WEST VIRGINIA LEGISLATURE
REGULAR SESSION, 1986

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ENROLLED
Committee Substitute for
SENATE BILL NO. 619

(By Senator Rogers and Shaw)

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PASSED March 7, 1986
In Effect 90 days from Passage
ENROLLED
COMMITTEE SUBSTITUTE
FOR
Senate Bill No. 619
(SENATORS ROGERS AND SHAW, original sponsors)

[Passed March 7, 1986; in effect ninety days from passage.]

AN ACT to amend and reenact sections two and three, article seven, chapter twenty-two of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend and reenact sections two and three, article eight of said chapter; and to amend and reenact section one, article one, chapter twenty-two-b of said code, all relating to oil and gas wells generally; the definitions of “deep wells” and “shallow wells”; and permitting shallow well operators to drill into the upper portion of the uppermost Onondaga Group for certain purposes.

Be it enacted by the Legislature of West Virginia:

That sections two and three, article seven, chapter twenty-two of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; that sections two and three, article eight of said chapter be amended and reenacted; and that section one, article one, chapter twenty-two-b of said code be amended and reenacted, all to read as follows:

CHAPTER 22. ENERGY.

ARTICLE 7. SHALLOW GAS WELL REVIEW BOARD.

§22-7-2. Definitions.

1 Unless the context in which used clearly requires a
2 different meaning, as used in this article:
(1) "Board" means the West Virginia shallow gas well review board provided for in section four of this article;
(2) "Chairman" means the chairman of the West Virginia shallow gas well review board provided for in section four of this article;
(3) "Coal operator" means any person who proposes to or does operate a coal mine;
(4) "Coal seam" and "workable coal bed" are interchangeable terms and mean any seam of coal twenty inches or more in thickness, unless a seam of less thickness is being commercially worked, or can in the judgment of the department foreseeably be commercially worked and will require protection if wells are drilled through it;
(5) "Commission" means the oil and gas conservation commission provided for in section four, article eight of this chapter;
(6) "Commissioner" means the oil and gas conservation commissioner provided for in section four, article eight of this chapter;
(7) "Correlative rights" means the reasonable opportunity of each person entitled thereto to recover and receive without waste the gas in and under a tract or tracts, or the equivalent thereof;
(8) "Deep well" means any well other than a shallow well, drilled and completed in a formation at or below the top of the uppermost member of the "Onondaga Group";
(9) "Department" means the state department of energy provided for in chapter twenty-two of this code;
(10) "Director" means the director for the division of oil and gas provided for in section eleven, article one, chapter twenty-two of this code;
(11) "Drilling unit" means the acreage on which the board decides one well may be drilled under section ten of this article;
(12) "Gas" means all natural gas and all other fluid hydrocarbons not defined as oil in subdivision (15) of this section;
(13) "Gas operator" means any person who owns or has the right to develop, operate and produce gas from a pool and to appropriate the gas produced therefrom either for 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": Provided, That in
drilling a shallow well the well operator may penetrate into
the "Onondaga Group" to a reasonable depth, not in excess
of twenty feet, in order to allow for logging and completion
operations, but in no event may the "Onondaga Group"
formation be otherwise produced, perforated or stimulated
in any manner;
(22) "Tracts comprising a drilling unit" means that all
separately owned tracts or portions thereof which are
included within the boundary of a drilling unit;
(23) "Well" means any shaft or hole sunk, drilled, bored
or dug into the earth or into underground strata for the
extraction, injection or placement of any liquid or gas, or
any 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
locate, drill, operate or abandon any well.

§22-7-3. Application of article; exclusions.

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

(b) This article shall not apply to or affect:
(1) Deep wells;
(2) Oil wells and enhanced oil recovery wells associated
with oil wells;
(3) Any shallow well permitted under article four of this
chapter prior to 12:01 a.m., the first day of August, one
thousand nine hundred seventy-eight, unless such well is,
after completion (whether such completion is prior or
subsequent to the ninth day of June, one thousand nine hundred seventy-eight), deepened subsequent to the ninth day of June, one thousand nine hundred seventy-eight, through another coal seam to another formation above the top of the uppermost member of the “Onondaga Group”; 
(4) Any shallow well as to which no objection is made under section seventeen, article one, chapter twenty-two-b of this code;
(5) Wells as defined in subdivision (4), section one, article four, chapter twenty-two-b of this code; or

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

ARTICLE 8. OIL AND GAS CONSERVATION.

§22-8-2. Definitions.

(a) Unless the context in which used clearly requires a different meaning, as used in this article:
(1) “Commission” means the oil and gas conservation commission, and “commissioner” means the oil and gas conservation commissioner as provided for in section four of this article;
(2) “Director” means the director for the division of oil and gas provided for in section eleven, article one, chapter twenty-two of this code;
(3) “Person” means any natural person, corporation, partnership, receiver, trustee, executor, administrator, guardian, fiduciary or other representative of any kind, and includes any government or any political subdivision or any agency thereof;
(4) “Operator” means any owner of the right to develop, operate and produce oil and gas from a pool and to appropriate the oil and gas produced therefrom, either for
himself or for himself and others; in the event that there is
no oil and gas lease in existence with respect to the tract in
question, the owner of the oil and gas rights therein shall be
considered as "operator" to the extent of seven eighths of
the oil and gas in that portion of the pool underlying the
tract owned by such owner, and as "royalty owner" as to
one eighth interest in such oil and gas; and in the event the
oil is owned separately from the gas, the owner of the
substance being produced or sought to be produced from
the pool shall be considered as "operator" as to such pool;
(5) "Royalty owner" means any owner of oil and gas in
place, or oil and gas rights, to the extent that such owner is
not an operator as defined in subdivision (4) of this section;
(6) "Independent producer" means a person who is
actively engaged in the production of oil and gas in West
Virginia, but whose gross revenue from such production in
West Virginia does not exceed five hundred thousand
dollars per year;
(7) "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;
(8) "Gas" means all natural gas and all other fluid
hydrocarbons not defined as oil in subdivision (7) of this
section;
(9) "Pool" means an underground accumulation of
petroleum 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 petroleum from one part of the pool affects
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 formations, so that it is effectively separated
from any other pools that may be presented in the same
district or on the same geologic structure;
(10) "Well" means any shaft or hole sunk, drilled, bored
or dug into the earth or underground strata for the
extraction of oil or gas;
(11) "Shallow well" means any well drilled and
completed in a formation above the top of the uppermost
Provided, That in drilling a shallow well the operator may penetrate into the "Onondaga Group" to a reasonable depth, not in excess of twenty feet, in order to allow for logging and completion operations, but in no event may the "Onondaga Group" formation be otherwise produced, perforated or stimulated in any manner;

(12) "Deep well" means any well, other than a shallow well, drilled and completed in a formation at or below the top of the uppermost member of the "Onondaga Group";

(13) "Drilling unit" means the acreage on which one well may be drilled;

(14) "Waste" means and includes: (a) Physical waste, as that term is generally understood in the oil and gas industry; (b) the locating, drilling, equipping, operating or producing of any oil or gas well in a manner that causes, or tends to cause, a reduction in the quantity of oil or gas ultimately recovered from a pool under prudent and proper operations, or that causes or tends to cause unnecessary or excessive surface loss of oil or gas; or (c) the drilling of more deep wells than are reasonably required to recover efficiently and economically the maximum amount of oil and gas from a pool;

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

(16) "Just and equitable share of production" means, as to each person, an amount of oil or gas or both substantially equal to the amount of recoverable oil and gas in that part of a pool underlying his tract or tracts.

(b) Unless the context clearly indicates otherwise, the use of the word "and" and the word "or" shall be interchangeable, as, for example, "oil and gas" shall mean oil or gas or both.

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

(a) Except as provided in subsection (b) of this section, the provisions of this article shall apply to all lands located in this state, 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 article one, chapter twenty-two-b of this code.

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

(1) Shallow wells other than those utilized in secondary recovery programs as set forth in section eight of this article;

(2) Any well commenced or completed prior to the ninth day of March, one thousand nine hundred seventy-two, unless such well is, after completion (whether such completion is prior or subsequent to that date), (i) deepened subsequent to that date to a formation at or below the top of the uppermost member of the "Onondaga Group" or (ii) involved in secondary recovery operations for oil under an order of the commissioner entered pursuant to section eight of this article;

(3) Gas storage operations or any well employed to inject gas into or withdraw gas from a gas storage reservoir or any well employed for storage observation; or

(4) Free gas rights.

(c) The provisions of this article shall not be construed to grant to the commissioner authority or power to:

(1) Limit production or output, or prorate production of any oil or gas well, except as provided in subdivision (6), subsection (a), section seven of this article; or

(2) Fix prices of oil or gas.

CHAPTER 22B. OIL AND GAS.

ARTICLE 1. DIVISION OF OIL AND GAS; OIL AND GAS WELLS; ADMINISTRATION; ENFORCEMENT.

§22B-1-1. Definitions.

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 seven, chapter twenty-two of this code;
(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) "Commissioner" means commissioner of the department of energy;
(h) "Deep well" means any well other than a shallow well, drilled and completed in a formation at or below the top of the uppermost member of the "Onondaga Group";
(i) "Division" means, for purposes of this article and articles three and four of this chapter, the division of oil and gas of the department of energy;
(j) "Director" means, for the purposes of this article and articles two, three and four of this chapter, the director of the division of oil and gas of the department of energy;
(k) "Expanding cement" means any cement approved by the division of oil and gas which expands during the hardening process, including, but not limited to, regular oil field cements with the proper additives;
(l) "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 article three or four of this chapter, other than a well or well site;
(m) "Gas" means all natural gas and all other fluid hydrocarbons not defined as oil in subdivision (n) of this section;
(n) "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;
(o) "Owners" 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 principal, or as
lessee or contractor, employee or agent of such principal;
(p) "Owner" when used with reference to any coal seam,
shall include any person or persons who own, lease or
operate such coal seam;
(q) "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;
(r) "Plat" means a map, drawing or print showing the
location of a well or wells as herein defined;
s) "Review board" means the West Virginia shallow gas
well review board as provided for in section four, article
seven, chapter twenty-two of this code;
t) "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;
u) "Shallow well" means any gas well drilled and
completed in a formation above the top of the uppermost
member of the "Onondaga Group": Provided, That in
drilling a shallow well the operator may penetrate into the
"Onondaga Group" to a reasonable depth, not in excess of
twenty feet, in order to allow for logging and completion
operations, but in no event may the "Onondaga Group"
formation be otherwise produced, perforated or stimulated
in any manner;
v) "Stimulate" means any action taken by a 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;
w) "Waste" means (i) physical waste, as the term is
generally understood in the oil and gas industry; (ii) the
locating, drilling, equipping, operating or producing or any
oil or gas well in a manner that causes, or tends to cause a
substantial reduction in the quantity of oil or gas ultimately
recoverable from a pool under prudent and proper
operations, or that causes or tends to cause a substantial or
unnecessary or excessive surface loss of oil or gas; or (iii) the
drilling of more deep wells than are reasonably required to
recover efficiently and economically the maximum amount
of oil and gas from a pool; (iv) substantially inefficient,
excessive or improper use, or the substantially unnecessary
dissipation of, reservoir energy, it being understood that
nothing in this chapter shall be construed to authorize any
agency of the state to impose mandatory spacing of shallow
wells except for provisions of section eight, article eight,
chapter twenty-two of this code and the provisions of
article seven, chapter twenty-two of this code; (v)
inefficient storing of oil or gas: Provided, That storage in
accordance with a certificate of public convenience issued
by the federal energy regulatory commission shall be
conclusively presumed to be efficient and (vi) other
underground or surface waste in the production or storage
of oil, gas or condensate, however caused;
(x) "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;
(y) "Well work" means the drilling, redrilling,
deepening, stimulating, pressuring by injection of any fluid,
converting from one type of well to another, combining or
physically changing to allow the migration of fluid from one
formation to another or plugging or replugging of any well;
(z) "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;
(bb) "Pollutant" shall have the same meaning as
provided in subsection (x), section two, article five-a,
chapter twenty of this code; and
(bb) "Waters of this state" shall have the same meaning
as the term "waters" as provided in subsection (e), section
two, article five-a, chapter twenty of this code.
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Bruce O. Williams
Chairman Senate Committee

Floyd Fuller
Chairman House Committee

Originated in the Senate.

In effect ninety days from passage.

J. Todd C. Forrester
Clerk of the Senate

Donald J. Kapp
Clerk of the House of Delegates

Robert Tomlinson
President of the Senate

Joseph P. Allen, Jr.
Speaker House of Delegates

The within .................. this the .............
day of .................., 1986.

A. Charles Beene,
Governor