WEST VIRGINIA LEGISLATURE
SECOND REGULAR SESSION, 1998

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ENROLLED

House Bill No. 4574
(By Delegates Douglas, Collins, Stalnaker,
Heck, Everson, Varner and Davis)

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Passed March 14, 1998

In Effect Ninety Days from Passage
ENROLLED

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.

(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 of the division of environmental protection and "chief" means the chief of the office of oil and gas;

(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 such person or for such person 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 producer of crude oil or natural gas whose allowance for depletion is determined under Section 613A of the federal Internal Revenue Code in effect on the first day of July, one thousand nine hundred ninety-seven;

(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 or 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 petroleum or gas 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 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;

(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 recoverable 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. Waste does not include gas vented or released from any mine areas as defined in section two, article one, chapter twenty-two-a of this code or from adjacent coal seams which are the subject of a current permit issued under article two of chapter twenty-two-a of this code: Provided, That nothing in this exclusion is intended to address ownership of the gas;

(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 such person’s 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.

§22C-9-3. 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 six, chapter twenty-two 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):

(A) Deepened subsequent to that date to a formation at or below the top of the uppermost member of the “Onondaga Group”; or

(B) Involved in secondary recovery operations for oil under an order of the commission 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
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28 construed to grant to the commissioner or the commission
29 authority or power to:
30
31 (1) Limit production or output, or prorate production
32 of any oil or gas well, except as provided in subdivision
33 (6), subsection (a), section seven of this article; or
34
35 (2) Fix prices of oil or gas.

§22C-9-4. Oil and gas conservation commissioner and com-
mission; commission membership; qualifications
of members; terms of members; vacancies on
commission; meetings; compensation and ex-
penses; appointment and qualifications of com-
mmissioner; 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
appointed by the governor, before performing any duty
hereunder, shall take and subscribe to the oath required by
section 5, article IV of the constitution of West Virginia.

Vacancies in the membership appointed by the governor
shall be filled by appointment by the governor for the
unexpired term of the member whose office is vacant and
such appointment shall be made by the governor within
sixty days of the occurrence of such vacancy. Any
member appointed by the governor may be removed by
the governor in case of incompetency, neglect of duty,
gross immorality or malfeasance in office. A commission
member’s appointment shall be terminated as a matter of
law if that member fails to attend three consecutive
meetings. The governor shall appoint a replacement
within thirty days of the termination.

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

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

(e) The commission is hereby empowered and it is the
commission’s 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 commission has jurisdiction and
authority over all persons and property necessary therefor. The commission is authorized to make such investigation of records and facilities as the commission deems proper. In the event of a conflict between the duty to prevent waste and the duty to protect correlative rights, the commission’s duty to prevent waste shall be paramount.

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

1. Regulate the spacing of deep wells;
2. Make and enforce reasonable rules and orders reasonably necessary to prevent waste, protect correlative rights, govern the practice and procedure before the commission and otherwise administer the provisions of this article;
3. Issue subpoenas for the attendance of 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 commission, it is necessary to do so for the effective discharge of the commission’s duties under the provisions of this article; and
4. Serve as technical advisor regarding oil and gas to the Legislature, its members and committees, to the chief of office of oil and gas, to the division of environmental protection and to any other agency of state government having responsibility related to the oil and gas industry.

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

1. The application conforms to the rules of the commission; and
2. No request for hearing has been received.

(h) The commission may not delegate its authority to:
(1) Propose legislative rules;

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

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

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

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

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

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

§22C-9-5. Rules; notice requirements.

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

(b) Notwithstanding the provisions of section two, article seven, chapter twenty-nine-a of this code, any notice required under the provisions of this article shall be given at the direction of the commission by personal or substituted service or by certified United States mail, addressed, postage 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. In the case of providing notice upon the filing of an application with the commission, the commission shall cause notice to be published as a Class II legal advertisement in compliance with the provisions of article three, chapter fifty-nine of this code, and the publication area for such publication shall be the county or counties wherein any land which may be affected by such order is situate.

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

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

(a) Drilling units.

(1) After one discovery deep well has been drilled establishing a pool, an application to establish drilling units may be filed with the commission by the operator of such discovery deep well or by the operator of any lands directly and immediately affected by the drilling of such
discovery deep well, or subsequent deep wells in said pool. Each application shall contain such information as prescribed by reasonable rules proposed by the commission in accordance with the provisions of section five of this article.

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

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

(A) The surface topography and property lines of the lands underlaid by the pool to be included in such order;
(B) The plan of deep well spacing then being employed or proposed in such pool for such lands;
(C) The depth at which production from said pool has been found;
(D) The nature and character of the producing formation or formations, and whether the substance produced or sought to be produced is gas or oil or both;

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

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

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

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

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

(6) An order establishing drilling units shall specify the minimum distance from the nearest outside boundary of the drilling unit at which a deep well may be drilled. The minimum distance provided shall be the same in all drilling units established under said order with necessary exceptions for deep wells drilled or being drilled at the time of the filing of the application. If the commission finds that a deep well to be drilled at or more than the specified minimum distance from the boundary of a
drilling unit would not be likely to produce in paying quantities or will encounter surface conditions which would substantially add to the burden or hazard of drilling such deep well, or that a location within the area permitted by the order is prohibited by the lawful order of any state agency or court, the commission is authorized after notice and hearing to make an order permitting the deep well to be drilled at a location within the minimum distance prescribed by the spacing order. In granting exceptions to the spacing order, the commission may restrict the production from any such deep well so that each person entitled thereto in such drilling unit shall not produce or receive more than his just and equitable share of the production from such pool.

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

(8) After the date an application to establish drilling units has been filed with the commission, no additional deep well shall be commenced for production from the pool until the order establishing drilling units has been made, unless the commencement of the deep well is authorized by order of the commission.
(9) The commission shall, within forty-five days after the filing of an application to establish drilling units for a pool subject to the provisions of this section, enter an order establishing such drilling units, dismiss the application, or for good cause, continue the application process.

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

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

(b) Pooling of interests in drilling units.

(1) When two or more separately owned tracts are embraced within a drilling unit, or when there are separately owned interests in all or a part of a drilling unit, the interested persons may pool their tracts or interests for the development and operation of the drilling unit. In the absence of voluntary pooling and upon application of any operator having an interest in the drilling unit, the commission shall set a hearing and provide notice to all interested parties. Each notice shall describe the area for which an order is to be entered in recognizable, narrative terms; contain such other information as is essential to the giving of proper notice, including the time and date and place of a hearing. After the hearing, the commission shall enter an order pooling all tracts or interests in the
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164 drilling unit for the development and operation thereof and for sharing production therefrom. Each such pooling order shall be upon terms and conditions which are just and reasonable and in no event shall drilling be initiated on the tract of an unleased owner without the owner’s written consent.

170 (2) All operations, including, but not limited to, the commencement, drilling or operation of a deep well, upon any portion of 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 deep well drilled thereon.

181 (3) Any pooling order under the provisions of this subsection (b) shall authorize the drilling and operation of a deep well for the production of oil or gas from the pooled acreage; shall designate the operator to drill and operate such deep well; shall prescribe the time and manner in 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 and abandoning such deep well shall be borne, and all production therefrom shared, by all owners of operating interests in proportion to the net oil or gas acreage in the pooled tracts owned or under lease to each owner; and shall make provisions for payment of all reasonable costs thereof, including a reasonable charge for supervision and for interest on past-due accounts, by all those who elect to participate therein.

198 (4) No drilling or operation of a deep well for the production of oil or gas shall be permitted upon or within any tract of land unless the operator shall have first obtained the written consent and easement therefor, duly acknowledged and placed on record in the office of the county clerk, for valuable consideration of all owners of
the surface of such tract of land, which consent shall
describe with reasonable certainty, the location upon such
tract, of the location of such proposed deep well, a
certified copy of which consent and easement shall be
submitted by the operator to the commission.

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

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

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

(6) In the event a nonparticipating owner elects
Option 2, and an owner of any operating interest in any
portion of the pooled tract shall drill and operate, or pay
the costs of drilling, completing, equipping and operating
a deep well for the benefit of such nonparticipating owner
as provided in the pooling order, 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 in any leases, assignments
thereof or agreements relating thereto, of 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.

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

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

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

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

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

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

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

(4) The operators of at least three fourths of the acreage (calculating partial interests on a pro rata basis for operator interests on any parcel owned in common) and the royalty owners of at least three fourths of the acreage (calculating partial interests on a pro rata basis for royalty interests on any parcel owned in common) in such pool have approved the plan and terms of unit operation to be specified by the commission in its order, such approval to be evidenced by a written contract setting forth the terms of the unit operation and executed by said operators and
said royalty owners, and filed with the commission. The order requiring such unit operation shall designate one operator in the pool as unit operator and shall also make provision for the proportionate allocation to all operators of the costs and expenses of the unit operation, including reasonable charges for supervision and interest on past-due accounts, which allocation shall be in the same proportion that the separately owned tracts share in the production of oil from the unit. In the absence of an agreement entered into by the operators and filed with the commission providing for sharing the costs of capital investment in wells and physical equipment, and intangible drilling costs, the commission shall provide by order for the sharing of such costs in the same proportion as the costs and expenses of the unit operation: Provided, That any operator who has not consented to the unitization shall not be required to contribute to the costs or expenses of the unit operation, or to the cost of capital investment in wells and physical equipment, and intangible drilling costs, except out of the proceeds from the sale of the production accruing to the interest of such operator: Provided, however, That no credit to the well costs shall be adjusted on the basis of less than the average well costs within the unitized area: Provided further, That no order entered under the provisions of this section requiring unit operation shall vary or alter any of the terms of any contract entered into by operators and royalty owners under the provisions of this section.

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


(a) Upon receipt of a request for hearing, the commission shall set a time and place for such hearing not less than twenty and not more than forty-five days thereafter. Any scheduled hearing may be continued by the commission upon the commission’s own motion or
for good cause shown by any party to the hearing. All
interested parties shall be entitled to be heard at any
hearing conducted under the provisions of this article.

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

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

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

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

The decision of the commission shall be final unless

(a) Any party adversely affected by an order of the commission 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 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, except that notwithstanding the provisions of said section one the petition seeking such review must be filed with said supreme court of appeals within thirty days from the date of entry of the judgment of the circuit court.

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

§22C-9-12. Injunctive relief.

(a) Whenever it appears to the commission that any person has been or is violating or is about to violate any provision of this article, any reasonable rule promulgated by the commission hereunder or any order or final decision of the commission, the commission 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
fourteen of this article.

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

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

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

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

§22C-9-14. Penalties.

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

(b) Any person who, for the purpose of evading any
provision of this article, any of the reasonable rules
promulgated by the commission hereunder or any order
or final decision of the commission, shall make or cause to
be made any false entry or statement in a report required
under the provisions of this article, any of the reasonable
rules promulgated by the commission hereunder or any
order or final decision of the commission, or shall make
or cause to be made any false entry in any record, account
or memorandum required under the provisions of this
article, any of the reasonable rules promulgated by the
commission hereunder or any order or any final decision
of the commission, or who shall omit, or cause to be
omitted, from any such record, account or memorandum,
full, true and correct entries, or shall remove from this
state or destroy, mutilate, alter or falsify any such record,
account or memorandum, 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 reasonable rules promulgated by the
commission hereunder or any order of final decision of
the commission, shall be subject to the same penalty as
that prescribed in this article for the violation by such
other person.

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

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

(b) Orders and actions of the commission or
commissioner in the exercise of functions amended by
this enactment are subject to judicial review to the same
extent and in the same manner as if such orders and
actions had been by the commission or commissioner
exercising such functions immediately preceding the
enactment of this article.
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Chairman Senate Committee

Chairman House Committee

Originating in the House.

Takes effect ninety days from passage.

Clerk of the Senate

Clerk of the House of Delegates

President of the Senate

Speaker of the House of Delegates

The within ______ approved this the ______ day of ______, 1998.

Governor