proximity to any mine opening or shaft, entry, travelway, airway, haulageway, drainageway or passageway, or to any proposed extension thereof, in any operated or abandoned or operating coal mine, or any coal mine already surveyed and platted but not yet being operated;

(2) Whether the proposed drilling can reasonably be done through an existing or planned pillar of coal, or in close proximity to an existing well or such pillar of coal, taking into consideration the surface topography;

(3) Whether the proposed well can be drilled safely, taking into consideration the dangers from creeps, squeezes or other disturbances due to the extraction of coal; and

(4) The extent to which the proposed drilling location unreasonably interferes with the safe recovery of coal and gas.

The written order of the board shall also contain findings of fact and conclusions based thereon concerning the following:

(5) The extent to which the proposed drilling location will unreasonably interfere with present or future coal mining operations on the surface including, but not limited to, operations subject to the provisions of article three, chapter twenty-two of this code;

(6) The feasibility of moving the proposed drilling location to a mined-out area, below the coal outcrop, or to some other location;

(7) The feasibility of a drilling moratorium for not more than one year in order to permit the completion of imminent coal mining operations;

(8) The methods proposed for the recovery of coal and gas;

(9) The distance limitations established in section eight of this article;

(10) The practicality of locating the well on a uniform pattern with other wells;

(11) The surface topography and use; and

(12) Whether the order of the board will substantially affect the right of the gas operator to explore for and produce gas.

(d) Any member of the board may file a separate opinion. Copies of all orders and opinions shall be mailed by the board, by registered or certified mail, to the parties present or represented at the hearing.

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§22C-8-8. Distance limitations.

(a) If the well operator and the objecting coal seam owners present or represented at the time and place fixed by the chair for consideration of the objections to the proposed drilling location are unable to agree upon a drilling location, then the written order of the board shall direct the director to refuse to issue a drilling permit unless the following distance limitations are observed:

(1) For all shallow wells with a depth less than three thousand feet, there shall be a minimum distance of one thousand feet from the drilling location to the nearest existing well as defined in subsection (b) of this section; and

(2) For all shallow wells with a depth of three thousand feet or more, there shall be a minimum distance of one thousand five hundred feet from the drilling location to the nearest existing well as defined in subsection (b) of this section, except that where the distance from the drilling location to such nearest existing well is less than two thousand feet but more than one thousand five hundred feet and a coal seam owner has objected, the gas operator shall have the burden of establishing the need for the drilling location less than two thousand feet from such nearest existing well. Where the distance from the drilling location proposed by the operator or designated by the board to the nearest existing well as defined in subsection (b) of this section is greater than two thousand feet, distance criterion will not be a ground for objection by a coal seam owner.

(b) The words "existing well" as used in this section means (i) any well not plugged within nine months after being drilled to its total depth and either completed in the same target formation or drilled for the purpose of producing from the same target formation, and (ii) any unexpired, permitted drilling location for a well to the same target formation.

(c) The minimum distance limitations established by this section shall not apply if the proposed well be drilled through an existing or planned pillar of coal required for protection of a preexisting oil or gas well and the proposed well will neither require enlargement of such pillar nor otherwise have an adverse effect on existing or planned coal mining operations.

(d) Nothing in this article shall be construed to empower the board to order the director to issue a drilling permit to any person other than the well operator filing the application which is the subject of the proceedings.

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§22C-8-9. Application to establish a drilling unit; contents; notice.

(a) Whenever the board has issued an order directing the director to refuse a drilling permit, the gas operator may apply to the board for the establishment of a drilling unit encompassing a contiguous tract or tracts if such gas operator believes that such a drilling unit will afford one well location for the production of gas from under the tract on which the drilling permit was sought, and will be agreeable to the coal seam owners.

(b) An application to establish a drilling unit shall be filed with the board and shall contain:

(1) The name and address of the applicant;

(2) A plat prepared by a licensed land surveyor or registered professional engineer showing the boundary of the proposed drilling unit, the district and county in which such unit is located, the acreage of the proposed drilling unit, the boundary of the tracts which comprise the proposed drilling unit, the names of the owners of record of each such tract, the proposed well location on the proposed drilling unit, and the proposed well location for which the division refused to issue a drilling permit;

(3) The names and addresses of the royalty owners of the gas underlying the tracts which comprise the proposed drilling unit;

(4) The names and addresses of the gas operators of the tracts which comprise the proposed drilling unit;

(5) The approximate depth and target formation to which the well for the proposed drilling unit is to be drilled;

(6) A statement indicating whether a voluntary pooling agreement has been reached among any or all of the royalty owners of the gas underlying the tracts which comprise the proposed drilling unit and the gas operators of such tracts;

(7) An affidavit of publication of the notice of intent to file an application to establish a drilling unit as required in subsection (c) of this section; and

(8) Such other pertinent and relevant information as the board may prescribe by reasonable rules promulgated in accordance with the provisions of section six of this article.

(c) Prior to the filing of an application to establish a drilling unit, the applicant shall cause to be published, as a Class II legal advertisement in accordance with the provisions of article three, chapter fifty-nine of this code, a notice of intent to file an application to establish a drilling unit. Such notice shall contain the information required by subdivisions (1), (4) and (5), subsection (b) of this section, the name of the royalty owner of the gas underlying the proposed well location on the proposed drilling unit, plus an abbreviated description, or, at the applicant's option, a plat of the drilling unit, disclosing the county and district wherein the proposed drilling unit is to be located, the post office closest to the proposed drilling

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unit, a statement that the applicant will deliver a copy of the plat required by subdivision (2) of subsection (b) to any person desiring the same, the date upon which the applicant intends to file the application to establish a drilling unit, and a statement that written protests and objections to such application may be filed with the board until a specified date, which date shall be at least ten days after the date upon which the applicant intends to file the application to establish a drilling unit. The publication area of the notice required by this subsection shall be the county or counties in which the proposed drilling unit is to be located.

(d) At the time an application to establish a drilling unit is filed, the applicant shall forward a copy thereof by registered or certified mail to each and every person whose name and address were included on the application in accordance with the provisions of subdivisions (3) and (4), subsection (b) of this section. With each such application there shall be enclosed a notice (the form for which shall be furnished by the board on request) addressed to each such person to whom a copy of the application is required to be sent, informing the person that the application is being mailed by registered or certified mail, pursuant to the requirements of this article: Provided, That the application and notice need not be forwarded to those royalty owners or gas operators within the boundary of the proposed drilling unit who have previously agreed to voluntary pooling by separately stated document or documents empowering the gas operator, by assignment or otherwise, unilaterally to declare a unit.

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§22C-8-10. Establishment of drilling units; hearings; orders.

(a) At the time and place fixed by the chair for the meeting of the board and for consideration of an application to establish a drilling unit, the applicant shall present proof that the drilling location on the proposed drilling unit has been agreed to by all of the owners of the coal seams underlying such drilling location; and thereafter the applicant, the royalty owners of the gas underlying the tracts comprising the unit, and the gas operators of the tracts comprising the unit or such of them as are present or represented, shall hold a conference with the board to consider the application. Such persons present or represented at the conference may agree upon the boundary of the drilling unit as proposed by the applicant or as changed to satisfy all valid objections of those persons present or represented. Any change in the boundary of the drilling unit from the boundary proposed by the applicant shall be shown on the plat filed with the board as part of the application. If agreement is reached at the conference upon the boundary of the drilling unit among the applicants, the royalty owners of the gas underlying the tracts comprising the drilling unit and the gas operators of the tracts comprising such unit, or such of them as are present or represented, and if such agreement is approved by the board, the board shall issue a written order establishing and specifying the boundary of the drilling unit.

(b) If the applicant, the royalty owners of the gas underlying the tracts comprising the drilling unit and the gas operators of the tracts comprising such unit, or such of them as are present or represented at the time and place fixed by the chair for consideration of the application, are unable to agree upon the boundary of the drilling unit, then the board shall hold a hearing without recess of more than one business day to consider the application to establish a drilling unit. All of the pertinent provisions of article five, chapter twenty-nine-a of this code shall apply to and govern such hearing. Within twenty days after the close of the hearing, the board shall issue a written order either establishing a drilling unit or dismissing the application. If the board determines to establish a drilling unit, the order shall specify the boundary of such drilling unit. In determining whether to grant or deny an application to establish a drilling unit, the board shall consider:

(1) The surface topography and property lines of the lands comprising the drilling unit;

(2) The correlative rights of all gas operators and royalty owners therein;

(3) The just and equitable share of production of each gas operator and royalty owner therein;

(4) Whether a gas operator or royalty owner objecting to the drilling unit has proved by clear and convincing evidence that the drilling unit is substantially smaller than the area that will be produced by the proposed well; and

(5) Other evidence relevant to the establishment of the boundary of a drilling unit.

(c) The board shall not grant an application to establish a drilling unit, nor shall it approve

any drilling unit, unless the board finds that:

(1) The applicant has proved that the drilling location on the drilling unit has been agreed to by all of the owners of the coal seams underlying such drilling location;

(2) The director has previously refused to issue a drilling permit on one of the tracts comprising the drilling unit because of an order of the board;

(3) The drilling unit includes all acreage within the minimum distance limitations provided by section eight of this article, unless the gas operators and royalty owners of any excluded acreage have agreed to such exclusion; and

(4) The drilling unit includes a portion of the acreage from under which the well operator intended to produce gas under the drilling permit which was refused.

(d) All orders issued by the board under this section shall contain findings of fact and conclusions based thereon as required by section three, article five, chapter twenty-nine-a of this code and shall be filed with the director within twenty days after the hearing. Any member of the board may file a separate opinion. Copies of all orders and opinions shall be mailed by the board, by registered or certified mail, to the parties present or represented at the hearing.

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§22C-8-11. Pooling of interests in a drilling unit; limitations.

(a) Whenever the board establishes a drilling unit pursuant to the provisions of sections nine and ten of this article, the order establishing such drilling unit shall include an order pooling the separately owned interests in the gas to be produced from such drilling unit.

(b) If a voluntary pooling agreement has been reached between all persons owning separate operating interests in the tracts comprising the drilling unit, the order of the board shall approve such agreement.

(c) If no voluntary pooling agreement is reached prior to or during the hearing held pursuant to subsection (b), section ten of this article, then at such hearing the board shall also determine the pooling of interests in the drilling unit.

(d) Any order of the board pooling the separately owned interests in the gas to be produced from the drilling unit shall be upon terms and conditions which are just and equitable and shall authorize the production of gas from the drilling unit; shall designate the applicant as the operator to drill and operate such gas well; shall prescribe the procedure by which all owners of operating interests in the pooled tracts or portions of tracts may elect to participate therein; shall provide that all reasonable costs and expenses of drilling, completing, equipping, operating, plugging, abandoning and reclaiming such well shall be borne, and all production therefrom shared, by all owners of operating interests in proportion to the net gas acreage in the pooled tracts owned or under lease to each owner; and shall make provisions for payment of all reasonable costs thereof, including all reasonable charges for supervision and for interest on past-due accounts, by all those who elect to participate therein.

(e) Upon request, any such pooling order shall provide an owner of an operating interest, an election to be made within ten days from the date of the pooling order, (i) to participate in the risks and costs of the drilling of the well, or (ii) to participate in the drilling of the well on a limited or carried basis on terms and conditions which, if not agreed upon, shall be determined by the board to be just and equitable. If the election is not made within the ten-day period, such owner shall be conclusively presumed to have elected the limited or carried basis. Thereafter, if an owner of any operating interest in any portion of the pooled tract shall drill and operate, or pay the costs of drilling and operating, a well for the benefit of such nonparticipating owner as provided in the order of the board, then such operating owner shall be entitled to the share of production from the tracts or portions thereof pooled accruing to the interest of such nonparticipating owner, exclusive of any royalty or overriding royalty reserved with respect to such tracts or portions thereof, or exclusive of one eighth of the production attributable to all unleased tracts or portions thereof, until the market value of such nonparticipating owner's share of the production, exclusive of such royalty, overriding royalty or one eighth of production, equals double the share of such costs payable by or charged to the interest of such nonparticipating owner.

(f) In no event shall drilling be initiated or completed on any tract, where the gas underlying

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such tract has not been severed from the surface thereof by deed, lease or other title document, without the written consent of the person who owns such tract.

(g) All disputes which may arise as to the costs of drilling and operating a well under a pooling order issued pursuant to this section shall be resolved by the board within ninety days from the date of written notification to the board of the existence of such dispute.

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§22C-8-12. Effect of order establishing drilling unit or pooling of interests; recordation.

(a) An order issued by the board establishing a drilling unit and ordering the pooling of interests therein shall not entitle the gas operator designated in such order to drill a well on such drilling unit until such gas operator shall have received a drilling permit in accordance with the provisions applicable to alternative drilling locations set out in section seventeen, article six, chapter twenty-two of this code. All orders issued by the board establishing a drilling unit shall be filed with the director and shall also direct the director to issue a drilling permit for the drilling location agreed to by all of the owners of the coal seams underlying such drilling location.

(b) A certified copy of any order of the board establishing a drilling unit or a pooling of interests shall be mailed by the board to the clerk of the county commission of each county wherein all or any portion of the drilling unit is located, for recordation in the record book of such county in which oil and gas leases are normally recorded. Such recordation from the time noted thereon by such clerk shall be notice of the order to all persons.

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§22C-8-13. Judicial review; appeal to Supreme Court of Appeals; legal representation for board.

(a) Any person adversely affected by an order of the board shall be entitled to judicial review thereof. All of the pertinent provisions of section four, article five, chapter twenty-nine-a of this code shall apply to and govern such judicial review with like effect as if the provisions of said section four were set forth in extenso in this section.

(b) The judgment of the circuit court shall be final unless reversed, vacated or modified on appeal to the Supreme Court of Appeals in accordance with the provisions of section one, article six, chapter twenty-nine-a of this code.

(c) Legal counsel and services for the board in all appeal proceedings in any circuit court and the Supreme Court of Appeals shall be provided by the Attorney General or his or her assistants and in any circuit court by the prosecuting attorney of the county as well, all without additional compensation. The board, with the written approval of the Attorney General, may employ special counsel to represent the board at any such appeal proceedings.

WV Legislature

§22C-8-14. Operation on drilling units.

All operations including, but not limited to, the commencement, drilling or operation of a well upon a drilling unit for which a pooling order has been entered, shall be deemed for all purposes the conduct of such operations upon each separately owned tract in the drilling unit by the several owners thereof. That portion of the production allocated to a separately owned tract included in a drilling unit shall, when produced, be deemed for all purposes to have been actually produced from such tract by a well drilled thereon.

WV Legislature

§22C-8-15. Validity of unit agreements.

No agreement between or among gas operators, lessees or other owners of gas rights in gas properties, entered into pursuant to the provisions of this article or with a view to or for the purpose of bringing about the unitized development or operation of such properties, shall be held to violate the statutory or common law of this state prohibiting monopolies or acts, arrangements, contracts, combinations or conspiracies in restraint of trade or commerce.

WV Legislature

§22C-8-16. Injunctive relief.

(a) Whenever it appears to the board that any person has been or is violating or is about to violate any provision of this article, any rule promulgated by the board hereunder or any order or final decision of the board, the board may apply in the name of the state to the circuit court of the county in which the violations or any part thereof has occurred, is occurring or is about to occur, or to the judge thereof in vacation, for an injunction against such person and any other persons who have been, are or are about to be, involved in any practices, acts or omissions, so in violation, enjoining such person or persons from any such violation or violations. Such application may be made and prosecuted to conclusion whether or not any such violation or violations have resulted or shall result in prosecution or conviction under the provisions of section seventeen of this article.

(b) Upon application by the board, the circuit courts of this state may by mandatory or prohibitory injunction compel compliance with the provisions of this article, the rules promulgated by the board hereunder and all orders of the board. The court may issue a temporary injunction in any case pending a decision on the merits of any application filed. Any other section of this code to the contrary notwithstanding, the state shall not be required to furnish bond or other undertaking as a prerequisite to obtaining mandatory, prohibitory or temporary injunctive relief under the provisions of this article.

(c) The judgment of the circuit court upon any application permitted by the provisions of this section shall be final unless reversed, vacated or modified on appeal to the Supreme Court of Appeals. Any such appeal shall be sought in the manner and within the time provided by law for appeals from circuit courts in other civil actions.

(d) The board shall be represented in all such proceedings by the Attorney General or the Attorney General's assistants and in such proceedings in the circuit courts by the prosecuting attorneys of the several counties as well, all without additional compensation. The board, with the written approval of the Attorney General, may employ special counsel to represent the board in any such proceedings.

(e) If the board shall refuse or fail to apply for an injunction to enjoin a violation or threatened violation of any provision of this article, any rule promulgated by the board hereunder or any order or final decision of the board, within ten days after receipt of a written request to do so by any person who is or will be adversely affected by such violation or threatened violation, the person making such request may apply in such person's own behalf for an injunction to enjoin such violation or threatened violation in any court in which the board might have brought suit. The board shall be made a party defendant in such application in addition to the person or persons violating or threatening to violate any provision of this article, any rule promulgated by the board hereunder or any order of the board. The application shall proceed and injunctive relief may be granted without bond or other undertaking in the same manner as if the application had been made by the chair.

WV Legislature

§22C-8-17. Penalties.

(a) Any person who violates any provision of this article, any of the rules promulgated by the board hereunder or any order of the board other than a violation governed by the provisions of subsection (b) of this section, shall be guilty of a misdemeanor, and, upon conviction thereof, shall be fined not more than $1,000.

(b) Any person who, with the intention of evading any provision of this article, any of the rules promulgated by the board hereunder or any order of the board shall make or cause to be made any false entry or statement in any application or other document permitted or required to be filed under the provisions of this article, any of the rules promulgated by the board hereunder or any order of the board, shall be guilty of a misdemeanor, and, upon conviction thereof, shall be fined not more than $5,000, or imprisoned in the county jail not more than six months, or both fined and imprisoned.

(c) Any person who knowingly aids or abets any other person in the violation of any provision of this article, any of the rules promulgated by the board hereunder or any order or final decision of the board, shall be subject to the same penalty as that prescribed in this article for the violation by such other person.

WV Legislature

§22C-8-18. Construction.

This article shall be liberally construed so as to effectuate the declaration of public policy set forth in section one of this article.

WV Legislature

§22C-8-19. Rules, orders and permits remain in effect.

The rules promulgated and all orders and permits in effect upon the effective date of this article pursuant to the provisions of article seven, of former chapter twenty-two of this code shall remain in full force and effect as if such rules, orders and permits were adopted by the board continued in this article but all such rules, orders and permits shall be subject to review by the board to ensure they are consistent with the purposes and policies set forth in this chapter and chapter twenty-two of this code.

WV Legislature