

WEST VIRGINIA LEGISLATURE
REGULAR SESSION, 1955



ENROLLED

HOUSE BILL No. 428

(By Mr. Watson and Tamm)



PASSED March 10, 1955

In Effect ninety days ^{of} Passage

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D. PITT O'BRIEN
SECRETARY OF STATE

ENROLLED

House Bill No. 428

(By MR. WATSON and MR. FUMICH)

[Passed March 10, 1955; in effect ninety days from passage.]

AN ACT to amend chapter twenty-two of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, to be designated article seven, relating to the operation of underground gas storage reservoirs.

Be it enacted by the Legislature of West Virginia:

That chapter twenty-two of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto a new article, to be designated article seven, to read as follows:

Article 7. Underground Gas Storage Reservoirs.

Section 1. *Definitions.*—In this article unless the context otherwise requires:

- 1 (1) The term “coal mine” means those operations in
2 a coal seam which include the excavated and abandoned

5 portions as well as the places actually being worked;
6 also all underground workings and shafts, slopes, tunnels,
7 and other ways and openings and all such shafts, slopes,
8 tunnels, and other openings in the course of being sunk
9 or driven, together with all roads and facilities connected
10 with them below the surface.

11 (2) The term "operating coal mine" means (a) a coal
12 mine which is producing coal or has been in production
13 of coal at any time during the twelve months immediately
14 preceding the date its status is put in question under this
15 article and any worked out or abandoned coal mine con-
16 nected underground with or contiguous to such operating
17 coal mine as herein defined and (b) any coal mine to be
18 established or reestablished as an operating coal mine
19 in the future pursuant to section four of this article.

20 (3) The term "outside coal boundaries" when used in
21 conjunction with the term "operating coal mine" means
22 the boundaries of the coal acreage assigned to such coal
23 mine and which can be practicably and reasonably ex-
24 pected to be mined through such coal mine.

25 (4) The term "well" means a bore hole drilled or pro-

26 posed to be drilled within the storage reservoir boundary
27 or reservoir protective area for the purpose of or to be
28 used for producing, extracting or injecting any gas,
29 petroleum or other liquid but excluding bore holes
30 drilled to produce potable water to be used as such.

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

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

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

39 (8) The term "linear foot" means a unit of measure-
40 ment in a straight line on a horizontal plane.

41 (9) The term "person" means any individual, associa-
42 tion, partnership or corporation.

43 (10) The term "reservoir protective area" means all
44 of that area outside of and surrounding the storage reser-
45 voir boundary but within two thousand linear feet there-
46 of.

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

51 (12) The term "pillar" means a solid block of coal
52 surrounded by either active mine workings or a mined
53 out area.

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

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

61 (15) The term "workable coal seam" shall have the
62 same meaning as the term "workable coal bed" as set out
63 in section one of article four of this chapter.

64 (16) The terms "owner," "coal operator," "well oper-
65 ator," "department," "department of mines," "plat," "cas-
66 ing," "oil," and "cement," shall have the meanings set out
67 in section one of article four of this chapter.

Sec. 2. Filing of Maps and Data by Persons Operating

2 *or Proposing to Operate Gas Storage Reservoirs.—(a)*

3 Any person who, on the effective date of this article, is
4 injecting gas into or storing gas in a storage reservoir
5 which underlies or is within three thousand linear feet
6 of an operating coal mine which is operating in a coal
7 seam that extends over the storage reservoir or the
8 reservoir protective area, shall, within sixty days there-
9 after, file with the department a copy of a map and cer-
10 tain data in the form and manner provided in this sub-
11 section.

12 Any person who, on the effective date of this article, is
13 injecting gas into or storing gas in a storage reservoir
14 which is not at such date under or within three thou-
15 sand linear feet, but is less than ten thousand linear
16 feet from an operating coal mine which is operating in
17 a coal seam that extends over the storage reservoir or
18 the reservoir protective area, shall file such map and
19 data within such time in excess of sixty days as the
20 department may fix.

21 Any person who, after the effective date of this article,

22 proposes to inject or store gas in a storage reservoir
23 located as above, shall file the required map and data
24 with the department not less than six months prior to
25 the starting of actual injection or storage.

26 The map provided for herein shall be prepared by a
27 competent engineer or geologist. It shall show the
28 stratum or strata in which the existing or proposed stor-
29 age reservoir is or is to be located, the geographic loca-
30 tion of the outside boundaries of the said storage reser-
31 voir and the reservoir protective area, the location of
32 all known oil or gas wells which have been drilled into
33 or through the storage stratum within the reservoir or
34 within three thousand linear feet thereof, indicating
35 which of these wells have been, or are to be cleaned out
36 and plugged or reconditioned for storage and also indi-
37 cating the proposed location of all additional wells which
38 are to be drilled within the storage reservoir or within
39 three thousand linear feet thereof.

40 The following information, if available, shall be fur-
41 nished for all known oil or gas wells which have been
42 drilled into or through the storage stratum within the

43 storage reservoir or within three thousand linear feet
44 thereof; name of the operator, date drilled, total depth,
45 depth of production if the well was productive of oil or
46 gas, the initial rock pressure and volume, the depths at
47 which all coal seams were encountered and a copy of
48 the driller's log or other similar information. At the
49 time of the filing of the aforesaid maps and data such
50 person shall file a detailed statement of what efforts he
51 has made to determine, (1) that the wells shown on said
52 map are accurately located thereon, and (2) that to the
53 best of his knowledge they are all the oil or gas wells
54 which have ever been drilled into or below the storage
55 stratum within the proposed storage reservoir or within
56 the reservoir protective area. This statement shall also
57 include information as to whether or not the initial in-
58 jection is for testing purposes, the maximum pressures
59 at which injection and storage of gas is contemplated, and
60 a detailed explanation of the methods to be used or which
61 theretofore have been used in drilling, cleaning out,
62 reconditioning and plugging wells in the storage reser-
63 voir or within the reservoir protective area. The map

64 and data required to be filed hereunder shall be amended
65 or supplemented semiannually in case any material
66 changes have occurred: *Provided, however,* That the de-
67 partment may require a storage operator to amend or
68 supplement such map or data at more frequent intervals
69 if material changes have occurred justifying such earlier
70 filing.

71 (b) The requirements of this section shall not apply
72 to the operator of an underground gas storage reservoir
73 so long as said reservoir is located more than ten thousand
74 linear feet from an operating coal mine: *Provided, how-*
75 *ever,* That such storage operator shall give notice to the
76 department of the name of each political subdivision
77 and county in which said operator maintains and
78 operates a gas storage reservoir. In those political sub-
79 divisions and counties where both gas storage reservoirs
80 and coal mines are being operated the department may
81 request the storage operator to furnish maps showing the
82 geographical location and outside boundaries of such
83 storage reservoirs. The department shall keep a record
84 of such information and shall promptly notify both the

85 coal operator and the storage operator if it is found that
86 the coal mine and storage reservoir are within ten thou-
87 sand linear feet of each other.

88 (c) At the time of the filing of the above maps and
89 data, and the filing of amended or supplemental maps
90 or data, the department shall give written notice of said
91 filing to all persons who may be affected under the pro-
92 visions of this article by the storage reservoir described
93 in such maps or data. Such notices shall contain a des-
94 cription of the boundaries of such storage reservoir. When
95 a person operating a coal mine or owning an interest in
96 coal properties which are or may be affected by the
97 storage reservoir, requests in writing a copy of any map
98 or data filed with the department such copy shall be
99 furnished by the storage operator.

100 (d) For all purposes of this article, the outside bound-
101 aries of a storage reservoir shall be defined by the loca-
102 tion of those wells around the periphery of the storage
103 reservoir which had no gas production when drilled in
104 said storage stratum: *Provided, however,* That the bound-
105 aries as thus defined shall be originally fixed or subse-

106 quently changed where, based upon the number and
107 nature of such wells, upon the geological and production
108 knowledge of the storage stratum, its character, permea-
109 bility, and distribution, and operating experience, it is
110 determined in a conference or hearing under section ten
111 of this article that modification should be made.

Sec. 3. Filing of Maps and Data by Persons Operating

2 *Coal Mines.*—(a) Any person owning or operating a coal
3 mine shall, within thirty days from the effective date
4 of this article, file with the department a map, prepared
5 by a competent engineer, showing the outside coal
6 boundaries of the said operating coal mine, the existing
7 workings and exhausted areas and the relationship of
8 said boundaries to identifiable surface properties and
9 landmarks. Any person who is storing or contemplating
10 the storage of gas in the vicinity of such operating coal
11 mines shall, upon written request, be furnished a copy
12 of the aforesaid map by the coal operator and such per-
13 son and the department shall thereafter be informed of
14 any boundary changes at the time such changes occur.
15 The department shall keep a record of such information

16 and shall promptly notify both the coal operator and the
17 storage operator if it is found that the coal mine and the
18 storage reservoir are within ten thousand linear feet of
19 each other.

20 (b) Any person owning or operating any coal mine
21 which, on the date of the enactment of this article, is or
22 which thereafter comes within ten thousand linear feet of
23 a storage reservoir, and where the coal seam being
24 operated extends over the storage reservoir or the reser-
25 voir protective area, shall within forty-five days after
26 he has notice from the department of such fact, file with
27 the department, and furnish to the person operating such
28 storage reservoir, a map in the form hereinabove pro-
29 vided and showing in addition, the existing and pro-
30 jected excavations and workings of such operating coal
31 mine for the ensuing eighteen month period, and also the
32 location of any oil or gas wells of which said coal operator
33 has knowledge. Such person owning or operating said
34 coal mine shall each six months thereafter file with the
35 department and furnish to the person operating such
36 storage reservoir a revised map showing any additional

37 excavations and workings, together with the projected
38 excavations and workings for the then ensuing eighteen
39 month period which may be within ten thousand linear
40 feet of said storage reservoir: *Provided, however, That*
41 the department may require a coal operator to file such
42 revised map at more frequent intervals if material changes
43 have occurred justifying such earlier filing. Such person
44 owning or operating said coal mine shall also file with
45 the department and furnish the person operating said
46 reservoir prompt notice of any wells which have been
47 cut into, together with all available pertinent information.

Sec. 4. *Notice by Persons Operating Coal Mines.*—

- 2 (a) Any person owning or operating a coal mine on the
3 effective date of this article, and having knowledge that
4 it overlies or is within two thousand linear feet of a gas
5 storage reservoir, shall within thirty days notify the de-
6 partment and the storage operator of such fact.
- 7 (b) When any person owning or operating a coal mine
8 hereafter expects that within the ensuing nine month
9 period such coal mine will be extended to a point which
10 will be within two thousand linear feet of any storage

11 reservoir he shall notify the department and the storage
12 operator in writing of such fact.

13 (c) Any person hereafter intending to establish or re-
14 establish an operating coal mine which when established
15 or reestablished will be over a storage reservoir or within
16 two thousand linear feet of a storage reservoir, or which
17 upon being established or reestablished may within nine
18 months thereafter be expected to be within two thousand
19 linear feet of a storage reservoir, shall notify the depart-
20 ment and the storage operator in writing before doing so
21 and such notice shall include the date on which it is in-
22 tended the operating coal mine will be established or re-
23 established.

24 Any person who serves such notice of an intention to es-
25 tablish or reestablish an operating coal mine under this
26 subsection, without intending in good faith to establish or
27 reestablish such mine, shall be liable for continuing dam-
28 ages to any storage operator injured by the serving of
29 such improper notice and shall be guilty of a misdemeanor
30 under this article and subject to the same penalties as set
31 forth in section twelve of this article.

Sec. 5. *Obligations to Be Performed by Persons Operat-*

2 *ing Storage Reservoirs.*—(a) Any person who, on the
3 effective date of this article, is operating a storage reser-
4 voir which underlies or is within two thousand linear
5 feet of an operating coal mine which is operating in a coal
6 seam that extends over the storage reservoir or the reser-
7 voir protective area, shall:

8 (1) Use every known method which is reasonable un-
9 der the circumstances for discovering and locating all
10 wells which have or may have been drilled into or through
11 the storage stratum in that acreage which is within the
12 outside coal boundaries of such operating coal mine and
13 which overlies the storage reservoir or the reservoir pro-
14 tective area;

15 (2) Plug or recondition, in the manner provided by
16 sections nine and ten of article four of this chapter and
17 subsection (e) of this section, all known wells (except
18 to the extent otherwise provided in subsections (e), (f),
19 (g) and (h) of this section) drilled into or through the
20 storage stratum and which are located within that portion
21 of the acreage of the operating coal mine overlying the

22 storage reservoir or the reservoir protective area: *Pro-*
23 *vided, however,* That where objection is raised as to the
24 use of any well as a storage well, and after a conference
25 or hearing in accordance with section ten of this article
26 it is determined, taking into account all the circumstances
27 and conditions, that such well should not be used as a
28 storage well, such well shall be plugged: *Provided, how-*
29 *ever,* That if, in the opinion of the storage operator, the
30 well to which such objection has been raised may at some
31 future time be used as a storage well, the storage operator
32 may recondition and inactivate such well instead of plug-
33 ging it, if such alternative is approved by the department
34 after taking into account all of the circumstances and
35 conditions.

36 The requirements of clause (2) of this subsection shall
37 be deemed to have been fully complied with if, as the
38 operating coal mine is extended, all wells which, from
39 time to time, come within the acreage described in said
40 clause (2) are reconditioned or plugged as provided in
41 subsections (e) or (f) of this section and in section ten
42 of article four of this chapter so that by the time the coal

43 mine has reached a point within two thousand linear
44 feet of any such wells, they will have been reconditioned
45 or plugged so as to meet the requirements of said sub-
46 sections (e) or (f) and of said section ten of article
47 four.

48 (b) Any person operating a storage reservoir referred
49 to in subsection (a) of this section shall within sixty days
50 after the effective date of this article file with the depart-
51 ment and furnish a copy to the person operating the
52 affected operating coal mine, a verified statement setting
53 forth:

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

57 (2) A detailed explanation of what the storage operator
58 has done to comply with the requirements of clauses (1)
59 and (2) of subsection (a) of this section and the results
60 thereof;

61 (3) Such additional efforts, if any, as the storage op-
62 erator is making and intends to make to locate all oil and
63 gas wells; and

64 (4) Any additional wells that are to be plugged or re-
65 conditioned to meet the requirements of clause (2) of
66 subsection (a) of this section.

67 If such statement is not filed by the storage reservoir
68 operator within the time specified herein, the department
69 shall summarily order such operator to file such state-
70 ment.

71 (c) Within one hundred twenty days after the receipt
72 of any such statement, the department may, and it shall,
73 if so requested by either the storage operator or the coal
74 operator affected, direct that a conference be held in ac-
75 cordance with section ten of this article to determine
76 whether the information as filed indicates that the re-
77 quirements of section two of this article and of subsection
78 (a) of this section have been fully complied with. At
79 such conference, if any person shall be of the opinion
80 that such requirements have not been fully complied
81 with, the parties shall attempt to agree on what additional
82 things are to be done and the time within which they
83 are to be completed, subject to the approval of the de-
84 partment, to meet the said requirements.

85 If such agreement cannot be reached, the department
86 shall direct that a hearing be held in accordance with
87 section ten of this article. At such hearing the department
88 shall determine whether the requirements of said section
89 two of this article and of subsection (a) of this section
90 have been met and shall issue an order setting forth such
91 determination. If the department shall determine that
92 any of the said requirements have not been met, the order
93 shall specify, in detail, both the extent to which such re-
94 quirements have not been met, and the things which the
95 storage operator must do to meet such requirements. The
96 order shall grant to the storage operator such time as is
97 reasonably necessary to complete each of the things which
98 he is directed to do. If, in carrying out said order, the
99 storage operator encounters conditions which were not
100 known to exist at the time of the hearing and which
101 materially affect the validity of said order or the ability
102 of the storage operator to comply with the order, the
103 storage operator may apply for a rehearing or modifica-
104 tion of said order.

105 (d) Whenever, in compliance with subsection (a) of

106 this section, a storage operator, after the filing of the
107 statement provided for in subsection (b) of this section,
108 plugs or reconditions a well, he shall so notify the de-
109 partment and the coal operator affected in writing, set-
110 ting forth such facts as will indicate the manner in which
111 the plugging or reconditioning was done. Upon receipt
112 thereof, the coal operator affected or the department may
113 request a conference or hearing in accordance with section
114 ten of this article.

115 (e) In order to meet the requirements of subsection (a)
116 of this section, wells which are to be plugged shall be
117 plugged in the manner specified in section ten of article
118 four of this chapter. When a well located within the
119 storage reservoir or the reservoir protective area has been
120 plugged prior to the enactment of this article and on
121 the basis of the data, information and other evidence
122 submitted to the department it is determined that: (1)
123 such plugging was done in the manner required in section
124 ten of article four of this chapter; and (2) said plugging
125 is still sufficiently effective to meet the requirements of
126 this article, the obligations imposed by subsection (a) of

127 this section as to plugging said well shall be considered
128 fully satisfied.

129 (f) In order to meet the requirements of subsection (a)
130 of this section wells which are to be reconditioned shall
131 be cleaned out from the surface through the storage hori-
132 zon and the following casing strings shall be pulled and
133 replaced with new casing, using the same procedure as
134 is applicable to drilling a new well as provided for in
135 sections five, six, seven and eight of article four of this
136 chapter: (1) the producing casing; (2) the largest di-
137 ameter casing passing through the lowest workable coal
138 seam unless such casing extends at least twenty-five feet
139 below the bottom of such coal seam and is determined
140 to be in good physical condition: *Provided, however,* That
141 the storage operator may, instead of replacing the largest
142 diameter casing, replace the next largest casing string
143 if such casing string extends at least twenty-five feet be-
144 low the lowest workable coal seam; and (3) such other
145 casing strings which are determined not to be in good
146 physical condition. In the case of wells to be used for gas
147 storage, the annular space between each string of casing,

148 and the annular space behind the largest diameter casing
149 to the extent possible, shall be filled to the surface with
150 cement or aquagel or such equally non-porous material
151 as is approved by the department pursuant to section eight
152 of this article. At least fifteen days prior to the time when
153 a well is to be reconditioned the storage operator shall
154 give notice thereof to the coal operator or owner and
155 to the department setting forth in such notice the manner
156 in which it is planned to recondition such well and any
157 pertinent data known to the storage operator which will
158 indicate the then existing condition of such well. In addi-
159 tion the storage operator shall give the coal operator
160 or owner and such representative of the department as
161 the chief of the department shall have designated at least
162 seventy-two hours notice of the time when such recon-
163 ditioning is to begin. The coal operator or owner shall
164 have the right to file, within ten days after the receipt
165 of the first notice required herein, objections to the plan
166 of reconditioning as submitted by the storage operator.
167 If no such objections are filed or if none is raised by the
168 department within such ten day period, the storage op-

169 erator may proceed with the reconditioning in accordance
170 with the plan as submitted. If any such objections are
171 filed by the coal operator or owner or are made by the
172 department, the department shall fix a time and place for
173 a conference in accordance with section ten of this article
174 at which conference the well operator and the person
175 who has filed such objections shall endeavor to agree
176 upon a plan of reconditioning which meets the require-
177 ments herein and which will satisfy such objections. If
178 no plan is approved at such conference the department
179 shall direct that a hearing be held in accordance with
180 section ten of this article and, after such hearing, shall
181 by an appropriate order determine whether the plan as
182 submitted meets the requirements set forth herein, or
183 what changes, if any, should be made to meet such re-
184 quirements. If, in reconditioning a well in accordance
185 with said plan, physical conditions are encountered which
186 justify or necessitate a change in said plan, the storage
187 operator or the coal operator may request that the plan
188 be changed. If the storage operator and the coal operator
189 cannot agree upon such change, the department shall ar-

190 range for a conference or hearing in accordance with sec-
191 tion ten of this article to determine the matter in the
192 same manner as set forth herein in connection with origi-
193 nal objections to said plan. Application may be made to the
194 department in the manner prescribed in section eight of
195 this article for approval of an alternative method of re-
196 conditioning a well. When a well located within the
197 storage reservoir or the reservoir protective area has
198 been reconditioned prior to the enactment of this article
199 or was so drilled and equipped previously and on the
200 basis of the data, information and other evidence sub-
201 mitted to the department it is determined that: (1) such
202 reconditioning or previous drilling and equipping was
203 done in the manner required in this subsection, or in a
204 manner approved as an alternative method in accordance
205 with section eight of this article and (2) such recondition-
206 ing or previous drilling and equipping is still sufficiently
207 effective to meet the requirements of this article, the ob-
208 ligations imposed by subsection (a) as to reconditioning
209 said well shall be considered fully satisfied. Where a
210 well requires emergency repairs this subsection shall not

211 be construed to require the storage operator to give the
212 notices specified herein before making such repairs.

213 (g) When a well located within the reservoir protec-
214 tive area is a producing well in a stratum below the stor-
215 age stratum the obligations imposed by subsection (a) of
216 this section shall not begin until such well ceases to be a
217 producing well.

218 (h) When a well within a storage reservoir or the
219 reservoir protective area penetrates the storage stratum
220 but does not penetrate the coal seam being mined by an
221 operating coal mine the department may, upon applica-
222 tion of the operator of such storage reservoir, exempt such
223 well from the requirements of this section. Either party
224 affected may request a conference and hearing with re-
225 spect to the exemption of any such well in accordance
226 with section ten of this article.

227 (i) In fulfilling the requirements of clause (2) of sub-
228 section (a) of this section with respect to a well within
229 the reservoir protective area, the storage operator shall
230 not be required to plug or recondition such well until
231 he has received from the coal operator written notice that

232 the mine workings will within the period stated in such
233 notice, be within two thousand linear feet of such well.
234 Upon the receipt of such notice the storage operator shall
235 use due diligence to complete the plugging or recondition-
236 ing of such well in accordance with the requirements of
237 this section and of section ten of article four of this chap-
238 ter. If the said mine workings do not, within a period
239 of three years after said well has been plugged, come
240 within two thousand linear feet of said well, the coal
241 operator shall reimburse the storage operator for the cost
242 of said plugging, provided such well is still within the
243 reservoir protective area as of that time.

244 (j) When retreat mining approaches a point where
245 within ninety days it is expected that such retreat work
246 will be at the location of the pillar surrounding an active
247 storage well the coal operator shall give written notice
248 of such approach to the storage operator and by agree-
249 ment said parties shall determine whether it is necessary
250 or advisable to inactivate effectively said well tempor-
251 arily. The well shall not be reactivated until a reasonable
252 period has elapsed, such reasonable period to be deter-

253 mined by the said parties. In the event that the said
254 parties cannot agree upon either of the foregoing matters,
255 such question shall be submitted to the department for
256 decision in accordance with section ten of this article.
257 The number of wells required to be temporarily inacti-
258 vated during the retreat period shall not be such as to
259 materially affect the efficient operation of such storage
260 pool. This provision shall not preclude the temporary
261 inactivation of a particular well where the practical effect
262 of inactivating such well is to render the pool temporarily
263 inoperative.

264 (k) The requirements of subsection (a), (l), and (m)
265 of this section shall not apply to the injection of gas into
266 any stratum when the sole purpose of such injection (such
267 purpose being herein referred to as testing) is to deter-
268 mine whether the said stratum is suitable for storage pur-
269 poses: *Provided, however,* That such testing shall be con-
270 ducted only in compliance with the following require-
271 ments:

272 (1) The person testing or proposing to test shall comply
273 with all the provisions and requirements of section two

274 of this article and shall verify the statement required to
275 be filed thereby;

276 (2) If any part of the proposed storage reservoir is
277 under or within two thousand linear feet of an operating
278 coal mine which is operating in a coal seam that extends
279 over the proposed storage reservoir or the reservoir pro-
280 tective area, the storage operator shall give at least six
281 months' written notice to the department and to the coal
282 operator of the fact that injection of gas for testing pur-
283 poses is proposed;

284 (3) The coal operator affected may at any time file
285 objections with the department in accordance with sub-
286 section (e) of section nine of this article. If any such
287 objections are filed by the coal operator or if the depart-
288 ment shall have any objections, the department shall fix
289 a time and place for a conference in accordance with
290 section ten of this article, not more than ten days from
291 the date of the notice to the storage operator, at which
292 conference the storage operator and the person who has
293 filed such objections shall attempt to agree, subject to
294 the approval of the department, on the questions involved.

295 If such agreement cannot be reached at such conference,
296 the department shall direct that a hearing be held in
297 accordance with section ten of this article. At such hear-
298 ing the department shall determine and set forth in an
299 appropriate order the conditions and requirements which
300 it shall deem necessary or advisable in order to prevent
301 gas from such storage reservoir from entering any oper-
302 ating coal mine. The storage operator shall comply with
303 such conditions and requirements throughout the period
304 of the testing operations. In determining such conditions
305 and requirements the department shall take into account
306 the extent to which the matters referred to in subsection
307 (a) of this section have been performed. If, in carrying
308 out said order, either the storage operator or the coal
309 operator encounters or discovers conditions which were
310 not known to exist at the time of the hearing and which
311 materially affect said order or the ability of the storage
312 operator to comply with the order, either operator may
313 apply for a rehearing or modification of said order;

314 (4) Where, at any time, a proposed storage reservoir
315 being tested comes under or within two thousand linear

316 feet of an operating coal mine either because of the ex-
317 tension of the storage reservoir being tested or because
318 of the extension or establishment or reestablishment of
319 the operating coal mine, then and at the time of any such
320 event the requirements of this subsection shall become
321 applicable to such testing.

322 (1) Any person who, after the effective date of this
323 article, proposes to establish a storage reservoir under,
324 or within two thousand linear feet of an operating coal
325 mine which is operating in a coal seam that extends over
326 the storage reservoir or the reservoir protective area,
327 shall, prior to establishing such reservoir, in addition to
328 complying with the requirements of section two of this
329 article and subsection (a) of this section, file the verified
330 statement required by subsection (b) of this section and
331 fully comply with such order or orders, if any, as the
332 department may issue in the manner provided for under
333 subsections (b) or (c) of this section before beginning
334 the operation of such storage reservoir. After the person
335 proposing to operate such storage reservoir shall have
336 complied with such requirements and shall have there-

337 after begun to operate such reservoir, he shall continue
338 to be subject to all of the provisions of this article.

339 (m) When a gas storage reservoir, (1) is in operation
340 on the effective date of this article, and at any time there-
341 after it is under or within two thousand linear feet of an
342 operating coal mine, or (2) when a gas storage reservoir
343 is put in operation after the effective date of this article
344 and at any time after such storage operations begin it is
345 under or within two thousand linear feet of an operating
346 coal mine, then and in either such event, the storage
347 operator shall comply with all of the provisions of this
348 section except that the time for filing the verified state-
349 ment under subsection (b) shall be sixty days after the
350 date stated in the notice filed by the coal operator under
351 subsections (b) or (c) of section four of this article as
352 to when the operating coal mine will be at a point within
353 two thousand linear feet of such reservoir: *Provided,*
354 *however,* That if the extending of the projected workings
355 or the proposed establishment or reestablishment of the
356 operating coal mine is delayed after the giving of the
357 notice provided in subsections (b) and (c) of section four
358 of this article, the coal operator shall give notice of such

359 delay to the department and the department shall, upon
360 the request of the storage operator, extend the time for
361 filing such statement by the additional time which will
362 be required to extend or establish or reestablish such
363 operating coal mine to a point within two thousand linear
364 feet of such reservoir. Such verified statement shall also
365 indicate that the map referred to in subsection (a) of
366 section two of this article has been currently amended
367 as of the time of the filing of such statement. The person
368 operating any such storage reservoir shall continue to be
369 subject to all of the provisions of this article.

370 (n) If, in any proceeding under this article, the depart-
371 ment shall determine that any operator of a storage reser-
372 voir has failed to carry out any lawful order of the de-
373 partment issued under this article, the department shall
374 have authority to require such storage operator to suspend
375 the operation of such reservoir and to withdraw the gas
376 therefrom until such violation is remedied. In such an
377 event the gas shall be withdrawn under the following
378 conditions. The storage operator shall remove the maxi-
379 mum amount of gas which is required by the department

380 to be removed from the storage reservoir that can be
381 withdrawn in accordance with recognized engineering
382 and operating procedures and shall proceed with due
383 diligence insofar as existing facilities used to remove gas
384 from the reservoir will permit.

385 (o) In addition to initial compliance with the other
386 provisions of this article and any lawful orders issued
387 thereunder, it shall be the duty at all times of the person
388 owning or operating any storage reservoir which is sub-
389 ject to the provisions of this article to keep all wells
390 drilled into or through the storage stratum in such con-
391 dition and to operate the same in such manner as to pre-
392 vent the escape of gas into any coal mine therefrom, and
393 to operate and maintain such storage reservoir and its
394 facilities in such manner and at such pressures as will
395 prevent gas from escaping from such reservoir or its
396 facilities into any coal mine, provided that this duty shall
397 not be construed to include the inability to prevent the
398 escape of gas where such escape results from an act of
399 God or an act of any person not under the control of the
400 storage operator other than in connection with any well

401 which the storage operator has failed to locate and to
402 make known to the department: *Provided, however*, That
403 if any escape of gas into a coal mine does result from an
404 act of God or an act of any person not under the control
405 of the storage operator, the storage operator shall be
406 under the duty of taking such action thereafter as is rea-
407 sonably necessary to prevent further escape of gas into
408 the coal mine.

Sec. 6. *Inspection of Facilities and Records; Reliance on*

2 *Maps; Burden of Proof.*—(a) In determining whether
3 a particular coal mine or operating coal mine is or will
4 be within any distance material under this article from
5 any storage reservoir, the owner or operator of such coal
6 mine and the storage operator may rely on the most
7 recent map of the storage reservoir or coal mine filed by
8 the other with the department.

9 (b) In any proceeding under this article where the
10 accuracy of any map or data filed by any person pursuant
11 to the requirements of this article is in issue, the person
12 filing the same shall at the request of any party to such
13 proceeding be required to disclose the information and

14 method used in compiling such map and data and such
15 information as is available to such person that might
16 affect the current validity of such map or data. If any
17 material question is raised in such proceeding as to the
18 accuracy of such map or data with respect to any partic-
19 ular matter or matters contained therein, the person filing
20 such map or data shall then have the burden of proving
21 the accuracy of the map or data with respect to such
22 matter or matters.

23 (c) The person operating any storage reservoir affected
24 by the terms of this article shall, at all reasonable times,
25 be permitted to inspect the applicable records and facil-
26 ities of any coal mine overlying such storage reservoir
27 or the reservoir protective area, and the person operating
28 any such coal mine affected by the terms of this article,
29 shall similarly, at all reasonable times, be permitted to
30 inspect the applicable records and facilities of any such
31 storage reservoir underlying any such coal mine. In the
32 event that either such storage operator or coal operator
33 shall refuse to permit any such inspection of records or
34 facilities, the department shall, on its own motion, or on

35 application of the party seeking the inspection after
36 reasonable written notice, and a hearing thereon, if re-
37 quested by either of the parties affected, make an order
38 providing for such inspection.

Sec. 7. *Exemptions.*—(a) The provisions of this article
2 shall not apply to strip mines and auger mines operating
3 from the surface.

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

Sec. 8. *Alternative Method.*—(a) Whenever provision
2 is made in this article by reference to this section for
3 using an alternative method or material in carrying out
4 any obligation imposed by the article, the person seeking
5 the authority to use such alternative method or material
6 shall file an application with the department describing
7 such proposed alternative method or material in rea-

8 sonable detail. Notice of filing of any such application
9 shall be given by registered mail to any coal operator or
10 operators affected. Any such coal operator may within
11 ten days following such notice, file objections to such pro-
12 posed alternative method or material. If no objections are
13 filed within said ten day period or if none is raised by the
14 department, the department shall forthwith issue a permit
15 approving such proposed alternative method or material.

16 (b) If any such objections are filed by any coal operator
17 or are raised by the department, the department shall
18 direct that a conference be held in accordance with sec-
19 tion ten of this article within the ten days following the
20 the filing of such objections. At such conference the per-
21 son seeking approval of the alternative method or mate-
22 rial and the person who has filed such objections shall
23 attempt to agree on such alternative method or material
24 or any modification thereof, and if such agreement is
25 reached and approved by the department, the department
26 shall forthwith issue a permit approving the alternative
27 method or material. If no such agreement is reached and
28 approved, the department shall direct that a hearing be

29 held in accordance with section ten of this article: *Provid-*
30 *ed, however,* That if the alternative method or material
31 involves a new development in technology or technique
32 the department may, before such a hearing is held, grant
33 such affected parties a period not to exceed ninety days
34 to study and evaluate said proposed alternative method
35 or material. Following such hearing, if the department
36 shall find that such proposed alternative method or mate-
37 rial will furnish adequate protection to the workable coal
38 seams, the department shall by order approve such alter-
39 native method or material; otherwise the department
40 shall deny the said application.

Sec. 9. *Powers and Duties of the Department.*—(a) The
2 department may review the maps and data filed under
3 sections two and three hereof for the purpose of deter-
4 mining the accuracy thereof. Where any material ques-
5 tion is raised by any interested storage operator or coal
6 operator or owner as to the accuracy of any such map
7 or data, the department shall hold hearings thereon and
8 shall by an appropriate order require the person filing

9 such map or data to correct the same if they are found
10 to be erroneous.

11 (b) It shall be the duty of the department to receive
12 and keep in a safe place for public inspection any map,
13 data, report, well log, notice or other writing required
14 to be filed with it pursuant to the provisions of this article.
15 The department shall keep such indices of all such infor-
16 mation as will enable any person using the same to readily
17 locate such information either by the identity of the per-
18 son who filed the same or by the person or persons affected
19 by such filing or by the geographic location of the subject
20 matter by political subdivision. The department shall
21 also keep a docket for public inspection of all proceedings,
22 in which shall be entered the dates of any notices, the
23 names of all persons notified and their addresses, the dates
24 of hearings, conferences and all orders, decrees, decisions,
25 determinations, rulings or other actions issued or taken
26 by the department and such docket shall constitute the
27 record of each and every proceeding before the depart-
28 ment.

29 (c) The department shall have authority to make any

30 inspections and investigations of records and facilities
31 which it shall deem necessary or desirable to perform its
32 functions under this article.

33 (d) Where in any section of this article provision is
34 made for the filing of objections, such objections shall be
35 filed in writing with the department by the person en-
36 titled to file the same or by the department, and shall
37 state as definitely as is reasonably possible the reasons
38 for such objections. The person filing such objections
39 shall send a copy thereof by registered mail to the person
40 or persons affected thereby.

Sec. 10. *Conferences, Hearings and Appeals.*—(a) The
2 department or any person having a direct interest in the
3 subject matter of this article may at any time request that
4 a conference be held for the purpose of discussing and
5 endeavoring to resolve by mutual agreement any matter
6 arising under the provisions of this article. Prompt notice
7 of any such conference shall be given by the department
8 to all such interested parties. At such conference a repre-
9 sentative of the department shall be in attendance, and
10 the department may make such recommendations as it

11 deems appropriate. Any agreement reached at such con-
12 ference shall be consistent with the requirements of this
13 article and, if approved by such representative of the
14 department, it shall be reduced to writing and shall be
15 effective unless reviewed and rejected by the department
16 within ten days after the close of the conference. The
17 record of any such agreement approved by the depart-
18 ment shall be kept on file by the department with copies
19 furnished to the parties. The conference shall be deemed
20 terminated as of the date any party refuses to confer
21 thereafter. Such a conference shall be held in all cases
22 prior to conducting any hearing under this section.

23 (b) Within ten days after termination of the conference
24 provided for in this section at which no approved agree-
25 ment has been reached or within ten days after the rejec-
26 tion by the department of any agreement approved at any
27 such conference, any person who has a direct interest in
28 the subject matter of the conference may submit the mat-
29 ter or matters, or any part thereof, considered at the
30 conference, to the department for determination at a
31 public hearing. The hearing procedure shall be form-

32 ally commenced by the filing of a petition with the
33 department upon forms prescribed by the department
34 or by specifying in writing the essential elements of
35 the petition, including name and address of the peti-
36 tioner and of all other persons affected thereby, a clear
37 and concise statement of the facts involved, and a
38 specific statement of the relief sought. The hearing
39 shall thereafter be conducted in accordance with such
40 regulations and such provisions as to reasonable notice
41 as the department may prescribe. Consistent with the
42 requirements for reasonable notice all hearings under
43 this article shall be held by the department promptly.
44 All testimony taken at such hearings shall be under oath
45 and shall be reduced to writing by a reporter appointed
46 by the department, and the parties shall be entitled to
47 appear and be heard in person or by attorney. The depart-
48 ment may present at such hearing any evidence which is
49 material to the matter under consideration and which has
50 come to the department's attention in any investigation
51 or inspection made pursuant to provisions of this article.
52 (c) After the conclusion of hearings, the department

53 shall make and file its findings and order with its opinion,
54 if any. A copy of such order shall be served by registered
55 mail upon the person against whom it runs, or his attorney
56 of record, and notice thereof shall be given to the other
57 parties to the proceedings, or their attorney of record.

58 (d) The department may, at any time after notice and
59 after opportunity to be heard as provided in this section,
60 rescind or amend any approved agreement or order made
61 by it. Any order rescinding or amending a prior agree-
62 ment or order shall, when served upon the person affected,
63 and after notice thereof is given to the other parties to
64 the proceedings, have the same effect as is herein provided
65 for original orders; but no such order shall affect the
66 legality or validity of any acts done by such person in
67 accordance with the prior agreement or order before
68 receipt by such person of the notice of such change.

69 (e) The chief of the department shall have power,
70 either personally or by any of his authorized represent-
71 atives, to subpoena witnesses and take testimony, and
72 administer oaths to any witness in any hearing, proceed-
73 ing or examination instituted before the department or

74 conducted by it with reference to any matter within the
75 jurisdiction of the department. In all hearings or proceed-
76 ings before the department the evidence of witnesses and
77 the production of documentary evidence may be required
78 at any designated place of hearing; and in case of dis-
79 obedience to a subpoena or other process the department
80 or any party to the proceedings before the department
81 may invoke the aid of any circuit court in requiring the ev-
82 idence and testimony of witnesses and the production of
83 such books, records, maps, plats, papers, documents and
84 other writings as it may deem necessary or proper in and
85 pertinent to any hearing, proceeding or investigation held
86 or had by it. Such court, in case of the refusal of any such
87 person to obey the subpoena, shall issue an order requir-
88 ing such person to appear before the department and pro-
89 duce the required documentary evidence, if so ordered,
90 and give evidence touching the matter in question. Any
91 failure to obey such order of the court may be punished
92 by such court as contempt thereof. A claim that any such
93 testimony or evidence may tend to criminate the person
94 giving the same shall not excuse such witness from tes-

95 tifying, but such witness shall not be prosecuted for any
96 offense concerning which he is compelled hereunder to
97 testify.

98 (f) With the consent of the department, the testimony
99 of any witness may be taken by deposition at the instance
100 of a party to any hearing before the department at any
101 time after hearing has been formally commenced. The
102 department may, of its own motion, order testimony to be
103 taken by deposition at any stage in any hearing, proceed-
104 ing or investigation pending before it. Such deposition
105 shall be taken in the manner prescribed by the laws of
106 West Virginia for taking depositions in civil cases in courts
107 of record.

108 (g) Whether or not it be so expressly stated, an appeal
109 from any final order, decision or action by the department
110 in administering the provisions of this article may be
111 taken by any aggrieved person within ten days of notice
112 of such order, decision or action, to the circuit court of the
113 county in which the subject matter of such order, decision
114 or action is located, and in all cases of appeals to the
115 circuit court, that court shall certify its decisions to the

116 department. The circuit court to which the appeal is
117 taken shall hear the appeal without a jury on the record
118 certified by the department. In any such appeal the find-
119 ings of the department shall, if supported by substantial
120 evidence, be conclusive. If the order of the department is
121 not affirmed, the court may set aside or modify it, in
122 whole or in part, or may remand the proceedings to the
123 department for further disposition in accordance with the
124 order of the court. From all final decisions of the circuit
125 court an appeal shall lie to the supreme court of appeals
126 as is now provided by law in cases in equity, by the de-
127 partment as well as by any other party of record before the
128 circuit court.

129 Any party feeling aggrieved by the final order of the
130 circuit court affecting him, may present his petition in
131 writing to the supreme court of appeals, or to a judge
132 thereof in vacation, within twenty days after the entry
133 of such order, praying for the suspension or modification
134 of such final order. The applicant shall deliver a copy of
135 such petition to the department and to all other parties of
136 record before presenting the same to the court or judge.

137 The court or judge shall fix a time for the hearing on the
138 application, but such hearing shall not be held sooner
139 than seven days after its presentation unless by agree-
140 ment of the parties, and notice of the time and place of
141 such hearing shall be forthwith given to the department
142 and to all other parties of record. If the court or judge, after
143 such hearing, be of opinion that such final order should be
144 suspended or modified, the court or the judge may require
145 bond, upon such conditions and in such penalty, and
146 impose such terms and conditions upon the petitioner as
147 are just and reasonable. For such hearing the entire rec-
148 ord before the circuit court, or a certified copy thereof,
149 shall be filed in the supreme court, and that court, upon
150 such papers, shall promptly decide the matter in con-
151 troversy as may seem to it to be just and right, and may
152 award costs in each case as to it may seem just and eq-
153 uitable.

Sec. 11. *Enforcement.*—(a) The department or any
2 person having a direct interest in the subject matter of
3 this article may complain in writing setting forth that any
4 person is violating or is about to violate, any provisions

5 of this article, or has done, or is about to do, any act, mat-
6 ter or thing therein prohibited or declared to be unlawful,
7 or has failed, omitted, neglected or refused, or is about to
8 fail, omit, neglect or refuse, to perform any duty enjoined
9 upon him by this article. Upon the filing of a complaint
10 against any person, the department shall cause a copy
11 thereof to be served upon such person by registered mail
12 accompanied by a notice from the department setting such
13 complaint for hearing at a time and place specified in such
14 notice. At least five days' notice of such hearing shall be
15 given to the parties affected and such hearing shall be
16 held in accordance with the provisions of section ten of
17 this article. Following such hearing, the department shall,
18 if it finds that the matter alleged in the complaint is not
19 in violation of this article, dismiss the complaint, but if
20 the department shall find that the complaint is justified,
21 it shall by appropriate order compel compliance with this
22 article.

23 (b) Whenever the department shall be of the opinion
24 that any person is violating, or is about to violate, any
25 provisions of this article, or has done, or is about to do,

26 any act, matter or thing therein prohibited or declared
27 to be unlawful, or has failed, omitted, neglected or refused,
28 or is about to fail, omit, neglect or refuse, to perform any
29 duty enjoined upon him by this article, or has failed,
30 omitted, neglected or refused, or is about to fail, omit,
31 neglect or refuse to obey any lawful requirement or order
32 made by the department, or any final judgment, order or
33 decree made by any court pursuant to this article, then
34 and in every such case the department may institute in
35 the circuit court of the county or counties wherein the
36 operation is situated, injunction, mandamus or other ap-
37 propriate legal proceedings to restrain such violations of
38 the provisions of this article or of orders of the department
39 to enforce obedience therewith. No injunction bond shall
40 be required to be filed in any such proceeding. Such
41 persons or corporations as the court may deem necessary
42 or proper to be joined as parties in order to make its
43 judgment, order or writ effective may be joined as parties.
44 The final judgment in any such action or proceeding shall
45 either dismiss the action or proceeding or direct that the
46 writ of mandamus or injunction or other order, issue or be

47 made permanent as prayed for in the petition or in such
48 modified or other form as will afford appropriate relief.
49 An appeal may be taken as in other civil actions.

50 (c) In addition to the other remedies herein provided,
51 any storage operator or coal operator affected by the pro-
52 visions of this article may proceed by injunction or other
53 appropriate remedy to restrain violations or threatened
54 violations of the provisions of this article or of orders of
55 the department or the judgments, orders or decrees of
56 any court or to enforce obedience therewith.

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

Sec. 12. *Penalties.*—Any person who shall wilfully
2 violate any order of the department issued pursuant to the
3 provisions of this article shall be guilty of a misdemean-
4 or, and, on conviction thereof, shall be punished by a fine
5 not exceeding two thousand dollars, or imprisoned in jail
6 for not exceeding twelve months, or both, in the discretion

7 of the court, and prosecutions under this section may be
8 brought in the name of the state of West Virginia in the
9 court exercising criminal jurisdiction in the county in
10 which the violation of such provisions of the article or
11 terms of such order was committed, and at the instance
12 and upon the relation of any citizen of this state.

The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

[Handwritten Signature]

Chairman Senate Committee

W. T. Bratcher Jr
Chairman House Committee

Originated in the House of Delegates

Takes effect *thirty days from* passage.

Howard Myers
Clerk of the Senate

A. Blankenship
Clerk of the House of Delegates

Ralph Bean
President of the Senate

W. E. Flannery
Speaker House of Delegates

The within *approved* this the *16* day of *March* 1955.

William C. Marland
Governor



Filed in the Office of the Secretary of State of West Virginia **MAR 17 1955**

D. PITT O'BRIEN
SECRETARY OF STATE