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2005 MAY -4 P 4: 17

OFFICE WEST VIRGINIA  
SECRETARY OF STATE

# WEST VIRGINIA LEGISLATURE

FIRST REGULAR SESSION, 2005



# ENROLLED

## House Bill No. 3354

(By Delegates Michael and Cann)



Passed April 9, 2005

In Effect Ninety Days from Passage

FILED

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OFFICE WEST VIRGINIA  
SECRETARY OF STATE

**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.**

1 (a) The secretary shall have as his or her duty the supervi-  
2 sion of the execution and enforcement of matters related to oil  
3 and gas set out in this article and in articles eight and nine of  
4 this chapter.

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

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

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

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

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

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

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

27 (6) Employ a hearing officer and such clerks, stenographers  
28 and other employees, as may be necessary to carry out his or

29 her duties and the purposes of the office of oil and gas and fix  
30 their compensation;

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

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

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

47 (10) Collect a permit fee of four hundred dollars for each  
48 permit application filed other than an application for a deep  
49 well or a coalbed methane well; and collect a permit fee of six  
50 hundred fifty dollars for each permit application filed for a deep  
51 well: *Provided*, That no permit application fee shall be required  
52 when an application is submitted solely for the plugging or  
53 replugging of a well, or to modify an existing application for  
54 which the operator previously has submitted a permit fee under  
55 this section. All application fees required hereunder shall be in  
56 lieu of and not in addition to any fees imposed under article  
57 eleven of this chapter relating to discharges of stormwater but  
58 shall be in addition to any other fees required by the provisions  
59 of this article: *Provided*, That upon a final determination by the  
60 United States Environmental Protection Agency regarding the

61 scope of the exemption under section 402(1)(2) of the federal  
62 Clean Water Act (33 U.S.C.1342(1)(2)), which determination  
63 requires a “national pollutant discharge elimination system”  
64 permit for stormwater discharges from the oil and gas opera-  
65 tions described therein, any permit fees for storm water permits  
66 required under article eleven of this chapter for such operations  
67 shall not exceed one hundred dollars.

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

70 (12) Perform all duties as the permit issuing authority for  
71 the state in all matters pertaining to the exploration, develop-  
72 ment, production, storage and recovery of this state’s oil and  
73 gas;

74 (13) Adopt rules with respect to the issuance, denial,  
75 retention, suspension or revocation of permits, authorizations  
76 and requirements of this chapter, which rules shall assure that  
77 the rules, permits and authorizations issued by the secretary are  
78 adequate to satisfy the purposes of this article and articles  
79 seven, eight, nine and ten of this chapter particularly with  
80 respect to the consolidation of the various state and federal  
81 programs which place permitting requirements on the explora-  
82 tion, development, production, storage and recovery of this  
83 state’s oil and gas: *Provided*, That notwithstanding any provi-  
84 sions of this article and articles seven, eight, nine and ten of this  
85 chapter to the contrary, the environmental quality board shall  
86 have the sole authority pursuant to section three, article three,  
87 chapter twenty-two-b to promulgate rules setting standards of  
88 water quality applicable to waters of the state; and

89 (14) Perform such acts as may be necessary or appropriate  
90 to secure to this state the benefits of federal legislation estab-  
91 lishing programs relating to the exploration, development,  
92 production, storage and recovery of this state’s oil and gas,  
93 which programs are assumable by the state.

94 (d) The secretary shall have authority to visit and inspect  
95 any well or well site and any other oil or gas facility in this state  
96 and may call for the assistance of any oil and gas inspector or  
97 inspectors or supervising inspector whenever such assistance is  
98 necessary in the inspection of any such well or well site or any  
99 other oil or gas facility. Similarly, all oil and gas inspectors and  
100 the supervising inspector shall have authority to visit and  
101 inspect any well or well site and any other oil or gas facility in  
102 this state. Any well operator, coal operator operating coal seams  
103 beneath the tract of land, or the coal seam owner or lessee, if  
104 any, if said owner or lessee is not yet operating said coal seams  
105 beneath said tract of land may request the secretary to have an  
106 immediate inspection made. The operator or owner of every  
107 well or well site or any other oil or gas facility shall cooperate  
108 with the secretary, all oil and gas inspectors and the supervising  
109 inspector in making inspections or obtaining information.

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

115 (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.**

1 (a) Before drilling for oil or gas, or before fracturing or  
2 stimulating a well on any tract of land, the well operator shall  
3 have a plat prepared by a licensed land surveyor or registered  
4 engineer showing the district and county in which the tract of  
5 land is located, the name and acreage of the same, the names of  
6 the owners of adjacent tracts, the proposed or actual location of

7 the well determined by survey, the courses and distances of  
8 such location from two permanent points or landmarks on said  
9 tract and the number to be given the well. In the event the tract  
10 of land on which the said well proposed to be drilled or  
11 fractured is located is known to be underlain by one or more  
12 coal seams, copies of the plat shall be forwarded by registered  
13 or certified mail to each and every coal operator operating said  
14 coal seams beneath said tract of land, who has mapped the same  
15 and filed such maps with the office of miners' health, safety and  
16 training in accordance with chapter twenty-two-a of this code  
17 and the coal seam owner of record and lessee of record, if any,  
18 if said owner or lessee has recorded the declaration provided in  
19 section thirty-six of this article, and if said owner or lessee is  
20 not yet operating said coal seams beneath said tract of land.  
21 With each of such plats there shall be enclosed a notice (form  
22 for which shall be furnished on request by the secretary)  
23 addressed to the secretary and to each such coal operator, owner  
24 and lessee, if any, at their respective addresses, informing them  
25 that such plat and notice are being mailed to them respectively  
26 by registered or certified mail, pursuant to the requirements of  
27 this article.

28 (b) If no objections are made, or are found by the secretary,  
29 to such proposed location or proposed fracturing within fifteen  
30 days from receipt of such plat and notice by the secretary, the  
31 same shall be filed and become a permanent record of such  
32 location or fracturing subject to inspection at any time by any  
33 interested person, and the secretary may forthwith issue to the  
34 well operator a permit reciting the filing of such plat, that no  
35 objections have been made by the coal operators, owners and  
36 lessees, if any, or found thereto by the secretary, and authoriz-  
37 ing the well operator to drill at such location, or to fracture the  
38 well. Unless the secretary has objections to such proposed  
39 location or proposed fracturing or stimulating, such permit may  
40 be issued prior to the expiration of such fifteen-day period upon  
41 the obtaining by the well operator of the consent in writing of

42 the coal operator or operators, owners and lessees, if any, to  
43 whom copies of the plat and notice shall have been mailed as  
44 herein required, and upon presentation of such written consent  
45 to the secretary. The notice above provided for may be given to  
46 the coal operator by delivering or mailing it by registered or  
47 certified mail as above to any agent or superintendent in actual  
48 charge of mines.

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

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

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

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

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

14 (b) In addition to any other fees required by the provisions  
15 of this article, every applicant for a permit to drill a well shall,  
16 before the permit is issued, pay to the secretary a special  
17 reclamation fee of one hundred and fifty dollars for each  
18 activity for which a well work application is required to be



19 filed: *Provided*, That a special reclamation fee shall not be  
20 assessed for plugging activities. Such special reclamation fee  
21 shall be paid at the time the application for a drilling permit is  
22 filed with the secretary and the payment of such reclamation fee  
23 shall be a condition precedent to the issuance of said permit.

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

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

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

49 The secretary shall make an annual report to the governor  
50 and to the Legislature setting forth the number of wells re-

51 claimed or plugged through the use of the oil and gas reclama-  
 52 tion fund provided for herein. Such report shall identify each  
 53 such reclamation and plugging project, state the number of  
 54 wells reclaimed or plugged thereby, show the county wherein  
 55 such wells are located and shall make a detailed accounting of  
 56 all expenditures from the oil and gas reclamation fund.

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

**ARTICLE 21. COALBED METHANE WELLS AND UNITS.**

**§22-21-2. Definitions.**

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

3 (a) "Review board" means the West Virginia coalbed  
 4 methane review board which shall be comprised of the mem-  
 5 bers of the West Virginia shallow gas well review board  
 6 provided for in article eight, chapter twenty-two-c of this code,  
 7 the state geologist, a representative of the United Mine Workers  
 8 of America, an employee of the gas industry, and the director  
 9 of the office of miners' health, safety and training, and the  
 10 chairman of the review board shall be the chairman of the West  
 11 Virginia shallow gas review board;

12 (b) "Coalbed" or "coal seam" means a seam of coal,  
 13 whether workable or unworkable, and the noncoal roof and  
 14 floor of said seam of coal;

15 (c) "Coalbed methane" means gas which can be produced  
 16 from a coal seam, the rock or other strata in communication  
 17 with a coal seam, a mined-out area or a gob well;

18 (d) “Coalbed methane owner” means any owner of coalbed  
19 methane;

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

32 (f) “Coalbed methane well operator” or “well operator”  
33 means any person who has the right to operate or does operate  
34 a coalbed methane well;

35 (g) “Coal operator” means any person who proposes to or  
36 does operate a coal mine;

37 (h) “Coal owner” means any person who owns or leases a  
38 coal seam;

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

42 (j) “Director” means the director of the division of environ-  
43 mental protection;

44 (k) “Division” means the division of environmental  
45 protection;

46 (l) "Gob well" means a well drilled or vent hole converted  
47 to a well pursuant to this article which produces or is capable of  
48 producing coalbed methane or other natural gas from a dis-  
49 tressed zone created above and below a mined-out coal seam by  
50 any prior full seam extraction of the coal;

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

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

57 (o) "Person" means any natural person, corporation, firm,  
58 partnership, partnership association, venture, receiver, trustee,  
59 executor, administrator, guardian, fiduciary, other representa-  
60 tive of any kind, any recognized legal entity, or political  
61 subdivision or agency thereof;

62 (p) "Stimulate" means any action taken to increase the  
63 natural flow of coalbed methane or the inherent productivity of  
64 a coalbed methane well, including, but not limited to, fractur-  
65 ing, shooting, acidizing or water flooding, but excluding  
66 cleaning out, bailing or workover operations;

67 (q) "Waste" means: (i) Physical waste as the term is  
68 generally understood in the gas industry and as provided for in  
69 article six of this chapter, but giving special consideration to  
70 coal mining operations and the safe recovery of coal; (ii) the  
71 locating, drilling, equipping, operating, producing or transport-  
72 ing coalbed methane in a manner that causes or tends to cause  
73 a substantial reduction in the quantity of coalbed methane  
74 recoverable from a pool under prudent and proper operations,  
75 or that causes or tends to cause a substantial or unnecessary or  
76 excessive surface loss of coalbed methane; (iii) the drilling of

77 more wells than are reasonably required to recover efficiently  
78 and economically the maximum amount of coalbed methane  
79 from a pool; or (iv) substantially inefficient, excessive or  
80 improper use, or the substantially unnecessary dissipation of  
81 reservoir pressure. Waste does not include coalbed methane  
82 vented or released from any mine area, the degasification of a  
83 coal seam for the purpose of mining coal, the plugging of  
84 coalbed methane wells for the purpose of mining coal, coalbed  
85 methane vented or flared from a coalbed methane well, after  
86 completion, for the purpose of evaluating its economic viabil-  
87 ity, or the conversion of coalbed methane wells to vent holes for  
88 the purpose of mining coal;

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

93 (s) "Secretary" means the secretary of the department of  
94 environmental protection.

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

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

5 (b) This article does not apply to or affect (1) any well  
6 otherwise permitted, approved or regulated under articles six,  
7 seven, eight, nine or ten of this chapter or article eight, chapter  
8 twenty-two-c of this code, (2) any ventilation fan, vent hole,  
9 mining apparatus, or other facility utilized solely for the  
10 purpose of venting any mine or mine area, or (3) the ventilation  
11 of any mine or mine area or degasification of any coal seam for  
12 the mining of coal.

13 (c) This article does not apply to or affect subsurface  
14 boreholes drilled from the mine face of an underground mine,  
15 except that the provisions of sections fifteen, sixteen, seventeen,  
16 eighteen and nineteen shall apply.

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

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

28 (2) The provisions of section four providing for the review  
29 of findings and orders by the chief, special inspection, annul-  
30 ment, revision of order and notice;

31 (3) The provisions of section five providing for the require-  
32 ments of findings, orders and notices; posting of findings and  
33 orders; and judicial review of final orders of the chief;

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

36 (5) The provisions of section twenty-two providing for a  
37 well log to be filed, contents, and authority to promulgate  
38 regulations. In addition to the requirements of such section, the  
39 operator shall certify that the well was drilled and completed as  
40 shown on the well plat required for a coalbed methane well, or  
41 in the alternative, file a revised well plat showing the actual  
42 location of the well and the coal seams in which the well is  
43 completed for production. Such log and certificate shall be

44 served on all coal owners and operators who must be named in  
45 the permit application under section six of this article;

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

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

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

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

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

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

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

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

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

69 (15) The provisions of section thirty-nine providing for  
70 injunctive relief.

71 In addition to the foregoing and subject to the same  
72 qualifications, the provisions of article ten of this chapter shall  
73 apply to coalbed methane wells. Any well which is abandoned  
74 or presumed to be abandoned under the provisions of this article  
75 shall be treated as an abandoned well under said article ten. In  
76 addition, the provisions of article seven of this chapter shall  
77 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.**

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

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

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

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



24 operator of the seams to be penetrated by a proposed well shall  
25 be necessary;

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

28 (4) The approximate depth to which the well is to be  
29 drilled, deepened or converted, the coal seams (stating the depth  
30 and thickness of each seam) in which the well will be com-  
31 pleted for production, and any other coal seams (including the  
32 depth and thickness of each seam) which will be penetrated by  
33 the well;

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

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

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

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

52 (9) If the proposed operations will include horizontal  
53 drilling of a well commenced on the surface, a description of

54 such operations, including both the vertical and horizontal  
55 alignment and extent of the well from the surface to total depth;  
56 and,

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

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

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

63 (2) A permit application fee of two hundred fifty dollars:  
64 *Provided*, That no permit application fee shall be required to  
65 modify an existing permit application for which the operator  
66 previously has submitted a permit fee under this section. All  
67 application fees required under this section shall be in lieu of  
68 and not in addition to any fees relating to discharges of storm  
69 water imposed under article eleven of this chapter: *Provided*,  
70 That upon a final determination by the United States Environ-  
71 mental Protection Agency regarding the scope of the exemption  
72 under section 402(1)(2) of the federal Clean Water Act (33  
73 U.S.C.1342(1)(2)), which determination requires a “national  
74 pollutant discharge elimination system” permit for stormwater  
75 discharges from the oil and gas operations described therein,  
76 any permit fees for storm water permits required under article  
77 eleven of this chapter for such operations shall not exceed one  
78 hundred dollars.

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

81 (4) The consent and agreement of the coal owner as  
82 required by section seven and, if applicable, section twenty of  
83 this article;

84 (5) A plat prepared by a licensed land surveyor or regis-  
85 tered engineer showing the district and county in which the drill  
86 site is located, the name of the surface owner of the drill site  
87 tract, the acreage of the same, the names of the surface owners  
88 of adjacent tracts, the names of all coal owners underlying the  
89 drill site tract, the proposed or actual location of the well  
90 determined by a survey, the courses and distances of such  
91 location from two permanent points or landmarks on said tract,  
92 the location of any other existing or permitted coalbed methane  
93 well or any oil or gas well located within two thousand five  
94 hundred feet of the drill site, the number to be given the coalbed  
95 methane well, and if horizontal drilling of a well commenced  
96 on the surface is proposed, the vertical and horizontal alignment  
97 and extent of the well; and

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

103 (d) An erosion and sediment control plan shall accompany  
104 each application for a permit. Such plan shall contain methods  
105 of stabilization and drainage, including a map of the project  
106 area indicating the amount of acreage disturbed. The erosion  
107 and sediment control plan shall meet the minimum require-  
108 ments of the West Virginia erosion and sediment control  
109 manual as adopted and from time to time amended by the office  
110 of oil and gas in consultation with the several soil conservation  
111 districts pursuant to the control program established in this state  
112 through section 208 of the federal Clean Water Act. The erosion  
113 and sediment control plan shall become part of the terms and  
114 conditions of a permit and the provisions of the plan shall be  
115 carried out where applicable in operations under the permit. The  
116 erosion and sediment control plan shall set out the proposed

117 method of reclamation which shall comply with the require-  
118 ments of section thirty, article six of this chapter.

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

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

133 (g) The chief shall deny the issuance of a permit if he or she  
134 determines that the applicant has committed a substantial  
135 violation of a previously issued permit, including the erosion  
136 and sediment control plan, or a substantial violation of one or  
137 more of the rules promulgated hereunder, and has failed to  
138 abate or seek review of the violation. In the event that the chief  
139 finds that a substantial violation has occurred with respect to  
140 existing operations and that the operator has failed to abate or  
141 seek review of the violation in the time prescribed, he or she  
142 may suspend the permit on which said violation exists, after  
143 which suspension the operator shall forthwith cease all work  
144 being conducted under the permit until the chief reinstates the  
145 permit, at which time the work may be continued. The chief  
146 shall make written findings of any such determination made by  
147 him or her and may enforce the same in the circuit courts of this  
148 state and the operator may appeal such suspension pursuant to  
149 the provisions of section twenty-five of this article. The chief  
150 shall make a written finding of any such determination.

151 (h) Any person who violates any provision of this section  
152 shall be guilty of a misdemeanor, and, upon conviction thereof,  
153 shall be fined not more than five thousand dollars, or be  
154 imprisoned in the county jail not more than twelve months, or  
155 both fined and imprisoned.

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

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

24 (b) In the absence of the applicant submitting the consent  
25 described in subsection (a) above, the applicant may submit a  
26 request for hearing before the board accompanied by an  
27 affidavit which shall include the following:

28 (1) A statement that a coal owner or operator as described  
29 in subsection (a) of this section has refused to provide written  
30 authorization to stimulate the well;

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

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

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

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

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

**§22-21-20. Spacing.**

1 No coalbed methane well may be drilled closer than one  
2 hundred feet of the outermost boundary of the coalbed methane  
3 tract, leased premises, or unit from which coalbed methane is

4 or will be produced or within one thousand six hundred linear  
5 feet of the location of an existing well or a proposed well for  
6 which a permit application is on file, unless all owners and  
7 operators of any affected workable coal seams agree in writing.  
8 Affected workable coal seams for purposes of this section shall  
9 be those which will be penetrated or those seams more than  
10 twenty-eight inches in thickness from which production is  
11 targeted. Spacing shall otherwise be as provided in a pooling  
12 order issued by the chief, an order establishing special field  
13 rules or an order issued by the review board.

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

*Randy White*  
Chairman Senate Committee

*H. Russ Byrd*  
Chairman House Committee

Originating in the House.

In effect ninety days from passage.

*Darrell E. Johns*  
Clerk of the Senate

*Bruce W. Byrd*  
Clerk of the House of Delegates

*Carl Roy Tomblin*  
President of the Senate

*[Signature]*  
Speaker of the House of Delegates

The within *is approved* this the *4<sup>th</sup>*  
day of *May*, 2005.

*[Signature]*  
Governor



PRESENTED TO THE  
GOVERNOR

MAY 2 2005

Time 10:35am