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WEST VIRGINIA LEGISLATURE

SECOND REGULAR SESSION, 1998



ENROLLED

House Bill No. 4574

(By Delegates Douglas, Collins, Stalnaker,
Heck, Everson, Varner and Davis)



Passed March 14, 1998

In Effect Ninety Days from Passage

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H. B. 4574

(BY DELEGATES DOUGLAS, COLLINS, STALNAKER,
HECK, EVERSON, VARNER AND DAVIS)

[Passed March 14, 1998; in effect ninety days from passage.]

AN ACT to amend and reenact sections two, three, four, five, seven, eight, ten, eleven, twelve, fourteen and sixteen, article nine, chapter twenty-two-c of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to further amend said article by adding thereto a new section, designated section four-a, all relating to the oil and gas conservation commission generally; revising definitions; reestablishing, reconstituting and continuing the oil and gas conservation commission; requiring that the appointed commission members may not be employees of the division of environmental protection; requiring at least one commission member possess minimum educational and professional qualifications; providing that the commissioner serve on the commission; providing for termination of commission members under certain circumstances; establishing quorum requirements; authorizing and prohibiting delegation of authority and providing the circumstances therefor; establishing a termination date and requiring submission of annual reports; expanding notice requirements; revising hearing procedures; expanding minimum acreage requirements for drilling units; transferring authority from the oil and gas conservation commissioner to the oil and gas conservation commission;

and continuing the effect of existing orders, determinations, and other lawful actions of the commissioner and the commission under prior enactments of this article.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 9. OIL AND GAS CONSERVATION.

§22C-9-2. Definitions.

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

3 (1) "Commission" means the oil and gas
4 conservation commission and "commissioner" means the
5 oil and gas conservation commissioner as provided for in
6 section four of this article;

7 (2) "Director" means the director of the division of
8 environmental protection and "chief" means the chief of
9 the office of oil and gas;

10 (3) "Person" means any natural person, corporation,
11 partnership, receiver, trustee, executor, administrator,
12 guardian, fiduciary or other representative of any kind,
13 and includes any government or any political subdivision
14 or any agency thereof;

15 (4) "Operator" means any owner of the right to
16 develop, operate and produce oil and gas from a pool and
17 to appropriate the oil and gas produced therefrom, either
18 for such person or for such person and others; in the event
19 that there is no oil and gas lease in existence with respect
20 to the tract in question, the owner of the oil and gas rights
21 therein shall be considered as "operator" to the extent of
22 seven eighths of the oil and gas in that portion of the pool
23 underlying the tract owned by such owner, and as
24 "royalty owner" as to one-eighth interest in such oil and
25 gas; and in the event the oil is owned separately from the

26 gas, the owner of the substance being produced or sought
27 to be produced from the pool shall be considered as
28 “operator” as to such pool;

29 (5) “Royalty owner” means any owner of oil and gas
30 in place, or oil and gas rights, to the extent that such owner
31 is not an operator as defined in subdivision (4) of this
32 section;

33 (6) “Independent producer” means a producer of
34 crude oil or natural gas whose allowance for depletion is
35 determined under Section 613A of the federal Internal
36 Revenue Code in effect on the first day of July, one
37 thousand nine hundred ninety-seven;

38 (7) “Oil” means natural crude oil or petroleum and
39 other hydrocarbons, regardless of gravity, which are
40 produced at the well in liquid form by ordinary
41 production methods and which are not the result of
42 condensation of gas after it leaves the underground
43 reservoir;

44 (8) “Gas” means all natural gas and all other fluid
45 hydrocarbons not defined as oil in subdivision (7) of this
46 section;

47 (9) “Pool” means an underground accumulation of
48 petroleum or gas in a single and separate natural reservoir
49 (ordinarily a porous sandstone or limestone). It is
50 characterized by a single natural-pressure system so that
51 production of petroleum or gas from one part of the pool
52 affects the reservoir pressure throughout its extent. A pool
53 is bounded by geologic barriers in all directions, such as
54 geologic structural conditions, impermeable strata, and
55 water in the formations, so that it is effectively separated
56 from any other pools that may be presented in the same
57 district or on the same geologic structure;

58 (10) “Well” means any shaft or hole sunk, drilled,
59 bored or dug into the earth or underground strata for the
60 extraction of oil or gas; .

61 (11) “Shallow well” means any well drilled and
62 completed in a formation above the top of the uppermost
63 member of the “Onondaga Group”: *Provided*, That in

64 drilling a shallow well the operator may penetrate into the
65 “Onondaga Group” to a reasonable depth, not in excess
66 of twenty feet, in order to allow for logging and
67 completion operations, but in no event may the
68 “Onondaga Group” formation be otherwise produced,
69 perforated or stimulated in any manner;

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

74 (13) “Drilling unit” means the acreage on which one
75 well may be drilled;

76 (14) “Waste” means and includes:

77 (A) Physical waste, as that term is generally
78 understood in the oil and gas industry;

79 (B) The locating, drilling, equipping, operating or
80 producing of any oil or gas well in a manner that causes,
81 or tends to cause, a reduction in the quantity of oil or gas
82 ultimately recoverable from a pool under prudent and
83 proper operations, or that causes or tends to cause
84 unnecessary or excessive surface loss of oil or gas; or

85 (C) The drilling of more deep wells than are
86 reasonably required to recover efficiently and
87 economically the maximum amount of oil and gas from a
88 pool. Waste does not include gas vented or released from
89 any mine areas as defined in section two, article one,
90 chapter twenty-two-a of this code or from adjacent coal
91 seams which are the subject of a current permit issued
92 under article two of chapter twenty-two-a of this code:
93 *Provided*, That nothing in this exclusion is intended to
94 address ownership of the gas;

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

99 (16) “Just and equitable share of production” means,
100 as to each person, an amount of oil or gas or both

101 substantially equal to the amount of recoverable oil and
102 gas in that part of a pool underlying such person's tract or
103 tracts.

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

§22C-9-3. Application of article; exclusions.

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

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

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

13 (2) Any well commenced or completed prior to the
14 ninth day of March, one thousand nine hundred
15 seventy-two, unless such well is, after completion (whether
16 such completion is prior or subsequent to that date):

17 (A) Deepened subsequent to that date to a formation at
18 or below the top of the uppermost member of the
19 "Onondaga Group"; or

20 (B) Involved in secondary recovery operations for oil
21 under an order of the commission entered pursuant to
22 section eight of this article;

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

26 (4) Free gas rights.

27 (c) The provisions of this article shall not be

28 construed to grant to the commissioner or the commission
29 authority or power to:

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

33 (2) Fix prices of oil or gas.

§22C-9-4. Oil and gas conservation commissioner and commission; commission membership; qualifications of members; terms of members; vacancies on commission; meetings; compensation and expenses; appointment and qualifications of commissioner; general powers and duties.

1 (a) The "oil and gas conservation commission" shall
2 be composed of five members. The director of the
3 division of environmental protection and the chief of the
4 office of oil and gas shall be members of the commission
5 ex officio. The remaining three members of the
6 commission shall be appointed by the governor, by and
7 with the advice and consent of the Senate, and may not be
8 employees of the division of environmental protection. Of
9 the three members appointed by the governor, one shall
10 be an independent producer and at least one shall be a
11 public member not engaged in an activity under the
12 jurisdiction of the public service commission or the
13 federal energy regulatory commission. The third
14 appointee shall possess a degree from an accredited
15 college or university in petroleum engineering or geology
16 and must be a registered professional engineer with
17 particular knowledge and experience in the oil and gas
18 industry and shall serve as commissioner and as chair of
19 the commission.

20 (b) The members of the commission appointed by the
21 governor shall be appointed for overlapping terms of six
22 years each, except that the original appointments shall be
23 for terms of two, four and six years, respectively. Each
24 member appointed by the governor shall serve until the
25 members successor has been appointed and qualified.
26 Members may be appointed by the governor to serve any
27 number of terms. The members of the commission

28 appointed by the governor, before performing any duty
29 hereunder, shall take and subscribe to the oath required by
30 section 5, article IV of the constitution of West Virginia.
31 Vacancies in the membership appointed by the governor
32 shall be filled by appointment by the governor for the
33 unexpired term of the member whose office is vacant and
34 such appointment shall be made by the governor within
35 sixty days of the occurrence of such vacancy. Any
36 member appointed by the governor may be removed by
37 the governor in case of incompetency, neglect of duty,
38 gross immorality or malfeasance in office. A commission
39 member's appointment shall be terminated as a matter of
40 law if that member fails to attend three consecutive
41 meetings. The governor shall appoint a replacement
42 within thirty days of the termination.

43 (c) The commission shall meet at such times and
44 places as shall be designated by the chair. The chair may
45 call a meeting of the commission at any time, and shall
46 call a meeting of the commission upon the written request
47 of two members or upon the written request of the oil and
48 gas conservation commissioner or the chief of the office
49 of oil and gas. Notification of each meeting shall be given
50 in writing to each member by the chair at least fourteen
51 calendar days in advance of the meeting.. Three members
52 of the commission, at least two of whom are appointed
53 members, shall constitute a quorum for the transaction of
54 any business.

55 (d) The commission shall pay each member the same
56 compensation as is paid to members of the Legislature for
57 their interim duties as recommended by the citizens
58 legislative compensation commission and authorized by
59 law for each day or portion thereof engaged in the
60 discharge of official duties and shall reimburse each
61 member for actual and necessary expenses incurred in the
62 discharge of official duties.

63 (e) The commission is hereby empowered and it is the
64 commission's duty to execute and carry out, administer
65 and enforce the provisions of this article in the manner
66 provided herein. Subject to the provisions of section three
67 of this article, the commission has jurisdiction and

68 authority over all persons and property necessary therefor.
69 The commission is authorized to make such investigation
70 of records and facilities as the commission deems proper.
71 In the event of a conflict between the duty to prevent waste
72 and the duty to protect correlative rights, the
73 commission's duty to prevent waste shall be paramount.

74 (f) Without limiting the commission's general
75 authority, the commission shall have specific authority to:

76 (1) Regulate the spacing of deep wells;

77 (2) Make and enforce reasonable rules and orders
78 reasonably necessary to prevent waste, protect correlative
79 rights, govern the practice and procedure before the
80 commission and otherwise administer the provisions of
81 this article;

82 (3) Issue subpoenas for the attendance of witnesses
83 and subpoenas duces tecum for the production of any
84 books, records, maps, charts, diagrams and other pertinent
85 documents, and administer oaths and affirmations to such
86 witnesses, whenever, in the judgment of the commission, it
87 is necessary to do so for the effective discharge of the
88 commission's duties under the provisions of this article;
89 and

90 (4) Serve as technical advisor regarding oil and gas to
91 the Legislature, its members and committees, to the chief
92 of office of oil and gas, to the division of environmental
93 protection and to any other agency of state government
94 having responsibility related to the oil and gas industry.

95 (g) The commission may delegate to the commission
96 staff the authority to approve or deny an application for
97 new well permits, to establish drilling units or special field
98 rules if:

99 (1) The application conforms to the rules of the
100 commission; and

101 (2) No request for hearing has been received.

102 (h) The commission may not delegate its authority to:

104 (1) Propose legislative rules;

105 (2) Approve or deny an application for new well
106 permits, to establish drilling units or special field rules if
107 the conditions set forth in subsection (g) of this section are
108 not met; or

109 (3) Approve or deny an application for the pooling of
110 interests within a drilling unit.

111 (i) Any exception to the field rules or the spacing of
112 wells which does not conform to the rules of the
113 commission, and any application for the pooling of
114 interests within a drilling unit, must be presented to and
115 heard before the commission.

§22C-9-4a. Termination of commission; reports.

1 (a) The commission is hereby continued until the first
2 day of July, two thousand one.

3 (b) On or before the thirty-first day of December, one
4 thousand nine hundred ninety-eight, and for the next two
5 consecutive years thereafter, the oil and gas conservation
6 commission shall submit a report annually to the joint
7 committee on government operations of its activities for
8 the year and any recommendations for improving the
9 function of the commission.

§22C-9-5. Rules; notice requirements.

1 (a) The commission may propose rules for legislative
2 approval in accordance with the provisions of article three,
3 chapter twenty-nine-a of this code, to implement and
4 make effective the provisions of this article and the powers
5 and authority conferred and the duties imposed upon the
6 commission under the provisions of this article.

7 (b) Notwithstanding the provisions of section two,
8 article seven, chapter twenty-nine-a of this code, any
9 notice required under the provisions of this article shall be
10 given at the direction of the commission by personal or
11 substituted service or by certified United States mail,
12 addressed, postage prepaid, to the last-known mailing
13 address, if any, of the person being served, with the
14 direction that the same be delivered to addressee only,

15 return receipt requested. In the case of providing notice
16 upon the filing of an application with the commission, the
17 commission shall cause notice to be published as a Class II
18 legal advertisement in compliance with the provisions of
19 article three, chapter fifty-nine of this code, and the
20 publication area for such publication shall be the county
21 or counties wherein any land which may be affected by
22 such order is situate.

23 In addition, the commission shall mail a copy of such
24 notice to all other persons who have specified to the
25 commission an address to which all such notices may be
26 mailed. The notice shall issue in the name of the state,
27 shall be signed by one of the commission members, shall
28 specify the style and number of the proceeding, the time
29 and place of any hearing and shall briefly state the
30 purpose of the proceeding. Each notice of a hearing must
31 be provided no fewer than twenty days preceding the
32 hearing date. Personal or substituted service and proof
33 thereof may be made by an officer authorized to serve
34 process or by an agent of the commission in the same
35 manner as is now provided by the "West Virginia Rules of
36 Civil Procedure for Trial Courts of Record" for service of
37 process in civil actions in the various courts of this state.

38 A certified copy of any pooling order entered under
39 the provisions of this article shall be presented by the
40 commission to the clerk of the county commission of each
41 county wherein all or any portion of the pooled tract is
42 located, for recordation in the record book of such county
43 in which oil and gas leases are normally recorded. The
44 recording of the order from the time noted thereon by
45 such clerk shall be notice of the order to all persons.

**§22C-9-7. Drilling units and the pooling of interests in drilling
units in connection with deep oil or gas wells.**

1 (a) Drilling units.

2 (1) After one discovery deep well has been drilled
3 establishing a pool, an application to establish drilling
4 units may be filed with the commission by the operator of
5 such discovery deep well or by the operator of any lands
6 directly and immediately affected by the drilling of such

7 discovery deep well, or subsequent deep wells in said pool.
8 Each application shall contain such information as
9 prescribed by reasonable rules proposed by the
10 commission in accordance with the provisions of section
11 five of this article.

12 (2) Upon the filing of an application to establish
13 drilling units, the commission shall provide notice to all
14 interested parties in accordance with this subsection. If the
15 application does not conform to the existing rules of the
16 commission, then the commission shall set a hearing and
17 provide notice to all interested parties. If the application
18 conforms to the rules of the commission, the commission
19 shall provide notice of the filing of the application to all
20 interested parties. Each notice shall describe the area for
21 which a spacing order is to be entered in recognizable,
22 narrative terms; contain such other information as is
23 essential to the giving of proper notice, including the time
24 and date and place of a hearing, if any; include a
25 statement that any party has a right to a hearing before the
26 commission; and include a statement that any request for
27 hearing must be filed with the commission within fifteen
28 days of receipt of notice. If no request for hearing has
29 been received within the fifteen days following receipt of
30 the notice, the commission may proceed to process the
31 application. If a request for hearing has been received by
32 the commission, then the commission shall set a hearing
33 and provide notice to all interested parties.

34 (3) The commission shall determine the area to be
35 included in such spacing order and the acreage to be
36 contained by each drilling unit, the shape thereof, and the
37 minimum distance from the outside boundary of the unit
38 at which a deep well may be drilled thereon. The
39 commission shall consider:

40 (A) The surface topography and property lines of the
41 lands underlaid by the pool to be included in such order;

42 (B) The plan of deep well spacing then being
43 employed or proposed in such pool for such lands;

44 (C) The depth at which production from said pool has
45 been found;

46 (D) The nature and character of the producing
47 formation or formations, and whether the substance
48 produced or sought to be produced is gas or oil or both;

49 (E) The maximum area which may be drained
50 efficiently and economically by one deep well; and

51 (F) Any other available geological or scientific data
52 pertaining to said pool which may be of probative value to
53 the commission in determining the proper deep well
54 drilling units therefor.

55 If the commission determines that drilling units
56 should be established, the commission shall enter an order
57 establishing drilling units of a specified and
58 approximately uniform size and shape for each pool
59 subject to the provisions of this section.

60 (4) When it is determined that an oil or gas pool
61 underlies an area for which a spacing order is to be
62 entered, the commission shall include in such order all
63 lands determined or believed to be overlaid by such pool
64 and exclude all other lands.

65 (5) No drilling unit established by the commission
66 shall be smaller than the maximum area which can be
67 drained efficiently and economically by one deep well:
68 *Provided*, That if there is not sufficient evidence from
69 which to determine the area which can be drained
70 efficiently and economically by one deep well, the
71 commission may enter an order establishing temporary
72 drilling units for the orderly development of the pool
73 pending the obtaining of information necessary to
74 determine the ultimate spacing for such pool.

75 (6) An order establishing drilling units shall specify
76 the minimum distance from the nearest outside boundary
77 of the drilling unit at which a deep well may be drilled.
78 The minimum distance provided shall be the same in all
79 drilling units established under said order with necessary
80 exceptions for deep wells drilled or being drilled at the
81 time of the filing of the application. If the commission
82 finds that a deep well to be drilled at or more than the
83 specified minimum distance from the boundary of a

84 drilling unit would not be likely to produce in paying
85 quantities or will encounter surface conditions which
86 would substantially add to the burden or hazard of drilling
87 such deep well, or that a location within the area permitted
88 by the order is prohibited by the lawful order of any state
89 agency or court, the commission is authorized after notice
90 and hearing to make an order permitting the deep well to
91 be drilled at a location within the minimum distance
92 prescribed by the spacing order. In granting exceptions
93 to the spacing order, the commission may restrict the
94 production from any such deep well so that each person
95 entitled thereto in such drilling unit shall not produce or
96 receive more than his just and equitable share of the
97 production from such pool.

98 (7) An order establishing drilling units for a pool shall
99 cover all lands determined or believed to be underlaid by
100 such pool, and may be modified by the commission from
101 time to time, to include additional lands determined to be
102 underlaid by such pool or to exclude lands determined
103 not to be underlaid by such pool. An order establishing
104 drilling units may be modified by the commission to
105 permit the drilling of additional deep wells on a
106 reasonably uniform pattern at a uniform minimum
107 distance from the nearest unit boundary as provided
108 above. Any order modifying a prior order shall be made
109 only after application by an interested operator and notice
110 and hearing as prescribed herein for the original order:
111 *Provided*, That drilling units established by order shall not
112 exceed one hundred sixty acres for an oil well or six
113 hundred forty acres for a gas well: *Provided, however*,
114 That the commission may exceed the acreage limitation
115 by ten percent if the applicant demonstrates that the area
116 would be drained efficiently and economically by a larger
117 drilling unit.

118 (8) After the date an application to establish drilling
119 units has been filed with the commission, no additional
120 deep well shall be commenced for production from the
121 pool until the order establishing drilling units has been
122 made, unless the commencement of the deep well is
123 authorized by order of the commission.

124 (9) The commission shall, within forty-five days after
125 the filing of an application to establish drilling units for a
126 pool subject to the provisions of this section, enter an
127 order establishing such drilling units, dismiss the
128 application, or for good cause, continue the application
129 process.

130 (10) As part of the order establishing a drilling unit,
131 the commission shall prescribe just and reasonable terms
132 and conditions upon which the royalty interests in the unit
133 shall, in the absence of voluntary agreement, be deemed to
134 be integrated without the necessity of a subsequent order
135 integrating the royalty interests.

136 (11) If a hearing has been held on an application
137 submitted pursuant to this subsection, the order shall be a
138 final order. If no hearing has been held, the commission
139 shall issue a proposed order and shall provide a copy of
140 the proposed order, together with notice of the right to
141 appeal and request a hearing, to all interested parties. Any
142 party aggrieved by the proposed order may appeal the
143 proposed order to the full commission and request a
144 hearing. Notice of appeal and request for hearing shall be
145 made in accordance with section ten of this article within
146 fifteen days of entry of the order. If no appeal and
147 request for hearing has been received within fifteen days,
148 the proposed order shall become final.

149 (b) Pooling of interests in drilling units.

150 (1) When two or more separately owned tracts are
151 embraced within a drilling unit, or when there are
152 separately owned interests in all or a part of a drilling unit,
153 the interested persons may pool their tracts or interests for
154 the development and operation of the drilling unit. In the
155 absence of voluntary pooling and upon application of any
156 operator having an interest in the drilling unit, the
157 commission shall set a hearing and provide notice to all
158 interested parties. Each notice shall describe the area for
159 which an order is to be entered in recognizable, narrative
160 terms; contain such other information as is essential to the
161 giving of proper notice, including the time and date and
162 place of a hearing. After the hearing, the commission
163 shall enter an order pooling all tracts or interests in the

164 drilling unit for the development and operation thereof
165 and for sharing production therefrom. Each such pooling
166 order shall be upon terms and conditions which are just
167 and reasonable and in no event shall drilling be initiated
168 on the tract of an unleased owner without the owner's
169 written consent.

170 (2) All operations, including, but not limited to, the
171 commencement, drilling or operation of a deep well, upon
172 any portion of a drilling unit for which a pooling order
173 has been entered, shall be deemed for all purposes the
174 conduct of such operations upon each separately owned
175 tract in the drilling unit by the several owners thereof.
176 That portion of the production allocated to a separately
177 owned tract included in a drilling unit shall, when
178 produced, be deemed for all purposes to have been
179 actually produced from such tract by a deep well drilled
180 thereon.

181 (3) Any pooling order under the provisions of this
182 subsection (b) shall authorize the drilling and operation of
183 a deep well for the production of oil or gas from the
184 pooled acreage; shall designate the operator to drill and
185 operate such deep well; shall prescribe the time and
186 manner in which all owners of operating interests in the
187 pooled tracts or portions of tracts may elect to participate
188 therein; shall provide that all reasonable costs and
189 expenses of drilling, completing, equipping, operating,
190 plugging and abandoning such deep well shall be borne,
191 and all production therefrom shared, by all owners of
192 operating interests in proportion to the net oil or gas
193 acreage in the pooled tracts owned or under lease to each
194 owner; and shall make provisions for payment of all
195 reasonable costs thereof, including a reasonable charge for
196 supervision and for interest on past-due accounts, by all
197 those who elect to participate therein.

198 (4) No drilling or operation of a deep well for the
199 production of oil or gas shall be permitted upon or within
200 any tract of land unless the operator shall have first
201 obtained the written consent and easement therefor, duly
202 acknowledged and placed on record in the office of the
203 county clerk, for valuable consideration of all owners of

204 the surface of such tract of land, which consent shall
205 describe with reasonable certainty, the location upon such
206 tract, of the location of such proposed deep well, a
207 certified copy of which consent and easement shall be
208 submitted by the operator to the commission.

209 (5) Upon request, any such pooling order shall
210 provide just and equitable alternatives whereby an owner
211 of an operating interest who does not elect to participate in
212 the risk and cost of the drilling of a deep well may elect:

213 (A) Option 1. To surrender such interest or a portion
214 thereof to the participating owners on a reasonable basis
215 and for a reasonable consideration, which, if not agreed
216 upon, shall be determined by the commission; or

217 (B) Option 2. To participate in the drilling of the deep
218 well on a limited or carried basis on terms and conditions
219 which, if not agreed upon, shall be determined by the
220 commission to be just and reasonable.

221 (6) In the event a nonparticipating owner elects
222 Option 2, and an owner of any operating interest in any
223 portion of the pooled tract shall drill and operate, or pay
224 the costs of drilling, completing, equipping and operating
225 a deep well for the benefit of such nonparticipating owner
226 as provided in the pooling order, then such operating
227 owner shall be entitled to the share of production from the
228 tracts or portions thereof pooled accruing to the interest of
229 such nonparticipating owner, exclusive of any royalty or
230 overriding royalty reserved in any leases, assignments
231 thereof or agreements relating thereto, of such tracts or
232 portions thereof, or exclusive of one eighth of the
233 production attributable to all unleased tracts or portions
234 thereof, until the market value of such nonparticipating
235 owner's share of the production, exclusive of such royalty,
236 overriding royalty or one eighth of production, equals
237 double the share of such costs payable by or charged to
238 the interest of such nonparticipating owner.

239 (7) If a dispute shall arise as to the costs of drilling,
240 completing, equipping and operating a deep well, the
241 commission shall determine and apportion the costs,
242 within ninety days from the date of written notification to

243 the commission of the existence of such dispute.

244 (8) The commission shall, within forty-five days after
245 the filing of an application, enter an order, dismiss the
246 application, or for good cause, continue the application
247 process.

§22C-9-8. Secondary recovery of oil; unit operations.

1 (a) Upon the application of any operator in a pool
2 productive of oil the commission shall set a hearing and
3 provide notice to all interested parties. Each notice shall
4 describe the area for which an order is to be entered in
5 recognizable, narrative terms; contain such other
6 information as is essential to the giving of proper notice,
7 including the time and date and place of a hearing. After
8 the hearing, the commission may enter an order requiring
9 the unit operation of such pool in connection with a
10 program of secondary recovery of oil, and providing for
11 the unitization of separately owned tracts and interests
12 within such pool, but only after finding that:

13 (1) The order is reasonably necessary for the
14 prevention of waste and the drilling of unnecessary wells;

15 (2) The proposed plan of secondary recovery will
16 increase the ultimate recovery of oil from the pool to such
17 an extent that the proposed secondary recovery operation
18 will be economically feasible;

19 (3) The production of oil from the unitized pool can
20 be allocated in such a manner as to ensure the recovery by
21 all operators of their just and equitable share of such
22 production; and

23 (4) The operators of at least three fourths of the
24 acreage (calculating partial interests on a pro rata basis for
25 operator interests on any parcel owned in common) and
26 the royalty owners of at least three fourths of the acreage
27 (calculating partial interests on a pro rata basis for royalty
28 interests on any parcel owned in common) in such pool
29 have approved the plan and terms of unit operation to be
30 specified by the commission in its order, such approval to
31 be evidenced by a written contract setting forth the terms
32 of the unit operation and executed by said operators and

33 said royalty owners, and filed with the commission. The
34 order requiring such unit operation shall designate one
35 operator in the pool as unit operator and shall also make
36 provision for the proportionate allocation to all operators
37 of the costs and expenses of the unit operation, including
38 reasonable charges for supervision and interest on
39 past-due accounts, which allocation shall be in the same
40 proportion that the separately owned tracts share in the
41 production of oil from the unit. In the absence of an
42 agreement entered into by the operators and filed with the
43 commission providing for sharing the costs of capital
44 investment in wells and physical equipment, and intangible
45 drilling costs, the commission shall provide by order for
46 the sharing of such costs in the same proportion as the
47 costs and expenses of the unit operation: *Provided*, That
48 any operator who has not consented to the unitization
49 shall not be required to contribute to the costs or expenses
50 of the unit operation, or to the cost of capital investment in
51 wells and physical equipment, and intangible drilling costs,
52 except out of the proceeds from the sale of the production
53 accruing to the interest of such operator: *Provided*,
54 *however*, That no credit to the well costs shall be adjusted
55 on the basis of less than the average well costs within the
56 unitized area: *Provided further*, That no order entered
57 under the provisions of this section requiring unit
58 operation shall vary or alter any of the terms of any
59 contract entered into by operators and royalty owners
60 under the provisions of this section.

61 (5) The commission shall, within forty-five days after
62 the filing of an application to establish unit operators for a
63 pool subject to the provisions of this section, enter an
64 order establishing such unit operators, dismiss the
65 application, or for good cause, continue the application
66 process.

§22C-9-10. Hearing procedures.

1 (a) Upon receipt of a request for hearing, the
2 commission shall set a time and place for such hearing not
3 less than twenty and not more than forty-five days
4 thereafter. Any scheduled hearing may be continued by
5 the commission upon the commission's own motion or

6 for good cause shown by any party to the hearing. All
7 interested parties shall be entitled to be heard at any
8 hearing conducted under the provisions of this article.

9 (b) All of the pertinent provisions of article five,
10 chapter twenty-nine-a of this code shall apply to and
11 govern the hearing and the administrative procedures in
12 connection with and following such hearing, with like
13 effect as if the provisions of said article five were set forth
14 in extenso in this subsection.

15 (c) Any such hearing shall be conducted by the
16 commission. For the purpose of conducting any such
17 hearing, the commission shall have the power and
18 authority to issue subpoenas and subpoenas duces tecum
19 which shall be issued and served as specified in section
20 one, article five of said chapter twenty-nine-a, and all of
21 the said section one provisions dealing with subpoenas and
22 subpoenas duces tecum shall apply to subpoenas and
23 subpoenas duces tecum issued for the purpose of a
24 hearing hereunder.

25 (d) At any hearing parties may represent themselves
26 or be represented by an attorney-at-law admitted to
27 practice before any circuit court of this state. Upon
28 request by the commission, the commission shall be
29 represented at a hearing by the attorney general or the
30 attorney general's assistants without additional
31 compensation. The commission, with the written approval
32 of the attorney general, may employ special counsel to
33 represent the commission at any hearing.

34 (e) After any hearing and consideration of all of the
35 testimony, evidence and record in the case, the
36 commission shall render a decision in writing. The written
37 decision of the commission shall be accompanied by
38 findings of fact and conclusions of law as specified in
39 section three, article five, chapter twenty-nine-a of this
40 code, and a copy of such decision and accompanying
41 findings and conclusions shall be served by certified mail,
42 return receipt requested, upon all parties and their attorney
43 of record, if any.

44 The decision of the commission shall be final unless

45 reversed, vacated or modified upon judicial review thereof
46 in accordance with the provisions of section eleven of this
47 article.

§22C-9-11. Judicial review; appeal to supreme court of appeals; legal representation for commission.

1 (a) Any party adversely affected by an order of the
2 commission shall be entitled to judicial review thereof. All
3 of the pertinent provisions of section four, article five,
4 chapter twenty-nine-a of this code, shall apply to and
5 govern such judicial review with like effect as if the
6 provisions of said section four were set forth in this
7 section.

8 (b) The judgment of the circuit court shall be final
9 unless reversed, vacated or modified on appeal to the
10 supreme court of appeals in accordance with the
11 provisions of section one, article six, chapter twenty-nine-a
12 of this code, except that notwithstanding the provisions of
13 said section one the petition seeking such review must be
14 filed with said supreme court of appeals within thirty days
15 from the date of entry of the judgment of the circuit
16 court.

17 (c) Legal counsel and services for the commission in
18 all appeal proceedings in any circuit court and the
19 supreme court of appeals shall be provided by the
20 attorney general or the attorney general's assistants and in
21 any circuit court by the prosecuting attorney of the
22 county as well, all without additional compensation. The
23 commission, with the written approval of the attorney
24 general, may employ special counsel to represent the
25 commission at any such appeal proceedings.

§22C-9-12. Injunctive relief.

1 (a) Whenever it appears to the commission that any
2 person has been or is violating or is about to violate any
3 provision of this article, any reasonable rule promulgated
4 by the commission hereunder or any order or final
5 decision of the commission, the commission may apply in
6 the name of the state to the circuit court of the county in
7 which the violations or any part thereof has occurred, is

8 occurring or is about to occur, or the judge thereof in
9 vacation, for an injunction against such person and any
10 other persons who have been, are or are about to be,
11 involved in any practices, acts or omissions, so in violation,
12 enjoining such person or persons from any such violation
13 or violations. Such application may be made and
14 prosecuted to conclusion whether or not any such
15 violation or violations have resulted or shall result in
16 prosecution or conviction under the provisions of section
17 fourteen of this article.

18 (b) Upon application by the commission, the circuit
19 courts of this state may by mandatory or prohibitory
20 injunction compel compliance with the provisions of this
21 article, the reasonable rules promulgated by the
22 commission hereunder and all orders and final decisions
23 of the commission. The court may issue a temporary
24 injunction in any case pending a decision on the merits of
25 any application filed. Any other section of this code to the
26 contrary notwithstanding, the state shall not be required to
27 furnish bond or other undertaking as a prerequisite to
28 obtaining mandatory, prohibitory or temporary injunctive
29 relief under the provisions of this article.

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

37 (d) The commission shall be represented in all such
38 proceedings by the attorney general or the attorney
39 general's assistants and in such proceedings in the circuit
40 courts by the prosecuting attorneys of the several counties
41 as well, all without additional compensation. The
42 commission, with the written approval of the attorney
43 general, may employ special counsel to represent the
44 commission in any such proceedings.

45 (e) If the commission shall refuse or fail to apply for
46 an injunction to enjoin a violation or threatened violation
47 of any provision of this article, any reasonable rule

48 promulgated by the commission hereunder or any order
49 or final decision of the commission within ten days after
50 receipt of a written request to do so by any person who is
51 or will be adversely affected by such violation or
52 threatened violation, the person making such request may
53 apply in his own behalf for an injunction to enjoin such
54 violation or threatened violation in any court in which the
55 commission might have brought suit. The commission
56 shall be made a party defendant in such application in
57 addition to the person or persons violating or threatening
58 to violate any provision of this article, any reasonable rule
59 promulgated by the commission hereunder or any order
60 or final decision of the commission. The application shall
61 proceed and injunctive relief may be granted without
62 bond or other undertaking in the same manner as if the
63 application had been made by the commission.

§22C-9-14. Penalties.

1 (a) Any person who violates any provision of this
2 article, any of the reasonable rules promulgated by the
3 commission hereunder or any order or any final decision
4 of the commission, other than a violation covered by the
5 provisions of subsection (b) of this section, shall be guilty
6 of a misdemeanor and, upon conviction thereof, shall be
7 fined not more than one thousand dollars, and each day
8 that a violation continues shall constitute a new and
9 separate violation.

10 (b) Any person who, for the purpose of evading any
11 provision of this article, any of the reasonable rules
12 promulgated by the commission hereunder or any order
13 or final decision of the commission, shall make or cause to
14 be made any false entry or statement in a report required
15 under the provisions of this article, any of the reasonable
16 rules promulgated by the commission hereunder or any
17 order or final decision of the commission, or shall make
18 or cause to be made any false entry in any record, account
19 or memorandum required under the provisions of this
20 article, any of the reasonable rules promulgated by the
21 commission hereunder or any order or any final decision
22 of the commission, or who shall omit, or cause to be
23 omitted, from any such record, account or memorandum,

24 full, true and correct entries, or shall remove from this
25 state or destroy, mutilate, alter or falsify any such record,
26 account or memorandum, shall be guilty of a
27 misdemeanor, and, upon conviction thereof, shall be fined
28 not more than five thousand dollars, or imprisoned in the
29 county jail not more than six months, or both fined and
30 imprisoned.

31 (c) Any person who knowingly aids or abets any
32 other person in the violation of any provision of this
33 article, any of the reasonable rules promulgated by the
34 commission hereunder or any order of final decision of
35 the commission, shall be subject to the same penalty as
36 that prescribed in this article for the violation by such
37 other person.

§22C-9-16. Rules, orders and permits remain in effect.

1 (a) All orders, determinations, rules, permits, grants,
2 contracts, certificates, licenses, waivers, bonds,
3 authorizations and privileges which have been issued,
4 made, granted or allowed to become effective pursuant to
5 any prior enactment of this article and which are in effect
6 on the effective date of this article shall continue in effect
7 according to their terms until modified, terminated,
8 superseded, set aside or revoked pursuant to this article, by
9 a court of competent jurisdiction, or by operation of law.

10 (b) Orders and actions of the commission or
11 commissioner in the exercise of functions amended by
12 this enactment are subject to judicial review to the same
13 extent and in the same manner as if such orders and
14 actions had been by the commission or commissioner
15 exercising such functions immediately preceding the
16 enactment of this article.

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

Ray Johnson
Chairman Senate Committee

Bill Trantano
Chairman House Committee

Originating in the House.

Takes effect ninety days from passage.

Carroll Ellis
Clerk of the Senate

Bryan W. Burd
Clerk of the House of Delegates

Earl Ray Tomblin
President of the Senate

[Signature]
Speaker of the House of Delegates

The within *approved* this the *7th*
day of *April*, 1998.

[Signature]
Governor

PRESENTED TO THE

GOVERNOR

Date. 3/31/98

Time. 2:48 pm