WEST VIRGINIA LEGISLATURE
SEVENTY-NINTH LEGISLATURE
REGULAR SESSION, 2009

ENROLLED
COMMITTEE SUBSTITUTE
FOR
Senate Bill No. 613
(Senator Kessler, original sponsor)

[Passed April 11, 2009; in effect ninety days from passage.]
AN ACT to amend and reenact §§22–21–6, §§22–21–15, §§22–21–16 and §§22–21–17 of the Code of West Virginia, 1931, as amended, all relating to clarifying notice requirements for a hearing on a permit application related to coalbed methane wells; requiring a notice of hearing to be published; and making technical clarifications.

Be it enacted by the Legislature of West Virginia:

That §§22–21–6, §§22–21–15, §§22–21–16 and §§22–21–17 of the Code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:

ARTICLE 21. COALBED METHANE WELLS AND UNITS.
§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 section nine of this article;

(2) The name and address of each coal operator of record 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 coal seams to be stimulated in 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;

(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 $650;

(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 of this article 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, the proposed date for completion of drilling, the proposed date for any stimulation of the well and, if horizontal drilling of a well commenced on the surface is proposed, the vertical and horizontal alignment and extent of the well;

(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 Water Pollution Control Act Amendments of 1972, 33 U. S. C. §1288. 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 section twenty-five of this article. The chief shall make a written finding of any such determination.

(h) Any person who violates this section shall be guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than $5,000 or be confined in jail not more than one year, or both fined and confined.

§22-21-15. Drilling units and pooling of interests.

(a) In the absence of a voluntary agreement, an operator, owner or other party claiming an ownership interest in the coalbed methane may file an application with the chief to pool: (i) Separately owned interests in a single tract; (ii) separately owned tracts; (iii) separately owned interests in any tract; and (iv) any combination of (i), (ii) and (iii) to form a drilling unit for the production of coalbed methane from one or more coalbed methane wells.

(b) The application for a drilling unit may accompany the application for a permit for a coalbed methane well or
be filed as a supplement to the permit application. Such application shall be verified by the applicant and contain the following information for the proposed unit:

(1) The identity of each well and operator as set out in the well permit application;

(2) Each well number, if one has been assigned;

(3) The acreage of the proposed unit, the identity and acreage of each separate tract to be included in the proposed unit and, where parts of tracts are included, the acreage of such parts;

(4) The district and county in which the unit is located;

(5) The names and addresses of all persons to whom notice must be provided under subsection (a), section sixteen of this article known to the applicant. When any coal seam is separately owned, the list of names shall identify such separate ownership giving the names of the separately owned seams;

(6) A statement describing the actions taken by the applicant to obtain a voluntary agreement from each interest owner or claimant named in the application to whom notice must be provided under subsection (a), section sixteen of this article or any other owner or claimant who has notified the applicant of a claim from which agreement has not been obtained;

(7) Other pertinent and relevant information as the chief may prescribe by rules.

(c) The application for a drilling unit shall be accompanied with the following:

(1) A plat prepared by a licensed land surveyor or registered professional engineer showing the location of the coalbed methane well or wells, or proposed well or wells, the boundary and acreage of the proposed drilling
section twenty-two of this article was 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;

(4) An estimate of the cost, or the actual cost if known, of drilling, completing and equipping, operating, plugging and abandoning any well or wells in the proposed unit.


(a) At least thirty days prior to the date set for hearing under section seventeen of this article, the applicant shall deliver by personal service or by certified mail, return receipt requested, notice to the following:

(1) Each coal owner of record and coal operator of record of any coal seam underlying any tract or portion thereof which is proposed to be included in the unit;

(2) Each owner and lessee of record and each operator of natural gas surrounding the well bore and existing in formations above the top of the uppermost member of the "Onondaga Group" or at a depth less than six thousand feet, whichever is shallower. Notices to gas operators shall be sufficient if served upon the agent of record with the Office of Oil and Gas; and

(3) Any coalbed methane owner to the extent not otherwise named which interest arises from a deed, lease,
contract, will, inheritance or other instrument of record wherein a person or entity identified in subdivision (1) or (2), subsection (a) of this section or the predecessor in title to such person or entity, expressly granted, leased, reserved or conveyed coalbed methane.

(b) At least thirty days prior to the date set for the hearing under section seventeen of this article, the applicant shall publish a notice by a Class II legal advertisement in the county or counties in which the well unit is to be located. The legal advertisement shall contain the information required by subsection (c) and any other information as the chief shall prescribe by rule.

(c) The notice required by this section shall specify a time and place for a conference and a hearing on this application, shall advise the persons notified that the applicant has filed an application for a drilling unit for the production of coalbed methane, that they may be present and object or offer comments to the formation of the proposed unit and shall be accompanied with copies of: (i) The permit application for the coalbed methane well; (ii) the permit application for the drilling unit; and (iii) the plat of the drilling unit. However, in the case of the notice required by subsection (b) of this section, only the address of where an interested party can obtain such copies is required to be published.

(d) Notice by the applicant to all persons to whom notice must be provided under subsection (a) of this section and notice by publication as provided by subsection (b) of this section shall be deemed to include, and shall be deemed to be sufficient notice to, all potential claimants to ownership of the coalbed methane.

§22-21-17. Review of application; hearing; pooling order; spacing; operator; elections; working interests, royalty interests, carried interests, escrow account for conflicting claims, division order.
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(a) Prior to the time fixed for a hearing under subsection (b) of this section, the board shall also set a time and place for a conference between the proposed applicant to operate a coalbed methane drilling unit and all persons to whom notice has been given under subsection (a), section sixteen of this article who have not entered into a voluntary agreement. At such conference the applicant and such other persons present or represented having an interest in the proposed unit shall be given an opportunity to enter into voluntary agreements for the development of the unit upon reasonable terms and conditions.

No order may be issued by the board as to any unit unless the applicant submits at the hearing a verified statement setting forth the results of the conference. If agreement is reached with all parties to the conference, the board shall find the unit is a voluntary unit and issue an order consistent with such finding.

(b) The review board shall, upon request of a proposed applicant for a drilling unit or upon request of a coal owner or operator, provide a convenient date and time for a hearing on the application for a drilling unit, which hearing date shall be no sooner than thirty-five days nor more than sixty days of the date the request for hearing is made. The review board shall review the application and on the date specified for a hearing shall conduct a public hearing. The review board shall take evidence, making a record thereof and consider:

(1) The area which may be drained efficiently and economically by the proposed coalbed methane well or wells;

(2) The plan of development of the coal and the need for proper ventilation of any mines or degasification of any affected coal seams;
(3) The nature and character of any coal seam or seams which will be affected by the coalbed methane well or wells;

(4) The surface topography and property lines of the lands underlaid by the coal seams to be included in the unit;

(5) Evidence relevant to the proper boundary of the drilling unit;

(6) The nature and extent of ownership of each coalbed methane owner or claimant and whether conflicting claims exist;

(7) Whether the applicant for the drilling unit proposes to be the operator of the coalbed methane well or wells within the unit; and if so, whether such applicant has a lease or other agreement from the owners or claimants of a majority interest in the proposed drilling unit;

(8) Whether a disagreement exists among the coalbed methane owners or claimants over the designation of the operator for any coalbed methane wells within the unit and, if so, relevant evidence to determine which operator can properly and efficiently develop the coalbed methane within the unit for the benefit of the majority of the coalbed methane owners;

(9) If more than one person is interested in operating a well within the unit, the estimated cost submitted by each such person for drilling, completing, operating and marketing the coalbed methane from any proposed well or wells; and

(10) Any other available geological or scientific data pertaining to the pool which is proposed to be developed.

(c) The review board shall take into account the evidence introduced, comments received and any objec-
tions at the hearing, and if satisfied that a drilling unit should not be established, shall enter an order denying the application. If the review board is satisfied that a drilling unit should be established, it shall enter a pooling order establishing a drilling unit. Such pooling order shall:

(1) Establish the boundary of the proposed unit, making such adjustment in the boundary as is just;

(2) Authorize the drilling and operation of a coalbed methane well or wells for production of coalbed methane from the pooled acreage;

(3) Establish minimum distances for any wells in the unit and for other wells which would drain the pooled acreage;

(4) Designate the operator who will be authorized to drill, complete and operate any well or wells in the unit;

(5) Establish a reasonable fee for the operator for operating costs, which shall include routine maintenance of the well and all accounting necessary to pay all expenses, royalties and amounts due working interest owners;

(6) Such other findings and provisions as are appropriate for each order.

(d) The operator designated in such order shall be responsible for drilling, completing, equipping, operating, plugging and abandoning the well, shall market all production therefrom, shall collect all proceeds therefor and shall distribute such proceeds in accordance with the division order issued by the review board.

(e) Upon issuance of the pooling order, the coalbed methane owners or any lessee of any such owners or any claimants thereto may make one of the following elections within thirty days after issuance of the order:
(1) An election to sell or lease its interest to the operator on such terms as the parties may agree, or if unable to agree, upon such terms as are set forth by the board in its order;

(2) An election to become a working interest owner by participating in the risk and cost of the well; or

(3) An election to participate in the operation of the well as a carried interest owner.

Any entity which does not make an election within said thirty days prescribed herein shall be deemed to have elected to sell or lease under subdivision (1) of this subsection.

(f) The working interest in the well shall include: (i) The right to participate in decisions regarding expenditures in excess of operating costs, taxes, any royalties in excess of one-eighth, and other costs and expenses allowed in the pooling order; and (ii) the obligation to pay for all expenditures. The working interest shall exist in; (i) All well operators and owners who participate in the risk and cost of drilling and completing the well; and (ii) carried interest owners after recoupment provided in subsection (h) of this section. The working interest owners' net revenue share shall be seven eighths of the proceeds of sales of coalbed methane at the wellhead after deduction of operating costs, taxes, any royalties in excess of one-eighth and other costs and expenses allowed in a pooling order. Unless the working interest owners otherwise agree, the working interest owners shall share in all costs and decisions in proportion to their ownership interest in the unit. If any working interest owner deposits or contributes amounts in the escrow account which exceed actual costs, such owner shall be entitled to a refund; and if amounts deposited or contributed are less than actual costs, such owner shall make a deposit or contribution for the deficiency.
(g) The royalty interest in a well shall include the right to receive one eighth of the gross proceeds resulting from the sale of methane at the wellhead and such interest shall exist in the coalbed methane owners: Provided, That any coalbed methane owner who in good faith has entered a lease or other contract prior to receiving notice of an application to form the drilling unit as provided herein shall be entitled to such owner's fractional interest in the royalty calculated at a rate provided for in such contract. Each such owner shall be entitled to share in the royalty in proportion to his or her fractional interest in the unit.

(h) Where a coalbed methane owner elects to become a carried interest owner, such owner shall be entitled to his or her proportionate share of the working interest after the other working interest owners have recouped three hundred percent of the reasonable capital costs of the well or wells, including drilling, completing, equipping, plugging and abandoning and any further costs of reworking or other improvements of a capital nature.

(i) Each pooling order issued shall provide for the establishment of an escrow account into which the payment of costs and proceeds attributable to any conflicting interests shall be deposited and held for the interest of the claimants as follows:

(1) Each participating working interest owner, except for the operator, shall deposit in the escrow account its proportionate share of the costs allocable to the ownership interest claimed by such working interest owner.

(2) The operator shall deposit in the escrow account all proceeds attributable to the conflicting interests of any coalbed methane owners who lease, or are deemed to have leased, their interest, plus all proceeds in excess of operational expenses, as allowed in the pooling order, attributable to the conflicting working and carried interest owners.
(j) After each coalbed methane owner has made, or has been deemed to have made, an election under subsection (e) of this section, the review board shall enter a division order which shall set out the net revenue interest of each working interest owner, including each carried interest owner and the royalty interest of each coalbed methane owner. Thereafter payments shall be made to working interest owners, carried interest owners and royalty interest owners in accordance with the division order, except that payments attributable to conflicting claims shall be deposited in the escrow account. The fractional interest of each owner shall be expressed as a decimal carried to the sixth place.

(k) Upon resolution of conflicting claims either by voluntary agreement of the parties or a final judicial determination, the review board shall enter a revised division order in accordance with such agreement or determination and all amounts in escrow shall be distributed as follows:

1. Each legally entitled working interest owner shall receive its proportionate share of the proceeds attributable to the conflicting ownership interests;

2. Each legally entitled carried interest owner shall receive its proportionate share of the proceeds attributable to the conflicting ownership interests, after recoupment of amounts provided in subsection (h) of this section;

3. Each legally entitled entity leasing, or deemed to have leased, its coalbed methane shall receive a share of the royalty proceeds attributable to the conflicting interests; and

4. The operator shall receive the costs contributed to the escrow account by each legally entitled participating working interest owner.
(l) The review board shall enact rules for the administration and protection of funds delivered to escrow accounts.

(m) No provision of this section or article shall obviate the requirement that the coal owner's consent and agreement be obtained prior to the issuance of a permit as required under section seven of this article.
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Chairman Senate Committee

Chairman House Committee

Originated in the Senate.

In effect ninety days from passage.

Clerk of the Senate

Clerk of the House of Delegates

President of the Senate

Speaker House of Delegates

The within ap... this the 6th Day of May, 2009.

Governor
PRESENTED TO THE GOVERNOR

MAY 1 2009

Time 2:50 PM