WEST VIRGINIA LEGISLATURE
REGULAR SESSION, 1978

--- • ---

ENROLLED
Committee Substitute for
HOUSE BILL No. 1670

(By Mr. Speaker, Mr. Kopp, and Mr. Notes)

--- • ---

PASSED March 11, 1978

In Effect ninety days from Passage
AN ACT to amend and reenact sections one, one-k, two, two-a,
two-b, three, four, five, nine, ten and eleven, article four,
chapter twenty-two of the code of West Virginia, one thousand
nine hundred thirty-one, as amended; to further amend said
article four by adding thereto two new sections, designated
sections three-b and three-c; and to amend said chapter
twenty-two by adding thereto a new article, designated article
four-b, all relating to oil and gas wells generally; providing
definitions; relating to contents of applications; providing for
notice to coal seam owners and operators of the filing of certain
applications; providing for filing of objections by coal seam
owners and operators to proposed deep gas well and oil well
drilling sites; specifying procedures to be followed if any
such objections are filed; requiring preparation by the de­
partment of mines of a record of such proceedings relating
thereto; providing for filing of objections by coal seam owners
and operators to proposed shallow gas well drilling sites; spec­
ifying procedures to be followed if any such objections are
filed; requiring preparation by the department of mines of a
record of such proceedings relating thereto; specifying by
reference to date filed the applications for permits to drill
shallow gas wells with respect to which certain amendments
made to said article four by this act shall apply; providing for
judicial review of orders of issuance or refusal of permits to drill or fracture and procedures with respect thereto; relating to protective devices to be used by well operators when a well penetrates a workable coal bed; specifying methods of plugging wells; requiring the testing of such wells prior to mining; establishing a shallow gas well review board; setting forth declarations of public policy and legislative findings; providing definitions; relating to application of article four-b; specifying by reference to date filed the applications for permits to drill shallow gas wells with respect to which certain provisions of article four-b shall apply; relating to board membership, appointment, vacancies, compensation and expenses; relating to the staff for such board; relating to meetings and the general powers and duties of such board, including the power to issue subpoenas; authorizing such board to promulgate reasonable rules and regulations under certain procedures; providing for conferences and meetings of the board to consider objections to proposed drilling; authorizing the board to issue written orders; establishing specific criteria for consideration by the board in establishing shallow gas well drilling locations; establishing mandatory distance limitations for shallow gas wells; authorizing such board to accept applications to establish drilling units and specifying the contents of such applications; authorizing the board to establish drilling units and providing for procedures with respect thereto; placing certain limitations on such board in granting applications to establish drilling units; authorizing such board to pool interest in a drilling unit and establishing procedures to be followed with respect thereto; placing certain limitations on when drilling may be initiated or completed; relating to the effect of an order establishing a drilling unit or pooling of interests and providing for recordation thereof; providing for judicial review of orders of such board; relating to the effect of operation on drilling units; relating to the validity of unit agreements; authorizing the board to obtain injunctive relief against persons violating the provisions of said article four-b; and providing criminal offenses and penalties for violations.

Be it enacted by the Legislature of West Virginia:

That sections one, one-k, two, two-a, two-b, three, four, five,
nine, ten and eleven, article four, chapter twenty-two of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; that said article four be further amended by adding thereto two new sections, designated sections three-b and three-c; and that said chapter twenty-two be amended by adding thereto a new article, designated article four-b, all to read as follows:

ARTICLE FOUR. OIL AND GAS WELLS.

§22-4-1. Definitions.

1. Unless the context in which used clearly requires a different meaning, as used in this article:

(a) "Casing" means a string or strings of pipe commonly placed in wells drilled for natural gas or petroleum or both;

(b) "Cement" means hydraulic cement properly mixed with water;

(c) "Chairman" means the chairman of the West Virginia shallow gas well review board as provided for in section four, article four-b of this chapter;

(d) "Chief" means chief of the division of water resources of the department of natural resources;

(e) "Coal operator" means any person or persons, firm, partnership, partnership association or corporation that proposes to or does operate a coal mine;

(f) "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 department foreseeably be commercially worked and will require protection if wells are drilled through it;

(g) "Deep well" means any well drilled and completed in a formation at or below the top of the uppermost member of the "Onondaga Group" or at a depth of or greater than six thousand feet, whichever is shallower;

(h) "Department" or "department of mines" means the duly constituted authorities under the laws of this state having jurisdiction over coal mining operations;
"Deputy director" means the deputy director for oil and gas of the department of mines;

"Expanding cement" means any cement approved by the department which expands during the hardening process, including but not limited to regular oil field cements with the proper additives;

"Facility" means any facility utilized in the oil and gas industry in this state and specifically named or referred to in this article or in articles five or seven of this chapter, other than a well or well site;

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

"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 reservoirs;

"Owner" when used with reference to any well, shall include any person or persons, firm, partnership, partnership association or corporation that owns, manages, operates, controls or possesses such well as principals, or as lessee or contractor, employee or agent of such principal;

"Owner" when used with reference to any coal seam, shall include any person or persons who own, lease or operate such coal seam;

"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;

"Plat" means a map, drawing or print showing the location of a well or wells as herein defined;

"Review board" means the West Virginia shallow gas well review board as provided for in section four, article four-b of this chapter;
(s) "Safe mining through of a well" means the mining of coal in a workable coal bed up to a well which penetrates such workable coal bed and through such well so that the casing or plug in the well bore where the well penetrates the workable coal bed is severed;

(t) "Shallow well" means any gas well drilled and completed in a formation above the top of the uppermost member of the "Onondaga Group" or at a depth less than six thousand feet, whichever is shallower;

(u) "Stimulate" means any action taken by well operator to increase the inherent productivity of an oil or gas well, including but not limited to fracturing, shooting or acidizing, but excluding cleaning out, bailing or workover operations;

(v) "Well" means any shaft or hole sunk, drilled, bored or dug into the earth or into underground strata for the extraction or injection or placement of any liquid or gas, or any shaft or hole sunk or used in conjunction with such extraction or 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

(w) "Well operator" or "operator" means any person or persons, firm, partnership, partnership association or corporation that proposes to or does locate, drill, operate or abandon any well as herein defined.

§22-4-1k. Permits required; application for permit; information; responsible agent; drilling permit number; when permits not to be issued; penalty.

It shall be unlawful for any well to be drilled, redrilled, deepened, fractured, stimulated, plugged, pressured, converted, combined or physically changed to allow the migration of fluid from one formation to another unless a permit therefor has been issued by the department. An application for any such permit shall be filed with the deputy director and shall contain the following:

8 (a) The name and address of the well operator;
9 (b) The name and address of the owner of the surface
10 lands upon which the well is or may be located;
11 (c) The name and address of every coal operator operating
12 coal seams under the tract of land on which the well is or may
13 be located, and the coal seam owner of record and lessee of
14 record required to be given notice by section two, if any, if said
15 owner or lessee is not yet operating said coal seams;
16 (d) The name and address of the agent of the well opera-
17 tor, if any such agent is required to be designated under the
18 provisions of this section;
19 (e) The approximate depth to which the well is to be
20 drilled;
21 (f) The proposed casing program of such well including
22 the sizes of all such casing, the depth to which all casing is to
23 be run and the extent to which such casing is to be cemented;
24 (g) The proposed method of reclamation which shall com-
25 ply with the requirements of section twelve-b of this article;
26 and
27 (h) Any other information which the deputy director by
28 rule or regulation may require.

If the well operator named in such application is a corpora-
30 tion, partnership or a nonresident of the state of West Vir-
31 inia, then there shall be designated the name and address of
32 an agent for such operator who shall be the attorney-in-fact
33 for the operator and who shall be a resident of the state of
34 West Virginia upon whom notices, orders or other commu-
35 nications issued pursuant to this article or article five-a, chapter
36 twenty, may be served, and upon whom process may be served.
37 Every well operator required to designate an agent under this
38 section shall within five days after the termination of such
39 designation notify the department of such termination and
40 designate a new agent.

41 The well owner or operator shall install the permit number
42 as issued by the deputy director in a legible and permanent
43 manner to the well upon completion of any permitted work.
The dimensions, specifications and manner of installation shall be in accordance with the administrative rules and regulations of the department.

For the purpose of ascertaining whether or not issuance of any permit to drill, redrill, deepen, case, fracture, stimulate, pressure, operate, plug, abandon, convert or combine any well, or physically change any well or allow the migration of fluid from one formation to another, will contribute to an existing pollution problem, the deputy director shall have the right and it shall be his duty to consult with the director of the department of natural resources. In the event the issuance of any such permit may reasonably be expected to contribute to any such existing pollution then the deputy director will not issue such permit.

Any person who violates any provision of this section shall be guilty of a misdemeanor, and, upon conviction thereof, shall be punished by a fine not exceeding two thousand dollars, or imprisonment in jail for not exceeding twelve months, or both such fine and imprisonment.

§22-4-2. Plats prerequisite to drilling or fracturing wells; preparation and contents; notice and information furnished to coal operators, owners or lessees; issuance of permits; performance bonds or securities in lieu thereof; bond forfeiture.

Before drilling for oil or gas, or before fracturing or stimulating a well on any tract of land, the well operator shall have a plat prepared by a licensed land surveyor or registered engineer showing the district and county in which the tract of land is located, the name and acreage of the same, the names of the owners of adjacent tracts, the proposed or actual location of the well determined by survey, the courses and distances of such location from two permanent points or landmarks on said tract and the number to be given the well and the date of drilling completion of a well when it is proposed that such well be fractured and shall forward by registered or certified mail a copy of the plat to the department of mines. In the event the tract of land on which the said well proposed to be drilled or fractured is located is known to be underlaid with one or more coal seams, copies of the plat
shall be forwarded by registered or certified mail to each and every coal operator operating said coal seams beneath said tract of land, who has mapped the same and filed his maps with the department in accordance with article two of this chapter, and the coal seam owner of record and lessee of record, if any, if said owner or lessee has recorded the declaration provided in section twenty of this article, and if said owner or lessee is not yet operating said coal seams beneath said tract of land. With each of such plats there shall be enclosed a notice (form for which shall be furnished on request by the department of mines) addressed to the department of mines and to each such coal operator, owner and lessee, if any, at their respective addresses, informing them that such plat and notice are being mailed to them respectively by registered or certified mail, pursuant to the requirements of this article. If no objections are made, or are found by the department, to such proposed location or proposed fracturing within fifteen days from receipt of such plat and notice by the department of mines, the same shall be filed and become a permanent record of such location or fracturing subject to inspection at any time by any interested person, and the department may forthwith issue to the well operator a permit reciting the filing of such plat, that no objections have been made by the coal operators, owners and lessees, if any, or found thereto by the department, and authorizing the well operator to drill at such location, or to fracture the well. Unless the department has objections to such proposed location or proposed fracturing or stimulating, such permit may be issued prior to the expiration of such fifteen-day period upon the obtaining by the well operator of the consent in writing of the coal operator or operators, owners and lessees, if any, to whom copies of the plat and notice shall have been mailed as herein required, and upon presentation of such written consent to the department. The notice above provided for may be given to the coal operator by delivering or mailing it by registered or certified mail as above to any agent or superintendent in actual charge of mines.

A permit to drill, or to fracture or stimulate an oil or gas well, shall not be issued unless the application therefor is
accompanied by a bond of the operator in the sum of two
thousand five hundred dollars, payable to the state of West
Virginia, with a corporate bonding or surety company author-
ized to do business in this state as surety thereon, conditioned
on full compliance with all laws, rules and regulations relating
to the drilling, redrilling, deepening, casing, plugging, aban-
donment and reclamation of wells and for furnishing such
reports and information as may be required by the department:
Provided, That when such operator makes or has made ap-
plication for permits to drill a number of wells or fracture or
stimulate a well or wells the operator may in lieu of furnishing
a separate bond furnish a blanket bond in the sum of fifteen
thousand dollars, payable to the state of West Virginia, with
a corporate bonding or surety company authorized to do
business in this state as surety thereon, and conditioned as
aforesaid: Provided, however, That in lieu of corporate surety
on a separate or blanket bond, as the case may be, the
operator may elect to deposit with the deputy director for
oil and gas cash or the following collateral securities or any
combination thereof: (1) Bonds of the United States or
agency thereof, or those guaranteed by, or for which the
credit of the United States or agency therefor is pledged for
the payment of the principal and interest thereof; (2) direct
general obligation bonds of this state, or any other state,
or territory of the United States, or the District of Columbia,
unconditionally guaranteed as to the principal and interest
by such other state or territory of the United States, or the
District of Columbia if such other state, territory, or the
District of Columbia has the power to levy taxes for the
payment of the principal and interest of such securities, and
if at the time of the deposit such other state, territory, or the
District of Columbia is not in default in the payment of any
part of the principal or interest owing by it upon any part
of its funded indebtedness; (3) direct general obligation
bonds of any county, district, city, town, village, school
district or other political subdivision of this state issued
pursuant to law and payable from ad valorem taxes levied
on all the taxable property located herein, that the total
indebtedness after deducting sinking funds and all debts
incurred for self-sustaining public works does not exceed five
percent of the assessed value of all taxable property therein
at the time of the last assessment made before the date of
such deposit, and that the issuer has not, within five years
prior to the making thereof, been in default for more than
ninety days in the payment of any part of the principal or
interest on any debt, evidenced by its bonds; (4) revenue
bonds issued by this state or any agency of this state when
such bonds are payable from revenues or earnings specifically
pledged for the payment of principal and interest, and a
lawful sinking fund or reserve fund has been established
and is being maintained for the payment of such bonds; (5)
revenue bonds issued by a municipality in this state for the
acquisition, construction, improvement or extension of a
waterworks system, or a sewerage system, or a combined
waterworks and sewerage system, when such bonds are pay-
able from revenue or earnings specifically pledged for the
payment of principal and interest, and a lawful sinking fund
or reserve fund has been established and is being maintained
for the payment of such bonds; (6) revenue bonds issued
by a public service board of a public service district in this
state for the acquisition, construction, improvement or exten-
sion of any public service properties, or for the reimbursement
or payment of the costs and expenses of creating the district,
when such bonds are payable from revenue or earnings
specifically pledged for the payment of principal and interest,
and a lawful sinking fund or reserve fund has been established
and is being maintained for the payment of such bonds; (7)
revenue bonds issued by a board of trustees of a sanitary
district in this state for the corporate purposes of such district,
when such bonds are payable from revenue or earnings
specifically pledged for the payment of principal and interest,
and a lawful sinking fund or reserve fund has been estab-
lished and is being maintained for the payment of such bonds;
and (8) bonds issued by a federal land bank or home owners'
loan corporation. The cash deposit or market value, or
both, of the collateral securities shall be equal to or greater
than the penalty of the separate or blanket bond, as the
case may be. Upon receipt of any such deposit or cash or
collateral securities, the deputy director for oil and gas
shall immediately deliver the same to the treasurer of the
The treasurer shall determine whether any such securities satisfy the requirements of this section. If the securities are approved they shall be accepted by the treasurer. If the securities are not approved, they shall be rejected and returned to the operator and no permit shall be issued until a corporate surety bond is filed or cash or proper collateral securities are filed in lieu of such surety. The treasurer shall hold any cash or securities in the name of the state in trust for the purposes for which the deposit was made. The operator shall be entitled to all interest and income earned on the collateral securities filed by such operator so long as the operator is in full compliance with all laws, rules and regulations relating to the drilling, redrilling, deepening, casing, plugging, abandonment and reclamation of wells and for furnishing such reports and information as may be required by the department. The operator making the deposit shall be entitled from time to time to receive from the treasurer, upon the written order of the deputy director for oil and gas, the whole or any portion of such securities upon depositing with the treasurer in lieu thereof cash equal to or greater than the penalty of the bond, in other approved securities of the classes herein specified having a market value equal to or greater than the penalty of the bond, or a corporate surety bond.

When an operator has furnished a separate bond from a corporate bonding or surety company to drill, fracture or stimulate an oil or gas well and the well produces oil or gas, or both, its operator may deposit with the deputy director for oil and gas cash from the sale of the oil or gas, or both, until the total deposited is two thousand five hundred dollars. When the sum of the cash deposited is two thousand five hundred dollars, the separate bond for the well shall be released by the department. Upon receipt of such cash, the deputy director for oil and gas shall immediately deliver the same to the treasurer of the state of West Virginia. The treasurer shall hold such cash in the name of the state in trust for the purpose for which the bond was furnished and the deposit was made. The operator shall be entitled to all interest and income which may be earned on the cash deposited so long as the operator is in full compliance with all
laws, rules and regulations relating to the drilling, redrilling,
deepening, casing, plugging, abandonment and reclamation of
the well for which the cash was deposited and so long as he
has furnished all reports and information as may be required
by the department. If the cash realized from the sale of oil
or gas, or both, from the well is not sufficient for the operator
to deposit with the deputy director for oil and gas the sum
of two thousand five hundred dollars within one year of the
day the well started producing, the corporate or surety com-
pany which issued the bond on the well may notify the
operator and the department of its intent to terminate its
liability under its bond. The operator then shall have thirty
days to furnish a new bond from a corporate bonding or
surety company or collateral securities, as provided in the
next preceding paragraph of this section, with the department.
If a new bond or collateral securities are furnished by the
operator, the liability of the corporate bonding or surety
company under the original bond shall terminate as to any
acts and operations of the operator occurring after the effec-
tive date of the new bond or the date the collateral securities
are accepted by the treasurer of the state of West Virginia.
If the operator does not furnish a new bond or collateral
securities, as provided in the next preceding paragraph of
this section, with the department, he shall immediately plug,
fill and reclaim the well in accordance with all of the pro-
visions of law, rules and regulations applicable thereto. In
such case, the corporate or surety company which issued the
original bond shall be liable for any plugging, filling or
reclamation not performed in accordance with such laws,
rules and regulations.

Any such bond shall remain in force until released by the
department and the department shall release the same when
it is satisfied the conditions thereof have been fully performed.
Upon the release of any such bond, any cash or collateral
securities deposited shall be returned by the deputy director
for oil and gas to the operator who deposited same.

If any of the requirements of this article or rules and
regulations promulgated pursuant thereto or the orders of
the deputy director for oil and gas have not been complied
with within the time limit set by the violation notice as defined in sections one-g, one-h and one-i, article four, chapter twenty-two of this code the performance bond shall then be forfeited.

When any bond is forfeited pursuant to the provisions of this article or rules and regulations promulgated pursuant thereto the deputy director shall give notice to the attorney general who shall collect the forfeiture without delay.

All forfeitures shall be deposited in the treasury of the state of West Virginia in the special reclamation fund as defined in section twelve-a, article four, chapter twenty-two of this code.

§22-4-2a. Notice to coal operators, owners or lessees and department of mines of intention to fracture certain other wells; contents of such notice; permit required.

Before fracturing any well the well operator shall, by registered or certified mail, forward a notice of intention to fracture such well to the department of mines and to each and every coal operator operating coal seams beneath said tract of land, who has mapped the same and filed his maps with the department in accordance with article two of this chapter, and the coal seam owner and lessee, if any, if said owner of record or lessee of record has recorded the declaration provided in section twenty of this article, and if said owner or lessee is not yet operating said coal seams beneath said tract of land.

The notice shall be addressed to the department of mines and to each such coal operator at their respective addresses, shall contain the number of the drilling permit for such well and such other information as may be required by the department to enable the department and the coal operators to locate and identify such well and shall inform them that such notice is being mailed to them, respectively, by registered or certified mail, pursuant to the requirements of this article. (The form for such notice of intention shall be furnished on request by the department of mines.) If no objections are made, or are found by the department, to such proposed fracturing within fifteen days from receipt of such notice by the depart-
ment of mines, the same shall be filed and become a permanent
record of such fracturing, subject to inspection at any time
by any interested person, and the department shall forthwith
issue to the well operator a permit reciting the filing of such
notice, that no objections have been made by the coal opera-
tors, or found thereto by the department, and authorizing
the well operator to fracture such well. Unless the depart-
ment has objections to such proposed fracturing, such permit
shall be issued prior to the expiration of such fifteen-day period
upon the obtaining by the well operator of the consent in
writing of the coal operator or operators, owners or lessees,
if any, to whom notice of intention to fracture shall have been
mailed as herein required, and upon presentation of such
written consent to the department. The notice above provided
for may be given to the coal operator by delivering or mailing
it by registered or certified mail as above to any agent or
superintendent in actual charge of mines.

§22-4-2b. Plats prerequisite to introducing liquids or waste into
wells; preparation and contents; notice and informa-
tion furnished to coal operators, owners or lessees and
chief of water resources; issuance of permits; perform-
ance bonds or security in lieu thereof.

Before drilling a well for the introduction of liquids for the
purposes provided for in section ten-a of this article or for the
introduction of liquids for the disposal of sewage, industrial
waste or other waste or the effluent therefrom on any tract
of land, or before converting an existing well for such purposes,
the well operator shall have a plat prepared by a registered
engineer or licensed land surveyor showing the district and
county in which the tract of land is located, the name and
acreage of the same, the names of the owners of all adjacent
tracts, the proposed or actual location of the well or wells
determined by a survey, the courses and distances of such
location from two permanent points of land marked on said
tract and the number to be given to the well, and shall for-
ward by registered or certified mail the original and one copy
of the plat to the department of mines. In addition, the well
operator shall provide the following information on the plat or
by way of attachment thereto to the department in the manner
and form prescribed by the department's rules and regulations:
(a) The location of all wells, abandoned or otherwise located
within the area to be affected; (b) where available, the casing
records of all such wells; (c) where available, the drilling log
of all such wells; (d) the maximum pressure to be introduced;
(e) the geological formation into which such liquid or pressure
is to be introduced; (f) a general description of the liquids to
be introduced; (g) the location of all water-bearing horizons
above and below the geological formation into which such
pressure, liquid or waste is to be introduced; and (h) such
other information as the deputy director by rule and regula-
tion may require.

In the event the tract of land on which said well proposed
to be drilled or converted for the purposes provided for in this
section is located is known to be underlaid with coal seams,
copies of the plat and all information required by this section
shall be forwarded by the operator by registered or certified
mail to each and every coal operator operating coal seams be-
neath said tract of land, who has mapped the same and filed
his maps with the department in accordance with article two
of this chapter, and the coal seam owner of record and lessee
of record, if any, if said owner or lessee has recorded the de-
claration provided in section twenty of this article, and if said
owner or lessee is not yet operating said seams beneath said
tract of land. With each of such plats, there shall be enclosed a
notice (form for which shall be furnished on request by the
department of mines) addressed to the department of mines
and to each such coal operator, owner or lessee, if any, at
their respective addresses, informing them that such plat and
notice are being mailed to them, respectively, by registered or
certified mail, pursuant to the requirements of this section. The
deputy director shall forward a copy of the plat, notice and all
other information required by this section to the chief of the
division of water resources of the department of natural re-

If no objections are made by any such coal operator, owner,
lessee or such chief, or are found by the department to such
proposed drilling or converting of the well or wells for the
purposes provided for in this section within thirty days from
the receipt of such plat and notice by the department of mines, the same shall be filed and become a permanent record of such location or well, subject to inspection at any time by any interested person, and the department shall forthwith issue to the well operator a permit reciting the filing of such plat and notice, that no objections have been made by the coal operators, owners and lessees, if any, or found thereto by the department of mines or by the chief, and authorizing the well operator to drill at such location or convert such existing well or wells for the purposes provided for in this section. Such permit shall be issued prior to the expiration of such thirty-day period upon the obtaining by the well operator, of the consent in writing of the coal operator, owners and lessees, if any, to whom copies of the plat and notice must have been mailed as herein required and upon obtaining the consent in writing of the chief, and upon presentation of such written consent in writing of the chief, and upon presentation of such written consent to the department. The notice above provided for may be given to the coal operator by delivering or mailing it by registered or certified mail as above to any agent or superintendent in actual charge of the mines.

A permit to drill a well or wells or convert an existing well or wells for the purposes provided for in this section shall not be issued until all of the bonding provisions required by the provisions of section two of this article have been fully complied with and all such bonding provisions shall apply to all wells drilled or converted for the purposes provided for in this section as if such wells had been drilled for the purposes provided for in section two of this article, except that such bonds shall be conditioned upon full compliance with all laws, rules, and regulations relating to the drilling of a well or the converting of an existing well for the purposes provided for in said section ten-a, or introducing of liquids for the disposal of sewage, industrial waste or other waste or the effluent therefrom including the redrilling, deepening, casing, plugging or abandonment of all such wells.
§22-4-3. Objections to proposed drilling of deep wells and oil wells; objections to fracturing; notices and hearings; agreed location or conditions; indication of changes on plats, etc.; issuance of permits.

When a proposed deep well drilling site or oil well drilling site or any fracturing site is above a seam or seams of coal, then the coal operator operating said coal seams beneath the tract of land, or the coal seam owner or lessee, if any, if said owner or lessee is not yet operating said coal seams, may within fifteen days from the receipt by the department of the plat and notice required by section two of this article, or within fifteen days from the receipt by the department of notice required by section two-a of this article, file objections in writing (forms for which will be furnished by the department on request) to such proposed drilling or fracturing with the department, setting out therein as definitely as is reasonably possible the ground or grounds on which such objections are based.

If any objection is filed, or if any objection is made by the department, the department shall notify the well operator of the character of the objections and by whom made and fix a time and place, not less than fifteen days from the end of said fifteen-day period, at which such objections will be considered of which time and place the well operator and all objecting coal operators, owners or lessees, if any, shall be given at least ten days' written notice by the department, by registered or certified mail, and summoned to appear. At the time and place so fixed the well operator and the objecting coal operators, owners or lessees, if any, or such of them as are present or represented, shall proceed to consider the objections. In the case of proposed drilling, such parties present or represented may agree upon either the location as made or so moved as to satisfy all objections and meet the approval of the department, and any change in the original location so agreed upon and approved by the department shall be indicated on said plat on file with the department, and the distance and direction of the new location from the original location shall be shown, and as so altered, the plat shall be filed and become a permanent record, and in the case of proposed fracturing, such par-
ties present or represented may agree upon conditions under which the well is to be fractured which will protect life and property and which will satisfy all objections and meet the approval of the department, at which time the plat and notice required by section two or the notice required by section two-a as the case may be, shall be filed and become a permanent record. Whereupon the department shall forthwith issue to the well operator a drilling or fracturing permit, as the case may be, reciting the filing of the plat and notice required by said section two, or the notice required by said section two-a, as the case may be, that at a hearing duly held a location as shown on the plat or the conditions under which the fracturing is to take place for the protection of life and property were agreed upon and approved, and that the well operator is authorized to drill at such location or to fracture at the site shown on such plat, or to fracture the well identified in the notice required by section two-a, as the case may be.

(a) In the event the well operator and the objecting coal operators, owners or lessees, if any, or such as are present or represented at such hearing are unable to agree upon a drilling location, or upon a drilling location that meets the approval of the department of mines, then the department shall proceed to hear the evidence and testimony in accordance with sections one and two, article five, chapter twenty-nine-a of this code, except where such provisions are inconsistent with this article. The department shall take into consideration in arriving at its decision:

(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 coal mines 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 a well can be drilled safely, taking into consid-
eration 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, oil and gas.

At the close of the hearing or within ten days thereafter the department shall issue an order stating:

(1) That it refuses to issue a permit;

(2) That it will issue a permit for the proposed drilling location;

(3) That it will issue a permit for a drilling location different than that requested by the well operator.

The order shall state with particularity the reasons for the department’s order and shall be mailed by registered or certified mail to the parties present or represented at such hearing. If the department has ruled that it will issue a permit, it shall issue a permit effective ten days after it has mailed such order, except that for good cause shown, the department may stay the issuance of a permit for a period not to exceed thirty days.

If a permit is issued, the department shall indicate the new drilling location on the plat on file and shall number and keep an index of and docket each plat and notice mailed to it as provided in section two of this article, and each notice mailed to it as provided in section two-a of this article, entering in such docket the name of the well operator, and the names and addresses of all persons notified, the dates of hearings and all actions taken by the department. The department shall also prepare a record of the proceedings, which record shall include all applications, plats and other documents filed with the department, all notices given and proof of service thereof, all orders issued, all permits issued and a transcript of the hearing. The record prepared by the department shall be open to inspection by the public.

(b) In the event the well operator and the objecting coal operators, owners or lessees, if any, or such as are present or
represented at such hearing, are unable to agree upon the conditions under which the well is to be fractured as to protect life and property, or upon conditions of fracturing that meet with the approval of the department, then the department shall proceed to hear the evidence and testimony in accordance with sections one and two, article five, chapter twenty-nine-a of this code, except where such provisions are inconsistent with this article.

The department shall take into consideration upon its decision whether the well can be fractured safely, taking into consideration the dangers from creeps, squeezes or other disturbances.

At the close of the hearing, or within ten days thereafter, the department shall issue an order stating the conditions under which the well is to be fractured, provided the well can be fractured safely, taking into consideration the dangers from creeps, squeezes or other disturbances. If such fracturing cannot be done safely, the department shall issue an order stating with particularity the reasons for refusing to issue a permit.

The order shall state with particularity the reasons for the department's order and shall be mailed by registered or certified mail to the parties present or represented at such hearing. If the department has ruled that it will issue a permit, it shall issue a permit effective ten days after it has mailed such order, except that for good cause shown, the department may stay the issuance of a permit for a period not to exceed thirty days.

If a permit is issued, the department shall indicate the well to be fractured on the plat on file and shall number and keep an index of and docket each plat and notice mailed to it as provided in section two of this article, and each notice mailed to it as provided in section two-a of this article, entering in such docket the name of the well operator, the names and addresses of all persons notified, the dates of hearings and all actions taken by the department. The department shall also prepare a record of the proceedings, which record shall include all applications, plats and other documents filed with the department, all notices given and proof of service thereof,
all orders issued, all permits issued and a transcript of the
hearing. The record prepared by the department shall be open
to inspection by the public.

§22-4-3b. Objections to proposed drilling of shallow gas wells;
notice to chairman of review board; indication of
changes on plats; issuance of permits.

When a proposed shallow well drilling site is above a seam
or seams of coal, then the owner of any such coal seam may,
within fifteen days from the receipt by the department of
the plat and notice required by section two of this article,
file objections in writing (forms for which will be furnished
by the department on request) to such proposed drilling
with the department, setting out therein as definitely as is
reasonably possible the ground or grounds on which such
objections are based.

If any such objection is filed, or if any objection is made
by the department, the deputy director shall forthwith mail,
by registered or certified mail, to the chairman of the review
board, a notice that an objection to the proposed drilling
or deepening of a shallow well has been filed with the
department, and shall enclose in such notice a copy of all
objections filed with or made by the department and a copy
of the application and plat filed with the department in ac-
cordance with the provisions of section two of this article.

Thereafter, no further action shall be taken on such appli-
cation by the department until the department receives an
order from the review board directing the department to:

(1) Refuse a drilling permit; or

(2) Issue a drilling permit for the proposed drilling loca-
tion; or

(3) Issue a drilling permit for an alternate drilling loca-
tion different than 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 than
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.

Upon receipt of such order, the department shall promptly
undertake the action directed by the review board, except that
the department shall not issue a drilling permit unless all
other provisions of this article (except section three) pertaining
to the application for and approval of a drilling permit have
been complied with. All permits issued by the department
pursuant to this section shall be effective ten days after
issuance unless the review board orders the department to
stay the effectiveness of a permit for a period not to exceed
thirty days from the date of issuance.

If a permit is issued, the department shall indicate the
approved drilling location on the plat filed with the department
in accordance with the provisions of section two of this article
and shall number and keep an index of and docket each
plat and notice mailed to it as provided in section two of
this article, and each notice mailed to it as provided in
section two-a of this article, entering in such docket the
name of the well operator, and the names and addresses of all
persons notified, the dates of conferences, hearings and all
other actions taken by the department and the review board.
The department shall also prepare a record of the proceed-
ings, which record shall include all applications, plats and
other documents filed with the department, all notices given
and proof of service thereof, all orders issued, all permits
issued and a transcript of the hearing. The record prepared
by the department shall be open to inspection by the public.

§22-4-3c. Applicability.

The provisions of this act affecting applications for per-
mits to drill shallow gas wells shall only apply to such applica-
tions filed after 12:01 a.m., August first, one thousand nine
hundred seventy-eight, and the provisions of this article
affecting such applications which were in effect immediately
prior to the effective date of this act shall apply to all such
applications filed prior to 12:01 a.m., August first, one
thousand nine hundred seventy-eight, with like effect as if
this act had not been enacted.
§22-4-4. Appeal from order of issuance or refusal of permit to drill or fracture; procedure.

Any party to proceedings under section three or section three-b of this article or section seven, article four-b of this chapter, adversely affected by the issuance of a drilling permit, or to the issuance of a fracturing permit or the refusal of the department to grant a drilling permit or fracturing permit, is 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.

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.

§22-4-5. Protective devices—When well penetrates workable coal bed.

When a well penetrates one or more workable coal beds, the well operator shall run and cement a string of casing in the hole through the workable coal bed or beds in such a manner as will exclude all oil, gas or gas pressure from the coal bed or beds, except such oil, gas or gas pressure as may be found in such coal bed or beds. Such string of casing shall be run to a point at least thirty feet below the lowest workable coal bed which the well penetrates and shall be circulated and cemented from such point to the surface in such a manner as provided for in reasonable rules and regulations promulgated by the director of the department in accordance with the provisions of chapter twenty-nine-a. After any such string of casing has been so run and cemented to the surface, drilling may proceed to the permitted depth.

§22-4-9. Plugging, abandonment and reclamation of well; notice of intention; performance bonds or securities in lieu thereof; affidavit showing time and manner.

All dry or abandoned wells or wells presumed to be abandoned under the provisions of section seven of this article
shall be plugged and reclaimed in accordance with this section and the other provisions of this article and in accordance with the rules and regulations promulgated by the deputy director.

Prior to the commencement of plugging operations and the abandonment of any well, the well operator shall either (a) notify, by registered or certified mail, the department of mines and the coal operator operating coal seams, the coal seam owner of record or lessee of record, if any, to whom notices are required to be given by section two of this article, and the coal operators to whom notices are required to be given by section two-a of this article, of its intention to plug and abandon any such well (using such form of notice as the department may provide), giving the number of the well and its location and fixing the time at which the work of plugging and filling will be commenced, which time shall be not less than five days after the day on which such notice so mailed is received or in due course should be received by the department of mines, in order that a representative or representatives of the department and such coal operator, owner or lessee, if any, may be present at the plugging and filling of the well:

Provided, That whether such representatives appear or do not appear, the well operator may proceed at the time fixed to plug and fill the well in the manner hereinafter described, or (b) first obtain the written approval of the department of mines and such coal operator, owner or lessee, if any, or (c) in the event the well to be plugged and abandoned is one on which drilling or reworking operations have been continuously progressing pursuant to authorization granted by the department, first obtain the verbal permission of the deputy director for oil and gas or his designated representative to plug and abandon such well, except that the well operator shall, within a reasonable period not to exceed five days after the commencement of such plugging operations, give the written notices required by subdivision (a) above.

No well shall be plugged or abandoned unless prior to the commencement of plugging operations and the abandonment of any well the department is furnished a bond of the operator in the sum of two thousand five hundred dollars, payable to the state of West Virginia, with a corporate bonding or
surety company authorized to do business in this state as
surety thereon, conditioned on full compliance with all laws,
rules and regulations relating to the casing, plugging, abandon-
ment and reclamation of wells and for furnishing such reports
and information as may be required by the department. When
a number of wells are involved, the operator may in lieu of
furnishing a separate bond furnish a blanket bond in the
sum of fifteen thousand dollars, payable to the state of
West Virginia, with a corporate bonding or surety company
authorized to do business in this state as surety thereon, and
conditioned as aforesaid. In lieu of corporate surety on a
separate or blanket bond, as the case may be, the operator
may elect to deposit with the deputy director for oil and
gas cash or collateral securities as specified in section two
of this article. All of the provisions of section two dealing
with cash or collateral securities in lieu of corporate surety
shall be fully applicable hereto except for the condition of
the bond with respect to which the operator must be in full
compliance in order to be entitled to the interest and income
earned on such securities. The operator shall be entitled to
such interest and income under this section so long as the
operator is in full compliance with all laws, rules and regula-
tions relating to the casing, plugging, abandonment and
reclamation of wells and for furnishing such reports and
information as may be required by the department. Any
such bond shall remain in force until released by the depart-
ment and the department shall release the same when it is
satisfied the conditions thereof have been fully performed.
Notwithstanding the foregoing provisions, any operator who,
in accordance with section two of this article, has furnished
a separate bond, which has not been released by the de-
partment, for the drilling, converting or drilling for the
introduction of liquids, for the disposal of sewage, industrial
waste or other waste or the effluent therefrom, or introducing
pressure, whether liquid or gas, or introducing liquid for the
purposes provided for in section ten-a of this article or
fracturing of the well it is now proposed be plugged and
abandoned, or who, in accordance with the provisions of said
section two of this article, has furnished a blanket bond which
has not been released by the department shall not be required
by this section to furnish any other bond. When the plugging, filling and reclamation of a well have been completed, an affidavit, in triplicate, shall be made (on a form to be furnished by the department) by two experienced men who participated in the work, the deputy director for oil and gas or his designated representative, in which affidavit shall be set forth the time and manner in which the well was plugged and filled and the land reclaimed. One copy of this affidavit shall be retained by the well operator, another (or true copies of same) shall be mailed to the coal operator or operators, if any, and the third to the department of mines.

§22-4-10. Methods of plugging well.

Upon the abandonment or cessation of the operation of any well drilled for natural gas or petroleum, or drilled or converted for the introduction of pressure, whether liquid or gas, or for the introduction of liquid for the purposes provided for in section ten-a of this article or for the disposal of sewage, industrial waste or other waste or the effluent therefrom the well operator, at the time of such abandonment or cessation, shall fill and plug the well in the following manner:

(a) Where the well does not penetrate workable coal beds, it shall either be filled with mud, clay or other nonporous material from the bottom of the well to a point twenty feet above the top of its lowest oil, gas or water-bearing stratum; or a permanent bridge shall be anchored thirty feet below its lowest oil, gas or water-bearing stratum, and from such bridge it shall be filled with mud, clay or other nonporous material to a point twenty feet above such stratum; at this point there shall be placed a plug of cement or other suitable material which will completely seal the hole. Between this sealing plug and a point twenty feet above the next higher oil, gas or water-bearing stratum, the hole shall be filled, in the manner just described; and at such point there shall be placed another plug of cement or other suitable material which will completely seal the hole. In like manner the hole shall be filled and plugged, with reference to each of its oil, gas or water-bearing strata. However, whenever such strata are not widely separated and are free from water, they may be grouped and treated as a single sand, gas or
petroleum horizon, and the aforesaid filling and plugging be performed as though there were but one horizon. After the plugging of all oil, gas or water-bearing strata, as aforesaid, a final cement plug shall be placed approximately ten feet below the bottom of the largest casing in the well; from this point to the surface the well shall be filled with mud, clay or other nonporous material. In case any of the oil or gas-bearing strata in a well shall have been shot, thereby creating cavities which cannot readily be filled in the manner above described, the well operator shall follow either of the following methods:

(1) Should the stratum which has been shot be the lowest one in the well, there shall be placed, at the nearest suitable point, but not less than twenty feet above the stratum, a plug of cement or other suitable material which will completely seal the hole. In the event, however, that the shooting has been done above one or more oil or gas-bearing strata in the well, plugging in the manner specified shall be done at the nearest suitable point, but not less than twenty feet below and above the stratum shot, or (2), when such cavity shall be in the lowest oil or gas-bearing stratum in the well, a liner shall be placed which shall extend from below the stratum to a suitable point, but not less than twenty feet above the stratum in which shooting has been done. In the event, however, that the shooting has been done above one or more oil or gas-bearing strata in the well, the liner shall be so placed that it will extend not less than twenty feet above, nor less than twenty feet below, the stratum in which shooting has been done. Following the placing of the liner in the manner here specified it shall be compactly filled with cement, mud, clay or other nonporous sealing material;

(b) Where the well penetrates one or more workable coal beds and a coal protection string of casing has been circulated and cemented in to the surface, the well shall be filled and securely plugged in the manner provided in subsection (a) of this section, except that expanding cement shall be used instead of regular hydraulic cement, to a point approximately one hundred feet below the bottom of the coal protection string of casing. A one hundred foot plug of expanding cement
shall then be placed in the well so that the top of such plug is located at a point just below the coal protection string of casing. After such plug has been securely placed in the well, the coal protection string of casing shall be emptied of liquid from the surface to a point one hundred feet below the lowest workable coal bed or to the bottom of the coal protection string of casing, whichever is shallower. A vent or other device approved by the department shall then be installed on the top of the coal protection string of casing in such a manner that will prevent liquids and solids from entering the well but will permit ready access to the full internal diameter of the coal protection string of casing when required. The coal protection string of casing and the vent or other device approved by the department shall extend, when finally in place, a distance of no less than thirty inches above ground level and shall be permanently marked with the well number assigned by the department.

(c) Where the well penetrates one or more workable coal beds and a coal protection string of casing has not been circulated and cemented in to the surface, the well shall be filled and securely plugged in the manner provided in subsection (a) of this section to a point fifty feet below the lowest workable coal bed. Thereafter, a plug of cement shall be placed in the well at a point not less than forty feet below the lowest workable coal bed. After the cement plug has been securely placed in the well, the well shall be filled with cement to a point twenty feet above the lowest workable coal bed. From this point the well shall be filled with mud, clay or other nonporous material to a point forty feet beneath the next overlying workable coal bed, if such there be, and the well shall then be filled with cement from this point to a point twenty feet above such workable coal bed, and similarly, in case there are more overlying workable coal beds. After the filling and plugging of the well to a point above the highest workable coal bed, filling and plugging of the well shall continue in the manner provided in subsection (a) of this section to a point fifty feet below the surface, and a plug of cement shall be installed from the point fifty feet below the surface to the surface with a monument installed therein extending thirty inches above ground level.
(d) (1) Where the well penetrates one or more workable coal beds and a coal protection string of casing has not been circulated and cemented in to the surface, a coal operator or coal seam owner may request that the well be plugged in the manner provided in subdivision (3) of this subsection rather than by the method provided in subsection (c) of this section. Such request (forms for which shall be provided by the department) must be filed in writing with the department prior to the scheduled plugging of the well, and must include the number of the well to be plugged and the name and address of the well operator. At the time such request is filed with the department, a copy of such request must also be mailed by registered or certified mail to the well operator named in the request.

(2) Upon receipt of such request, the department shall issue an order staying the plugging of the well and shall promptly determine the cost of plugging the well in the manner provided in subdivision (3) of this subsection and the cost of plugging the well in the manner provided in subsection (c) of this section. In making such determination, the department shall take into consideration any agreement previously made between the well operator and the coal operator or coal seam owner making the request. If the department determines that the cost of plugging the well in the manner provided in subsection (c) of this section exceeds the cost of plugging the well in the manner provided in subdivision (3) of this subsection, the department shall grant the request of the coal operator or owner and shall issue an order requiring the well operator to plug the well in the manner provided in subdivision (3) of this subsection. If the department determines that the cost of plugging the well in the manner provided in subsection (c) of this section is less than the cost of plugging the well in the manner provided in subdivision (3) of this subsection, the department shall request payment into escrow of the difference between the determined costs by the coal operator or coal seam owner making the request. Upon receipt of satisfactory notice of such payment, or upon receipt of notice that the well operator has waived such payment, the department shall grant the request of the coal operator or coal seam owner and shall issue an order requiring the well operator to plug the
well in the manner provided in subdivision (3) of this sub-
section. If satisfactory notice of payment into escrow, or
notice that the well operator has waived such payment, is not
received by the department within fifteen days after the re-
quest for payment into escrow, the department shall issue an
order permitting the plugging of the well in the manner pro-
vided in subsection (c) of this section. Copies of all orders
issued by the department shall be sent by registered or certi-
fied mail to the coal operator or coal seam owner making the
request and to the well operator. When the escrow agent has
received certification from the department of the satisfactory
completion of the plugging work and the reimbursable extra
cost thereof (that is, the difference between the department's
determination of plugging cost in the manner provided in sub-
section (c) of this section and the well operator's actual
plugging cost in the manner provided in subsection (3) of this
subsection), he shall pay the reimbursable sum to the well
operator or his nominee from the payment into escrow to the
extent available. The amount by which the payment into
escrow exceeds the reimbursable sum plus the escrow agent's
fee, if any, shall be repaid to the coal owner. If the amount
paid to the well operator or his nominee is less than the actual
reimbursable sum, the escrow agent shall inform the coal
owner, who shall pay the deficiency to the well operator or
his nominee within thirty days. If the coal operator breaches
this duty to pay the deficiency, the well operator shall have a
right of action and be entitled to recover damages as if for
wrongful conversion of personality, and his reasonable attor-
ney fees.

(3) Where a request of a coal operator or coal seam owner
filed pursuant to subdivision (1) of this subsection has been
granted by the department, the well shall be plugged in the
manner provided in subsection (a) of this section, except that
expanding cement shall be used instead of regular hydraulic
cement, to a point approximately two hundred feet below the
lowest workable coal bed. A one hundred foot plug of ex-
expanding cement shall then be placed in the well beginning at
the point approximately two hundred feet below the lowest
workable coal bed and extending to a point approximately
one hundred feet below the lowest workable coal bed. A string
of casing with an outside diameter no less than four and one
half inches shall then be run into the well to a point approxi-
mately one hundred feet below the lowest workable coal bed
and such string of casing shall be circulated and cemented in
to the surface. The casing shall then be emptied of liquid from
a point approximately one hundred feet below the lowest work-
able coal bed to the surface, and a vent or other device ap-
proved by the department shall be installed on the top of the
string of casing in such a manner that it will prevent liquids and
solids from entering the well but will permit ready access to
the full internal diameter of the coal protection string of cas-
ing when required. The string of casing and the vent or other
device approved by the department shall extend, when finally
in place, a distance of no less than thirty inches above ground
level and shall be permanently marked with the well number
assigned by the department. Notwithstanding the foregoing
provisions of this subdivision, if under particular circum-
stances a different method of plugging is required to obtain the
approval of another governmental agency for the safe mining
through of said well, the department may approve such dif-
f erent method of plugging if it finds the same to be as safe
for mining through and otherwise adequate to prevent gas or
other fluid migration from the oil and gas reservoirs as the
method above specified.

(e) Any person may apply to the department for an order to
clean out and replug a previously plugged well in a manner
which will permit the safe mining through of such well. Such
application shall be filed with the department and shall con-
tain the well number, a general description of the well loca-
tion, the name and address of the owner of the surface land
upon which the well is located, a copy of or record reference
to a deed, lease or other document which entitles the applicant
to enter upon the surface land, a description of the method by
which the well was previously plugged, and a description of
the method by which such applicant proposes to clean out
and replug the well. At the time an application is filed with
the department, a copy shall be mailed by registered or certi-
fied mail to the owner or owners of the land, and the oil and
gas lessee of record, if any, of the site land upon which the
well is located. If no objection to the replugging of the well is
filed by any such landowner or oil and gas lessee within thirty
days after the filing of the application, and if the department
determines that the method proposed for replugging the well
will permit the safe mining through of such well, the depart-
ment shall grant the application by an order authorizing the
replugging of the well. Such order shall specify the method by
which the well shall be replugged, and copies thereof shall be
mailed by certified or registered mail to the applicant and to
the owner or owners of the land, and the oil and gas lessee, if
any, of the site upon which such well is located. If any such
landowner or oil and gas lessee objects to the replugging of
the well, the department shall notify the applicant of such
objection. Thereafter, the department shall schedule a hearing
to consider the objection, which hearing shall be held after
notice by registered or certified mail to the objectors and the
applicant. After consideration of the evidence presented at the
hearing, the department shall issue an order authorizing the
replugging of the well if it determines that replugging of the
well will permit the safe mining through of such well. Such
order shall specify the manner in which the well shall be re-
plugged and copies thereof shall be sent by registered or certi-
fied mail to the applicant and objectors. The department shall
issue an order rejecting the application if it determines that
the proposed method for replugging the well will not permit the
safe mining through of such well.

(f) All persons adversely affected by a determination or
order of the department issued pursuant to the provisions of
this section shall be entitled to judicial review thereof in ac-
cordance with the provisions of articles five and six, chapter
twenty-nine-a of this code.

§22-4-11. When coal operator to file maps and plans as pre­
requisite to extension of coal operations; petition for
leave to conduct operations within two hundred feet
of well or to mine through a well; proceedings
thereon.

Hereafter, before removing any coal or other material, or
driving any entry or passageway within less than five hundred
feet of any well, and also before extending the workings in
any coal mine beneath any tract of land on which wells are
already drilled, or within five hundred feet of any well, or under any tract of land in visible possession by a well opera-
tor for the purpose of drilling for oil or gas, the coal operator shall forward, by registered mail, to, or file a copy of the parts of its maps and plans which it is required by law to prepare and file and bring to date, from time to time, showing its mine workings and projected mine workings beneath such tract of land and within five hundred feet of the outer bound-
daries thereof, simultaneously, with the well operator and the department of mines, accompanying each of said copies with a notice (form of which shall be furnished on request by the department of mines), addressed to the well operator and to the department of mines at their respective addresses, informing them that such plans or maps and notice are being mailed by registered mail to them, or are being filed and served upon them, respectively, pursuant to the requirements of this section. Following the filing of such parts of said plans or maps as aforesaid, the coal operator may proceed with its mining operations in the manner and as projected on such plans or maps, but shall not remove any coal or other material or cut any passageway nearer than two hundred feet of any completed well, or well that is being drilled, or for the purpose of drilling which a derrick is being constructed, without the consent of the department of mines, and the coal operator shall, at least every six months, bring such plans or maps so filed with the department to date, or file new plans and maps complete to date.

Application may be made at any time to the department of mines by the coal operator for leave to mine or remove coal or conduct its mining operations within two hundred feet of any well or to mine through any well, by petition, duly verified, showing the location of the well, the workings adjacent to the well and any other material facts, and what further mining operations within two hundred feet of the well or through such well are contemplated, and praying the approval of the same by the department, and naming the well operator as a respondent. The coal operator shall file such petition with, or mail the same by registered mail to, the department and shall at the same time serve upon or mail by registered mail a true copy to the well operator. The
department of mines shall, forthwith upon receipt of such
copy, notify the well operator that it may answer the petition
within five days, and that in default of an answer the depart-
ment may approve the proposed operations as requested,
if it be shown by the petitioner or otherwise to the satisfaction
of the department that such operations are in accordance
with law and with the provisions of this article. At the
expiration of such five-day period, the department, whether
an answer be filed or not filed, shall fix a time and place of
hearing within ten days, of which it shall give the coal oper-
ator and the well operator five days' written notice by regis-
tered mail, and after a full hearing, at which the well operator
and coal operator, as well as the department of mines, shall
be permitted to offer any competent and relevant evidence,
the department shall grant the request of the coal operator
or refuse to grant the same, or make such other decision
with respect to such proposed further operations in the vicinity
of any such well as in its judgment is just and reasonable under
all the circumstances and in accordance with law and the pro-
visions of this article: Provided, That a grant by the depart-
ment of a request to mine through a well shall require an
acceptable test to be conducted by the coal operator establish-
ing that such mining through can be done safely. The de-
partment of mines shall docket and keep a record of all
such proceedings substantially as required in the last para-
graph of section three of this article, and from any such final
decision or order of the department of mines, either the well
operator or coal operator, or both, may, within ten days,
appeal to the circuit court of the county in which the well
about which approval of such further operations is involved
is located. The procedure in the circuit court shall be sub-
stantially as provided in section four, the department being
named as a respondent. From any final order or decree of
the circuit court, an appeal may be taken to the supreme court
of appeals as heretofore provided.

ARTICLE 4B. SHALLOW GAS WELL REVIEW BOARD.

§22-4B-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) Insure 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 his 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 insuring 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 insure the fullest practical recovery of coal and gas in this state and to further insure 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 insure 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.

§22-4B-2. Definitions.

1 Unless the context in which used clearly requires a different meaning, as used in this article:

2 (1) “Board” means the West Virginia shallow gas well review board provided for in section four of this article;

3 (2) “Chairman” means the chairman of the West Virginia shallow gas well review board provided for in section four of this article;

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

5 (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 department foreseeably be commercially worked and will require protection if wells are drilled through it;

6 (5) “Commission” means the oil and gas conservation commission provided for in section four, article four-a of this chapter;

7 (6) “Commissioner” means the oil and gas conservation commissioner provided for in section four, article four-a of this chapter;

8 (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;

9 (8) “Deep well” means any well drilled and completed in a formation at or below the top of the uppermost member of the “Onondaga Group” or at a depth of or greater than six thousand feet, whichever is shallower;
(9) "Department" or "department of mines" means the state department of mines provided for in section two, article two of this chapter;

(10) "Deputy director" means the deputy director for oil and gas provided for in section one-a, article four of this chapter;

(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 himself or for himself 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 shall be considered a "gas operator" to the extent of seven-eighths 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 such 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, shall include any person or persons who own, lease or operate such 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 drilled and completed in a formation above the top of the uppermost member of the "Onondaga Group" or at a depth less than six thousand feet, whichever is shallower;

(22) "Tracts comprising a drilling unit" means 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 shaft or hole sunk or used in conjunction with such 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.
§22-4B-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, article four-b, chapter twenty-two and section one, article four, chapter twenty-two of this code, one thousand nine hundred thirty-one, 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 articles four and four-a of this chapter.

(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 permitted under article four of this chapter prior to 12:01 a.m., August first, one thousand nine hundred seventy-eight, unless such well is, after completion (whether such completion is prior or subsequent to the effective date of this article), deepened subsequent to the effective date of this article through another coal seam to another formation above the top of the uppermost member of the "Onondaga Group" or to a depth of less than six thousand feet, whichever is shallower;

(4) Any shallow well as to which no objection is made under section three-b, article four of this chapter;

(5) Wells as defined in subdivision (4), section one, article seven of this chapter; or


(c) The provisions of this act affecting applications for permits to drill shallow gas wells shall only apply to such applications filed after 12:01 a.m., August first, one thousand nine hundred seventy-eight, and the provisions of article four of this chapter affecting such applications which were in
36 effect immediately prior to the effective date of this act shall
37 apply to all such applications filed prior to 12:01 a.m.,
38 August first, one thousand nine hundred seventy-eight, with
39 like effect as if this act had not been enacted.

§22-4B-4. West Virginia shallow gas well review board; membership; method of appointment; vacancies; compensation and expenses; staff.

1 (a) There is hereby created the “West Virginia Shallow
2 Gas Well Review Board” which shall be composed of three
3 members, two of whom shall be the commissioner and the
4 deputy director. The remaining member of the board shall
5 be a registered professional mining engineer with at least
6 ten years practical experience in the coal mining industry
7 and shall be appointed by the governor, by and with the
8 advice and consent of the Senate: Provided, That any person
9 so appointed while the Senate of this state is not in session
10 shall be permitted to serve in an acting capacity for one
11 year from his appointment or until the next session of the
12 Legislature, whichever is less. As soon as practical after
13 appointment and qualification of the member appointed by
14 the governor, the governor shall convene a meeting of the
15 board for the purpose of organizing and electing a chairman,
16 who shall serve as such until his successor is elected by the
17 board.

18 (b) The member of the board appointed by the governor
19 shall be appointed within three months of the effective date
20 of this article. A vacancy in the membership appointed by
21 the governor shall be filled by appointment by the governor
22 within sixty days after the occurrence of such vacancy. Before
23 performing any duty hereunder, each member of the board
24 shall take and subscribe to the oath required by section five,
25 article four of the constitution of West Virginia, and shall
26 serve thereafter until his successor has been appointed and
27 qualified.

28 (c) The member of the board appointed by the governor
29 shall receive not less than seventy-five dollars per diem while
30 actually engaged in the performance of his duties as a member
31 of the board. Each member of the board shall also be re-
imbursed for all reasonable and necessary expenses actually
incurred in the performance of his duties as a member of
the board.

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

§22-4B-5. Same—Meetings; notice; general powers and duties.

(a) The board shall meet and hold conferences and hear-
ings at such times and places as shall be designated by the
chairman. The chairman may call a meeting of the board
at any time. The chairman shall call a meeting of the board
(1) upon receipt of a notice from the deputy 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
three-b, article four of this chapter or that an objection has
been made by the department, (2) upon receipt of an applica-
tion 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. Meet-
ings called pursuant to subdivisions (1) and (2) of this sub-
section shall be scheduled not less than ten days nor more
than twenty days from receipt by the chairman 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 chairman 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 chairman 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 pro-
visions of subsection (c), section nine of this article.

(c) A majority of the members of the board shall con-
(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 pro-
visions 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 and
regulations necessary to govern the practice and procedure
before the board;

(3) Make such relevant investigations of records and facili-
ties as it deems proper; and

(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.

§22-4B-6. Rules and regulations; notice requirements.

(a) The board may promulgate, pursuant to the provisions
of chapter twenty-nine-a of this code, such reasonable rules
and regulations as are deemed necessary or desirable to im-
plement 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 direc-
tion of the chairman 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) pub-
cication of such notice as a Class II legal advertisement in com-
pliance 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 chairman
shall also mail a copy of such notice to all other persons who
have specified to the chairman 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 chairman, 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 chairman, he shall make proof
thereof by affidavit. Failure to make proof of service or pub-
lication within the time required shall not affect the validity of
the service of the notice.

§22-4B-7. Objections to proposed drilling; conferences; agreed lo-
cations and changes on plats; hearings; orders.

(a) At the time and place fixed by the chairman for the
meeting of the board and for consideration of the objections
to proposed drilling filed by coal seam owners pursuant to
section three-b, article four of this chapter, the well operator
and the objecting coal seam owners present or represented,
shall hold a conference with the board to consider the objec-
tions. 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 chairman by the deputy director in accordance with the provisions of section three-b, article four of this chapter, 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 department to grant the well operator a drilling permit for the location agreed upon. The original of such order shall be filed with the department 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 department a written order directing it, subject to other matters requiring approval of the department, to:

(1) Refuse a drilling permit; or
(2) Issue a drilling permit for the proposed drilling location; or
(3) Issue a drilling permit for an alternate drilling location different than 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 than 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 prox-
imity 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 un-
reasonably 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 follow-
ing:

(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 opera-
tions subject to the provisions of article six, chapter twenty
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.

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.

§22-4B-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 chairman 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 department 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 shall
mean (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 will be drilled
through an existing or planned pillar of coal required for
protection of a pre-existing 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 department to issue a drilling permit to
any person other than the well operator filing the application
which is the subject of the proceedings.

§22-4B-9. Application to establish a drilling unit; contents; notice.

(a) Whenever the board has issued an order directing the
department 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 regis-
tered professional engineer showing the boundary of the
Enr. Com. Sub. for H. B. 1670) 48

(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 the
board may prescribe by reasonable rules and regulations
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) of 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 unit, a statement that the applicant will deliver a copy of the plat required by subdivision (2) of this subsection to any person desiring the same, the date upon which 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 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 him that such application is being mailed to him respectively 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.

§22-4B-10. Establishment of drilling units; hearings; orders.

(a) At the time and place fixed by the chairman 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 chairman 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;
48  (4) Whether a gas operator or royalty owner objecting to
49  the drilling unit has proved by clear and convincing evidence
50  that the drilling unit is substantially smaller than the area
51  that will be produced by the proposed well; and
52  (5) Other evidence relevant to the establishment of the
53  boundary of a drilling unit.
54  (c) The board shall not grant an application to establish a
55  drilling unit, nor shall it approve any drilling unit, unless
56  the board finds that:
57  (1) The applicant has proved that the drilling location on
58  the drilling unit has been agreed to by all of the owners of
59  the coal seams underlying such drilling location;
60  (2) The department has previously refused to issue a drill-
61  ing permit on one of the tracts comprising the drilling unit
62  because of an order of the board;
63  (3) The drilling unit includes all acreage within the mini-
64  mum distance limitations provided by section eight of this
65  article, unless the gas operators and royalty owners of any
66  excluded acreage have agreed to such exclusion; and
67  (4) The drilling unit includes a portion of the acreage
68  from under which the well operator intended to produce gas
69  under the drilling permit which was refused.
70  (d) All orders issued by the board under this section shall
71  contain findings of fact and conclusions based thereon as
72  required by section three, article five, chapter twenty-nine-a
73  of this code and shall be filed with the department within
74  twenty days after the hearing. Any member of the board
75  may file a separate opinion. Copies of all orders and opinions
76  shall be mailed by the board, by registered or certified mail,
77  to the parties present or represented at the hearing.

§22-4B-11.  Pooling of interests in a drilling unit; limitations.

1  (a) Whenever the board establishes a drilling unit pursuant
2  to the provisions of sections nine and ten of this article, the
3  order establishing such drilling unit shall include an order
4  pooling the separately owned interests in the gas to be pro-
5  duced 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 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 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.

§22-4B-12. Effect of order establishing drilling unit or pooling of interests; recordation.

1 (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 three-b of article four of this chapter. All orders issued by the board establishing a drilling unit shall be filed with the department and shall also direct the department 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.


(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 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.

§22-4B-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.


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.

§22-4B-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 and regulation 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 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 and regulations 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

32 and within the time provided by law for appeals from circuit
33 courts in other civil actions.
34
35 (d) The board shall be represented in all such proceedings
36 by the attorney general or his assistants and in such pro-
37 ceedings in the circuit courts by the prosecuting attorneys of
38 the several counties as well, all without additional compensa-
39 tion. The board, with the written approval of the attorney
general, may employ special counsel to represent the board in
40 any such proceedings.
41
42 (e) If the board shall refuse or fail to apply for an in-
43 junction to enjoin a violation or threatened violation of any
44 provision of this article, any rule and regulation promulgated
45 by the board hereunder or any order or final decision of the
46 board, within ten days after receipt of a written request to
47 do so by any person who is or will be adversely affected by
48 such violation or threatened violation, the person making
49 such request may apply in his own behalf for an injunction
50 to enjoin such violation or threatened violation in any court
51 in which the board might have brought suit. The board shall
52 be made a party defendant in such application in addition to
53 the person or persons violating or threatening to violate any
54 provision of this article, any rule and regulation promulgated
55 by the board hereunder or any order of the board. The
56 application shall proceed and injunctive relief may be granted
57 without bond or other undertaking in the same manner as
58 if the application had been made by the chairman.

§ 22-4B-17. Penalties.
1 (a) Any person who violates any provision of this article,
2 any of the rules and regulations promulgated by the board
3 hereunder or any order of the board other than a violation
4 governed by the provisions of subsection (b) of this section,
5 shall be guilty of a misdemeanor, and, upon conviction there-
6 of, shall be fined not more than one thousand dollars.
7
8 (b) Any person who, with the intention of evading any
9 provision of this article, any of the rules and regulations prom-
10ulgated by the board hereunder or any order of the board
11 shall make or cause to be made any false entry or statement
12 in any application or other document permitted or required
to be filed under the provisions of this article, any of the
rules and regulations 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
five thousand dollars, 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 and regulations 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.


This article shall be liberally construed so as to effectuate
the declaration of public policy set forth in section one of this
article.
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

James L. Davis
Chairman Senate Committee

Chairman House Committee

Originated in the House.

Takes effect ninety days from passage.

J. William Jr.
Clerk of the Senate

C. Blankenship
Clerk of the House of Delegates

W. E. Blandford Jr.
President of the Senate

Donald L. Hoff
Speaker House of Delegates

The within is approved this the 30
day of March, 1978.

Governor

---
C-641
RECEIVED
Mar 23 4 08 PM '78
OFFICE OF THE GOVERNOR

APPROVED AND SIGNED BY THE GOVERNOR

Date: Mar 30, 1978
Time: 5:20 P.M.