ENROLLED

House Bill No. 3354

(By Delegates Michael and Cann)

Passed April 9, 2005

In Effect Ninety Days from Passage
ENROLLED

H. B. 3354

(BY DELEGATES MICHAEL AND CANN)

[Passed April 9, 2005; in effect ninety days from passage]

AN ACT to amend and reenact §22-6-2, §22-6-12 and §22-6-29 of the Code of West Virginia, 1931, as amended; and to amend and reenact §22-21-2, §22-21-3, §22-21-6, §22-21-7 and §22-21-20 of said Code, all relating to the secretary's authority to assess a permit fee for well work permits, deep wells, coalbed methane wells, and reclamation fund fees; plat information; definitions; damage compensation; consent and agreement of coal owner and operator; and spacing of coalbed methane wells.

Be it enacted by the Legislature of West Virginia:

That §22-6-2, §22-6-12 and §22-6-29 of the Code of West Virginia, 1931, as amended, be amended and reenacted; and that §22-21-2, §22-21-3, §22-21-6, §22-21-7 and §22-21-20 of said Code be amended and reenacted, all to read as follows:

ARTICLE 6. OFFICE OF OIL AND GAS; OIL AND GAS WELLS; ADMINISTRATION; ENFORCEMENT.

§22-6-2. Secretary — Powers and duties generally; department records open to public; inspectors.
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(a) The secretary shall have as his or her duty the supervision of the execution and enforcement of matters related to oil and gas set out in this article and in articles eight and nine of this chapter.

(b) The secretary is authorized to propose rules for legislative approval in accordance with the provisions of article three, chapter twenty-nine-a of this code necessary to effectuate the above stated purposes.

(c) The secretary shall have full charge of the oil and gas matters set out in this article and in articles eight and nine of this chapter. In addition to all other powers and duties conferred upon him or her, the secretary shall have the power and duty to:

(1) Supervise and direct the activities of the office of oil and gas and see that the purposes set forth in subsections (a) and (b) of this section are carried out;

(2) Employ a supervising oil and gas inspector and oil and gas inspectors;

(3) Supervise and direct such oil and gas inspectors and supervising inspector in the performance of their duties;

(4) Suspend for good cause any oil and gas inspector or supervising inspector without compensation for a period not exceeding thirty days in any calendar year;

(5) Prepare report forms to be used by oil and gas inspectors or the supervising inspector in making their findings, orders and notices, upon inspections made in accordance with this article and articles seven, eight, nine and ten of this chapter;

(6) Employ a hearing officer and such clerks, stenographers and other employees, as may be necessary to carry out his or
her duties and the purposes of the office of oil and gas and fix
their compensation;

(7) Hear and determine applications made by owners, well
operators and coal operators for the annulment or revision of
orders made by oil and gas inspectors or the supervising
inspector, and to make inspections, in accordance with the
provisions of this article and articles eight and nine of this
chapter;

(8) Cause a properly indexed permanent and public record
to be kept of all inspections made by the secretary or by oil and
gas inspectors or the supervising inspector;

(9) Conduct such research and studies as the secretary shall
deem necessary to aid in protecting the health and safety of
persons employed within or at potential or existing oil or gas
production fields within this state, to improve drilling and
production methods and to provide for the more efficient
protection and preservation of oil and gas-bearing rock strata
and property used in connection therewith;

(10) Collect a permit fee of four hundred dollars for each
permit application filed other than an application for a deep
well or a coalbed methane well; and collect a permit fee of six
hundred fifty dollars for each permit application filed for a deep
well: Provided, That no permit application fee shall be required
when an application is submitted solely for the plugging or
replugging of a well, or to modify an existing application for
which the operator previously has submitted a permit fee under
this section. All application fees required hereunder shall be in
lieu of and not in addition to any fees imposed under article
eleven of this chapter relating to discharges of stormwater but
shall be in addition to any other fees required by the provisions
of this article: Provided, That upon a final determination by the
United States Environmental Protection Agency regarding the
scope of the exemption under section 402(l)(2) of the federal Clean Water Act (33 U.S.C.1342(l)(2)), which determination requires a “national pollutant discharge elimination system” permit for stormwater discharges from the oil and gas operations described therein, any permit fees for storm water permits required under article eleven of this chapter for such operations shall not exceed one hundred dollars.

(11) Perform all other duties which are expressly imposed upon the secretary by the provisions of this chapter;

(12) Perform all duties as the permit issuing authority for the state in all matters pertaining to the exploration, development, production, storage and recovery of this state’s oil and gas;

(13) Adopt rules with respect to the issuance, denial, retention, suspension or revocation of permits, authorizations and requirements of this chapter, which rules shall assure that the rules, permits and authorizations issued by the secretary are adequate to satisfy the purposes of this article and articles seven, eight, nine and ten of this chapter particularly with respect to the consolidation of the various state and federal programs which place permitting requirements on the exploration, development, production, storage and recovery of this state’s oil and gas: Provided, That notwithstanding any provisions of this article and articles seven, eight, nine and ten of this chapter to the contrary, the environmental quality board shall have the sole authority pursuant to section three, article three, chapter twenty-two-b to promulgate rules setting standards of water quality applicable to waters of the state; and

(14) Perform such acts as may be necessary or appropriate to secure to this state the benefits of federal legislation establishing programs relating to the exploration, development, production, storage and recovery of this state’s oil and gas, which programs are assumable by the state.
(d) The secretary shall have authority to visit and inspect any well or well site and any other oil or gas facility in this state and may call for the assistance of any oil and gas inspector or inspectors or supervising inspector whenever such assistance is necessary in the inspection of any such well or well site or any other oil or gas facility. Similarly, all oil and gas inspectors and the supervising inspector shall have authority to visit and inspect any well or well site and any other oil or gas facility in this state. Any well operator, coal operator operating coal seams beneath the tract of land, or the coal seam owner or lessee, if any, if said owner or lessee is not yet operating said coal seams beneath said tract of land may request the secretary to have an immediate inspection made. The operator or owner of every well or well site or any other oil or gas facility shall cooperate with the secretary, all oil and gas inspectors and the supervising inspector in making inspections or obtaining information.

(e) Oil and gas inspectors shall devote their full time and undivided attention to the performance of their duties, and they shall be responsible for the inspection of all wells or well sites or other oil or gas facilities in their respective districts as often as may be required in the performance of their duties.

(f) All records of the office shall be open to the public.

§22-6-12. Plats prerequisite to drilling or fracturing wells; preparation and contents; notice and information furnished to coal operators, owners or lessees; issuance of permits; performance bonds or securities in lieu thereof; bond forfeiture.

(a) Before drilling for oil or gas, or before fracturing or stimulating a well on any tract of land, the well operator shall have a plat prepared by a licensed land surveyor or registered engineer showing the district and county in which the tract of land is located, the name and acreage of the same, the names of the owners of adjacent tracts, the proposed or actual location of
the well determined by survey, the courses and distances of such location from two permanent points or landmarks on said tract and the number to be given the well. In the event the tract of land on which the said well proposed to be drilled or fractured is located is known to be underlain by one or more coal seams, copies of the plat shall be forwarded by registered or certified mail to each and every coal operator operating said coal seams beneath said tract of land, who has mapped the same and filed such maps with the office of miners’ health, safety and training in accordance with chapter twenty-two-a of this code and the coal seam owner of record and lessee of record, if any, if said owner or lessee has recorded the declaration provided in section thirty-six of this article, and if said owner or lessee is not yet operating said coal seams beneath said tract of land. With each of such plats there shall be enclosed a notice (form for which shall be furnished on request by the secretary) addressed to the secretary and to each such coal operator, owner and lessee, if any, at their respective addresses, informing them that such plat and notice are being mailed to them respectively by registered or certified mail, pursuant to the requirements of this article.

(b) If no objections are made, or are found by the secretary, to such proposed location or proposed fracturing within fifteen days from receipt of such plat and notice by the secretary, the same shall be filed and become a permanent record of such location or fracturing subject to inspection at any time by any interested person, and the secretary may forthwith issue to the well operator a permit reciting the filing of such plat, that no objections have been made by the coal operators, owners and lessees, if any, or found thereto by the secretary, and authorizing the well operator to drill at such location, or to fracture the well. Unless the secretary has objections to such proposed location or proposed fracturing or stimulating, such permit may be issued prior to the expiration of such fifteen-day period upon the obtaining by the well operator of the consent in writing of
the coal operator or operators, owners and lessees, if any, to whom copies of the plat and notice shall have been mailed as herein required, and upon presentation of such written consent to the secretary. The notice above provided for may be given to the coal operator by delivering or mailing it by registered or certified mail as above to any agent or superintendent in actual charge of mines.

(c) A permit to drill, or to fracture or stimulate an oil or gas well, shall not be issued unless the application therefor is accompanied by a bond as provided in section twenty-six of this article.

§22-6-29. Operating permit and processing fund; special reclamation fund; fees.

(a) There is hereby continued within the treasury of the state of West Virginia the special fund known as the oil and gas operating permit and processing fund, and the secretary shall deposit with the state treasurer to the credit of such special fund all fees collected under the provisions of subdivision ten, subsection (c), section two of this article.

The oil and gas operating permit and processing fund shall be administered by the secretary for the purposes of carrying out the provisions of this chapter.

The secretary shall make an annual report to the governor and to the Legislature on the use of the fund, and shall make a detailed accounting of all expenditures from the oil and gas operating permit and processing fund.

(b) In addition to any other fees required by the provisions of this article, every applicant for a permit to drill a well shall, before the permit is issued, pay to the secretary a special reclamation fee of one hundred and fifty dollars for each activity for which a well work application is required to be
Provided, That a special reclamation fee shall not be assessed for plugging activities. Such special reclamation fee shall be paid at the time the application for a drilling permit is filed with the secretary and the payment of such reclamation fee shall be a condition precedent to the issuance of said permit.

There is hereby continued within the treasury of the state of West Virginia the special fund known as the oil and gas reclamation fund, and the secretary shall deposit with the state treasurer to the credit of such special fund all special reclamation fees collected. The proceeds of any bond forfeited under the provisions of this article shall inure to the benefit of and shall be deposited in such oil and gas reclamation fund.

The oil and gas reclamation fund shall be administered by the secretary. The secretary shall cause to be prepared plans for the reclaiming and plugging of abandoned wells which have not been reclaimed or plugged or which have been improperly reclaimed or plugged. The secretary, as funds become available in the oil and gas reclamation fund, shall reclaim and properly plug wells in accordance with said plans and specifications and in accordance with the provisions of this article relating to the reclaiming and plugging of wells and all rules promulgated thereunder. Such funds may also be utilized for the purchase of abandoned wells, where such purchase is necessary, and for the reclamation of such abandoned wells, and for any engineering, administrative and research costs as may be necessary to properly effectuate the reclaiming and plugging of all wells, abandoned or otherwise.

The secretary may avail the division of any federal funds provided on a matching basis that may be made available for the purpose of reclaiming or plugging any wells.

The secretary shall make an annual report to the governor and to the Legislature setting forth the number of wells re-
claimed or plugged through the use of the oil and gas reclamation fund provided for herein. Such report shall identify each such reclamation and plugging project, state the number of wells reclaimed or plugged thereby, show the county wherein such wells are located and shall make a detailed accounting of all expenditures from the oil and gas reclamation fund.

All wells shall be reclaimed or plugged by contract entered into by the secretary on a competitive bid basis as provided for under the provisions of article three, chapter five-a of this code and the rules promulgated thereunder.

ARTICLE 21. COALBED METHANE WELLS AND UNITS.


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

(a) “Review board” means the West Virginia coalbed methane review board which shall be comprised of the members of the West Virginia shallow gas well review board provided for in article eight, chapter twenty-two-c of this code, the state geologist, a representative of the United Mine Workers of America, an employee of the gas industry, and the director of the office of miners’ health, safety and training, and the chairman of the review board shall be the chairman of the West Virginia shallow gas review board;

(b) “Coalbed” or “coal seam” means a seam of coal, whether workable or unworkable, and the noncoal roof and floor of said seam of coal;

(c) “Coalbed methane” means gas which can be produced from a coal seam, the rock or other strata in communication with a coal seam, a mined-out area or a gob well;
(d) "Coalbed methane owner" means any owner of coalbed methane;

(e) "Coalbed methane well" means any hole or well sunk, drilled, bored or dug into the earth for the production of coalbed methane for consumption or sale, including a gob well. The term "well" shall mean a coalbed methane well unless the context indicates otherwise. The term "coalbed methane well" does not include any shaft, hole or well sunk, drilled, bored or dug into the earth for core drilling, production of coal or water, venting gas from a mine area, or degasification of a coal seam, or any coalbed methane well extending from the surface into, but not below, a coal seam being mined after such well or its horizontal extension has been plugged in accordance with section twenty-three of this article;

(f) "Coalbed methane well operator" or "well operator" means any person who has the right to operate or does operate a coalbed methane well;

(g) "Coal operator" means any person who proposes to or does operate a coal mine;

(h) "Coal owner" means any person who owns or leases a coal seam;

(i) "Chief" means the chief of the office of oil and gas of the division of environmental protection provided for in section eight, article one of this chapter;

(j) "Director" means the director of the division of environmental protection;

(k) "Division" means the division of environmental protection;
"Gob well” means a well drilled or vent hole converted to a well pursuant to this article which produces or is capable of producing coalbed methane or other natural gas from a distressed zone created above and below a mined-out coal seam by any prior full seam extraction of the coal;

(m) “Mine” or “mine areas,” including the sub-definitions under “mine areas,” shall have the same definitions as are provided in section two, article one, chapter twenty-two-a of this code;

(n) “Office” means office of oil and gas provided for in section seven, article one of this chapter;

(o) “Person” means any natural person, corporation, firm, partnership, partnership association, venture, receiver, trustee, executor, administrator, guardian, fiduciary, other representative of any kind, any recognized legal entity, or political subdivision or agency thereof;

(p) “Stimulate” means any action taken to increase the natural flow of coalbed methane or the inherent productivity of a coalbed methane well, including, but not limited to, fracturing, shooting, acidizing or water flooding, but excluding cleaning out, bailing or workover operations;

(q) “Waste” means: (i) Physical waste as the term is generally understood in the gas industry and as provided for in article six of this chapter, but giving special consideration to coal mining operations and the safe recovery of coal; (ii) the locating, drilling, equipping, operating, producing or transporting coalbed methane in a manner that causes or tends to cause a substantial reduction in the quantity of coalbed methane recoverable from a pool under prudent and proper operations, or that causes or tends to cause a substantial or unnecessary or excessive surface loss of coalbed methane; (iii) the drilling of
more wells than are reasonably required to recover efficiently and economically the maximum amount of coalbed methane from a pool; or (iv) substantially inefficient, excessive or improper use, or the substantially unnecessary dissipation of reservoir pressure. Waste does not include coalbed methane vented or released from any mine area, the degasification of a coal seam for the purpose of mining coal, the plugging of coalbed methane wells for the purpose of mining coal, coalbed methane vented or flared from a coalbed methane well, after completion, for the purpose of evaluating its economic viability, or the conversion of coalbed methane wells to vent holes for the purpose of mining coal;

(r) “Workable coalbed” or “workable coal seam” means any seam of coal twenty inches or more in thickness, or any seam of less thickness which is being commercially mined or can be shown to be capable of being commercially mined;

(s) “Secretary” means the secretary of the department of environmental protection.

§22-21-3. Application of article; exclusions; application of chapter twenty-two-b to coalbed methane wells.

(a) The provisions of this article apply to (1) all lands in this state under which a coalbed is located, including any lands owned or administered by the state or any agency or subdivision thereof, and (2) any coalbed methane well.

(b) This article does not apply to or affect (1) any well otherwise permitted, approved or regulated under articles six, seven, eight, nine or ten of this chapter or article eight, chapter twenty-two-c of this code, (2) any ventilation fan, vent hole, mining apparatus, or other facility utilized solely for the purpose of venting any mine or mine area, or (3) the ventilation of any mine or mine area or degasification of any coal seam for the mining of coal.
(c) This article does not apply to or affect subsurface boreholes drilled from the mine face of an underground mine, except that the provisions of sections fifteen, sixteen, seventeen, eighteen and nineteen shall apply.

(d) To the extent that coalbed methane wells are similar to wells, as defined in section one, article six of this chapter, and the production of coalbed methane is similar to the production of natural gas, coalbed methane wells shall be treated as wells and coalbed methane treated as natural gas and subject to the following sections of article six of this chapter:

(1) The provisions of section three pertaining to the findings and orders of inspectors concerning violations, determination of reasonable time for abatement, extensions of time for abatement, special inspections, notice of findings and orders;

(2) The provisions of section four providing for the review of findings and orders by the chief, special inspection, annulment, revision of order and notice;

(3) The provisions of section five providing for the requirements of findings, orders and notices; posting of findings and orders; and judicial review of final orders of the chief;

(4) The provisions of section twenty-one providing for protective devices—installation of freshwater casings;

(5) The provisions of section twenty-two providing for a well log to be filed, contents, and authority to promulgate regulations. In addition to the requirements of such section, the operator shall certify that the well was drilled and completed as shown on the well plat required for a coalbed methane well, or in the alternative, file a revised well plat showing the actual location of the well and the coal seams in which the well is completed for production. Such log and certificate shall be
served on all coal owners and operators who must be named in
the permit application under section six of this article;

(6) The provisions of section twenty-eight providing for
supervision by the chief over drilling and reclamation opera-
tions, complaints, hearings and appeals;

(7) The provisions of section twenty-nine providing for
special reclamation funds and fees;

(8) The provisions of section thirty providing for reclama-
tion requirements;

(9) The provisions of section thirty-one providing for
preventing waste of gas, plan of operation required for wasting
gas in process of producing oil and rejection thereof;

(10) The provisions of section thirty-two providing for the
right of adjacent owner or operator to prevent waste of gas and
recovery of costs;

(11) The provisions of section thirty-three providing for
restraining waste;

(12) The provisions of section thirty-four providing for
offenses and penalties;

(13) The provisions of section thirty-five providing for civil
action for contamination or deprivation of freshwater source or
supply and presumption;

(14) The provisions of section thirty-six providing for
declaration of notice by owners and lessees of coal seams and
setting out the form of such declaration; and

(15) The provisions of section thirty-nine providing for
injunctive relief.
In addition to the foregoing and subject to the same qualifications, the provisions of article ten of this chapter shall apply to coalbed methane wells. Any well which is abandoned or presumed to be abandoned under the provisions of this article shall be treated as an abandoned well under said article ten. In addition, the provisions of article seven of this chapter shall apply to permits issued pursuant to this article.

§22-21-6. Permit required for coalbed methane well; permit fee; application; soil erosion control plan; penalties.

(a) It is unlawful for any person to commence, operate, deepen or stimulate any coalbed methane well, to conduct any horizontal drilling of a well commenced from the surface for the purpose of commercial production of coalbed methane, or to convert any existing well, vent hole or other hole to a coalbed methane well, including in any case site preparation work which involves any disturbance of land, without first securing from the chief a permit pursuant to this article.

(b) Every permit application filed under this section shall be verified and shall contain the following:

(1) The names and addresses of (i) the well operator, (ii) the agent required to be designated under subsection (e) of this section, and (iii) every person or entity whom the applicant must notify under any section of this article;

(2) The name and address of each coal operator and each coal owner of record or providing a record declaration of notice pursuant to section thirty-six, article six of this chapter of any coal seam which is (i) to be penetrated by a proposed well, (ii) within seven hundred fifty horizontal feet of any portion of the proposed well bore; or (iii) within one hundred vertical feet of the designated completion coal seams of the proposed well, except that in the case of an application to convert a ventilation hole to a gob well, the name and address only of such owner or
operator of the seams to be penetrated by a proposed well shall be necessary;

(3) The well name or such other identification as the chief may require;

(4) The approximate depth to which the well is to be drilled, deepened or converted, the coal seams (stating the depth and thickness of each seam) in which the well will be completed for production, and any other coal seams (including the depth and thickness of each seam) which will be penetrated by the well;

(5) A description of any means to be used to stimulate the well;

(6) If the proposed well will require casing or tubing to be set, the entire casing program for the well, including the size of each string of pipe, the starting point and depth to which each string is to be set, and the extent to which each such string is to be cemented;

(7) If the proposed operation is to convert an existing well, as defined in section one, article six of this chapter, or to convert a vertical ventilation hole to a coalbed methane well, all information required by this section, all formations from which production is anticipated, and any plans to plug any portion of the well;

(8) Except for a gob well or vent hole proposed to be converted to a well, if the proposed coalbed methane well will be completed in some but not all coal seams for production, a plan and design for the well which will protect all workable coal seams which will be penetrated by the well;

(9) If the proposed operations will include horizontal drilling of a well commenced on the surface, a description of
such operations, including both the vertical and horizontal
alignment and extent of the well from the surface to total depth;
and,

(10) Any other relevant information which the chief may
require by rule.

c) Each application for a coalbed methane well permit
shall be accompanied by the following:

(1) The applicable bond prescribed by section eight of this
article;

(2) A permit application fee of two hundred fifty dollars:
Provided, That no permit application fee shall be required to
modify an existing permit application for which the operator
previously has submitted a permit fee under this section. All
application fees required under this section shall be in lieu of
and not in addition to any fees relating to discharges of storm
water imposed under article eleven of this chapter: Provided,
That upon a final determination by the United States Environ-
mental Protection Agency regarding the scope of the exemption
under section 402(l)(2) of the federal Clean Water Act (33
U.S.C.1342(l)(2)), which determination requires a “national
pollutant discharge elimination system” permit for stormwater
discharges from the oil and gas operations described therein,
any permit fees for storm water permits required under article
eleven of this chapter for such operations shall not exceed one
hundred dollars.

(3) The erosion and sediment control plan required under
subsection (d) of this section;

(4) The consent and agreement of the coal owner as
required by section seven and, if applicable, section twenty of
this article;
(5) A plat prepared by a licensed land surveyor or registered engineer showing the district and county in which the drill site is located, the name of the surface owner of the drill site tract, the acreage of the same, the names of the surface owners of adjacent tracts, the names of all coal owners underlying the drill site tract, the proposed or actual location of the well determined by a survey, the courses and distances of such location from two permanent points or landmarks on said tract, the location of any other existing or permitted coalbed methane well or any oil or gas well located within two thousand five hundred feet of the drill site, the number to be given the coalbed methane well, and if horizontal drilling of a well commenced on the surface is proposed, the vertical and horizontal alignment and extent of the well; and

(6) A certificate by the applicant that the notice requirements of section nine of this article have been satisfied by the applicant. Such certification may be by affidavit of personal service, or the return receipt card, or other postal receipt, for certified mailing.

(d) An erosion and sediment control plan shall accompany each application for a permit. Such plan shall contain methods of stabilization and drainage, including a map of the project area indicating the amount of acreage disturbed. The erosion and sediment control plan shall meet the minimum requirements of the West Virginia erosion and sediment control manual as adopted and from time to time amended by the office of oil and gas in consultation with the several soil conservation districts pursuant to the control program established in this state through section 208 of the federal Clean Water Act. The erosion and sediment control plan shall become part of the terms and conditions of a permit and the provisions of the plan shall be carried out where applicable in operations under the permit. The erosion and sediment control plan shall set out the proposed
method of reclamation which shall comply with the requirements of section thirty, article six of this chapter.

(e) The well operator named in such application shall designate the name and address of an agent for such operator who shall be the attorney-in-fact for the operator and who shall be a resident of the state of West Virginia, upon whom notices, orders or other communications issued pursuant to this article may be served, and upon whom process may be served. Every well operator required to designate an agent under this section shall within five days after the termination of such designation notify the office of such termination and designate a new agent.

(f) The well owner or operator shall install the permit number as issued by the chief in a legible and permanent manner to the well upon completion of any permitted work. The dimensions, specifications and manner of installation shall be in accordance with the rules of the chief.

(g) The chief shall deny the issuance of a permit if he or she determines that the applicant has committed a substantial violation of a previously issued permit, including the erosion and sediment control plan, or a substantial violation of one or more of the rules promulgated hereunder, and has failed to abate or seek review of the violation. In the event that the chief finds that a substantial violation has occurred with respect to existing operations and that the operator has failed to abate or seek review of the violation in the time prescribed, he or she may suspend the permit on which said violation exists, after which suspension the operator shall forthwith cease all work being conducted under the permit until the chief reinstates the permit, at which time the work may be continued. The chief shall make written findings of any such determination made by him or her and may enforce the same in the circuit courts of this state and the operator may appeal such suspension pursuant to the provisions of section twenty-five of this article. The chief shall make a written finding of any such determination.
(h) Any person who violates any provision of this section shall be guilty of a misdemeanor, and, upon conviction thereof, shall be fined not more than five thousand dollars, or be imprisoned in the county jail not more than twelve months, or both fined and imprisoned.

§22-21-7. Consent and agreement of coal owner or operator.

(a) No permit shall be issued for a coalbed methane well unless and until the applicant has obtained and filed with the chief a consent and agreement from each owner and each operator of any workable coal seam in West Virginia twenty-eight inches or more in thickness which is within seven hundred fifty horizontal feet of the proposed well bore and (i) which coal seam the applicant proposes to stimulate or (ii) which coal seam is within one hundred vertical feet above or below a coal seam which the applicant proposes to stimulate. The requirement for consent and agreement contained in this section shall not be considered to impair, abridge or affect any contractual rights or objections arising out of a contract or lease which provides for the development of coalbed methane and stimulation of wells between the applicant and any coal owner or operator and the existence of any such contract or lease shall constitute a waiver of the requirement to file an additional signed consent and agreement. Such consent and agreement must provide: (i) That such coal owner or operator has been provided with a copy of the application for permit as required by section six of this article and with a copy of all plats and documents which must accompany the application and (ii) that such coal owner or operator consents and agrees to the stimulation of the coal seam as described in such application.

(b) In the absence of the applicant submitting the consent described in subsection (a) above, the applicant may submit a request for hearing before the board accompanied by an affidavit which shall include the following:
(1) A statement that a coal owner or operator as described in subsection (a) of this section has refused to provide written authorization to stimulate the well;

(2) A statement detailing the efforts undertaken to obtain such authorization;

(3) A statement setting out any known reasons for the authorization not being provided; and

(4) A statement or other information in addition to that provided pursuant to subdivision (5), subsection (b), section six of this article necessary to provide prima facie evidence that the proposed method of stimulation will not render the coal seam unworkable, or considering all factors, impair mine safety.

(c) Upon receipt of a request and affidavit as set forth in subsection (b) of this section, the chief shall forward the application to the board to consider the proposed stimulation, or if other objections or notices are filed requiring a hearing before the board, the request hereunder may be included for consideration by the board along with other matters related to the application.

(d) If the authorization of a coal owner or operator has been withheld based upon reasons related to safety, the chief shall, concurrent with submission of the request and affidavit to the board, submit a copy of the application to the director of the office of miners’ health, safety and training who shall review the application as to issues of mine safety and within thirty days submit recommendations to the board.

§22-21-20. Spacing.

No coalbed methane well may be drilled closer than one hundred feet of the outermost boundary of the coalbed methane tract, leased premises, or unit from which coalbed methane is
or will be produced or within one thousand six hundred linear feet of the location of an existing well or a proposed well for which a permit application is on file, unless all owners and operators of any affected workable coal seams agree in writing. Affected workable coal seams for purposes of this section shall be those which will be penetrated or those seams more than twenty-eight inches in thickness from which production is targeted. Spacing shall otherwise be as provided in a pooling order issued by the chief, an order establishing special field rules or an order issued by the review board.
That Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Chairman Senate Committee

Chairman House Committee

Originating in the House.

In 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 is approved this the ___ day of May, 2005.

Governor
PRESENTED TO THE
GOVERNOR

MAY 2 2005

Time 10:35