

Section 4.00 Notification of Hazardous Waste Activity Regulations.

Section 4.01 General.

(a) Applicability.

Any person that engages in a hazardous waste activity in the State of West Virginia shall notify the Chief of these activities, unless such activities are exempted from the requirements of these regulations.

(b) Any person as described in paragraph (a) that has notified the EPA or is subject to the requirements to notify EPA as specified in [Volume 45, No. 39 of the Federal Register, dated February 26, 1980, pages 12746 through 12754] is subject to the provisions of this section.

(c) The purpose of this section is to provide a means for the State of West Virginia to utilize the information provided by all who complied with the notification requirements of EPA as described in paragraph (b) of these regulations and to assure that all persons who did not notify EPA as described in paragraph (b) of these regulations or all who initiated hazardous waste activities subsequent to the requirements of EPA as referenced above in paragraph (b), shall notify the Chief of their hazardous waste activities.

Section 4.02 Notification.

(a) Any person that notified EPA of hazardous waste activities as referenced above in Section 4.01 shall provide a copy of that notification to the Chief within thirty (30) days of the effective date of these regulations.

(b) Any person involved in hazardous waste activities that did not comply with the notification requirements of EPA, as referenced above in Section 4.01, but is subject to those requirements shall notify the Chief in writing of their hazardous waste activities within thirty (30) days of the effective date of these regulations. Notification may be accomplished by the use of EPA Form 8700-12 or the provision of the same information in any other manner selected by the notifier.

(c) Any person exempted from the federal notification requirements but subject to West Virginia notification requirements as specified in 3.01.04 and 3.01.05 of these regulations shall notify the Chief in writing of their hazardous waste activities within ninety (90) days of the effective date of these regulations or the date of initiation of such activities, whichever is later. Notification may be accomplished by use of EPA Form 8700-12 or the provisions of the same information in any other manner selected by the notifier.

(d) One (1) notification form is required for each generator.

(e) A notification form is required for each storage, treat-

ment, disposal or other facility. However, if one facility site includes more than one storage, treatment or disposal activity, only one notification form for the entire facility site is required.

(f) Generators that store, treat or dispose of hazardous waste on-site shall file a notification form for generation activities as well as storage, and treatment and disposal activities, unless such activities are exempted from the requirements of these regulations.

(d) New generators and (those initiating activities subsequent to EPA notification period referenced in paragraph 4.01(b) of the regulations) shall comply with the EPA identification number requirements and shall provide a copy of their application for an EPA identification number to the Chief.

Series XV and VII

8.02.02 Identification Number.

Every facility owner or operator must apply to EPA for an EPA identification number in accordance with the EPA notification procedures.

8.02.07 Personnel Training.

(a)(1) Facility personnel must successfully complete a program of classroom instruction or on-the-job training that teaches them to perform their duties in a way that ensures the facility's compliance with the requirements of this section. The owner or operator must ensure that this program includes all the elements described in the document required under (d)(3) of this section.

(2) This program must be directed by a person trained in hazardous waste management procedures, and must include instruction which teaches facility personnel hazardous waste management procedures (including contingency plan implementation) relevant to the positions in which they are employed.

(3) At a minimum, the training program must be designed to ensure that the facility personnel are able to respond effectively to emergencies by familiarizing them with emergency procedures, emergency equipment and emergency systems, including where applicable:

(i) Procedures for using, inspecting, repairing, and replacing facility emergency and monitoring equipment;

(ii) Key parameters for automatic waste feed cut-off systems;

(iii) Communications or alarm systems;

(iv) Response to fires or explosions;

(v) Response to groundwater contamination incidents; and

(vi) Shutdown of operations.

(4) An outline of the training program required by Section 8.02.07 and a description of how the training program is designed to meet actual job tasks, must be submitted to the Chief with Part B of the permit application.

(b) Facility personnel must successfully complete the program required in (a) of this section within six (6) months after the date of their employment or assignment to a facility, or to a new position at a facility, whichever is later. Employees hired after the effective date of these regulations must not work in unsupervised positions until they have completed the training requirements of (a) of this section.

(c) Facility personnel must take part in an annual review of the initial training required in (a) of this section.

(d) The owner or operator must maintain the following documents and records at the facility:

(1) The job title for each position at the facility related to hazardous waste management, and the name of the employee filling each job.

(2) A written job description for each position listed under (d)(1) of this section. This description may be consistent in its degree of specificity with descriptions for other similar positions in the same company location or bargaining unit, but must include the requisite skill, education, or other qualifications and duties of employees assigned to each position.

(3) A written description of the type and amount of both introductory and continuing training that will be given to each person filling a position listed under (d)(1) of this section.

(4) Records that document that the training or job experience required under (a), (b), and (c) of this section has been given to, and completed by, facility personnel.

(e) Training records on current personnel must be kept until closure of the facility; training records on former employees must be kept for three (3) years from the date the employee last worked at the facility. Personnel training records may accompany personnel transferred within the same company.

8.05.02 Use of the manifest system.

(a) If a facility receives hazardous waste accompanied by a manifest, the owner or operator, or his agency, must:

- (1) Sign and date each copy of the manifest to certify that the hazardous waste covered by the manifest was received;
- (2) Note any significant discrepancies in the manifest (as defined in 8.05.03(a)) on each copy of the manifest.
- (3) Immediately give the transporter at least one copy of the signed manifest;
- (4) Within 30 days after the delivery, send a copy of the manifest to the generator; and
- (5) Retain at the facility a copy of each manifest for at least three years from the date of delivery.

(b) If a facility receives, from a rail or water (bulk shipment) transporter, hazardous waste which is accompanied by a shipping paper containing all the information required on the manifest (excluding the EPA identification numbers, generator's certification, and signatures), the owner or operator, or his agent, must:

- (1) Sign and date each copy of the manifest or shipping paper (if the manifest has not been received) to certify that the hazardous waste covered by the manifest or shipping paper was received;
- (2) Note any significant discrepancies (as defined in 8.05.03(a)) in the manifest or shipping paper (if the manifest has not been received) on each copy of the manifest or shipping paper.
- (3) Immediately give the rail or water (bulk shipment) transporter at least one copy of the manifest or shipping paper (if the manifest has not been received);
- (4) Within 30 days after the delivery, send a copy of the signed and dated manifest to the generator; however, if the manifest has not been received within 30 days after delivery, the owner or operator, or his agent, must send a copy of the shipping paper signed and dated to the generator; and
- (5) Retain at the facility a copy of the manifest and shipping paper (if signed in lieu of the manifest at the time of delivery) for at least three years from the date of delivery.

(c) Whenever a shipment of hazardous waste is initiated from a facility, the owner or operator of that facility must comply with the requirements of Section 6 of these regulations.

8.05.03 Manifest Discrepancies.

(a) Manifest discrepancies are differences between the quantity or type of hazardous waste designated on the manifest or shipping paper, and the quantity or type of hazardous waste a facility actually receives. Significant discrepancies in quantity are:

(1) For bulk waste, variations greater than 10 percent in weight, and

(2) For batch waste, any variation in piece count, such as a discrepancy of one drum in a truckload. Significant discrepancies in type are obvious differences which can be discovered by inspection or waste analysis, such as waste solvent substituted for waste acid, or toxic constituents not reported on the manifest or shipping paper.

(b) Upon discovering a significant discrepancy, the owner or operator must attempt to reconcile the discrepancy with the waste generator or transporter (e.g., with telephone conversations). If the discrepancy is not resolved within 15 days after receiving the waste, the owner or operator must immediately submit to the Chief a letter describing and attempts to reconcile it, and a copy of the manifest or shipping letter at issue.

8.05.04 Operating Record.

(a) The owner or operator shall keep a written operating record at the facility.

(b) The following information shall be recorded, as it becomes available, and maintained in the operating record until closure of the facility:

(1) A description and the quantity of each hazardous waste received, and the method(s) and date(s) of its treatment, storage or disposal at the facility.

(2) The location of each hazardous waste within the facility and the quantity of each location. For disposal facilities, the location and quantity of each hazardous waste must be recorded on a map or diagram of each cell or disposal area. For all facilities, this information must include cross-references to specific manifest document numbers, if the waste was accompanied by a manifest.

8.05.06 Annual Report.

The owner or operator shall prepare and submit a single copy of an annual report for the preceding year (January 1 - December 31) to the Chief by March 1 of each year. A form prescribed by the Chief shall be used for this report. The annual report shall cover facility activities during the previous calendar year and shall include the following information:

- (a) The EPA identification number, name and address of the facility
- (b) The calendar year covered by the report.
- (c) For off-site facilities, the EPA identification number of each hazardous waste generator from which the facility received hazardous waste during the year; for imported shipments, the report shall give the name and address of the foreign generator.
- (d) A description and the quantity of each hazardous waste the facility received during the year. For off-site facilities, this information shall be listed by the EPA identification number of each generator.
- (e) The method of treatment, storage or disposal for each hazardous waste.
- (f) Groundwater monitoring data on a form prescribed by the Chief.
- (g) The most recent closure cost estimate and, for disposal facilities, the most recent post-closure cost estimate.
- (h) The certification signed by the owner or operator of the facility or an authorized representative.

8.05.07 Unmanifested Waste Report.

If a facility accepts for treatment, storage or disposal any hazardous waste from an off-site source without an accompanying manifest or shipping paper and if the waste is not excluded from the manifest requirement by Section 3.01.04, then the owner or operator shall prepare and submit a single copy of a report to the Chief within fifteen (15) days after receiving the waste, on a form prescribed by the Chief. The report shall include the following information:

- (a) The EPA identification number, name and address of the facility.
- (b) The date the facility received the waste.
- (c) The EPA identification number, name and address of the generator and the transporter, if available.
- (d) A description and the quantity of each unmanifested hazardous waste the facility received.

(e) The method of treatment, storage or disposal for each hazardous waste.

(f) The certification signed by the owner or operator of the facility or an authorized representative.

(g) A brief explanation of why the waste was unmanifested, if known.

[Comment: Small quantities of hazardous waste are excluded from regulation under this section and do not require a manifest. Where a facility receives unmanifested hazardous wastes, the owner or operator must obtain from each generator a certification that the waste qualifies for exclusion. Otherwise, the owner or operator is required to file an unmanifested waste report for the hazardous waste movement.]

# **WEST VIRGINIA ADMINISTRATIVE REGULATIONS**

**JOHN D. ROCKEFELLER IV  
GOVERNOR**

**OFFICE OF OIL AND GAS  
OF THE DEPARTMENT OF MINES  
1979 EDITION (CHAPTER 22-4)**

**WALTER MILLER  
Director  
Department of Mines**

**THEODORE M. STREIT  
Administrator  
Office of Oil and Gas**



**OIL AND GAS  
CONSERVATION COMMISSION  
1979 EDITION (CHAPTER 22-4A)**

**THOMAS E. HUZZEY  
Commissioner**

**SHALLOW GAS WELL REVIEW BOARD  
1979 EDITION (CHAPTER 22-4B)**



OFFICE OF OIL AND GAS  
WEST VIRGINIA DEPARTMENT OF MINES  
1613 Washington St., E.  
Charleston, West Virginia 253116

WALTER N. MILLER  
DIRECTOR

THEODORE M. STREIT  
ADMINISTRATOR

PERSONNEL OF THE OFFICE OF OIL AND GAS

Theodore M. Streit, Administrator, 348-2057, 348-2058  
Mike Lewis, Engineer  
Fred Burdette, Supervising Inspector, Box 190, Cicerone Rt.,  
Sissonville, WV  
Pat Lewis, Draftsman  
Lois Simpkins, Secretary, 156 Oakwood Road, Charleston, WV  
Faye Fleet, Clerk, 1548 Lewis Street, Charleston, WV  
Charlotte Milam, Clerk, 5615 Starling Drive, Charleston, WV  
Opal Hoffman, P.O. Box 9194, South Charleston, WV  
Michelle Young, Clerk

OIL AND GAS INSPECTORS' EXAMINING BOARD

James A. Wasson, Chairman . . . . .Morgantown, WV  
Carl R. Morris-Term Expires-6-30-79 . . . .Grantsville, WV  
Eldon Haught-Term Expires-6-30-85 . . . .Smithville, WV  
J.L. Weekly-Term Expires-6-30-83 . . . .Scott Depot, WV  
Thomas E. Huzzey, Administrator-Executive  
Secretary . . . . .Charleston, WV

INSPECTORS

Mr. Fred Burdette, Supervision Inspector, P.O. Box 190, Cicerone Rt.  
Sissonville, WV 25320  
PH: 984-9263

Robert Bates  
109 Minnich St.  
Weston, WV 26452  
PH: 269-3820

William Bosser  
P.O. Box 1028  
Colfax, WV 26566  
PH: 363-9105 (Fairmont)

Braxton  
Lewis  
Pocahontas  
Webster

Marion  
Monongalia  
Preston  
Taylor

Kenneth Butcher  
RFD #1  
Barboursville, WV 25504  
PH: 736-4885

Stephen Casey  
Rt. 2, Box 232-D  
Jane Lew, WV 26378  
PH: 884-7470

Cabell  
Lincoln  
Mason  
Wayne

Doddridge  
Harrison

INSPECTORS (Continued)

Deo Mace  
Rt. 1, Box 5  
Sandridge, WV 25274  
PH: 655-7398

Calhoun  
Gilmer  
Wirt

Samuel N. Hersman  
P.O. Box 66  
Smithville, WV 26178  
PH: 477-3597

Ritchie  
Wood

Arthur St. Clair  
P.O. Box 157  
Brenton, WV 24818  
PH: 732-6227

Boone  
Logan  
Mingo

Robert Stewart  
P.O. Box 345  
Jane Lew, WV 26378  
PH: 884-7782

Barbour	Mineral
Berkeley	Morgan
Grant	Pendleton
Hampshire	Randolph
Hardy	Tucker
Jefferson	Upshur

D. Craig Duckworth  
P.O. Box 454  
Mt. Lookout, WV 26678  
PH: 872-6165

Fayette	Nicholas
Greenbrier	Raleigh
Monroe	Summers

Homer H. Dougherty  
Linden Rt., Box 3-A  
Looneyville, WV 25259  
PH: 927-4591

Clay  
Jackson  
Kanawha  
Roane

Rue Schoolcraft  
P.O. Box 706  
Pineville, WV 24874  
PH: 732-7245

McDowell  
Mercer  
Wyoming

Robert A. Lowther  
General Delivery  
Middlebourne, WV 26149  
PH: 758-4764

Brooke	Pleasants
Hancock	Tyler
Marshall	Wetzel
Ohio	

**OIL AND GAS LAWS**  
**Chapter 22, Article 4**  
**Official Code of West Virginia**

**Article 4. Oil and Gas Wells**

**§22-4-1. Definitions.**

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

- (a) "Casing" means a string or strings of pipe commonly placed in wells drilled for natural gas or petroleum or both;
- (b) "Cement" means hydraulic cement properly mixed with water;
- (c) "Chairman" means the chairman of the West Virginia shallow gas well review board as provided for in section four, article four-b of this chapter;
- (d) "Chief" means chief of the division of water resources of the department of natural resources;
- (e) "Coal operator" means any person or persons, firm, partnership, partnership association or corporation that proposes to or does operate a coal mine;
- (f) "Coal seam" and "workable coal bed" are interchangeable terms and mean any seam of coal twenty inches or more in thickness, unless a seam of less thickness is being commercially worked, or can in the judgment of the department foreseeably be commercially worked and will require protection if wells are drilled through it;
- (g) "Deep well" means any well drilled and completed in a formation at or below the top of the uppermost member of the "Onondaga Group" or at a depth of or greater than six thousand feet, whichever is shallower;
- (h) "Department" or "department of mines" means, for purposes of this article and articles five and seven of this chapter, the office of oil and gas of the department of mines.
- (i) "Administrator" means the head of the office of oil and gas of the department of mines and all references to the "deputy director" shall be defined to mean the administrator of the office of oil and gas.
- (j) "Expanding cement" means any cement approved by the office of oil and gas which expands during the hardening process, including but not limited to regular oil field cements with the proper additives;
- (k) "Facility" means any facility utilized in the oil and gas industry in this state and specifically named or referred to in this article or in articles five or seven of this chapter, other than a well or well site;
- (l) "Gas" means all natural gas and all other fluid hydrocarbons not defined as oil in subdivision (m) of this section;
- (m) "Oil" means natural crude oil or petroleum and other hydrocarbons, regardless of gravity, which are produced at the well in liquid form by ordinary production methods and which are not the result of condensation of gas after it leaves the underground reservoirs;
- (n) "Owner" when used with reference to any well, shall include any person or persons, firm, partnership, partnership association or corporation that owns, manages, operates, controls or possesses such well as principal, or as lessee or contractor, employee or agent of such principal;
- (o) "Owner" when used with reference to any coal seam, shall include any person or persons who own, lease or operate such coal seam;

(p) "Person" means any natural person, corporation, firm, partnership, partnership association, venture, receiver, trustee, executor, administrator, guardian, fiduciary or other representative of any kind, and includes any government or any political subdivision or any agency thereof;

(q) "Plat" means a map, drawing or print showing the location of a well or wells as herein defined;

(r) "Review board" means the West Virginia shallow gas well review board as provided for in section four, article four-b of this chapter;

(s) "Safe mining through of a well" means the mining of coal in a workable coal bed up to a well which penetrates such workable coal bed and through such well so that the casing or plug in the well bore where the well penetrates the workable coal bed is severed;

(t) "Shallow well" means any gas well drilled and completed in a formation above the top of the upper most member of the "Onondaga Group" or at a depth less than six thousand feet, whichever is shallower;

(u) "Stimulate" means any action taken by well operator to increase the inherent productivity of an oil or gas well including, but not limited to, fracturing, shooting or acidizing, but excluding cleaning out, bailing or workover operations;

(v) "Well" means any shaft or hole sunk, drilled, bored or dug into the earth or into underground strata for the extraction or injection or placement of any liquid or gas, or any shaft or hole sunk or used in conjunction with such extraction or injection or placement. The term "well" does not include any shaft or hole sunk, drilled, bored or dug into the earth for the sole purpose of core drilling or pumping or extracting therefrom potable, fresh or usable water for household domestic, industrial, agricultural or public use; and

(w) "Well operator" or "operator" means any person or persons, firm, partnership, partnership association or corporation that proposes to or does locate, drill, operate or abandon any well as herein defined.

(x) "Office of oil and gas" or "office" means the office of oil and gas within the department of mines charged with the responsibility of administering the provisions of chapter twenty-two, articles four, five and seven of the code of West Virginia, one thousand nine hundred thirty-one, as amended.

**§22-4-1a. Office of oil and gas—purposes; rules and regulations; administration; appointment; powers and duties; public records.** — (a) There is hereby created, under the jurisdiction of the director of the department of mines, an office of oil and gas which shall have as its purpose the supervision of the execution and enforcement of matters related to oil and gas set out in this article and in articles five and seven of this chapter.

(b) The office of oil and gas is authorized to enact rules and regulations necessary to effectuate the above stated purposes.

(c) There shall be an employee of the office of oil and gas whose title shall be "administrator of the office of oil and gas" who shall be appointed by the director of the department of mines to serve at the will and pleasure of the director and whose salary shall be set by the director. The administrator shall have full charge of the oil and gas matters set out in this article and in articles five and seven of this chapter, subject always to the direct supervision and control of the director of the department of mines. As such the administrator 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 not more than twelve oil and gas inspectors upon approval by the director;

(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 chapter;

(6) Employ a hearing officer and such clerks, stenographers and other employees, as may be necessary to carry out his 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 provision of this article and articles five and seven of this chapter;

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

(9) Make annually a full and complete written report to the director of the department of mines in such form and detail as the director may from time to time request, so that the director can complete the preparation of the director's annual report to the governor of the state;

(10) Conduct such research and studies as the director 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;

(11) Perform any and all acts necessary to carry out and implement the state requirements established by 92 Statutes at Large 3352, et seq., the "Natural Gas Policy Act of 1978", which are to be performed by a designated state jurisdictional agency regarding determinations that wells within the state qualify for a maximum lawful price under certain categories of natural gas as set forth by the provisions of the said "Natural Gas Policy Act of 1978".

(12) Collect a filing and processing fee of twenty-five dollars for each well, for which a determination of qualification to receive a maximum lawful price under the provisions of the "Natural Gas Policy Act of 1978" is sought from the administrator; all revenues from such fees to be placed in the general revenue fund of the state.

(13) Perform all other duties which are expressly imposed upon him by the provisions of this chapter, as well as duties assigned to him by the director of the department of mines.

(d) All records of the department shall be open to the public.

**§22-4-1b. Administrator—eligibility.** — The administrator of the office of oil and gas shall be a citizen of West Virginia, shall be a competent person of good reputation and temperate habits and be a registered professional engineer and shall have had at least ten years' practical experience in the oil and gas industry. A degree in geology or in mining or petroleum engineering shall be counted as two years' practical experience. The administrator shall devote all of his time to his duties, and shall not be directly or indirectly interested financially in any oil or gas production or drilling or in any coal mine in this state.

§22-4-1c. Oil and gas inspectors — Supervising inspectors; tenure; oath and bond. — Notwithstanding any other provisions of law, oil and gas inspectors shall be selected, serve and be removed as in this article provided.

The deputy director for oil and gas shall divide the State so as to equalize, as far as practical, the work of each oil and gas inspector. He may designate a supervising inspector and other inspectors as may be necessary, and may designate their places of abode, at points convenient to the accomplishment of their work.

The deputy director for oil and gas shall make each appointment from among the three qualified eligible candidates on the register having the highest grades. The director of the department of mines or the deputy director for oil and gas may, for good cause, at least thirty days prior to making an appointment, strike any name from the register. Upon striking any name from the register, the director or deputy director, as the case may be, shall immediately notify in writing each member of the oil and gas inspectors' examining board of his action, together with a detailed statement of the reasons therefor. Thereafter, the oil and gas inspectors' examining board, after hearing, if it finds that the action of striking such name was arbitrary or unreasonable, may order the name of any candidate so stricken from the register to be reinstated thereon. Such reinstatement shall be effective from the date of removal from the register.

Any candidate passed over for appointment for three years shall be automatically stricken from the register.

After having served for a probationary period of one year to the satisfaction of the deputy director for oil and gas and the director, an oil and gas inspector or supervising inspector shall have permanent tenure until he becomes seventy years of age, subject only to dismissal for cause in accordance with the provisions of section one-d [§22-4-1d] of this article. No oil and gas inspector or supervising inspector while in office shall be directly or indirectly interested as owner, lessor, operator, stockholder, superintendent or engineer of any oil or gas drilling or producing venture or of any coal mine in this State. Before entering upon the discharge of his duties as an oil and gas inspector or supervising inspector, he shall take the oath of office prescribed by the Constitution, and shall execute a bond in the penalty of two thousand dollars, with security to be approved by the director of the department of mines, conditioned upon the faithful discharge of his duties, a certificate of which oath and bond shall be filed in the office of the secretary of state.

The supervising inspector and oil and gas inspectors shall perform such duties as are imposed upon them by this chapter, and related duties assigned by the deputy director for oil and gas upon approval of the director. (1963, c. 95; 1973, c. 79; 1976, c. 97.)

§22-4-1d. Same — Eligibility for appointment; qualifications; salary; expenses; removal. — (a) No person shall be eligible for appointment as an oil and gas inspector or supervising inspector unless, at the time of his probationary appointment he (1) is a citizen of West Virginia, in good health, and of good character, reputation and temperate habits; (2) has had at least ten years' practical experience in the oil and gas industry, at least five years of which, immediately preceding his original appointment shall have been in the oil and gas industry in this State: Provided, that a diploma in geology or in mining or petroleum engineering shall be considered the equivalent of five years' practical experience; and (3) has good theoretical and practical knowledge of oil and gas drilling and production methods, practices and techniques, sound safety practices and applicable mining laws

(b) In order to qualify for appointment as an oil and gas inspector or supervision inspector, an eligible applicant shall submit to a written and oral examination by the oil and gas inspectors' examining board and shall furnish such evidence of good health, character and other facts establishing eligibility as such board may require. If such board finds after investigation and examination that an applicant (1) is eligible for appointment and (2) has passed all written and oral examinations, the board shall add such applicant's name and grade to the register of qualified eligible candidates and certify its action to the deputy director for oil and gas. No candidate's name shall remain on the register for more than three years without requalifying.

(c) The salary of the supervision inspector shall be not less than fifteen thousand two hundred twenty-two dollars per annum and not more than fifteen cents per mile traveling expenses. Salaries of inspectors shall be not less than thirteen thousand three hundred twenty-five dollars per annum and traveling expenses for personal car not

more than fifteen cents per mile. Within the limits provided by law, the salary of each inspector and of the supervising inspector shall be fixed by the deputy director for oil and gas, subject to the approval of the director of the department of mines and oil and gas inspectors' examining board. In fixing salaries of the oil and gas inspectors and of the supervising inspector, the deputy director for oil and gas shall consider ability, performance of duty and experience. No reimbursement for traveling expenses shall be made except upon an itemized account of such expenses submitted by the inspector or supervising inspector, as the case may be, who shall verify, upon oath, that such expenses were actually incurred in the discharge of his official duties.

(d) An inspector or the supervising inspector, after having received a permanent appointment, shall be removed from office only for physical or mental impairment, incompetency, neglect of duty, drunkenness, malfeasance in office, or other good cause.

Proceedings for the removal of an oil and gas inspector or the supervising inspector may be initiated by the deputy director for oil and gas or the director of the department of mines whenever either has reasonable grounds to believe and does believe that adequate cause exists warranting removal. Such a proceeding shall be initiated by a verified petition, filed with the oil and gas inspectors' examining board by the deputy director for oil and gas or the director, setting forth with particularity the facts alleged. Not less than twenty reputable citizens engaged in oil and gas drilling and production operation in the State may petition the deputy director for oil and gas or the director of the department of mines for the removal of an inspector or the supervising inspector. If such petition is verified by at least one of the petitioners, based on actual knowledge of the affiant, and alleges facts which, if true, warrant the removal of the inspector or supervising inspector, the deputy director for oil and gas or the director of the department of mines shall cause an investigation of the facts to be made. If, after such investigation, the deputy director for oil and gas or the director finds that there is substantial evidence which, if true, warrants removal of the inspector or supervising inspector, he shall file a petition with the oil and gas inspectors' examining board requesting removal of the inspector or supervising inspector.

On receipt of a petition by the deputy director for oil and gas or by the director of the department of mines seeking removal of an inspector or the supervising inspector, the oil and gas inspectors' examining board shall promptly notify the inspector or supervising inspector, as the case may be, to appear before it at a time and place designated in said notice, which time shall be not less than fifteen days nor more than thirty days thereafter. There shall be attached to the copy of the notice served upon the inspector or supervising inspector a copy of the petition filed with such board.

At the time and place designated in said notice, the oil and gas inspectors' examining board shall hear all evidence offered in support of the petition and on behalf of the inspector or supervising inspector. Each witness shall be sworn and a transcript shall be made of all evidence taken and proceedings had at any such hearing. No continuance shall be granted except for good cause shown.

The chairman of the board, the deputy director for oil and gas, and the director of the department of mines shall have power to administer oaths and subpoena witnesses.

An inspector or supervising inspector who shall willfully refuse or fail to appear before such board, or having appeared, shall refuse to answer under oath any relevant question on the ground that his testimony or answer might incriminate him, or shall refuse to accept a grant of immunity from prosecution on account of any relevant matter about which he may be asked to testify at such hearing before such board, shall forfeit his position.

If, after hearing, the oil and gas inspectors' examining board finds that the inspector or supervising inspector should be removed, it shall enter an order to that effect. The decision of the board shall be final and shall not be subject to judicial review. (1963, ch. 95; 1965, c. 100; 1969, c. 78; 1972, c. 68; 1976, c. 97.)

§22-4-1e. Oil and gas inspectors' examining board created; composition; appointment, term and compensation of members; chairman; oaths of members; meetings; powers and duties generally. — There is hereby created an oil and gas inspectors' examining board consisting of five members who, except for the public representative on such board, shall be appointed by the governor, by and with the advice and consent of the senate. Members may be removed only for the same causes and like manner as elective state officers. One member of the board who shall be the representative of the public, shall be a professor in the petroleum engineering department of the school of mines at West Virginia University appointed by the dean of said school; two members shall be persons who by reason of previous training and experience may reasonably be said to represent the viewpoint of independent oil and gas operators; and two members shall be persons who by reason of previous training and experience may reasonably be said to represent the viewpoint of major oil and gas producers.

The deputy director for oil and gas shall be an ex officio member of the board and shall serve as secretary of the board without additional compensation, but he shall have no right to vote with respect to any matter before the board.

The members of the board, except the public representative, shall be appointed for overlapping terms of eight years, except that the original appointments shall be for terms of two, four, six and eight years, respectively. Any member whose terms expires may be reappointed by the governor.

Each member of the board shall receive seventy-five dollars per diem while actually engaged in the performance of the work of the board; and shall receive mileage at the rate of not more than fifteen cents for each mile actually traveled going from the home of the member to the place of the meeting of the board and returning therefrom, which shall be paid out of the state treasury upon a requisition upon the state auditor, properly certified by such members of the board.

The public member shall serve as chairman of the board.

Members of the board, before performing any duty shall take and subscribe to the oath required by section 5, article IV of the Constitution of West Virginia.

The board shall meet at such times and places as shall be designated by the chairman. It shall be the duty of the chairman to call a meeting of the board on the written request of two members, or on the written request of the deputy director for oil and gas or the director of the department of mines. Notice of each meeting shall be given in writing to each member by the secretary at least five days in advance of the meeting. Three voting members shall constitute a quorum for the transaction of business.

In addition to other powers and duties expressly set forth elsewhere in this article, the board shall:

- (1) Establish, and from time to time revise, forms of application for employment as an oil and gas inspector and supervising inspector and forms for written examinations to test the qualifications of candidates, with such distinctions, if any, in the forms for oil and gas inspector and supervising inspector as the board may from time to time deem necessary or advisable;

- (2) Adopt and promulgate reasonable rules and regulations relating to the examination, qualification and certification of candidates for appointment, and relating to hearings for removal of inspectors or the supervising inspector, required to be held by this article. All of such rules and regulations shall be printed and a copy thereof furnished by the secretary of the board to any person upon request;

- (3) Conduct, after public notice of the time and place thereof, examinations of candidates for appointment. By unanimous agreement of all members of the board, one or more members of the board or an employee of the department of mines may be designated to give to a candidate the written portion of the examination;



(4) Prepare and certify to the deputy director for oil and gas and the director of the department of mines a register of qualified eligible candidates for appointment as oil and gas inspectors or as supervising inspectors, with such differentiation, if any, between the certification of candidates for oil and gas inspectors and for supervising inspectors as the board may from time to time deem necessary or advisable. The register shall list all qualified eligible candidates in the order of their grades, the candidate with the highest grade appearing at the top of the list. After each meeting of the board held to examine such candidates and at least annually, the board shall prepare and submit to the deputy director for oil and gas and the director of the department of mines a revised and corrected register of qualified eligible candidates for appointment, deleting from such revised register all persons (a) who are no longer residents of West Virginia, (b) who have allowed a calendar year to expire without, in writing, indicating their continued availability for such appointment, (c) who have been passed over for appointment for three years, (d) who have become ineligible for appointment since the board originally certified that such persons were qualified and eligible for appointment, or (e) who, in the judgment of at least three members of the board, should be removed from the register for good cause;

(5) Cause the secretary of the board to keep and preserve the written examination papers, manuscripts, grading sheets and other papers of all applicants for appointment for such period of time as may be established by the board. Specimens of the examinations given, together with the correct solution of each question, shall be preserved permanently by the secretary of the board;

(6) Issue a letter or written notice of qualification to each successful eligible candidate;

(7) Hear and determine proceedings for the removal of inspectors or the supervising inspector in accordance with the provisions of this article;

(8) Hear and determine appeals of inspectors or the supervising inspector from suspension orders made by the deputy director for oil and gas pursuant to the provisions of section one-a [§22-4-1a] of this article: Provided, that in order to appeal from any order of suspension, an aggrieved inspector or supervising inspector shall file such appeal in writing with the oil and gas inspectors' examining board not later than ten days after receipt of the notice of suspension. On such appeal the board shall affirm the action of the deputy director for oil and gas unless it be satisfied from a clear preponderance of the evidence that the deputy director for oil and gas has acted arbitrarily;

(9) Make an annual report to the governor concerning the administration of oil and gas inspection personnel in the state service; making such recommendations as the board considers to be in the public interest; and

(10) Render such advice and assistance to the deputy director for oil and gas as he shall from time to time determine necessary or desirable in the performance of his duties. (1963, c. 95; 1972, c. 68; 1973, c. 79; 1976, c. 97.)

**§22-4-1f. Authority and duty of deputy director and inspectors to visit and inspect wells and facilities; inspectors to devote full time to duties.** — The deputy director for oil and gas of the department of mines 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 deputy director 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 deputy director for oil and gas, all oil and gas inspectors and the supervising inspector in making inspections or obtaining information.

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. (1963, c. 95; 1969, c. 76; 1977, c. 123.)

**§22-4-1g. 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.** — (a) If an oil and gas inspector, upon making an inspection of a well or well site or any other oil or gas facility, finds that any provision of this article is being violated, he shall also find whether or not an imminent danger to persons engaged in active coal mining exists. If he finds that such imminent danger exists, he shall forthwith make an order requiring the operator of such well or well site or other oil or gas facility to cease further operations until such imminent danger has been abated. If he finds that no such imminent danger exists, he shall determine what would be a reasonable period of time within which such violation should be totally abated. Such findings shall contain reference to the provisions of this article which he finds are being violated, and a detailed description of the conditions which cause and constitute such violation.

(b) The period of time so found by such oil and gas inspector to be a reasonable period of time may be extended by such inspector, or by any other oil and gas inspector duly authorized by the deputy director for oil and gas, from time to time, but on not more than three occasions, upon the making of a special inspection to ascertain whether or not such violation has been totally abated. The deputy director for oil and gas shall cause a special inspection to be made: (A) Whenever an operator of a well or well site or any other oil or gas facility, prior to the expiration of any such period of time, requests him to cause a special inspection to be made at such well or well site or any other oil or gas facility; and (B) upon expiration of such period of time as originally fixed or as extended, unless the deputy director for oil and gas is satisfied that the violation has been abated. Upon making such special inspection, such oil and gas inspector shall determine whether or not such violation has been totally abated. If he determines that such violation has not been totally abated, he shall determine whether or not such period of time as originally fixed, or as so fixed and extended, should be extended. If he determines that such period of time should be extended, he shall determine what a reasonable extension would be. If he determines that such violation has not been totally abated, and if such period of time as originally fixed, or as so fixed and extended, has then expired, and if he also determines that such period of time should not be further extended, he shall thereupon make an order requiring the operator of such well or well site or other oil or gas facility to cease further operations of such well, well site or facility, as the case may be. Such findings and order shall contain reference to the specific provisions of this article which are being violated.

(c) Notice of each finding and order made under this section shall promptly be given to the operator of the well or well site or other oil or gas facility to which it pertains by the person making such finding or order.

(d) No order shall be issued under the authority of this section which is not expressly authorized herein. (1963, c. 95; 1969, c. 76; 1977, c. 123.)

**§22-4-1h. Review of findings and orders by deputy director for oil and gas; special inspection; annulment, revision, etc., of order; notice.** — Any well operator, complaining coal operator, owner or lessee, if any, aggrieved by findings or an order made by an oil or gas inspector pursuant to section one-g [§22-4-1g] of this article, may within fifteen days apply to the deputy director for oil and gas for annulment or revision of such order. Upon receipt of such application the deputy director for oil and gas shall make a special inspection of the well, well site or other oil and gas facility affected by such order, or cause two duly authorized oil and gas inspectors, other than the oil and gas inspector who made such order or the supervising inspector and one duly authorized oil and gas inspector other than the oil and gas inspector who made such order, to make such inspection of such well, or well site or other oil or gas facility and to report thereon to them. Upon making such special inspection himself, or upon receiving the report of such special inspection, as the case may be, the deputy director for oil and gas shall make an order which shall include his findings and shall annul, revise or affirm the order of the oil and gas inspector.

The deputy director for oil and gas shall cause notice of each finding and order made under this section to be given promptly to the operator of the well, well site or

other oil or gas facility to which such findings and order pertain, and the complainant under section one-f [§22-4-1f], if any.

At any time while an order made pursuant to section one-g [§22-4-1g] of this article is in effect, the operator of the well, well site or other oil or gas facility affected by such order may apply to the deputy director for oil and gas for annulment or revision of such order. The deputy director for oil and gas shall thereupon proceed to act upon such application in the manner provided in this section.

In view of the urgent need for prompt decision of matters submitted to the deputy director for oil and gas under this article, all actions which he, or oil and gas inspector, or the supervising inspector, is required to take under this article, shall be taken as rapidly as practicable, consistent with adequate consideration of the issues involved. (1963, c. 95; 1969, c. 76; 1977, c. 123.)

**§22-4-1i. Requirements for findings, orders and notices; posting of findings and orders.** — (a) All findings and orders made pursuant to sections one-g [§22-4-1g] or one-h [§22-4-1h] of this article, and all notices required to be given of the making of such findings and orders, shall be in writing. All such findings and orders shall be signed by the person making them, and all such notices shall be signed by the person charged with the duty of giving the notice. All such notices shall contain a copy of the findings and orders referred to therein.

(b) Notice of any finding or order required by sections one-g [§22-4-1g] or one-h [§22-4-1h] of this article to be given to an operator shall be given by causing such notice, addressed to the operator of the well, well site or other oil and/or gas facility to which such finding or order pertains, to be delivered to such operator by causing a copy thereof to be sent by registered mail to the permanent address of such operator as filed with the department of mines and by causing a copy thereof to be posted upon the drilling rig or other equipment at the well, well site or other oil and/or gas facility, as the case may be. The requirement of this article that a notice shall be "addressed to the operator of the well, well site or other oil and/or gas facility to which such finding or order pertains," shall not require that the name of the operator for whom it is intended shall be specifically set out in such address. Addressing such notice to "Operator of . . . . .," specifying the well, well site or other oil and/or gas facility, sufficient to identify it, shall satisfy such requirement. (1963, c. 95; 1969, c. 76.)

**§22-4-1j. Judicial review of final orders of deputy director for oil and gas.** — (a) Any well operator, complaining coal operator, owner of lessee, if any, adversely affected by a final order issued by the deputy director under section one-h [§22-4-1h] of this article shall be entitled to judicial review thereof. All of the pertinent provisions of section four [§29A-5-4], article five, chapter twenty-nine-A of this Code shall apply to and govern such judicial review with like effect as if the provisions of said section four were set forth in extenso in this section:

(b) The judgment of the circuit court shall be final unless reversed, vacated or modified on appeal to the supreme court of appeals in accordance with the provisions of section one [29A-6-1], article six, chapter twenty-nine-A of this Code.

(d) Legal counsel and services for the deputy director in all appeal proceedings in any circuit court and the supreme court of appeals shall be provided by the attorney general or his assistants and in any circuit court by the prosecuting attorney of the county as well, all without additional compensation. The deputy director, with written approval of the attorney general, may employ special counsel to represent the deputy director at any such appeal proceedings. (1963, c. 95; 1977, c. 123.)

**§22-4-1k. Permits required; application for permit; information; responsible agent; drilling permit number; when permits not to be issued; penalty.** — It shall be unlawful for any well to be drilled, redrilled, deepened, fractured, stimulated, plugged, pressured, converted, combined or physically changed to allow the migration of fluid from one formation to another unless a permit therefor has been issued by the department. An application for any such permit shall be filed with the deputy director and shall contain the following:

- (a) The name and address of the well operator;
- (b) The name and address of the owner of the surface lands upon which the well is or may be located;
- (c) The name and address of every coal operator operating coal seams under the tract of land on which the well is or may be located, and the coal seam owner of record and lessee of record required to be given notice by section two, if any, if said owner or lessee is not yet operating said coal seams;
- (d) The name and address of the agent of the well operator, if any such agent is required to be designated under the provisions of this section;
- (e) The approximate depth to which the well is to be drilled;
- (f) The proposed casing program of such well including the sizes of all such casing, the depth to which all casing is to be run and the extent to which such casing is to be cemented;
- (g) The proposed method of reclamation which shall comply with the requirements of section twelve-b of this article; and
- (h) Any other information which the deputy director by rule or regulation may require.

If the well operator named in such application is a corporation, partnership or a nonresident of the state of West Virginia, then there shall be designated 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 or article five-a, chapter twenty, 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 department of such termination and designate a new agent.

The well owner or operator shall install the permit number as issued by the deputy director 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 administrative rules and regulations of the department.

For the purpose of ascertaining whether or not issuance of any permit to drill, redrill, deepen, case, fracture, stimulate, pressure, operate, plug, abandon, convert or combine any well, or physically change any well or allow the migration of fluid from one formation to another, will contribute to an existing pollution problem, the deputy director shall have the right and it shall be his duty to consult with the director of the department of natural resources. In the event the issuance of any such permit may reasonably be expected to contribute to any such existing pollution then the deputy director will not issue such permit.

Any person who violates any provision of this section shall be guilty of a misdemeanor, and, upon conviction thereof, shall be punished by a fine not exceeding two thousand dollars, or imprisonment in jail for not exceeding twelve months, or both such fine and imprisonment.

**§22-4-2. 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. —** 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 and the date of drilling completion of a well when it is proposed that such well be fractured and shall forward by registered or certified mail a copy of the plat to the department of mines. In the event the tract of land on which the said well proposed to

be drilled or fractured is located is known to be underlaid with 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 his maps with the department in accordance with article two of this chapter, 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 twenty 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 department of mines) addressed to the department of mines 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. If no objections are made, or are found by the department, to such proposed location or proposed fracturing within fifteen days from receipt of such plat and notice by the department of mines, 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 department 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 department, and authorizing the well operator to drill at such location, or to fracture the well. Unless the department 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 department. 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.

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 of the operator in the sum of two thousand five hundred dollars, payable to the state of West Virginia, with a corporate bonding or surety company authorized to do business in this state as surety thereon, conditioned on full compliance with all laws, rules and regulations relating to the drilling, redrilling, deepening, casing, plugging, abandonment and reclamation of wells and for furnishing such reports and information as may be required by the department: *Provided*, That when such operator makes or has made application for permits to drill a number of wells or fracture or stimulate a well or wells the operator may in lieu of furnishing a separate bond furnish a blanket bond in the sum of fifteen thousand dollars, payable to the state of West Virginia, with a corporate bonding or surety company authorized to do business in this state as surety thereon, and conditioned as aforesaid: *Provided, however*, That in lieu of corporate surety on a separate or blanket bond, as the case may be, the operator may elect to deposit with the deputy director for oil and gas cash or the following collateral securities or any combination thereof: (1) Bonds of the United States or agency thereof, or those guaranteed by, or for which the credit of the United States or agency therefor is pledged for the payment of the principal and interest thereon; (2) direct general obligation bonds of this state, or any other state, or territory of the United States, or the District of Columbia, unconditionally guaranteed as to the principal and interest by such other state or territory of the United States, or the District of Columbia if such other state, territory, or the District of Columbia has the power to levy taxes for the payment of the principal and interest of such securities, and if at the time of the deposit such other state, territory, or the District of Columbia is not in default in the payment of any part of the principal or interest owing by it upon any part of its funded indebtedness; (3) direct general obligation bonds of this state issued pursuant to law and payable from ad valorem taxes levied on all the taxable property located herein, that the total indebtedness after deducting sinking funds and all debts incurred for self-sustaining public works does not exceed five percent of the assessed value of all taxable property therein at the time of the last assessment made before the date of such deposit, and that the issuer has not, within five years prior to the making thereof, been in default for more than ninety days in the payment of any part of the principal or interest on any debt, evidenced by its bonds; (4) revenue bonds issued by this state or any agency of this state when such bonds are payable from revenues or earnings specifically pledged for the payment of principal and interest, and a lawful sinking fund or reserve fund has been established and is being maintained for the payment of such bonds; (5) revenue bonds issued by a municipality in this state for the acquisition, construction, improvement or extension of a waterworks system, or a sewerage system, or a combined waterworks and sewerage system, when such bonds are payable from

revenue or earnings specifically pledged for the payment of principal and interest, and a lawful sinking fund or reserve fund has been established and is being maintained for the payment of such bonds; (6) revenue bonds issued by a public service board of a public service district in this state for the acquisition, construction, improvement or extension of any public service properties, or for the reimbursement or payment of the costs and expenses of creating the district, when such bonds are payable from revenue or earnings specifically pledged for the payment of principal and interest, and a lawful sinking fund or reserve fund has been established and is being maintained for the payment of such bonds; (7) revenue bonds issued by a board of trustees of a sanitary district in this state for the corporate purposes of such district, when such bonds are payable from revenue or earnings specifically pledged for the payment of principal and interest, and a lawful sinking fund or reserve fund has been established and is being maintained for the payment of such bonds; and (8) bonds issued by a federal land bank or home owners' loan corporation. The cash deposit or market value, or both, of the collateral securities shall be equal to or greater than the penalty of the separate or blanket bond, as the case may be. Upon receipt of any such deposit or cash or collateral securities, the deputy director for oil and gas shall immediately deliver the same to the treasurer of the state of West Virginia. The treasurer shall determine whether any such securities satisfy the requirements of this section. If the securities are approved they shall be accepted by the treasurer. If the securities are not approved, they shall be rejected and returned to the operator and no permit shall be issued until a corporate surety bond is filed or cash or proper collateral securities are filed in lieu of such surety. The treasurer shall hold any cash or securities in the name of the state in trust for the purposes for which the deposit was made. The operator shall be entitled to all interest and income earned on the collateral securities filed by such operator so long as the operator is in full compliance with all laws, rules and regulations relating to the drilling, redrilling, deepening, casing, plugging, abandonment and reclamation of wells and for furnishing such reports and information as may be required by the department. The operator making the deposit shall be entitled from time to time to receive from the treasurer, upon the written order of the deputy director for oil and gas, the whole or any portion of such securities upon depositing with the treasurer in lieu thereof cash equal to or greater than the penalty of the bond, in other approved securities of the classes herein specified having a market value equal to or greater than the penalty of the bond, or a corporate surety bond.

When an operator has furnished a separate bond from a corporate bonding or surety company to drill, fracture or stimulate an oil or gas well and the well produces oil or gas, or both, its operator may deposit with the deputy director for oil and gas cash from the sale of the oil or gas, or both, until the total deposited is two thousand five hundred dollars. When the sum of the cash deposited is two thousand five hundred dollars, the separate bond for the well shall be released by the department. Upon receipt of such cash, the deputy director for oil and gas shall immediately deliver the same to the treasurer of the state of West Virginia. The treasurer shall hold such cash in the name of the state in trust for the purpose for which the bond was furnished and the deposit was made. The operator shall be entitled to all interest and income which may be earned on the cash deposited so long as the operator is in full compliance with all laws, rules and regulations relating to the drilling, redrilling, deepening, casing, plugging, abandonment and reclamation of the well for which the cash was deposited and so long as he has furnished all reports and information as may be required by the department. If the cash realized from the sale of oil or gas, or both, from the well is not sufficient for the operator to deposit with the deputy director for oil and gas the sum of two thousand five hundred dollars within one year of the day the well started producing, the corporate or surety company which issued the bond on the well may notify the operator and the department of its intent to terminate its liability under its bond. The operator then shall have thirty days to furnish a new bond from a corporate bonding or surety company or collateral securities, as provided in the next preceding paragraph of this section, with the department. If a new bond or collateral securities are furnished by the operator, the liability of the corporate bonding or surety company under the original bond shall terminate as to any acts and operations of the operator occurring after the effective date of the new bond or the date the collateral securities are accepted by the treasurer of the state of West Virginia. If the operator does not furnish a new bond or collateral securities, as provided in the next preceding paragraph of this section, the department, he shall immediately plug, fill and reclaim the well in accordance with all of the provisions of law, rules and regulations applicable thereto. In such case, the corporate or surety company which issued the original bond shall be liable for any plugging, filling or reclamation not performed in accordance with such laws, rules and regulations.

Any such bond shall remain in force until released by the department and the department shall release the same when it is satisfied the conditions thereof have been fully performed. Upon the release of any such bond, any cash or collateral securities deposited shall be returned by the deputy director for oil and gas to the operator who deposited same.

If any of the requirements of this article or rules and regulations promulgated pursuant thereto or the orders of the deputy director for oil and gas have not been complied with within the time limit set by the violation notice as defined in sections one-g, one-h and one-i, article four, chapter twenty-two of this code the performance bond shall then be forfeited.

When any bond is forfeited pursuant to the provisions of this article or rules and regulations promulgated pursuant thereto the deputy director shall give notice to the attorney general who shall collect the forfeiture without delay.

All forfeitures shall be deposited in the treasury of the state of West Virginia in the special reclamation fund as defined in section twelve-a, article four, chapter twenty-two of this code.

**§22-4-2a Notice to coal operators, owners or lessees and department of mines of intention to fracture certain other wells; contents of such notice; permit required. —** Before fracturing any well the well operator shall, by registered or certified mail, forward a notice of intention to fracture such well to the department of mines and to each and every coal operator operating coal seams beneath said tract of land, who has mapped the same and filed his maps with the department in accordance with article two of this chapter, and the coal seam owner and lessee, if any, if said owner of record or lessee of record has recorded the declaration provided in section twenty of this article, and if said owner or lessee is not yet operating said coal seams beneath said tract of land.

The notice shall be addressed to the department of mines and to each such coal operator at their respective addresses, shall contain the number of the drilling permit for such well and such other information as may be required by the department to enable the department and the coal operators to locate and identify such well and shall inform them that such notice is being mailed to them, respectively, by registered or certified mail, pursuant to the requirements of this article. (The form for such notice of intention shall be furnished on request by the department of mines.) If no objections are made, or are found by the department, to such proposed fracturing within fifteen days from receipt of such notice by the department of mines, the same shall be filed and become a permanent record of such fracturing, subject to inspection at any time by any interested person, and the department shall forthwith issue to the well operator a permit reciting the filing of such notice, that no objections have been made by the coal operators, or found thereto by the department, and authorizing the well operator to fracture such well. Unless the department has objections to such proposed fracturing, such permit shall 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 or lessees, if any; to whom notice of intention to fracture shall have been mailed as herein required, and upon presentation of such written consent to the department. 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.

**§22-4-2b. Plats prerequisite to introducing liquids or waste into wells; preparation and contents; notice and information furnished to coal operators, owners or lessees and chief of water resources; issuance of permits; performance bonds or security in lieu thereof. —** Before drilling a well for the introduction of liquids for the purposes provided for in section ten-a of this article or for the introduction of liquids for the disposal of sewage, industrial waste or other waste or the effluent therefrom on any tract of land, or before converting an existing well for such purposes, the well operator shall have a plat prepared by a registered engineer or licensed land surveyor 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 all adjacent tracts, the proposed or actual location of the well or wells determined by a survey, the courses and distances of such location from two permanent points of land marked on said tract and the number to be given to the well, and shall forward by registered or certified mail the original and one copy of the plat to the department of mines. In addition, the well operator shall provide the following infor-

mation on the plat or by way of attachment thereto to the department in the manner and form prescribed by the department's rules and regulations: (a) The location of all wells, abandoned or otherwise located within the area to be affected; (b) where available, the casing records of all such wells; (c) where available, the drilling log of all such wells; (d) the maximum pressure to be introduced; (e) the geological formation into which such liquid or pressure is to be introduced; (f) a general description of the liquids to be introduced; (g) the location of all water-bearing horizons above and below the geological formation into which such pressure, liquid or waste is to be introduced; and (h) such other information as the deputy director by rule and regulation may require.

In the event the tract of land on which said well proposed to be drilled or converted for the purposes provided for in this section is located is known to be underlain with coal seams, copies of the plat and all information required by this section shall be forwarded by the operator by registered or certified mail to each and every coal operator operating coal seams beneath said tract of land, who has mapped the same and filed his maps with the department in accordance with article two of this chapter, 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 twenty of this article, and if said owner or lessee is not yet operating said 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 department of mines) addressed to the department of mines and to each such coal operator, owner or 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 section. The deputy director shall forward a copy of the plat, notice and all other information required by this section to the chief of the division of water resources of the department of natural resources.

If no objections are made by any such coal operator, owner, lessee or such chief, or are found by the department to such proposed drilling or converting of the well or wells for the purposes provided for in this section within thirty days from the receipt of such plat and notice by the department of mines, the same shall be filed and become a permanent record of such location or well, subject to inspection at any time by any interested person, and the department shall forthwith issue to the well operator a permit reciting the filing of such plat and notice, that no objections have been made by the coal operators, owners and lessees, if any, or found thereto by the department of mines or by the chief, and authorizing the well operator to drill at such location or convert such existing well or wells for the purposes provided for in this section. Such permit shall be issued prior to the expiration of such thirty-day period upon the obtaining by the well operator, of the consent in writing of the coal operator, owners and lessees, if any, to whom copies of the plat and notice must have been mailed as herein required and upon obtaining the consent in writing of the chief, and upon presentation of such written consent in writing of the chief, and upon presentation of such written consent to the department. 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 the mines.

A permit to drill a well or wells or convert an existing well or wells for the purposes provided for in this section shall not be issued until all of the bonding provisions required by the provisions of section two of this article have been fully complied with and all such bonding provisions shall apply to all wells drilled or converted for the purposes provided for in this section as if such wells had been drilled for the purposes provided for in section two of this article, except that such bonds shall be conditioned upon full compliance with all laws, rules, and regulations relating to the drilling of a well or the converting of an existing well for the purposes provided for in said section ten-a, or introducing of liquids for the disposal of sewage, industrial waste or other waste or the effluent therefrom including the redrilling, deepening, casing, plugging or abandonment of all such wells.

**§22-4-3 Objections to proposed drilling of deep wells and oil wells; objections to fracturing; notices and hearings; agreed location or conditions; indication of changes on plats, etc.; issuance of permits.** — When a proposed deep well drilling site or oil well drilling site or any fracturing site is above a seam or seams of coal, then the coal operator operating said 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, may within fifteen days from the receipt by the department of the plat and notice required by section two of this article, or within fifteen days from the receipt by the department of notice required by section two-a of this article, file objections in writing (forms for which will be furnished by the department on request) to such proposed drilling or fracturing with the department, setting out therein as definitely as is reasonably possible the ground or grounds on which such objections are based.



If any objection is filed, or if any objection is made by the department, the department shall notify the well operator of the character of the objections and by whom made and fix a time and place, not less than fifteen days from the end of said fifteen-day period, at which such objections will be considered of which time and place the well operator and all objecting coal operators, owners or lessees, if any, shall be given at least ten days' written notice by the department, by registered or certified mail, and summoned to appear. At the time and place so fixed the well operator and the objecting coal operators, owners or lessees, if any, or such of them as are present or represented, shall proceed to consider the objections. In the case of proposed drilling, such parties present or represented may agree upon either the location as made or so moved as to satisfy all objections and meet the approval of the department, and any change in the original location so agreed upon and approved by the department shall be indicated on said plat on file with the department, and the distance and direction of the new location from the original location shall be shown, and as so altered, the plat shall be filed and become a permanent record, and in the case of proposed fracturing, such parties present or represented may agree upon conditions under which the well is to be fractured which will protect life and property and which will satisfy all objections and meet the approval of the department, at which time the plat and notice required by section two or the notice required by section two-a as the case may be, shall be filed and become a permanent record. Whereupon the department shall forthwith issue to the well operator a drilling or fracturing permit, as the case may be, reciting the filing of the plat and notice required by said section two, or the notice required by said section two-a, as the case may be, that at a hearing duly held a location as shown on the plat or the conditions under which the fracturing is to take place for the protection of life and property were agreed upon and approved, and that the well operator is authorized to drill at such location or to fracture at the site shown on such plat, or to fracture the well identified in the notice required by section two-a, as the case may be.

(a) In the event the well operator and the objecting coal operators, owners or lessees, if any, or such as are present or represented at such hearing are unable to agree upon a drilling location, or upon a drilling location that meets the approval of the department of mines, then the department shall proceed to hear the evidence and testimony in accordance with sections one and two, article five, chapter twenty-nine-a of this code, except where such provisions are inconsistent with this article. The department shall take into consideration in arriving at its decision:

(1) Whether the drilling location is above or in close proximity to any mine opening or shaft, entry, travelway, airway, haulageway, drainageway or passageway, or to any proposed extension thereof, in any operated or abandoned or operating coal mine, or coal mines already surveyed and platted, but not yet being operated;

(2) Whether the proposed drilling can reasonably be done through an existing or planned pillar of coal, or in close proximity to an existing well or such pillar of coal, taking into consideration the surface topography;

(3) Whether a well can be drilled safely, taking into consideration the dangers from creeps, squeezes or other disturbances due to the extraction of coal; and

(4) The extent to which the proposed drilling location unreasonably interferes with the safe recovery of coal, oil and gas.

At the close of the hearing or within ten days thereafter the department shall issue an order stating:

(1) That it refuses to issue a permit;

(2) That it will issue a permit for the proposed drilling location;

(3) That it will issue a permit for a drilling location different than that requested by the well operator.

The order shall state with particularity the reasons for the department's order and shall be mailed by registered or certified mail to the parties present or represented at such hearing. If the department has ruled that it will issue a permit, it shall issue a permit effective ten days after it has mailed such order, except that for good cause shown, the department may stay the issuance of a permit for a period not to exceed thirty days.

If a permit is issued, the department shall indicate the new drilling location on the plat on file and shall number and keep an index of and docket each plat and notice mailed to it as provided in section two of this article, and each notice mailed to it as provided in section two-a of this article, entering in such docket the name of the well operator, and the names and addresses of all persons notified, the dates of hearings and all actions taken by the department. The department shall also prepare a record of the proceedings, which record shall include all applications, plats and other documents filed with the department, all notices given and proof of service thereof, all orders issued, all permits issued and a transcript of the hearing. The record prepared by the department shall be open to inspection by the public.

(b) In the event the well operator and the objecting coal operators, owners or lessees, if any, or such as are present or represented at such hearing, are unable to agree upon the conditions under which the well is to be fractured as to protect life and property, or upon conditions of fracturing that meet with the approval of the department, then the department shall proceed to hear the evidence and testimony in accordance with sections one and two, article five, chapter twenty-nine-a of this code, except where such provisions are inconsistent with this article.

The department shall take into consideration upon its decision whether the well can be fractured safely, taking into consideration the dangers from creeps, squeezes or other disturbances.

At the close of the hearing, or within ten days thereafter, the department shall issue an order stating the conditions under which the well is to be fractured, provided the well can be fractured safely, taking into consideration the dangers from creeps, squeezes or other disturbances. If such fracturing cannot be done safely, the department shall issue an order stating with particularity the reasons for refusing to issue a permit.

The order shall state with particularity the reasons for the department's order and shall be mailed by registered or certified mail to the parties present or represented at such hearing. If the department has ruled that it will issue a permit, it shall issue a permit effective ten days after it has mailed such order, except that for good cause shown, the department may stay the issuance of a permit for a period not to exceed thirty days.

If a permit is issued, the department shall indicate the well to be fractured on the plat on file and shall number and keep an index of and docket each plat and notice mailed to it as provided in section two of this article, and each notice mailed to it as provided in section two-a of this article, entering in such docket the name of the well operator, the names and addresses of all persons notified, the dates of hearings and all actions taken by the department. The department shall also prepare a record of the proceedings, which record shall include all applications, plats and other documents filed with the department, all notices given and proof of service thereof, all orders issued, all permits issued and a transcript of the hearing. The record prepared by the department shall be open to inspection by the public.

**§ 22-4-3a. Objections to proposed drilling or converting for introducing liquids or waste into wells; notices and hearings; agreed location or conditions; indication of changes on plats, etc.; issuance of permits; docket of proceeding.** — When a well is proposed to be drilled or converted for the purposes provided for in section two-b [§22-4-2b] of this article, and is above a seam or seams of coal, then the coal operator operating said 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, may within fifteen days from the receipt by the department of the plat and notice required by section two [§22-4-2] of this article, file objections in writing (forms for which will be furnished by the department on request) to such proposed drilling or conversion.

In any case wherein a well proposed to be drilled or converted for the purposes provided for in section two-b [§22-4-2b] of this article shall, in the opinion of the chief of the division of water resources of the department of natural resources, affect detrimentally the reasonable standards of purity and quality of the waters of the State, such chief shall, within thirty days from the receipt of the plats and notices required by section two-b, file with the department his objections in writing to such proposed drilling or conversion, setting out therein as definitely as is reasonably possible the ground or grounds upon which such objections are based and indicating the conditions, consistent

with the provisions of this article and the rules or regulations promulgated thereunder, as may be necessary for the protection of the reasonable standards of the purity and quality of such waters under which such proposed drilling or conversion may be completed to overcome such objections, if any.

If any objection or objections are so filed, or are made by the department, the department shall notify the well operator of the character of the objections and by whom made and fix a time and place, not less than thirty days from the end of said thirty-day period, at which such objections will be considered, of which time and place the well operator and all objecting coal operators, the owners or lessees, if any, or such chief, shall be given at least ten days written notice by the department, by registered or certified mail, and summoned to appear. At the time and place so fixed the well operator and the objecting coal operators, owners or lessees, if any, or such of them as are present or represented, or such chief, shall proceed to consider the objections. In the case of proposed drilling or converting of a well for the purposes provided for in section two-b [§22-4-2b], such parties present or represented may agree upon either the location as made or so moved as to satisfy all objections and meet the approval of the department, and any change in the original location so agreed upon and approved by the department shall be indicated on said plat on file with the department, and the distance and direction of the new location from the original location shall be shown, and, as so altered, the plat shall be filed and become a permanent record. In the case of proposed conversion, such parties present or represented may agree upon conditions under which the conversion is to take place for the protection of life and property or for protection of reasonable standards of purity and quality of the waters of the State. At which time the plat and notice required by section two-b shall be filed and become a permanent record. Whereupon the department shall forthwith issue to the well operator a permit to drill or convert, as the case may be, reciting the filing of the plat and notice required by said section two-b [§22-4-2b] that at a hearing duly held a location as shown on the plat or the conditions under which the conversion is to take place for the protection of life and property and reasonable standards of purity and quality of the waters of the State were agreed upon and approved, and that the well operator is authorized to drill at such location or to convert at the site shown on such plat, as the case may be.

(a) In the case, the well operator and the objecting coal operators, owners or lessees, if any, and such chief, or such as are present or represented at such hearing are unable to agree upon a drilling location, or upon a drilling location that meets the approval of the department of mines, then the department shall proceed to hear the evidence and testimony in accordance with sections one and two [§29A-5-1 and 29A-5-2], article five, chapter twenty-nine-A of this Code, except where such provisions are inconsistent with this article. The department shall take into consideration upon its decision:

(1) Whether the drilling location is above or in close proximity to any mine opening or shaft, entry, traveling, air haulage, drainage or passageway, or to any proposed extension thereof, in any operated or abandoned or operating coal mine, or coal mine already surveyed and platted, but not yet being operated;

(2) Whether the proposed drilling can reasonably be done through an existing or planned pillar of coal, or in close proximity to an existing well or such pillar of coal, taking into consideration the surface topography;

(3) Whether a well can be drilled safely, taking into consideration the dangers from creeps, squeezes or other disturbances, due to the extraction of coal;

(4) The extent to which the proposed drilling location unreasonably interferes with the safe recovery of coal, oil and gas.

At the close of the hearing or within ten days thereafter the department shall issue an order stating:

(1) That it refuses to issue a permit;

(2) That it will issue a permit for the proposed drilling location;

(3) That it will issue a permit for a drilling location different than that requested by the well operator.

The order shall state with particularity the reasons for the department's order and shall be mailed by registered or certified mail to the parties present or represented at such hearing. If the department has ruled that it will issue a permit, it shall issue a permit effective ten days after it has mailed such order: Except that for good cause shown, the department may stay the issuance of a permit for a period not to exceed thirty days.

If a permit is issued, the department shall indicate the new drilling location on the plat on file with the department and shall number and keep an index of and docket each plat and notice mailed to it as provided in section two [§22-4-2] of this article, and each notice mailed to it as provided in section two-a [§22-4-2a] of this article, entering in such docket the name of the well operator, and the names and addresses of all persons notified, the dates of hearings and all actions taken by the department, permits issued or refused, the papers filed and a transcript of the hearing. This shall constitute a record of the proceedings before the department and shall be open to inspection by the public.

(b) In the case, the well operator and the objecting coal operators, owners or lessees, if any, and such chief, or such as are present or represented at such hearing, are unable to agree upon the conditions under which the well is to be converted as to protect life and property, and the reasonable standards of purity and equality of the waters of the State, or upon conditions of converting that meet with the approval of the department, then the department shall proceed to hear the evidence and testimony in accordance with sections one and two [§29A-5-1 and 29A-5-2], article five, chapter twenty-nine-A of this Code, except where such provisions are inconsistent with this article.

The department shall take into consideration upon its decision:

(1) Whether the well can be converted safely, taking into consideration the dangers from creeps, squeezes or other disturbances;

(2) Whether the well can be converted, taking into consideration the reasonable standards of the purity and quality of the waters of the State.

At the close of the hearing, or within ten days thereafter, the department shall issue an order stating the conditions under which the conversion is to take place, providing the well can be converted safely, taking into consideration the dangers from creeps, squeezes or other disturbances and the reasonable standards of purity and quality of the waters of this State. If such converting cannot be done safely, or if the reasonable standards of purity and quality of such waters will be endangered, the department shall issue an order stating with particularity the reasons for refusing to issue a permit.

The order shall state with particularity the reasons for the department's order and shall be mailed by registered or certified mail to the parties present or represented at such hearing. If the department has ruled that it will issue a permit, it shall issue a permit effective ten days after it has mailed such order: Except for good cause shown, the department may stay the issuance of a permit for a period not to exceed thirty days.

If a permit is issued, the department shall indicate the well to be converted on the plat on file with the department and shall number and keep an index of and docket each plat and notice mailed to it as provided in section two-b [§22-4-2b], of this article, entering in such docket the name of the well operator, and the names and addresses of all persons notified, the dates of hearings and all actions taken by the department, permits issued or refused, the papers filed and a transcript of the hearings. This shall constitute a record of the proceedings before the department and shall be open to the inspection by the public. (1969, c. 76; 1977, c. 123.)

**§22-4-3b. Objections to proposed drilling of shallow gas wells; notice to chairman of review board; indication of changes on plats; issuance of permits. —** When a proposed shallow well drilling site is above a seam or seams of coal, then the owner of any such coal seam may, within fifteen days from the receipt by the department of the

plat and notice required by section two of this article, file objections in writing (forms for which will be furnished by the department on request) to such proposed drilling with the department, setting out therein as definitely as is reasonably possible the ground or grounds on which such objections are based.

If any such objection is filed, or if any objection is made by the department, the deputy director shall forthwith mail, by registered or certified mail, to the chairman of the review board, a notice that an objection to the proposed drilling or deepening of a shallow well has been filed with the department, and shall enclose in such notice a copy of all objections filed with or made by the department and a copy of the application and plat filed with the department in accordance with the provisions of section two of this article.

Thereafter, no further action shall be taken on such application by the department until the department receives an order from the review board directing the department to:

- (1) Refuse a drilling permit; or
- (2) Issue a drilling permit for the proposed drilling location; or
- (3) Issue a drilling permit for an alternate drilling location different than that requested by the well operator; or
- (4) Issue a drilling permit either for the proposed drilling location or for an alternate drilling location different than that requested by the well operator, but not allow the drilling of the well for a period of not more than one year from the date of issuance of such permit.

Upon receipt of such order, the department shall promptly undertake the action directed by the review board, except that the department shall not issue a drilling permit unless all other provisions of this article (except section three) pertaining to the application for and approval of a drilling permit have been complied with. All permits issued by the department pursuant to this section shall be effective ten days after issuance unless the review board orders the department to stay the effectiveness of a permit for a period not to exceed thirty days from the date of issuance.

If a permit is issued, the department shall indicate the approved drilling location on the plat filed with the department in accordance with the provisions of section two of this article and shall number and keep an index of and docket each plat and notice mailed to it as provided in section two of this article, and each notice mailed to it as provided in section two-a of this article, entering in such docket the name of the well operator, and the names and addresses of all persons notified, the dates of conferences, hearings and all other actions taken by the department and the review board. The department shall also prepare a record of the proceedings, which record shall include all applications, plats and other documents filed with the department, all notices given and proof of service thereof, all orders issued, all permits issued and a transcript of the hearing. The record prepared by the department shall be open to inspection by the public.

**§22-4-3c. Applicability.** — The provisions of this act affecting applications for permits to drill shallow gas wells shall only apply to such applications filed after 12:01 a.m., August first, one thousand nine hundred seventy eight, and the provisions of this article affecting such applications which were in effect immediately prior to the effective date of this act shall apply to all such applications filed prior to 12:01 a.m., August first, one thousand nine hundred seventy eight, with like effect as if this act had not been enacted.

**§22-4-4. Appeal from order of issuance or refusal of permit to drill or fracture; procedure.** — Any party to proceedings under section three or section three-b of this article or section seven, article four-b of this chapter, adversely affected by the issuance of a drilling permit, or to the issuance of a fracturing permit or the refusal of the department to grant a drilling permit or fracturing permit, is entitled to judicial review thereof. All of the pertinent provisions of section four, article five, chapter twenty-nine-a of this code shall apply to and govern such judicial review with like effect as if the provisions of said section four were set forth in extenso in this section.

The judgment of the circuit court shall be final unless reversed, vacated or modified on appeal to the supreme court of appeals in accordance with the provisions of section one, article six, chapter twenty-nine-a of this code.

**§22-4-4a.** Appeal from order of issuance or refusal of permit for drilling location for introduction of liquids or waste or from conditions of converting procedure. — Any party to the proceedings under section three-a [§22-4-3a] of this article adversely affected by the order of issuance of a drilling permit or to the issuance of a fracturing permit or the refusal of the department to grant a drilling permit or fracturing permit is entitled to judicial review thereof. All of the pertinent provisions of section four [§29A-5-4], article five, chapter twenty-nine-A of this Code shall apply to and govern such judicial review with like effect as if the provisions of section four were set forth in extenso in this section.

The judgment of the circuit court shall be final unless reversed, vacated or modified on appeal to the supreme court of appeals in accordance with the provisions of section one [§29A-6-1], article six, chapter twenty-nine-A of this Code. (1969, c. 76; 1977, c. 123.)

**§22-4-5.** Protective devices—When well penetrates workable coal bed. — When a well penetrates one or more workable coal beds, the well operator shall run and cement a string of casing in the hole through the workable coal bed or beds in such a manner as will exclude all oil, gas or gas pressure from the coal bed or beds, except such oil, gas or gas pressure as may be found in such coal bed or beds. Such string of casing shall be run to a point at least thirty feet below the lowest workable coal bed which the well penetrates and shall be circulated and cemented from such point to the surface in such a manner as provided for in reasonable rules and regulations promulgated by the director of the department in accordance with the provisions of chapter twenty-nine-a. After any such string of casing has been so run and cemented to the surface, drilling may proceed to the permitted depth.

**§22-4-6.** Same — When gas is found beneath or between workable coal beds. — In the event that gas is found beneath a workable coal bed before the hole has been reduced from the size it had at the coal bed, a packer shall be placed below the coal bed, and above the gas horizon, and the gas by this means diverted to the inside of the adjacent string of casing through perforations made in such casing, and through it passed to the surface without contact with the coal bed. Should gas be found between two workable beds of coal, in a hole, of the same diameter from bed to bed, two packers shall be placed, with perforations in the casing between them, permitting the gas to pass to the surface inside the adjacent casing. In either of the cases here specified, the strings of casing shall extend from their seats to the top of the well. (1929, c. 86, § 6.)

**§22-4-7.** Same — Continuance during life of well; dry or abandoned wells. — In the event that a well becomes productive of natural gas or petroleum, or is drilled for or converted for the introduction of pressure, whether liquid or gas, or for the introduction of liquid for the purposes provided for in section ten-a [§22-4-10a] of this article or for the disposal of sewage, industrial waste or other wastes or the effluent therefrom, all coal-protecting strings of casing and all water-protecting strings of casing shall remain in place until the well is plugged or abandoned. During the life of the well the annular spaces between the various strings of casing adjacent to workable beds of coal shall be kept open, and the top ends of all such strings shall be provided with casing heads, or such other suitable devices as will permit the free passage of gas and prevent filling of such annular spaces with dirt or debris.

Any well which is completed as a dry hole or which is not in use for a period of twelve consecutive months shall be presumed to have been abandoned and shall promptly be plugged by the operator in accordance with the provisions of this article, unless the operator furnishes satisfactory proof to the deputy director that there is a bona fide future use for such well. (1929, c. 86, § 7; 1969, c. 76.)

**§22-4-8.** Same — When well is drilled through horizon of coal bed from which coal has been removed. — When a well is drilled through the horizon of a coal bed from which the coal has been removed, the hole shall be drilled at least thirty feet below the coal bed, of a size sufficient to permit the placing of a liner which shall start not less than twenty feet beneath the horizon of the coal bed and extend not less than twenty feet above it. Within this liner, which may be welded to the casing to be used, shall be centrally placed the largest sized casing to be used in the well, and the space between the

liner and casing shall be filled with cement as they are lowered into the hole. Cement shall be placed in the bottom of the hole to a depth of twenty feet to form a sealed seat for both liner and casing. Following the setting of the liner, drilling shall proceed in the manner provided above. Should it be found necessary to drill through the horizon of two or more workable coal beds from which the coal has been removed, such liner shall be started not less than twenty feet below the lowest such horizon penetrated and shall extend to a point not less than twenty feet above the highest such horizon. (1929, c. 86, § 8.)

**§22-4-8a. Same — Installation of fresh water casings.** — When a permit has been issued for the drilling of an oil or gas well or both, each well operator shall run and permanently cement a string of casing in the hole through the fresh water bearing strata in such a manner and to the extent provided for in rules and regulations promulgated by the director of the department of mines in accordance with the provisions of chapter twenty-nine-A (§29A-1-1 et seq.).

No oil or gas well shall be drilled nearer than two hundred feet from an existing water well or dwelling without first obtaining the written consent of the owner of such water well or dwelling. (1969, c. 76; 1973, c. 79.)

**§22-4-8b. Well log to be filed; contents; authority to promulgate regulations.** — Within a reasonable time after the completion of the drilling of a well, the well operator shall file with the deputy director an accurate log. Such log shall contain the character, depth and thickness of geological formations encountered, including fresh water, coal seams, mineral beds, brine, and oil and gas bearing formations and such other information as the deputy director may require to effectuate the purposes of this article.

The deputy director may promulgate such reasonable rules and regulations in accordance with article three (§29A-3-1 et seq.), chapter twenty-nine-A of this Code, as it may deem necessary to insure that the character, depth and thickness of geological formations encountered are accurately logged: Provided, that the deputy director shall not require logging by the use of an electrical logging device. (1977, c. 123.)

**§22-4-9. Plugging, abandonment and reclamation of well; notice of intention; performance bonds or securities in lieu thereof; affidavit showing time and manner.** — All dry or abandoned wells or wells presumed to be abandoned under the provisions of section seven of this article shall be plugged and reclaimed in accordance with this section and the other provisions of this article and in accordance with the rules and regulations promulgated by the deputy director.

Prior to the commencement of plugging operations and the abandonment of any well, the well operator shall either (a) notify, by registered or certified mail, the department of mines and the coal operator operating coal seams, the coal seam owner of record or lessee of record, if any, to whom notices are required to be given by section two of this article, and the coal operators to whom notices are required to be given by section two-a of this article, of its intention to plug and abandon any such well (using such form of notice as the department may provide), giving the number of the well and its location and fixing the time at which the work of plugging and filling will be commenced, which time shall be not less than five days after the day on which such notice so mailed is received or in due course should be received by the department of mines, in order that a representative or representatives of the department and such coal operator, owner or lessee, if any, may be present at the plugging and filling of the well: *Provided*, That whether such representatives appear or do not appear, the well operator may proceed at the time fixed to plug and fill the well in the manner hereinafter described, or (b) first obtain the written approval of the department of mines and such coal operator, owner or lessee, if any, or (c) in the event the well to be plugged and abandoned is one on which drilling or reworking operations have been continuously progressing pursuant to authorization granted by the department, first obtain the verbal permission of the deputy director for oil and gas or his designated representative to plug and abandon such well, except that the well operator shall, within a reasonable period not to exceed five days after the commencement of such plugging operations, give the written notices required by subdivision (a) above.

No well shall be plugged or abandoned unless prior to the commencement of plugging operations and the abandonment of any well the department is furnished a bond of the operator in the sum of two thousand five hundred dollars, payable to the state of West Virginia, with a corporate bonding or surety company authorized to do business in this state as surety thereon, conditioned on full compliance with all laws, rules and regulations relating to the casing, plugging, abandonment and reclamation of wells and for furnishing such reports and information as may be required by the department. When a number of wells are involved, the operator may in lieu of furnishing a separate bond furnish a blanket bond in the sum of fifteen thousand dollars, payable to the state of West Virginia, with a corporate bonding or surety company authorized to do business in this state as surety thereon, and conditioned as aforesaid. In lieu of corporate surety on a separate or blanket bond, as the case may be, the operator may elect to deposit with the deputy director for oil and gas cash or collateral securities as specified in section two of this article. All of the provisions of section two dealing with cash or collateral securities in lieu of corporate surety shall be fully applicable hereto except for the condition of the bond with respect to which the operator must be in full compliance in order to be entitled to the interest and income earned on such securities. The operator shall be entitled to such interest and income under this section so long as the operator is in full compliance with all laws, rules and regulations relating to the casing, plugging, abandonment and reclamation of wells and for furnishing such reports and information as may be required by the department. Any such bond shall remain in force until released by the department and the department shall release the same when it is satisfied the conditions thereof have been fully performed. Notwithstanding the foregoing provisions, any operator who, in accordance with section two of this article, has furnished a separate bond, which has not been released by the department, for the drilling, converting or drilling for the introduction of liquids, for the disposal of sewage, industrial waste or other waste or the effluent therefrom, or introducing pressure, whether liquid or gas, or introducing liquid for the purposes provided for in section ten-a of this article or fracturing of the well it is now proposed be plugged and abandoned, or who, in accordance with the provisions of said section two of this article, has furnished a blanket bond which has not been released by the department shall not be required by this section to furnish any other bond. When the plugging, filling and reclamation of a well have been completed, an affidavit, in triplicate, shall be made (on a form to be furnished by the department) by two experienced men who participated in the work, the deputy director for oil and gas or his designated representative, in which affidavit shall be set forth the time and manner in which the well was plugged and filled and the land reclaimed. One copy of this affidavit shall be retained by the well operator, another (or true copies of same) shall be mailed to the coal operator or operators, if any, and the third to the department of mines.

§22-4-10. Methods of plugging well. — Upon the abandonment or cessation of the operation of any well drilled for natural gas or petroleum, or drilled or converted for the introduction of pressure, whether liquid or gas, or for the introduction of liquid for the purposes provided for in section ten-a of this article or for the disposal of sewage, industrial waste or other waste or the effluent therefrom the well operator, at the time of such abandonment or cessation, shall fill and plug the well in the following manner:

(a) Where the well does not penetrate workable coal beds, it shall either be filled with mud, clay or other nonporous material from the bottom of the well to a point twenty feet above the top of its lowest oil, gas or water-bearing stratum; or a permanent bridge shall be anchored thirty feet below its lowest oil, gas or water-bearing stratum, and from such bridge it shall be filled with mud, clay or other nonporous material to a point twenty feet above such stratum; at this point there shall be placed a plug of cement or other suitable material which will completely seal the hole. Between this sealing plug and a point twenty feet above the next higher oil, gas or water-bearing stratum, the hole shall be filled, in the manner just described; and at such point there shall be placed another plug of cement or other suitable material which will completely seal the hole. In like manner the hole shall be filled and plugged, with reference to each of its oil, gas or water-bearing strata. However, whenever such strata are not widely separated and are free from water, they may be grouped and treated as a single sand, gas or petroleum horizon, and the aforesaid filling and plugging be performed as though there were but one horizon. After the plugging of all oil, gas or water-bearing strata, as aforesaid, a final cement plug shall be placed approximately ten feet below the bottom of the largest casing in the well; from this point to the surface the well shall be filled with mud, clay or other nonporous material. In case any of the oil or gas-bearing strata in a well shall have been shot, thereby creating cavities which cannot readily be filled in the manner above described, the well operator shall follow either of the following methods:



(1) Should the stratum which has been shot be the lowest one in the well, there shall be placed, at the nearest suitable point, but not less than twenty feet above the stratum, a plug of cement or other suitable material which will completely seal the hole. In the event, however, that the shooting has been done above one or more oil or gas-bearing strata in the well, plugging in the manner specified shall be done at the nearest suitable point, but not less than twenty feet below and above the stratum shot, or (2), when such cavity shall be in the lowest oil or gas-bearing stratum in the well, a liner shall be placed which shall extend from below the stratum to a suitable point, but not less than twenty feet above the stratum in which shooting has been done. In the event, however, that the shooting has been done above one or more oil or gas-bearing strata in the well, the liner shall be so placed that it will extend not less than twenty feet above, nor less than twenty feet below, the stratum in which shooting has been done. Following the placing of the liner in the manner here specified it shall be compactly filled with cement, mud, clay or other nonporous sealing material;

(b) Where the well penetrates one or more workable coal beds and a coal protection string of casing has been circulated and cemented in to the surface, the well shall be filled and securely plugged in the manner provided in subsection (a) of this section, except that expanding cement shall be used instead of regular hydraulic cement, to a point approximately one hundred feet below the bottom of the coal protection string of casing. A one hundred foot plug of expanding cement shall then be placed in the well so that the top of such plug is located at a point just below the coal protection string of casing. After such plug has been securely placed in the well, the coal protection string of casing shall be emptied of liquid from the surface to a point one hundred feet below the lowest workable coal bed or to the bottom of the coal protection string of casing, whichever is shallower. A vent or other device approved by the department shall then be installed on the top of the coal protection string of casing in such a manner that will prevent liquids and solids from entering the well but will permit ready access to the full internal diameter of the coal protection string of casing when required. The coal protection string of casing and the vent or other device approved by the department shall extend, when finally in place, a distance of no less than thirty inches above ground level and shall be permanently marked with the well number assigned by the department.

(c) Where the well penetrates one or more workable coal beds and a coal protection string of casing has not been circulated and cemented in to the surface, the well shall be filled and securely plugged in the manner provided in subsection (a) of this section to a point fifty feet below the lowest workable coal bed. Thereafter, a plug of cement shall be placed in the well at a point not less than forty feet below the lowest workable coal bed. After the cement plug has been securely placed in the well, the well shall be filled with cement to a point twenty feet above the lowest workable coal bed. From this point the well shall be filled with mud, clay or other nonporous material to a point forty feet beneath the next overlying workable coal bed, if such there be, and the well shall then be filled with cement from this point to a point twenty feet above such workable coal bed, and similarly, in case there are more overlying workable coal beds. After the filling and plugging of the well to a point above the highest workable coal bed, filling and plugging of the well shall continue in the manner provided in subsection (a) of this section to a point fifty feet below the surface, and a plug of cement shall be installed from the point fifty feet below the surface to the surface with a monument installed therein extending thirty inches above ground level.

(d) (1) Where the well penetrates one or more workable coal beds and a coal protection string of casing has not been circulated and cemented in to the surface, a coal operator or coal seam owner may request that the well be plugged in the manner provided in subdivision (3) of this subsection rather than by the method provided in subsection (c) of this section. Such request (forms for which shall be provided by the department) must be filed in writing with the department prior to the scheduled plugging of the well, and must include the number of the well to be plugged and the name and address of the well operator. At the time such request is filed with the department, a copy of such request must also be mailed by registered or certified mail to the well operator named in the request.

(2) Upon receipt of such request, the department shall issue an order staying the plugging of the well and shall promptly determine the cost of plugging the well in the manner provided in subdivision (3) of this subsection and the cost of plugging the well in the manner provided in subsection (c) of this section. In making such determination, the department shall take into consideration any agreement previously made between

the well operator and the coal operator or coal seam owner making the request. If the department determines that the cost of plugging the well in the manner provided in subsection (c) of this section exceeds the cost of plugging the well in the manner provided in subdivision (3) of this subsection, the department shall grant the request of the coal operator or owner and shall issue an order requiring the well operator to plug the well in the manner provided in subdivision (3) of this subsection. If the department determines that the cost of plugging the well in the manner provided in subsection (c) of this section is less than the cost of plugging the well in the manner provided in subdivision (3) of this subsection, the department shall request payment into escrow of the difference between the determined costs by the coal operator or coal seam owner making the request. Upon receipt of satisfactory notice of such payment, or upon receipt of notice that the well operator has waived such payment, the department shall grant the request of the coal operator or coal seam owner and shall issue an order requiring the well operator to plug the well in the manner provided in subdivision (3) of this subsection. If satisfactory notice of payment into escrow, or notice that the well operator has waived such payment, is not received by the department within fifteen days after the request for payment into escrow, the department shall issue an order permitting the plugging of the well in the manner provided in subsection (c) of this section. Copies of all orders issued by the department shall be sent by registered or certified mail to the coal operator or coal seam owner making the request and to the well operator. When the escrow agent has received certification from the department of the satisfactory completion of the plugging work and the reimbursable extra cost thereof (that is, the difference between the department's determination of plugging cost in the manner provided in subsection (c) of this section and the well operator's actual plugging cost in the manner provided in subdivision (3) of this subsection), he shall pay the reimbursable sum to the well operator or his nominee from the payment into escrow to the extent available. The amount by which the payment into escrow exceeds the reimbursable sum plus the escrow agent's fee, if any, shall be repaid to the coal owner. If the amount paid to the well operator or his nominee is less than the actual reimbursable sum, the escrow agent shall inform the coal owner, who shall pay the deficiency to the well operator or his nominee within thirty days. If the coal operator breaches this duty to pay the deficiency, the well operator shall have a right of action and be entitled to recover damages as if for wrongful conversion of personality, and his reasonable attorney fees.

(3) Where a request of a coal operator or coal seam owner filed pursuant to subdivision (1) of this subsection has been granted by the department, the well shall be plugged in the manner provided in subsection (a) of this section, except that expanding cement shall be used instead of regular hydraulic cement, to a point approximately two hundred feet below the lowest workable coal bed. A one hundred foot plug of expanding cement shall then be placed in the well beginning at the point approximately two hundred feet below the lowest workable coal bed and extending to a point approximately one hundred feet below the lowest workable coal bed. A string of casing with an outside diameter no less than four and one half inches shall then be run into the well to a point approximately one hundred feet below the lowest workable coal bed and such string of casing shall be circulated and cemented in to the surface. The casing shall then be emptied of liquid from a point approximately one hundred feet below the lowest workable coal bed to the surface, and a vent or other device approved by the department shall be installed on the top of the string of casing in such a manner that it will prevent liquids and solids from entering the well but will permit ready access to the full internal diameter of the coal protection string of casing when required. The string of casing and the vent or other device approved by the department shall extend, when finally in place, a distance of no less than thirty inches above ground level and shall be permanently marked with the well number assigned by the department. Notwithstanding the foregoing provisions of this subdivision, if under particular circumstances a different method of plugging is required to obtain the approval of another governmental agency for the safe mining through of said well, the department may approve such different method of plugging if it finds the same to be as safe for mining through and otherwise adequate to prevent gas or other fluid migration from the oil and gas reservoirs as the method above specified.

(e) Any person may apply to the department for an order to clean out and replug a previously plugged well in a manner which will permit the safe mining through of such well. Such application shall be filed with the department and shall contain the well number, a general description of the well location, the name and address of the owner of the surface land upon which the well is located, a copy of or record reference to a deed, lease or other document which entitles the applicant to enter upon the surface

land, a description of the method by which the well was previously plugged, and a description of the method by which such applicant proposes to clean out and replug the well. At the time an application is filed with the department, a copy shall be mailed by registered or certified mail to the owner or owners of the land, and the oil and gas lessee of record, if any, of the site land upon which the well is located. If no objection to the replugging of the well is filed by any such landowner or oil and gas lessee within thirty days after the filing of the application, and if the department determines that the method proposed for replugging the well will permit the safe mining through of such well, the department shall grant the application by an order authorizing the replugging of the well. Such order shall specify the method by which the well shall be replugged, and copies thereof shall be mailed by certified or registered mail to the applicant and to the owner or owners of the land, and the oil and gas lessee, if any, of the site upon which such well is located. If any such landowner or oil and gas lessee objects to the replugging of the well, the department shall notify the applicant of such objection. Thereafter, the department shall schedule a hearing to consider the objection, which hearing shall be held after notice by registered or certified mail to the objectors and the applicant. After consideration of the evidence presented at the hearing, the department shall issue an order authorizing the replugging of the well if it determines that replugging of the well will permit the safe mining through of such well. Such order shall specify the manner in which the well shall be replugged and copies thereof shall be sent by registered or certified mail to the applicant and objectors. The department shall issue an order rejecting the application if it determines that the proposed method for replugging the well will not permit the safe mining through of such well.

(f) All persons adversely affected by a determination or order of the department issued pursuant to the provisions of this section shall be entitled to judicial review thereof in accordance with the provisions of articles five and six, chapter twenty-nine-a of this code.

**§22-4-10a. Introducing liquid pressure into producing strata to recover oil contained therein.** — The owner or operator of any well or wells which produce oil or gas may allow such well or wells to remain open for the purpose of introducing water or other liquid pressure into and upon the producing strata for the purpose of recovering the oil contained therein, and may drill additional wells for like purposes, provided that the introduction of such water or other liquid pressure shall be controlled as to volume and pressure and shall be through casing or tubing which shall be so anchored and packed that no water-bearing strata or other oil, or gasbearing sand or producing stratum, above or below the producing strata into and upon which such pressure is introduced, shall be affected thereby, fulfilling requirements as set forth under section two-b [§22-4-2b]. (1953, c. 123; 1969, c. 76; 1973, c. 79.)

**§22-4-11. When coal operator to file maps and plans as prerequisite to extension of coal operations; petition for leave to conduct underground operations within two hundred feet of well or to mine through a well; proceeding thereon.** — (a) Before a coal operator conducts underground mining operations within five hundred feet of any well, including the driving of an entry or passageway, or the removal of coal or other material, the coal operator shall file with the department of mines and forward to the well operator by certified mail, return receipt requested, its mining maps and plans (which it is required to prepare, file and update to and with the regulatory authority) for the area within five hundred feet of the well, together with a notice, on a form furnished by the department of mines, informing them that the mining maps and plans are being filed or mailed pursuant to the requirements of this section.

Once these mining maps and plans are filed with the department of mines, the coal operator may proceed with its underground mining operations in the manner and as projected on such plans or maps, but shall not remove, without the consent of the department of mines, any coal or other material or cut any passageway nearer than two hundred feet of any completed well or well that is being drilled. The coal operator shall, at least every six months while mining within the five hundred foot area, update its mining maps and plans and file the same with the department of mines and the well operator.

(b) Application may be made at any time to the department of mines by a coal operator for leave to conduct underground mining operations within two hundred feet of any well or to mine through any well, by petition, duly verified showing the location of the well, the workings adjacent to the well and the mining operations contemplated within two hundred feet of the well or through such well, and praying the approval of the same by the department of mines and naming the well operator as a respondent. The coal operator shall file such petition with the department of mines and mail a true copy to the well operator by certified mail, return receipt requested.

The petition shall notify the well operator that it may answer the petition within five days after receipt, and that in default of an answer the department of mines may approve the proposed operations as requested if it be shown by the petitioner or otherwise to the satisfaction of the department of mines that such operations are in accordance with the law and with the provisions of this article. If the well operator files an answer which requests a hearing, one shall be held within ten days of such answer, and the department of mines shall fix a time and date and give both the coal operator and well operator five days' written notice of same by certified mail, return receipt requested. At the hearing, the well operator and coal operator, as well as the department of mines, shall be permitted to offer any competent and relevant evidence. Upon conclusion of the hearing, the department of mines shall grant the request of the coal operator or refuse to grant the same, or make such other decision with respect to such proposed underground operation as in its judgment is just and reasonable under all circumstances and in accordance with law and the provisions of this article: *Provided*, That a grant by the department of mines of a request to mine through a well shall require an acceptable test to be conducted by the coal operator establishing that such mining through can be done safely.

If a hearing is not requested by the well operator or if the well operator gives, in writing, its consent to the coal operator to mine within closer than two hundred feet of the specified well, the department of mines shall grant the request of the coal operator within five days after the petition's original five day answer period if the department of mines determines that such operations are just, reasonable and in accordance with law and the provisions of this article.

The department of mines shall docket and keep a record of all such proceedings substantially as required in the last paragraph of section three of this article, and from any such final decision or order of the department of mines, either the well operator or coal operator or both, may, within ten days, appeal to the circuit court of the county in which the well subject to said petition is located. The procedure in the circuit court shall be substantially as provided in section four, chapter twenty-two of this code, with the department of mines being named as a respondent. From any final order or decree of the circuit court, an appeal may be taken to the supreme court of appeals as heretofore provided.

A copy of the document or documents evidencing the action of the department of mines with respect to such petition shall promptly be filed with the administrator.

(c) Before a coal operator conducts surface or strip mining operations as defined in article six, chapter twenty of this code, within two hundred feet of any well, including the removal of coal and other material, the operator shall file with the department of mines and furnish to the well operator by certified mail, return receipt requested, its mining maps and plans (which it is required to prepare, file and update to and with the regulatory authority) for the area within two hundred feet of the well, together with a notice, on a form furnished by the department of mines, informing them that the mining maps and plans are being filed or mailed pursuant to the requirements of this section, and representing that the planned operations will not unreasonably interfere with access to or operation of the well and will not damage the well. In addition, the coal operator shall furnish the well operator with evidence that it has in force public liability insurance, with at least the minimum insurance coverage required by article six, chapter twenty of this code, and the rules and regulations promulgated thereto and thereunder.

Once these mining maps and plans are filed with the department of mines, the coal operator may proceed with its surface or strip mining operations in the manner and as projected on such plans or maps, so long as such surface mining operations do not unreasonably interfere with access to, or operation of, the well or do not damage the well.

(d) The filing of petitions and notices with the department of mines as herein provided may be complied with by mailing such petition or notice to the department of mines by certified mail, return receipt requested.

§22-4-11a. Employment of oil and gas conservation commissioner as acting administrator; additional salary for administrator; employment of administrative assistant; source of salary of administrative assistant. — The director of the department of mines, with permission of the oil and gas conservation commission, may employ the oil and gas conservation commissioner as acting administrator of the office of oil and gas, providing the commissioner otherwise meets the qualifications for administrator of the office of oil and gas, and pay him an additional amount not to exceed the minimum salary provided for the administrator of the office of oil and gas; and additionally, the director may employ an administrative assistant to the oil and gas conservation commissioner, to be approved by the oil and gas conservation commissioner for purposes of acting as the assistant to the oil and gas conservation commissioner in carrying out his duties as acting administrator of the office of oil and gas, the salary of the administrative assistant to be paid from monies collected by the oil and gas conservation commission for the special oil and gas conservation tax imposed pursuant to section thirteen, article four-a of this chapter. In no event shall the term of appointment of the oil and gas conservation commissioner as acting administrator or the administrative assistant to the oil and gas conservation commissioner extend beyond June 30, 1982.

§22-4-12. Supervision by department of mines over drilling, mining and reclamation operations; complaints; hearings; appeals. — The department shall exercise supervision over the drilling, casing, plugging, filling and reclamation of all wells and of all mining operations in close proximity to any well and shall have such access to the plans, maps and other records and to the properties of the well operators and coal operators as may be necessary or proper for this purpose, and, either as the result of its own investigations or pursuant to charges made by any well operator or coal operator, the department may itself enter, or shall permit any aggrieved person to file before it, a formal complaint charging any well operator with not drilling or casing, or not plugging or filling, or reclaiming any well in accordance with the provisions of this article, or charging any coal operator with conducting mining operations in proximity to any well contrary to the provisions of this article, or to the order of the department. True copies of any such complaints shall be served upon or mailed by registered mail to any person so charged, with notice of time and place of hearing, of which the operator or operators so charged shall be given at least five days' notice. At the time and place fixed for hearing, full opportunity shall be given any person so charged or complaining to be heard and to offer such evidence as desired, and after a full hearing, at which the department may offer in evidence the results of such investigations as it may have made, the department shall make its findings of fact and enter such order as in its judgment is just and right and necessary to secure the proper administration of this article, and if it deems necessary, restraining the well operator from continuing to drill or case any well or from further plugging, filling or reclaiming the same, except under such conditions as the department may impose in order to insure a strict compliance with the provisions of this article relating to such matters, or restraining further mining operations in proximity to any well, except under such conditions as the department may impose.

Any well operator or coal operator adversely affected by a final decision or order of the department, may appeal in the manner set forth in section four (§22-4-4) of this article, (1929, c. 86, § 12; 1976, c. 71; 1977, c. 123.)

§22-4-12a. Special reclamation fund; fees.—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 deputy director for oil and gas a special reclamation fee of one hundred dollars for each well to be drilled. Such special reclamation fee shall be paid at the time the application for a drilling permit is filed with the deputy director and the payment of such reclamation fee shall be a condition precedent to the issuance of said permit.

There is hereby created within the treasury of the State of West Virginia a special fund to be known as the oil and gas reclamation fund, and the deputy director 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 director of the department of mines. The deputy director for oil and gas 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 director of the department of mines, 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 and regulations promulgated thereunder. Such funds may also be utilized for the purchase of 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 director may avail himself of any federal funds provided on a matching basis that may be made available for the purpose of reclaiming or plugging any wells

The director shall make an annual report to the governor and to the legislature setting forth the number of wells reclaimed 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 director on a competitive bid basis as provided for under the provisions of article three (§5A-3-1 et seq.), chapter five-A of this Code and the rules and regulations promulgated thereunder. (1969, c. 76; 1976, c. 71.)

**§22-4-12b. Reclamation requirements.** — The operator of a well shall reclaim the land surface within the area disturbed in siting, drilling, completing or producing the well in accordance with the following requirements:

(a) Within six months after the completion of a producing well, the operator shall fill all the pits for containing muds, cuttings, salt water and oil that are not needed for production purposes, or are not required or allowed by state or federal law or rule or regulation, and remove all concrete bases, drilling supplies and drilling equipment. Within such period, the operator shall grade or terrace and plant, seed or sod the area disturbed that is not required in production of the well where necessary to bind the soil and prevent substantial erosion and sedimentation. No pit may be used for the ultimate disposal of salt water. Salt water and oil shall be periodically drained or removed, and properly disposed of, from any pit that is retained so the pit is kept reasonably free of salt water and oil.

(b) Within six months after a well that has produced oil or gas is plugged, or after the plugging of a dry hole, the operator shall remove all production and storage structures, supplies and equipment, and any oil, salt water and debris, and fill any remaining excavations. Within such period, the operator shall grade or terrace and plant, seed or sod the area disturbed where necessary to bind the soil and prevent substantial erosion and sedimentation.

The deputy director may, upon written application by an operator showing reasonable cause, extend the period within which reclamation shall be completed, but not to exceed a further six-month period.

If the deputy director refuses to approve a request for extension, he shall do so by order. (1976, c. 71.)

**§22-4-13. Rules and regulations; hearings before department of mines; appeals.** — (a) The department of mines may promulgate such reasonable rules and regulations as it may deem necessary or desirable to implement and make effective the provisions of this article and the powers and authority conferred and the duties imposed upon it under the provisions of this article and for securing uniformity of procedure in the administration of the provisions of article three (§22-4-21), chapter twenty-nine-A of this Code.

(b) Any hearing or proceeding before the department shall be in accordance with the provisions of article five [§29A-5-1 et seq.], chapter twenty-nine-A of this Code, except where such provisions are inconsistent with this article.

Any well operator, coal operator, owner or lessee, if any, who would be required to be given notice by section two [§22-4-2], adversely affected by an order or final decision of the department may appeal the same in accordance with the provisions of section four [§29A-5-4], article five, chapter twenty-nine-A except where such provisions are inconsistent with this article. (1929, c. 86, §13; 1969, c. 76; 1977, c. 123.)

**§22-4-14. Preventing waste of gas; plan of operation required for wasting gas in process of producing oil; rejection thereof.** — Natural gas shall not be permitted to waste or escape from any well or pipeline, when it is reasonably possible to prevent such waste, after the owner or operator of such gas, or well, or pipeline, has had a reasonable length of time to shut in such gas in the well, or make the necessary repairs to such well or pipeline to prevent such waste: Provided, that (a) if, in the process of drilling a well for oil or gas, or both, gas is found in such well, and the owner or operator thereof desires to continue to search for oil or gas, or both, by drilling deeper in search of lower oil or gas-bearing strata, or (b) if it becomes necessary to make repairs to any well producing gas, commonly known as "cleaning out," and if in either event it is necessary for the gas in such well to escape therefrom during the process of drilling or making repairs, as the case may be, then the owner or operator of such well shall prosecute such drilling or repairs with reasonable diligence, so that the waste of gas from the well shall not continue longer than reasonably necessary, and if, during the progress of such deeper drilling or repairs, any temporary suspension thereof becomes necessary, the owner or operator of such well shall use all reasonable means to shut in the gas and prevent its waste during such temporary suspension: Provided, however, that in all cases where both oil and gas are found and produced from the same oil and gas-bearing stratum, and where it is necessary for the gas therefrom to waste in the process of producing the oil, the owner or operator shall use all reasonable diligence to conserve and save from waste so much of such gas as it is reasonably possible to save, but in no case shall such gas from any well be wasted in the process of producing oil therefrom until the owner or operator of such well shall have filed with the department a plan of operation for said well showing, among other things, the gas-oil production ratio involved in such operation, which plan shall govern the operation of said well unless the department shall, within ten days from the date on which such plan is submitted to the department, make a finding that such plan fails, under all the facts and circumstances, to propose the exercise of all reasonable diligence to conserve and save from waste so much of such gas as it is reasonably possible to save, in which event production of oil at such well by the wasting of gas shall cease and determine until a plan of operation is approved by the department. Successive plans of operation may be filed by the owner or operator of any such well with the department. (1891, c. 106, § 1; 1897, c. 58, § 3; Code 1923, c. 62D, § 3; 1963, c. 95.)

**§22-4-15. Right of adjacent owner or operator to prevent waste of gas; recovery of cost.** — If the owner or operator of any such well shall neglect or refuse to drill, case and equip, or plug and abandon, or shut in and conserve from waste the gas produced therefrom, as required to be done and performed by the preceding sections of this article, for a period of twenty days after a written notice so to do, which notice may be served personally upon the owner or operator, or may be posted in a conspicuous place at or near the well, it shall be lawful for the owner or operator of any adjacent or neighboring lands to enter upon the premises where such well is situated and properly case and equip such well, or, in case the well is to be abandoned, to properly plug and abandon it, or in case the well is wasting gas, to properly shut it in and make such needed repairs to the well to prevent the waste of gas, in the manner required to be done by the preceding sections of this article; and the reasonable cost and expense incurred by an owner or operator in so doing shall be paid by the owner or operator of such well and may be recovered as debts of like amount are by law recoverable. (1891, c. 106, §§ 4, 5; 1897, c. 58, § 4; Code 1923, c. 62D, § 4.)

**§22-4-16. Restraining waste.** — Aside from and in addition to the imposition of any penalties under this article, it shall be the duty of any circuit court in the exercise of its equitable jurisdiction to hear and determine any bill or bills in equity which may be filed to restrain the waste of natural gas in violation of this article, and to grant relief by injunction or by other decrees or orders, in accordance with the principles and practice in equity. The plaintiff in such bill shall have sufficient standing to maintain the same if he shall aver and prove that he is interested in the lands situated within the distance of one mile from such well, either as an owner of such land, or of the oil or gas, or both, thereunder, in fee simple, or as an owner of leases thereof or of rights therein for the production of oil and gas or either of them. (1897, c. 58, § 7; Code 1923, c. 62D, § 7.)

**§22-4-17. Offenses; penalties.** — Any person or persons, firm, partnership, partnership association or corporation violating any provision of this article or rule or regulation promulgated by virtue of this article, for which violation there is no penalty prescribed, or any person or persons, firm, partnership, partnership association or corporation willfully violating any of the provisions of this article which prescribe the manner of drilling and casing or plugging and filling any well, or which prescribe the methods of conserving gas from waste, or which fix the distance from wells within which mining operations shall not be conducted without the approval of the department, or violating the terms of any order of the department allowing mining operations within a lesser distance of any well than that prescribed by the article, shall be guilty of a misdemeanor, and, upon conviction thereof, shall be punished by a fine not exceeding two thousand dollars, or imprisonment in jail for not exceeding twelve months, or both, in the discretion of the court, and prosecutions under this section may be brought in the name of the State of West Virginia in the court exercising criminal jurisdiction in the county in which the violation of such provisions of the article or terms of such order was committed, and at the instance and upon the relation of any citizens of this State. (1891, c. 106, § 3; 1897, c. 58, § 6; Code 1923, c. 62D, § 6; 1929, c. 86, § 14; 1969, c. 76.)

**§22-4-18. Injunctive relief.** — (a) In addition to other remedies, and aside from various penalties provided by law, whenever it appears to the department that any person is violating or threatening to violate any provision of this article, any order or final decision of the department, or any lawful rule or regulation promulgated hereunder, the department may apply in the name of the State to the circuit court of the county in which the violations or any part thereof has occurred, is occurring or is about to occur, or the judge thereof in vacation, for an injunction against such persons and any other persons who have been, are or are about to be, involved in any practices, acts or admissions so in violation, enjoining such person or persons from any violation or violations. Such application may be made and prosecuted to conclusion, whether or not any violation or violations have resulted or shall result, in prosecution or conviction under the provisions of this article.

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

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

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

(e) If the department shall refuse or fail to apply for an injunction to enjoin a violation or threatened violation of any provision of this article, any order or final decision of the department, or any rules or regulations promulgated hereunder, within ten days after receipt of a written request to do so by 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, or the chief of the division of water resources of the department of natural resources, adversely affected by such violation or threatened violation, the person making such request may apply in his own behalf for an injunction to enjoin such violation or threatened violation in any court in which the department might have brought suit. The department shall be made party defendant in such application in addition to the person or persons violating or threatening to violate any provision of this article, any final order or decision of the department, or any rule or regulation promulgated hereunder. The application shall proceed and injunctive relief may be granted in the same manner as if the application had been made by the department. Except that the court may require a bond or other undertaking from the plaintiff (1963, c. 95; 1977, c. 123.)

**§22-4-19. Civil action for contamination or deprivation of fresh water source or supply; presumption.** — In any action for contamination or deprivation of a fresh water source or supply within one thousand feet of the site of drilling for an oil or gas well, there shall be a rebuttable presumption that such drilling, and such oil or gas well, or either, was the proximate cause of the contamination or deprivation of such fresh water source or supply. (1973, c. 79.)

**§22-4-20. Declaration of oil and gas notice by owners and lessees of coal seams.** — For purposes of notification under this article, any owner or lessee of coal seams shall file a declaration of his interest in such coal seams with the clerk of the county commission in the county where such coal seams are located. Said clerk shall file and index such declaration in accordance with section two [§39-1-2], article one, chapter thirty-nine of this Code, and shall index the name of the owner or lessee of such coal seams in the grantor index of the record maintained for the indexing of leases.

The declaration shall entitle such owner or lessee to the notices provided in sections two, two-a, two-b and nine [§22-4-2, 22-4-2a, 22-4-2b and 22-4-9] of this article. Provided, that the declaring owner shall be the record owner of the coal seam, and the declaring lessee shall be the record lessee with his source or sources of title recorded prior to recording such lessee's declaration.

The declaration shall be acknowledged by such owner or lessee, and in the case of a lessee, may be a part of the coal lease under which the lessee claims. Such declaration may be in the following language:

#### **"DECLARATION OF OIL AND GAS NOTICE"**

The undersigned hereby declares:

(1) The undersigned is the ('owner' or 'lessee') of one or more coal seams or workable coal beds as those terms are defined in section one [§22-4-1], article four, chapter twenty-two of the Code of West Virginia.

(2) The coal seam(s) or workable coal bed(s) owned or leased partly or wholly by the undersigned lie(s) under the surface of lands described as follows:

(Here insert a description legally adequate for a deed, whether by metes and bounds or other locational description, or by title references such as a book and page legally sufficient to stand in lieu of a locational description.)

(3) The undersigned desires to be given all notices of oil and gas operations provided by sections two, two-a, two-b and nine [§§22-4-2, 22-4-2a, 22-4-2b and 22-4-9], article four, chapter twenty-two of the Code of West Virginia, addressed as follows:

(Here insert the name and mailing address of the undersigned owner or lessee.)

.....  
(Signature)

(Here insert an acknowledgment legally adequate for a deed)."

The benefits of the foregoing declaration shall be personal to the declaring owner or lessee, and not transferable or assignable in any way. (1977, c. 123.)

**WEST VIRGINIA  
ADMINISTRATIVE REGULATIONS**

Department of Mines

Chapter 22-4

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# WEST VIRGINIA ADMINISTRATIVE REGULATIONS

Department of Mines

## Chapter 22-4

### SERIES V

(1978)

Subject: Oil and Gas Wells

#### 1. General Introduction

1.01. Scope. The Regulations set forth herein shall govern and apply to proceedings under Article 4, Chapter 22 of the Code concerning oil and gas wells.

1.02. Authority. These Regulations are promulgated pursuant to the authority of Code §22-4-13 and Article 3, Chapter 29A of the Code.

1.03. Effective Date. These Regulations were promulgated on the 29th day of September, 1978, and become effective on the 3rd day of December, 1978.

1.04. Filing Date. These Regulations were filed in the office of the Secretary of State on the 2nd day of November, 1978.

1.05. Forms. An index of all current forms and copies of any forms currently used under or required by Article 4, Chapter 22 of the Code or these Regulations may be obtained from the Deputy Director. The Department reserves the right to amend any forms prospectively to accord more fully with the Code or these Regulations.

#### 2. Definitions

2.01. Statutory Definitions. As used in these Regulations, the terms "casing", "cement", "Chairman", "Chief", "coal operator", "coal seam" or "workable coal bed", "deep well", "Department" or "Department of Mines", "Deputy Director", "expanding cement", "facility", "gas", "oil", "owner", "person", "plat", "Review Board", "safe mining through of a well", "shallow well", "stimulate", "well", and "well operator" or "operator" shall have the meanings set forth in Code §22-4-1.

2.02. Definitions Adopted by Regulation. Unless the context in which used clearly requires a different meaning, as used in these Regulations:

(a) The term "Code" shall mean the West Virginia Code of 1931, as amended.

(b) The term "barrel" shall mean 42 U. S. gallons of 231 cubic inches each of liquids, including slurries, at a temperature of 60 degrees Fahrenheit.

(c) The term "cubic foot of gas" shall mean the volume of gas contained in one cubic foot of space at a standard pressure base of 14.73 pounds per square inch and a standard temperature base of 60 degrees Fahrenheit.

(d) The term "day" shall mean a period of 24 consecutive hours.

(e) The term "designated agent" shall mean a resident of the State of West Virginia designated by an operator as the agent or attorney in fact of the operator upon whom process, notices, orders or other communications issued pursuant to Chapter 22 of the Code may be served. See Regulation 7.01.

(f) The term "gas-oil ratio test" shall mean a test, by any means generally accepted in the industry, to determine the number of cubic feet of gas produced per barrel of oil produced.

(g) The term "gas well" shall mean any well which produces or appears capable of producing a ratio of 6,000 cubic feet of gas or more to each barrel of oil on the basis of the initial gas-oil ratio test.

(h) The term "initial gas-oil ratio test" shall mean the gas-oil ratio test performed for the purpose of completing Form IV-36, "Well Operator's Report of Initial Gas-Oil Ratio Test", to designate the type of well.

(i) The term "log" or "well log" shall mean a systematic, detailed geological record of all formations, including coal, fresh water and salt water encountered in the drilling of a well.

(j) The term "oil well" shall mean any well which produces or appears capable of producing a ratio of less than 6,000 cubic feet of gas to each barrel of oil on the basis of the initial gas-oil ratio test.

(k) The term "underground storage well" shall mean a gas well subject to the provisions of Article 7, Chapter 22 of the Code.

### **3. Regulations Related to Code §22-4-1a.**

**3.01. Report Forms.** The report forms to be used by oil and gas inspectors or the supervising inspector upon inspections made under Chapter 22 of the Code are as follows:

Form IV-26, "Inspector's Well Report" for permitted work except plugging and abandonment (obverse) and plugging and abandonment (reverse);

Form IV-27, "Notice of Violation";

Form IV-28, "Imminent Danger Order";

Form IV-29, "Notice Extending Abatement Time";

Form IV-30, "Order for Failure to Abate Violation"; and

Form IV-31, "Notice of Abatement".

### **4. Regulations Related to Code §22-4-1d. [Reserved.]**

### **5. Regulations Related to Code §22-4-1e. [Reserved.]**

### **6. Regulations Related to Code §22-4-1g.**

**6.01. Violations Findings and Orders.** Findings and orders of oil and gas inspectors concerning violations discovered during an inspection shall be recorded on the appropriate form listed in Regulation 3.01. Such findings and orders shall not be construed to limit the Department's power to initiate any other lawful proceedings for violation of Article 4, Chapter 22 of the Code, or these Regulations.



## **7. Regulations Related to Code §22-4-1k.**

**7.01. Registration; Designated Agent; Transfer of Title.** (a) All persons owning or operating or proposing to own or operate any well in West Virginia shall register with the Deputy Director. In all cases an agent or attorney in fact shall be designated on Form IV-1, "Designation of Agent by Well Owner or Operator", by and for each well owner or operator, upon whom process, notices, orders and other communications issued pursuant to Chapter 22 of the Code may also be served; but the designation shall not be effective until it has been accepted by the designee and approved by the Department. Every well owner or operator who has designated such agent or attorney in fact shall, within five days after termination of such designation, notify the Department of such termination and designate a new agent on said Form IV-1. This regulation applies to all well operators, not merely those whom Code §22-4-1k specifically requires to designate an agent: Provided, that a well operator who is a natural person and a resident of the state of West Virginia may list himself instead of an agent for service of all such papers.

(b) (1) When title to a well is transferred from one well owner to another, the Deputy Director shall be notified in writing within five days by the transferor well owner. A copy of such notification shall be delivered to the transferee well owner. Failure to notify the Deputy Director of such transfer shall be a violation of this Regulation by said transferor, punishable under Code §22-7-17; and in addition, all bonds of such transferor under Article 4, chapter 22 of the Code shall be forfeited.

(2) The transferee well owner shall forthwith register with the Department if he is not already registered. In any event, said transferee shall forthwith notify the Department of his designated agent or attorney in fact pursuant to Regulation 7.01 unless a designation has already been made and approved; and the transferor's previously designated agent shall be liable unless or until an agent or attorney in fact has been designated by the transferee well owner and approved by the Department.

(3) The bonds or other approved security of the transferor well owner will not be released by the Department until (i) satisfactory evidence of the transfer or change of ownership is furnished to the Department, (ii) the transferee has furnished acceptable bonds or other approved security to replace those of the transferor, and (iii) the transferee has notified the Department of his designated agent or attorney in fact.

**7.02. Applications for Permit; Issuance, Conditions and Modification.** (a) An application for any oil or gas well or underground gas storage well permit required by Code §22-4-1k, except a permit to plug a well, shall be made on Form IV-2, "Oil and Gas Well Permit Application", and shall be accompanied by (i) a plat in the form prescribed by Regulation 11, (ii) a bond in one of the forms prescribed by Regulation 12, or in lieu thereof the other security allowed by Code §22-4-2, if applicable, (iii) Form IV-9, "Reclamation Plan", applicable to the reclamation required by Code §22-4-12b and Regulation 23, (iv) on the initial application to drill a well, the fee required by Code §22-4-12a, and (v), if applicable, the consent required by Code §22-4-8a. A separate Form IV-2 shall not be required for fracturing or stimulating a well where fracturing or stimulating is to be a part of the work for which a permit is sought and is noted as such on the Form IV-2 filed in connection therewith.

(b) An application for any liquid injection or waste disposal well permit required by Code §22-4-1k, except a permit to plug a well, shall be made on Form IV-3, "Liquid Injection or Waste Disposal Well Permit Application", and shall be accompanied by (i) a plat in the form prescribed by Regulation 11, (ii) a bond in one of the forms prescribed by Regulation 12, or in lieu thereof the other security allowed by Code §22-4-2b, if applicable, (iii) Form IV-9, "Reclamation Plan", applicable to the reclamation required by Code §22-4-12b and Regulation 23, and (iv) on the initial application to drill a well, the fee required by Code §22-4-12a. A separate Form IV-3 shall not be required for fracturing or stimulating a well where fracturing or stimulating is to be a part of the work for which a permit is sought and is noted as such on the Form IV-3 filed in connection therewith.

(c) An application for a permit to plug a well shall be made on Form IV-4, "Notice of Intention to Plug and Abandon a Well", and shall be accompanied by (i) a plat required by Regulation 17.01 in the form prescribed by Regulation 11, (ii) a bond in one of the forms prescribed by Regulation 12, or in lieu thereof the other security required by Code §22-4-9, if applicable, and (iii) Form IV-9, "Reclamation Plan", applicable to the reclamation required by Code §22-4-12b and Regulation 23.

(d) The applicant for any permit mentioned in this Regulation must file an original and four copies of the application and related documents.

(e) The permit and any conditions to or modification of the proposed permitted work shall be issued by endorsement on or attachment to the application (Form IV-2, IV-3 or IV-4, as applicable).

(f) Any permit issued under this Regulation 7 shall expire automatically unless the permitted drilling, converting, fracturing, stimulating or plugging is commenced within 8 months of the date the permit was granted. No permit shall be extended to authorize the commencement of work after the expiration of 8 months.

(g) No permit issued under this Regulation 7 shall be transferrable

**7.03 Identification Markings.** (a) Every well shall have attached or stamped, in a permanent manner, the API identification number which consists of the State (47), County (001 through 109), and permit number. Such numbering shall be no less than one half inch in height and detectable by any interested persons approaching the well. Any additional information the well operator may desire to display may be incorporated into the permanent identification plat or stamp in such a manner that it will not confuse or distort the permanent API identification number.

(b) Except as provided below, upon the completion of the plugging and filling of any abandoned well, a permanent monument or marker consisting of a length of pipe (minimum size, 6") filled with concrete (or the equivalent thereof if approved by the Deputy Director) shall be erected over the well; the marker shall extend no less than 30 inches above the surface and not less than 10 feet into the well, below the surface, and shall be sealed with concrete for the purpose of making the marker permanent. The API well identification number which consists of State (47), County (001 through 109), and permit number shall be attached or stamped in a permanent manner to said monument; and such numbering shall be no less than one half inch in height and detectable by any interested person approaching the marker. The erection of the marker shall in no way interfere with the bleeder pipe from the well where such pipe is required, or the vent or other device installed pursuant to Code §22-4-10. Such marker shall be accurately described on Form IV-38, "Affidavit of Plugging and Filling Well" (see Regulation 17.07) as to time and manner of plugging and filling the well and shall be accepted by the Deputy Director as a satisfactory landmark which may be used as such in the location of adjacent wells. Two permanent reference points with courses and distances from the abandoned well shall be designated and described on the plat required by Regulation 17.01 in the form prescribed by Regulation 11, accompanying Form IV-4, "Notice of Intention to Plug and Abandon a Well", or, if any change in the plat is necessary, accompanying Form IV-38, "Affidavit of Plugging and Filling Well" (see Regulation 17.07).

**7.04. Parties Responsible.** All contractors and drillers, including all service companies carrying on business or doing work in oil and gas fields in West Virginia, as well as lease holders and operators generally, shall take notice of and are hereby directed to observe and apply the provisions of Article 4, Chapter 22 of the Code and these Regulations; and all contractors, drillers, service companies and operators shall be held responsible for violations thereof.

**7.05. Evidence of Performance.** (a) After the completion of the work authorized to be done by any permit required by Code §22-4-1k, the permittee shall comply with the filing requirements of Code §22-4-8b and Regulation 16.

(b) In addition to the requirements of Regulation 7.05(a), after completion of plugging a well, the permittee shall also comply with the affidavit requirements of Code §22-4-9 and Regulation 17.

**8. Regulations Related to Code §§22-4-2, 22-4-2a, and 22-4-2b.**

**8.01. Plat.** (a) The plat required by Code §22-4-2 before "drilling for oil or gas, or before fracturing or stimulating a well", shall contain the information required thereby and otherwise by these Regulations in the form and manner provided in Regulation 11. A separate plat shall not be required for fracturing or stimulating such a well where fracturing or stimulating is to be a part of the work for which a permit is sought and is noted as such on Form IV-2, "Oil and Gas Well Permit Application".

(b) A plat is hereby required to accompany all applications for "fracturing any well" under Code §22-4-2a by means subsequent to and not an incident of previously permitted drilling, redrilling, deepening, pressuring or converting of such well. If the well to be fractured is an oil or gas well, the plat shall contain the same information required for plats by Code §22-4-2 and otherwise by these Regulations, in the form and manner provided in Regulation 11; and if the well is a liquid injection or waste disposal well, the plat shall contain the same information required for plats by Code §22-4-2b and otherwise by these Regulations, in the form and manner provided in Regulation 11.

(c) The plat required by Code §22-4-2b before "drilling a well for the introduction of liquids for the purposes provided for in section ten-a of this article [Code §22-4-10a] or for the introduction of liquids for the disposal of sewage, industrial waste or other waste or the affluent therefor on any tract of land, or before converting an existing well for such purposes", shall contain the information required thereby and otherwise by these Regulations in the form and manner provided in Regulation 11. A separate plat shall not be required for fracturing or stimulating such a well where fracturing or stimulating is to be a part of the work for which a permit is sought and is noted as such on the Form IV-3, "Liquid Injection or Waste Disposal Well Permit Application".

**8.02. Notice to Coal Operators, Owners or Lessees.** A copy of the completed application for any permit required by Code §22-4-1k, including the associated plat and reclamation plan required by Regulation 7, shall be used as the form of the notice which is required by Code §§22-4-2, 22-4-2a and 22-4-2b to be mailed by registered or certified mail to coal operators, owners or lessees.

**9. Operational Regulations on Liquid Injection and Waste Disposal Wells.**

**9.01. Tubing and Packer Arrangements; Variance; Regulation of Pressure.**

(a) Injection of water, other liquids, or wastes shall be accomplished through a tubing and packer arrangement with the packer set immediately above the injection zone, and the annulus between the tubing and casing shall be monitored by pressure sensitive devices or through production casing adequately seated and cemented that will allow monitoring of the annulus between the injection casing and last intermediate casing string or coal-fresh water casing string as the case may be. Upon a proposal made in detail in the Form IV-37, "Pre-Operation Certificate for Liquid Injection or Waste Disposal Well", a variance from any of the foregoing requirements may be granted upon a showing in the application or at the hearing by an individual operator that alternate prudent engineering practices will prevent migration outside the target formation.

(b) The injection pressure will be regulated to minimize the possibility of fracturing the confining strata; and the Form IV-37, "Pre-Operation Certificate for Liquid Injection or Waste Disposal Well", for each such well shall set forth the proposed operation in detail so as to demonstrate that this requirement will be satisfied.

**9.02. Disposal of Connate or Polluted Water.** No discharge of salt water, brackish water or other water unfit for domestic livestock or other general uses shall be made into the waters of the State. When underground disposal of such water is required, such disposal well and related facilities will be permitted only upon application and approval as required by Federal and State laws. Disposal into the same formation from which the water is produced is preferable.

**9.03. Pre-Operation Certificate.** Prior to injection into a permitted liquid injection or waste disposal well, the operator shall furnish the Department with a certification on Form IV-37, "Pre-Operation Certificate for Liquid Injection or Waste Disposal Well", indicating that all requirements of Regulations 9.01 and 9.02 have been met. The certification shall include:

(b) If a coal operator, owner or lessee files or the Department makes objection under Code §22-4-3b, the Department shall notify the applicant well operator as provided by Regulation 10.04.

**10.04. Notice to Review Board of Objection; Copies to Applicant.** If a coal operator, owner or lessee files or the Department makes objection under Code §22-4-3b, the Department shall notify the Chairman of the Review Board by means of Form IV-15, "Notice to Shallow Gas Well Review Board of Objection under Code §22-4-3b to a Proposed Drilling Site", attaching copies of all objections made under Regulations 10.01 and 10.02, and all other information required by Code §22-4-3b. Copies of all such documents shall be sent to the applicant well operator as his notice of objection.

## **11. Form and Contents of Plats.**

**11.01. Statutory Requirements for Plats.** Any plat required to be furnished under Code §§22-4-2 or 22-4-2b (see Regulation 7.02) shall contain all information specified in the statutory section requiring the plat.

**11.02. Additional Requirements for Plats.** Any plat required to be furnished under Code §§22-4-2 or 22-4-2b, or under Regulations 8.01(b) or 17.01, shall be recorded on Form IV-6, "Well Plat", and shall conform to the following standards of accuracy and depiction:

(1) **Accuracy.** An accuracy of one part in 2500 is required for location of wells on land containing workable coal beds which are tributary to operating coal mines. All other plats require a minimum accuracy of one part in 200. The attained accuracy standard shall be stated on every plat.

(2) **Permanent Landmarks.** At least two permanent monuments or landmarks with courses and distances to the subject well shall be shown on the basis of an on-the-ground survey; and, if any such monument or landmark is not a permanently established property corner, it shall be referenced to a property corner by courses and distances on the basis of an on-the-ground survey.

(3) **Physical Location of Well.** Every well shall be drilled within ten feet of the exact location designated on the plat.

(4) **Description.** Landmarks and permanently established property corners used shall be named and described on all plats. They shall include standing corner trees, set stones, iron pipes, T-rails, or other manufactured monuments; and existing wells (operating or abandoned) shall also be considered established landmarks if said wells are platted and on file with the Department. If landmarks used are not property corners, they must be adequately referenced to property corners to permit their future location.

(5) **Method of Showing Property Lines.** The courses and distances of all farm lines adjoining and those connecting the said landmarks or farm corners within the scope of such well location plat, shall be shown thereon. All lines actually surveyed shall be shown on such plat in solid lines. Lines taken from deed descriptions only shall be shown by broken lines.

(6) **Proven Elevation.** The elevation of the surface of the location shall be given and it shall be tied to either a government bench mark or other point of proven elevation. The location of the government bench mark or the point of proven elevation shall be noted and described on the plat.

(7) **North-South Line.** A north and south line shall be given and point to the top of the plat.

(8) **Scale and Size of Plat.** If practicable, all plats shall be drawn to a scale of 1" = 2000' (1:24,000) or even multiples of 1:2000 for easy reduction of the plat photographically to a 1:2000 scale. The plat shall be 8-½ inches by 14 inches in size.

(9) **Topographic Map Location of Well.** The topographic map location of the well for which any permit under Code §22-4-1k is being sought shall be shown on the plat by a "cross" with the measured distance in feet from the nearest 5 minute latitude and longitude intersection using the North East (upper right) border of the plat on the 15 minute (1:62,500) topographic map. If the 7.5 minute (1:24,000) topographic map is used, the topographic location shall be shown on the plat at a "cross" with the measured distance in feet from the nearest 2.5 minute latitude and longitude intersection using the North East (upper right) border of the plat. Each plat shall indicate the topographic map name and series whether 7.5 minute or 15 minute is used to show the well location.

(10) **Wells.** All wells within the scope of the plat, whether active, drilling or abandoned, shall be shown. The scope of every plat shall be sufficient to show all wells within 1,200 feet of the well which is the subject of the application; and in the case of an application for a shallow gas well with a depth of 3,000 feet or more that will penetrate a coal seam, the scope of the plat shall be sufficient to show all wells within 2,400 feet of the well which is the subject of the application. Each well so shown, including the subject well, shall bear a designation that permits the kind (oil, gas, liquid injection under Code §22-4-4a, waste disposal, underground gas storage, or storage observation) and status (active, abandoned, or drilling) of each such well to be determined by the use of (i) API permit number (excluding State and County) for each well having such a permit number, (ii) in parenthesis, and following the API number if such is listed, the kind and status numbers provided below, and (iii) the symbols provided below. The kind and status numbers shall be as follows:

**Oil wells**

- 01- Shallow, active
- 02- Shallow, abandoned
- 03- Shallow, drilling
- 04- Deep, active
- 05- Deep, abandoned
- 06- Deep, drilling

**Deep gas wells**

- 07- Production, active
- 08- Production, abandoned
- 09- Production, drilling
- 10- Underground storage, active
- 11- Underground storage, abandoned
- 12- Underground storage, drilling
- 13- Storage observation, active
- 14- Storage observation, abandoned
- 15- Storage observation, drilling

**Shallow gas wells**

- 16- Less than 3,000 feet, production, active
- 17- Less than 3,000 feet, production, abandoned
- 18- Less than 3,000 feet, production, drilling
- 19- Less than 3,000 feet, underground storage, active
- 20- Less than 3,000 feet, underground storage, abandoned
- 21- Less than 3,000 feet, underground storage, drilling
- 22- Less than 3,000 feet, storage observation, active
- 23- Less than 3,000 feet, storage observation, abandoned
- 24- Less than 3,000 feet, storage observation, drilling
- 25- 3,000 feet or more, production, active
- 26- 3,000 feet or more, production, abandoned
- 27- 3,000 feet or more, production drilling
- 28- 3,000 feet or more, underground storage, active
- 29- 3,000 feet or more, underground storage, abandoned
- 30- 3,000 feet or more, underground storage, drilling
- 31- 3,000 feet or more, storage observation, active
- 32- 3,000 feet or more, storage observation, abandoned
- 33- 3,000 feet or more, storage observation, drilling













Liquid injection wells under Code §22-4-10a

- 34- Active
- 35- Abandoned
- 36- Drilling or being converted

Waste disposal wells

- 37- Active
- 38- Abandoned
- 39- Drilling or being converted

The symbols shall be as follows:

New drilling location	
New fracturing or stimulating location	
Cancelled application or permit	
Oil well	
Gas well	
Dry hole	
Liquid injection well under Code §22-4-10a	
Waste disposal well	
Abandoned well	 —  —  — 

(11) **Other Surface Features.** In addition to the surface features and owner identification data required by statute or by the foregoing specifications in this Regulation 11.02, the plat shall also show the following surface features lying within the scope of the plat: (i) water wells within two hundred feet of the well for which any permit under Code §22-4-1k is being sought except for liquid injection or waste disposal wells, in which case water wells within one thousand feet of the well shall be shown; (ii) dwellings within two hundred feet of the well of which any such permit is being sought; (iii) streams; (iv) roads and highways; and (v) railroads, with the owners' names.

(12) **Names.** The plat shall state the names of the surface owners and the royalty owners of the land at the well location.

11.03. **Plat Certification.** Surveys and plats shall be made under the supervision of a registered professional engineer or licensed land surveyor entitled and licensed by law to practice in the State of West Virginia. The certificate shall be signed and certified by the registered professional engineer or licensed land surveyor in the following manner:

"I, the undersigned, hereby certify that this plat is correct to the best of my knowledge and belief and shows all the information required by law and the regulations issued and prescribed by the Department of Mines."

11.04 **Re-use of Plats.** After the initial permit for drilling a well, a subsequent application for any new permit involving the same well may be accompanied by an accurate copy of the plat accepted by the permit issued for the most recent previous application, updated as necessary to reflect new data or additional data now required by statute or these Regulations: Provided, that a new certification shall be necessary in the form required by Regulation 11.03.

**11.05 Permanent Character of Plats.** Every plat submitted under Regulation 11 shall be of permanent character, that is, on linen or plastic or other material of comparable quality and with india or other ink of a nature to result in a depiction not subject to substantial degradation through time from exposure to ordinary conditions of temperature, humidity and light.

**12. Performance Bonds for Well Operators.**

**12.01. Separate Bonds.** A separate bond furnished by a well operator in compliance with any section of Article 4, Chapter 22 of the Code shall be on Form IV-7, "Bond for Single Oil or Gas Well, Single Liquid Injection Well or Single Waste Disposal Well".

**12.02 Blanket Bonds.** A blanket bond furnished by a well operator in compliance with any section of Article 4, Chapter 22 of the Code shall be on Form IV-8, "Blanket Bond for Oil and Gas Wells, Liquid Injection Wells, and Waste Disposal Wells".

**13. Regulation Related to Code §22-4-3c. [Reserved.]**

**14. Regulations Related to Code §§22-4-4 and 22-4-4a.**

**14.01. Certification of Record on Appeal.** If an appeal is filed pursuant to Code §§22-4-4 or 22-4-4a, the Deputy Director shall be responsible for certifying and forwarding the entire record of the proceeding to the circuit court.

**15. Regulations Related to Code §§22-4-5, 22-4-6, 22-4-7, 22-4-8 and 22-4-8a.**

**15.01. Casing Not Exclusive.** In addition to the casing required by Code §§22-4-5, 22-4-6, 22-4-7, 22-4-8, and 22-4-8a, there shall be used in each well such material and equipment and there shall be employed such additional procedures as are necessary for the purpose of separating high pressure zones from low pressure zones, the producing horizons, the waterbearing strata, and mineable coal zones for the life of the well.

**15.02. Multiple Casing Through Coal Seams.** (a) The coal protection string of casing required by code §§22-4-5 through 22-4-8 to be installed through the workable coal seam or seams shall be in addition to the production string of casing.

(b) The coal protection string of casing required by Code §22-4-5 shall have cement circulated in the annular space outside said casing. The volume of cement needed shall be calculated by using approved engineering methods to assure the return of the cement to the surface. In the event cement does not return to the surface, every reasonable attempt will be made to fill the annular space by introducing cement from the surface.

**15.03. Fresh Water Casing.** The fresh water protective string of casing required by Code §22-4-8a shall extend 30 feet below the deepest fresh water horizon (being the deepest horizon which will replenish itself and from which fresh water or usable water for household, domestic, industrial, agricultural, or public use, may be economically or feasibly recovered), and shall have cement circulated in the annular space outside said casing. The volume of cement needed shall be calculated using approved engineering methods to assure the return of the cement to the surface. In the event cement does not return to the surface, every reasonable attempt will be made to fill the annular space by introducing cement from the surface. If the coal protection string of casing is cemented to the surface in accordance with prescribed procedure, this may also be considered a fresh water string for water strata above the coal.

**15.04. Cement Strength.** Cement placed in the annular space around any casing shall be allowed to set to a minimum compression strength of 500 pounds per square inch using approved engineering data for the type of cement used. The waiting time on cement shall in no case be less than eight hours.

16.01. **Well Records during Permitted Work.** The well operator or his drilling contractor or driller shall keep at the well location a copy of the application as permitted, including the associated plat and reclamation plan required by Regulation 7.02; and the well operator or his drilling contractor or driller shall make and preserve at the well location accurate records of the work done under the permit. The records shall be complete enough to justify, as applicable, the entries of work done and related data on Form IV-35, "Well Operator's Report of Drilling, Fracturing and/or Stimulating or Physical Change", Form IV-36, "Well Operator's Report of Initial Gas-Oil Ratio Test", Form IV-37, "Pre-Operation Certificate for Liquid Injection or Waste Disposal Well", and Form IV-38, "Affidavit of Plugging and Filling Well"; but such forms IV-35 through IV-38 shall reflect data discovered or changes made after the permitted work has been finished and before the forms are filed. Unless such records of work done are made by the well operator or owner, a copy of all such records shall be delivered to the well owner or operator.

16.02. **Filing of Well Record and Related Forms.** (a) Within 90 days after the completion of permitted work, two copies of Form IV-35, "Well Operator's Report of Drilling, Fracturing and/or Stimulating or Physical Change", containing the geological information required by Code §22-4-8b in the form specified by said Form, Form IV-36, "Well Operator's Report of Initial Gas-oil Ratio Test" (except that, where the well has not been connected within such 90-day period to pipelines or production tanks, Form IV-36 shall be filed not more than 15 days after such connection), Form IV-37, "Pre-Operation Certificate for Liquid Injection or Waste Disposal Well", and Form IV-38, "Affidavit of Plugging and Filling Well", shall be filed by the well owner or operator with the Deputy Director. Such forms need not repeat well record information for any work (whether permitted or not) done prior to and not part of the permitted work to which said forms apply. Such forms shall correct or add to the well log and other records made and preserved at the well location by specifying (i) the casing, treatment, or physical changes performed after completion of the permitted work, and (ii) the additional formations or corrected information discovered, by electric logs or other means, after completion of the permitted work.

(b) **Deep Well Confidential Information; Filing of Well Logs.** (1) Within 90 days after the completion of drilling or recompletion of a deep well, the well operator shall also file a copy of the well log and the electrical, radioactive or other similar conventional log if they have been run. In addition, as soon as practicable, the well operator shall file a copy of drill stem test charts, formation water analysis, porosity, permeability or fluid saturation measurements, core analysis, and lithologic log or sample description as compiled: Provided, That no such additional information shall be required unless the well operator has compiled such information in the ordinary course of business. No interpretation of the data is to be filed.

(2) All information furnished with respect to a deep well marked "confidential" shall be kept confidential for one year after the date the information is required to be filed hereunder, unless the well operator gives written permission to release such information at an earlier date.

(3) For good cause shown by the operator, the West Virginia Oil and Gas Conservation Commissioner may extend the period of confidentiality for one year. The total period of confidentiality shall not exceed three years.

16.03 **Restriction on New Applications.** Except for good cause shown, no application required by Code §22-4-1k may be filed for any work after the initial completion of a well unless all forms required by Regulation 16.02 have been completed and filed with the Department.

## 17. Regulations Related to Code §22-4-9.

17.01. **Notice of Intention to Plug and Abandon; Time of Filing.** (a) The notice of intention to plug and abandon a well, required by Code §22-4-9, shall consist of Form IV-4, "Notice of Intention to Plug and Abandon a Well", and shall be accompanied by a plat in the form prescribed in Regulation 11, the bond required by Code §22-4-9 and the reclamation plan required by Regulation 23.01. See Regulation 7.02(c).

(b) The completed Form IV-4 shall in all cases be filed with the Department and delivered to the coal operator, owner or lessee in the manner and within the time limits set out in subsections (a), (b), and (c) of Code §22-4-9 for the "notices" referred to therein.

(c) The owner or operator of every well presumed to have been abandoned under the provisions of Code §22-4-7 shall file Form IV-4 within 60 days after such abandonment, unless the Department waives this requirement for good cause shown.



**17.02. Work Order; Manner and Method of Plugging.** (a) On the reverse side of Form IV-4, "Notice of Intention To Plug and Abandon a Well" (see Regulation 7.02(c)), the applicant for a permit to plug a well shall set forth a detailed statement of the manner in which the work of plugging and filling such well is to be done, including (1) location (by depth), (2) kind and length of plugs to be used and the method chosen to insure that no gap exists between the bottom of the coal protection string of casing and the expanding cement plug thereunder, (3) plans for mudding, cementing, and filling, (4) plans for testing, and for shooting and removing casing, and (5) all other pertinent information regarding said plugging and filling, all of which shall be in compliance with Code §22-4-10.

(b) Where the well operator proposes to plug or to clean out and replug a well in the manner specified by Code §22-4-10(c), then he shall also fill out (i) the part of Form IV-4 provided for cost estimates for such work and (ii) the alternate cost estimates for performing such work in the manner specified by Code §22-4-10(d) (3). This requirement shall be met even though no coal operator, owner or lessee has filed a Form IV-16, "Request by Coal Operator, Owner or Lessee for Plugging under Code §22-4-10(d).

**17.03. "Verbal Permission" to Plug.** (a) The "verbal permission" under Code §22-4-9(c) in the event the well to be plugged and abandoned is one on which drilling or reworking operations have been continuously progressing pursuant to authorization granted by the Department shall be by the Deputy Director, or the supervising inspector, or any inspector who is available to supervise the plugging work. Unless such verbal approval is given by the Deputy Director, the well operator shall notify the Deputy Director's office by telephone no later than the next regular working day.

(b) Unless the well operator proposes to plug the well in a manner allowed by Code §22-4-10(d) (3), the well operator shall contact the coal operator or the coal owner or lessee who has filed a declaration under Code §22-4-20, to give the best feasible opportunity for the coal operator or owner or lessee to make a plugging request under Regulation 17.05.

**17.04. Objections to Proposed Plugging.** Objections to the proposed plugging of a well, whether by the Department or by any affected person, shall not be made except for violation or impending violation of the provisions of Code §22-4-9 or this Regulation or of Code §22-4-10 or Regulation 18. The Deputy Director shall promptly rule on such objections at a hearing after no less than five days' notice to the applicant and objectors.

**17.05. Plugging Method Request by Coal Operator or Coal Seam Owner.** (a) The request by a coal operator or coal seam owner made under Code §22-4-10(d), for a well to be plugged in any manner allowed by Code §22-4-10(d) (3) rather than by the method provided in Code §22-4-10(c), shall be made on Form IV-16, "Request by Coal Operator, Owner or Lessee for Plugging" under Code §22-4-10(d).

(b) The well operator or owner in his sole discretion may waive the provision in Code §22-4-10(d) that such request "must be filed in writing with the department prior to the scheduled plugging of the well". In the event of such waiver, the cost of undoing any part of the plugging work in order to comply with the coal operator's or coal seam owner's request shall be treated as a part of the cost of complying.

(c) The Department shall make the findings and issue an order in accordance with Code §22-4-10(d) (2) by endorsement on or attachment to said Form IV-4.

**17.06 Statutory Affidavit.** The affidavit required by Code §22-4-9 and Regulation 16.02 shall be made on IV-38, "Affidavit of Plugging and Filling Well". The affidavit shall be executed by at least two parties doing the actual work, whether they are employees of a service company or a plugging contractor; or the well owner or well operator.

## **18. Regulations Related to Code §22-4-10.**

**18.01. Materials Used in Plugging.** The non-porous materials and cements mentioned in Code §22-4-10 must be specified in the work order portion of Form IV-4, "Notice of Intention To Plug and Abandon a Well". They must be of a kind and quality accepted by the oil and gas industry and approved by the Department as suitable for the intended purpose: *Provided*, That in case the well operator furnishes satisfactory proof that a non-standard material or cement is suitable for the intended purpose and otherwise complies with all provisions of law and accepted standards, the Deputy Director may approve such non-standard material or cement.

**18.02. Cleaning Out and Replugging Application; Objections; Order.**

(a) Application under Code §22-4-10(e) to clean out and replug a previously plugged well shall be made by a completed Form IV-4, "Notice of Intention to Plug and Abandon a Well", and by the associated documents required to accompany said Form IV-4 by Regulation 17.01.

(b) Objections to a Form IV-4 application to clean out and replug a well whether by the Department or by any affected person, shall not be made except for violation or impending violation of the provisions of Code §22-4-9 or Regulation 17 or of Code §22-4-10. If such objection is filed or made, a hearing date shall be set and notice given by the Department by endorsement on the objection, mailed in accordance with Code §22-4-10(c). The endorsement shall indicate the date, time and location of the hearing, identifying the well by reference to its API well number.

(c) The Department's order permitting or rejecting such application shall be endorsed on the Form IV-4 application, and shall be mailed to the parties indicated and in the method provided by Code §22-4-10(e).

**19. Regulations Related to Code §22-4-10a.**

[See Regulation 9, "Operational Regulations on Liquid Injection and Waste Disposal Wells".]

**20. Regulations Related to Code §22-4-11.**

**20.01. Coal Operators' Maps; Filing.** All coal operators shall cause to be placed on their property maps the location of all oil or gas wells penetrating coal seams, whether they be active wells, wells being drilled, or abandoned wells; and all such wells coming within the scope of any mine map shall be shown thereon. All coal operators shall diligently endeavor to ascertain, collect and compile all available data concerning the location of all wells which have been drilled on said property and shall make and keep records of all such data.

**20.02. Five-Hundred-Foot Notice of Intention to Extend Mine Workings; Maps.** (a) The notice required by Code §22-4-11 before extension of certain coal removal or mine workings within 500 feet of a well shall be either (1) on Form IV-44, "Notice by Coal Operator of Intention to Extend Mine Workings Within 500 Feet of Well", including on the reverse thereof maps and plans showing all the information required by Code §22-4-11, or (2) if the operator intends to mine or conduct its mining operations within two hundred feet of any well or to mine through any well, by application under Regulation 20.03.

(b) The coal operator shall file two copies of Form IV-44 and maps and plans with the Department, and send additional copies thereof to each affected well operator, in the manner provided by Code §22-4-11.

**20.03. 200-Foot Petition; Plat and Other Maps; Notice of Receipt; Notice of Hearing; Approval.** (a) The application required by Code §22-4-11 of a coal operator "for leave to mine or remove coal or conduct its mining operations within two hundred feet of any well or to mine through any well" shall be made on Form IV-45, "Coal Operator's Petition to Operate within 200 Feet of or to Mine through a Well", including on the reverse thereof maps and plans showing all the information required by Code §22-4-11. The maps and plans may be copies of those submitted earlier in connection with any other filing by the coal operator, updated as necessary to reflect new data or additional data now required by statute or these Regulations. The coal operator shall file two copies of said Form IV-45 and maps and plans with the Department, and send an additional copy thereof to each affected well operator, in the manner provided by Code §22-4-11.

(b) The Department's statutory notice to the affected well operator of the receipt of a Form IV-45 petition shall be made on Form IV-46, "Department's Notice of Receipt of Coal Operator's Form IV-45 Petition". It shall state the provisional date, time and place of the statutory hearing.

(c) The Department's statutory notice of hearing to the coal operator and the well operator shall be on Form IV-47, "Notice of Statutory Hearing on Coal Operator's Form IV-45 Petition".

(d) The Form IV-45 petition, being verified as required by Code §22-4-11, shall be accepted as prima facie proof of the propriety of the coal operator's proposed extension of mine workings or mining through of a well. Accordingly, in the absence of contrary evidence offered by any person or by the Department, the petition may be approved without the necessity of appearance or additional evidence by the coal operator.

(e) If the coal operator does not appear at the hearing set above, and if evidence contrary to the Form IV-45 petition is offered, then the hearing will be adjourned until further notice, to give the coal operator an opportunity for cross-examination and for evidence in rebuttal.

(f) The Department's approval of a coal operator's Form IV-45 petition, and any conditions to or modification thereof, shall be recorded by endorsement on or attachment to the petition. The Department will mail copies of the approved petition to the coal operator and the well operator.

**20.04. Progress Maps.** After the coal operator has filed its Form IV-44 notice or the Department has approved a Form IV-45 petition, the coal operator shall submit a progress map to the Department at six-month intervals, on which shall be shown the permit number. Such maps shall be required until mining within 500 feet of the well has ceased or until the well has been mined through.

## **21. Regulations Related to Code §22-4-12.**

**21.01. Annual Report of Oil and Gas Production.** (a) An annual report of oil and gas production from each lease or tract shall be filed with the Deputy Director on or before the succeeding March 31. This report shall be on Form IV-39, "Report of Annual Production". The report must identify and state the production from every oil and gas well not yet plugged and abandoned, regardless of the status of the well. The first report under these Regulations must be filed by March 31, 1979, for the year 1978. The data shall be submitted by either the well operator or the well owner or a person specified by the operator or owner in the smallest units of measurement available, by well, lease or unit. Oil shall be measured in barrels, and gas shall be measured in thousand cubic feet.

(b) **Measurement of Oil.** The volume of oil production shall be determined through the standard practices of common carriers in the State of West Virginia. This volume of oil shall be that same volume on which the royalty interest was determined and will be of acceptable "pipeline quality."

(c) **Measurement of Gas.** (1) In case a meter has been set for each well, the gas production for each well shall be reported, with each well identified by API well number for each well having such a number, and otherwise by the operator's well number.

(2) In case of common or master meter measurement, when one meter measures gas production for more than one well, the production from each common meter will be reported, and the wells so measured shall be identified by API well number for each well having such a number, and otherwise by the operator's well number, and the production estimated for each well shall be reported if such estimates are made.

(3) In the case of calculated value, where no measurement of gas is available for an individual well or group of wells, the calculated volume of gas production using accepted engineering methods will be reported, and the wells so measured shall be identified by API well number for each well having such a number, and otherwise by the operator's well number, and the production estimated for each well shall be reported if such estimates are made.

**21.02. Accidents.** If any explosion or other accident occurs in or about an operation under a permit, causing loss of life or serious personal injury, the well operator or his contractor shall give immediate notice, stating the particulars of the explosion or accident, to the District Oil and Gas Inspector or Deputy Director.

22. Regulations Related to Code §22-4-12a. [Reserved.]

23. Regulations Related to Code §22-4-12b.

**23.01. Reclamation Plan.** (a) A proposed reclamation method for construction of roads, drilling locations and pits, if any, or alternative overflow prevention facilities, shall be submitted on Form IV-9, "Reclamation Plan", with the application for any permit required by Code §22-4-1K. See Regulation 7.02.

(b) Such proposed reclamation methods shall be approved by the Deputy Director or his designate, prior to the issuance of the permit.

(c) All reclamation shall be done under the supervision of the Deputy Director. The reclamation may be altered from that set out in said Form IV-9, if found necessary, with the consent of the Deputy Director or his designate, due to topography or other conditions not apparent upon initial submission and approval of the proposed reclamation methods.

**23.02. Access Roads.** All access roads shall be constructed and maintained to prevent excess sedimentation; to maintain natural drainage areas; and if practicable, to direct or carry away from disturbed areas surface water run-off from undisturbed areas.

**23.03. Drilling Sites.** Drilling sites shall be constructed and maintained to prevent surface run-off from carrying excessive sedimentation away from the site; to confine all materials leaked or spilled as a result of drilling operations to the drilling site; and to prevent excess sedimentation by placing in any stream any material moved or cut. Upon the plugging of a non-productive well, whether as a continuous operation with other permitted work or otherwise, all cementing and other waste materials resulting therefrom shall be retained on the drilling site.

**23.04. Pits.** All drilling pits shall be constructed, maintained and reclaimed in such manner as to prevent seepage, leakage and overflow; to divert surface water from the pit; and to provide impervious materials for the lining if existing soil is not impervious. If an operator is unable to prevent overflow from any drilling pit, the District Inspector shall be notified by the well operator; and additional drilling pits or alternative overflow facilities shall be constructed under the supervision of the Deputy Director to prevent said overflow. All drilling pits and alternative overflow prevention facilities shall be constructed, maintained and reclaimed so as not to be left in such condition as to constitute a hazard or to prevent use of the surface for agricultural purposes for an unreasonable length of time after completion of the permitted work.

**23.05. Surface and Underground Water Pollution.** (a) Before commencing to drill any well for oil and gas, the well owner or operator shall make proper and adequate provisions to prevent surface and underground water pollution.

(b) When rotary drilling penetrates a formation known to contain substantial amounts of salt water, drilling will continue to the next casing point by drilling with mud, foaming or other satisfactory method for the purpose of either isolating the salt water in the formation or preventing the discharge of salt water per se into a fresh water horizon, or above the surface of the ground. In the case of foaming, it is recognized that a certain amount of salt water, mixed with cuttings, will be discharged above the surface of the ground which will be contained in sump pits no larger than necessary for this purpose, or handled in such a manner that salt water per se will not be discharged into fresh water.

**23.06. Notifications Prior to Commencement of Work.** Prior to the construction of roads, locations and pits for any permitted work, the well operator or his contractor shall notify the proper oil and gas inspector to allow him the opportunity of inspecting and approving the construction and method of reclamation for all proposed areas to be disturbed in siting, drilling, completing or producing the well. In addition, the well operator or his contractor shall notify the proper district oil and gas inspector 24 hours before actual permitted work has commenced.

**24. Regulations Related to Code §22-4-13-(b).**

**24.01. Hearings.** All hearings conducted by the Department pursuant to Article 4, Chapter 22 of the Code or these Regulations shall be conducted in accordance with the provisions of Article 5, chapter 29-A of the Code. If any provision of these Regulations is inconsistent with any provision of said Article 5, the provision of said Article 5 shall control.

Notice to the public shall be given as follows:

(1) The Department shall file with the Secretary of State's office a Notice containing the time, date and place of all regularly scheduled meetings of the Department.

(2) The Department shall file with the Secretary of State's office a Notice or Notices containing the time, date and place of all hearings to be heard by the Department pursuant to Code §22-4B-7. Said Notice shall be filed with the Secretary of State at least ten (10) days before the date set for the hearing.

(3) The Department shall file with the Secretary of State's office a Notice containing the time, date, place and purpose of all special meetings to be held by the Department. Said Notice must be filed with that office at least twenty-four (24) hours in advance.

(4) Copies of all Notices required to be filed by this Regulation with the Secretary of State's office shall also be delivered to the Capitol News Media Office W-123, State Capitol Building.

(5) None of the provisions of this Regulation shall apply to Department actions taken in the event of an emergency requiring immediate official action.

**24.02. Consolidation of Proceedings.** The Department may at any time order a proceeding set for hearing under Article 4, chapter 22 of the Code or these Regulations consolidated with any other such proceeding then pending before the Department which involves the same parties and similar issues of law and fact.

**24.03. Filing and Service of Documents.** (a) **Where to file.** All documents required to be filed in a proceeding under Article 4, Chapter 22 of the Code or these Regulations shall be filed with the West Virginia Department of Mines, Oil and Gas Division, 1615 Washington Street, East, Charleston, West Virginia.

(b) **How to File.** All filing may be accomplished by personal delivery or first class mail.

(c) **When filing effected.** Filing is effective upon delivery.

(d) **Copies to be served.** Copies of all documents filed in any proceeding under Article 4, Chapter 22 of the Code or these Regulations shall be served upon all other parties to the proceeding.

(e) **Method of service; service of attorney.** Service of documents shall be accomplished by personal delivery or by registered or certified mail, return receipt requested, unless otherwise provided in Article 4, Chapter 22 of the Code or these Regulations. Whenever a party is represented by an attorney who has signed any document filed on behalf of such party, service thereafter shall be made upon the attorney and may be made by first class mail.

(f) **When service effected.** In the case of personal delivery, service is effective upon delivery. In the case of mailing, service is effective upon mailing.

(g) **Proof of service.** All documents required to be served in a proceeding under Article 4, Chapter 22 of the Code or these Regulations shall be accompanied by proof of service in the form of a certificate of service. The certificate of service shall include a statement of how service was accomplished.

**24.04. Notice of Hearings.** Unless otherwise specified in Article 4, Chapter 22 of the Code, no hearing shall be conducted on less than 10 days' written notice to the parties.

**24.05. Presiding Officer.** The Director or the Deputy Director shall preside over every hearing conducted pursuant to Article 4, Chapter 22 of the Code or these Regulations.

**24.06. Powers of Presiding Officer.** The Presiding Officer over every hearing, subject to the rules set forth in this section, may:

- (1) Administer oaths and affirmations;
- (2) Issue subpoenas in accordance with the provisions of Code §29A-5-1;
- (3) Rule upon offers of proof and receive relevant evidence;
- (4) Permit evidentiary depositions to be taken and read as in civil actions in the circuit courts of this state;
- (5) Permit discovery depositions;
- (6) Regulate the course of a hearing;
- (7) Dispose of procedural requests or similar matters;
- (8) Hold conferences for the settlement or simplification of the issues with the consent of the parties; and
- (9) Take any other action in connection with such hearing authorized by law.

**24.07. Representation at Hearings.** At hearings held pursuant to Article 4 of this Code or these Regulations, any party may represent himself or be represented by an attorney at law admitted to practice before the courts of any state or the District of Columbia. In addition, any party which is also an operator may be represented by a full-time employee.

**24.08. Conduct of Hearing.** (a) Conduct of attorneys before the Department shall be the same as required of attorneys before the Circuit Courts of the State of West Virginia. Any person testifying in response to a subpoena or subpoena duces tecum issued by a Presiding Officer and any person testifying in support of an application or in opposition thereto shall be required to do so under oath or affirmation administered by the Presiding Officer. Witnesses shall be examined with courtesy and respect, and their good faith shall be presumed.

(b) Smoking shall not be permitted in the hearing room during session or during recess.

(c) Electronic recording of any hearing is prohibited except as may be required by the Department for preserving a record thereof for the use of the Department in connection with the matter being heard. The taking of photographs in or broadcasting of proceedings from any hearing room or so close thereto as to disturb the hearing is prohibited.

(d) At the presiding officer's discretion, or on motion of any party, a transcript of testimony shall be taken and preserved as part of the permanent record. Parties may examine the official transcript or purchase copies thereof from the court reporter or Department.

**24.09. Hearings to be Public.** All hearings to be conducted under these rules shall be open to the public.

**24.10 Proposed Findings, Conclusions and Orders.** The Presiding Officer may request the submission by parties of proposed findings of fact, conclusions of law and orders, together with a supporting brief. Such proposals and briefs shall be served upon all parties, and shall contain adequate references to the record and authorities relied upon.

**24.11. Written Orders.** (a) As soon as practicable after conclusion of a hearing, the Presiding Officer shall consider the evidence and any proposals or briefs filed under Regulation 24.09 and issue a written order which shall include a statement of:

(1) findings and conclusions and the reasons therefor on the material issues of fact and law; and

(2) the appropriate ruling or order granting the permit, granting the permit for an alternate location, or denying the permit.

(b) A copy of the order shall be served by certified mail upon all parties at the time the order is issued.

**24.12. Re-opening; Re-hearing; Modification.** (a) Applications for re-opening a proceeding after hearing and before written order shall be made by petition filed prior to service of an order. Such petition shall state specifically the grounds relied upon and, if it be for the purpose of introducing additional evidence, shall also state the nature and purpose of the evidence to be introduced.

(b) Applications for re-hearing after issuance of a written order shall be made by petition filed within 30 days after service of such order. Such petition shall state specifically the grounds relied upon and, if any written order is sought to be vacated, reversed or modified by reason of (1) matters arising since the issuance of such order, (2) consequences which would result from compliance with the Department's order or (3) facts not in the possession of the petitioner prior to issuance of such order, such reasons shall also be stated.

(c) Applications for modification of written orders, which seek only a change in the date such order shall take effect, shall be made by petition filed within 30 days after service of the written order, except that, in the event of unforeseen emergencies satisfactorily shown by the petitioner, such relief may be sought informally by telegram or otherwise, upon notice to all parties or attorneys who appeared in the proceeding.

(d) A copy of each petition filed under this section shall be served on all other parties to the original proceeding and such petition shall be accompanied by a certificate showing service upon such parties. Within 15 days after such service, an adverse party may file and serve a reply to the petition.

(e) Upon the filing of the reply or upon the failure of an adverse party to reply within 15 days after service of a copy of the petition on such party, the Department shall consider the petition, the replies thereto, and the record of the proceeding, and, if it determines a hearing upon the petition to be necessary, shall, after 10 days' written notice to all parties, hold such hearing. As soon as practicable after consideration of the petition, the replies thereto and the record of the proceeding, the Department shall issue an order either granting in part or denying the relief requested in the petition.

(f) The filing of a petition seeking (i) re-hearing or re-argument after issuance of a written order or (ii) modification of a written order pursuant to subsections (b) and (c) of this section, shall not stay the time for appeal of such written order to the circuit court unless the Department orders re-hearing or re-argument or modifies the written order, in which case, the time for appeal pursuant to Code §22-4-4 shall begin to run anew after the Department's final action.

**24.13. Appeal.** If an appeal is filed pursuant to Code §22-4-4, the Deputy Director shall be responsible for certifying and forwarding the entire record of the proceedings to the circuit court.

## **25. Regulations Related to Code §22-4-14.**

**25.01. Necessary Equipment.** All well owners or operators, contractors, drillers, pipeline companies, or gas distributing companies producing or transporting oil or gas for any purpose, shall use every possible precaution in accordance with accepted and approved methods to prevent waste of oil or gas, and to prevent the pollution of the water of the State in drilling and producing operations, or in transporting or distributing such products, and shall not wastefully utilize oil or gas or allow the same to leak or escape from natural reservoirs, wells or pipelines.

25.02. **Commercial Well Properly Equipped.** Whenever oil or natural gas in commercial quantities, in a well-defined oil or gas-bearing stratum, known to contain oil or natural gas in such quantities, is encountered in any well drilled for oil or gas in this state, all such strata shall be adequately protected from infiltrating waters.

25.03. **Protection of High Pressure Wells.** On all wells where high pressure and large volumes can be reasonably expected, properly working pressure blow-out preventer equipment shall be used on the inner string of casing at all times. When the inner string of casing has been placed in the well and cemented in, said casing and blow-out equipment (both blind and pipe rams, or equivalent) shall be installed and tested by operation and pressure to a minimum pressure which commensurates with the objective formation pressure before drilling is continued.

25.04. **Preparation for Drilling In.** Equipment for conserving oil and gas shall be provided before drilling in. In all proven or well-defined oil or gas fields or where it can be reasonably expected that oil or gas in commercial quantities will be encountered, adequate preparations shall be made for the conservation of oil or gas before drilling any well.

25.05. **Multi-Zone Production.** So far as it is practical to do so, gas being produced at a high pressure should be separated in the well from that being produced at a substantially lower pressure by means of casing, tubing, casing heads and packers, in order to eliminate the flow of high pressure gas into the low pressure sands.

25.06. **Drilling Deeper.** Nothing in this Regulation shall be construed to prevent or discourage drilling deeper in search for oil or gas in any well.

26. **Regulations Related to Code §22-4-15.** [Reserved.]

27. **Regulations Related to Code §22-4-16.** [Reserved.]

28. **Regulations Related to Code §22-4-17.** [Reserved.]

29. **Regulations Related to Code §22-4-18.** [Reserved.]

30. **Regulations Related to Code §22-4-19.** [Reserved.]

31. **Regulations Related to Code §22-4-20.** [Reserved.]



**WEST VIRGINIA ADMINISTRATIVE REGULATIONS**  
**Department of Mines**

**Chapter 22-4**

**PART II**

**SERIES V**

**1979**

**Subject: Certification of Gas Wells under NGPA and West Virginia Code 22-4-1a,  
as Amended.**

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**Subject:** Certification of Gas Wells Under NGPA and West Virginia Code 22-4-1a,  
As Amended.

**32. General Introduction.**

**32.01. Introductory Findings.** (a) The Natural Gas Policy Act of 1978 was signed into law by the President of the United States on November 9, 1978. Pursuant to the provisions of that Act and to regulations promulgated by the Federal Energy Regulatory Commission, the various states are permitted to make certain findings as to various classes of natural gas wells located within the State. The Office of Oil and Gas of the Department of Mines has been authorized to act as the jurisdictional agency for the State of West Virginia to implement the requirements of the Natural Gas Policy Act.

(b) These Regulations supersede the Emergency Regulations promulgated by the Oil and Gas Division to implement the provisions of the Natural Gas Policy Act of 1978 and which were promulgated, filed with the Secretary of State and made effective on December 27, 1978.

**32.02. Scope.** The Regulations set forth herein shall govern and apply to proceedings under Chapter 22 of the Code concerning gas wells and implementing the Natural Gas Policy Act of 1978 and pertinent federal regulations.

**32.03. Authority.** These Regulations are promulgated pursuant to the authority of Code §22-4-13, Article 3, Chapter 29A of the Code and the Natural Gas Policy Act of 1978.

**32.04. Effective Date.** These Regulations were promulgated on the 28th day of March, 1979, and become effective on the 25th day of July, 1979.

**32.05. Filing Date.** These Regulations were filed in the Office of the Secretary of State on the 28th day of March, 1979.

### 33. Definitions.

33.01. Statutory Definitions. As used in these Regulations "Administrator", "Department" or "Department of Mines", "Deputy Director", "Operator", and "Person" shall have the meaning set forth in Code §22-4-1.

33.02. Definitions Adopted by Regulation. (a) General. Unless the context in which used clearly requires a different meaning as used in these Regulations:

(1) The term "Code" shall mean the West Virginia Code of 1931, as amended.

(2) "FERC" shall mean the Federal Energy Regulatory Commission.

(3) "NGPA" shall mean the Natural Gas Policy Act of 1978.

(b) Specific Definitions.

(1) The term "natural gas" shall mean either natural gas unmixed or any mixture of natural and artificial gas.

(2) The term "well" shall mean any well for the discovery or production of natural gas, crude oil, or both.

(3) The term "new well" shall mean any well, the surface drilling of which began on or after February 19, 1977, or the depth of which was increased by means of drilling on or after February 19, 1977 to a completion location which is at least 1,000 feet below the depth of the deepest completion location of such well attained before February 19, 1977.

(4) The term "old well" shall mean any well other than a new well.

(5) The term "marker well" shall mean any well from which natural gas was produced in commercial quantities at any time after January 1, 1970 and before April 20, 1977, including a well, the depth of which was increased on or after February 19, 1977, to a completion location at least 1,000 feet below the depth of the deepest completion location of such well attained before February 19, 1977, Provided, that the term "marker well" shall not include a well the surface drilling, of which began on or after February 19, 1977.

(6) The term "reservoir" shall mean any producible natural accumulation of natural gas, crude oil, or both confined by impermeable rock or water barriers, and characterized by single natural pressure system or confined by lithologic or structural barriers which prevent pressure communication.

(7) The term "completion location" shall mean any subsurface location from which natural gas is being, or has been produced in commercial quantities.

(8) The term "marker well completion location" or completion location when used with reference to any marker well shall mean any subsurface location from which natural gas was produced in commercial quantities after January 1, 1970 and before April 20, 1977.

(9) The term "Mcf" used with respect to natural gas shall mean 1,000 cubic feet of natural gas measured at a pressure of 14.73 pounds per square inch (absolute) and a temperature of 60 degrees Fahrenheit.

(10) The term "Btu" shall mean British Thermal Unit.

(11) The term "month" shall mean a calendar month.

(12) The term "mile" shall mean a statute mile of 5,280 feet.

(13) The term "jurisdictional agency" shall mean the West Virginia Department of Mines, Office of Oil and Gas.

(14) The term "production in commercial quantities" shall mean production of natural gas from a well or reservoir which is either sold and delivered to one other than the operator, or retained by the operator or any owner of the production at severance for beneficial economic use. Provided, that natural gas used for the testing of natural gas wells or for other field uses which are production related, shall not be considered produced in commercial quantities.

(15) The term "recognized enhanced recovery techniques" shall mean processes or equipment, or both, which when performed or installed, increase the ultimate recovery of gas from the well, including mechanical or chemical stimulation of the reservoir formation, and devices installed in the well bore or on the surface. Provided, that normal well maintenance repair or replacement of equipment or facilities do not qualify as enhanced recovery techniques.

#### 34. Filing Requirements.

34.01. General Requirements. (a) No application under these Regulations will be certified until such time as a copy of Form IV-1 "Designation of Agent by Well Owner or Operator" has been filed.

(b) All Series IV forms promulgated by the Office of Oil and Gas and required by these Regulations may be replaced by copies of any applicable predecessor form promulgated by the Oil and Gas Division or by equivalent company or operator forms.

(c) If an Operator wishes to seek a determination that a well qualifies for more than one category under NGPA, a separate application must be submitted for each category for which a determination is desired.

(d) Each application must be accompanied by a filing fee of twenty-five dollars. Where an Operator is submitting several applications at one time, a single check may be submitted for a sum equal to the number of applications multiplied by twenty-five dollars.

(e) Such other information as the Office of Oil and Gas may require in order to establish by substantial evidence that the well qualifies for the NGPA category for which a determination is sought.

34.02. New Onshore Wells Under §102 of the NGPA. For each well for which certification is sought under §274.202 of the FERC Regulations implementing the NGPA, the following shall be submitted by the Operator:

(a) For wells more than 2.5 miles from a marker well:

(1) 3 copies of FERC Form 121;

(2) 1 copy of Form IV-6, "Well Plat";

(3) 1 copy of Form IV-35; "Well Operator's Report of Drilling";

(4) 3 copies of Form IV-48WC, "State Application for Well Classification";

(5) 1 copy of Form IV-51WC, "Well Classification Form; Wells Drilled More than 2.5 Miles from a Marker Well";

(6) A plat to the scale of 1-inch equals 4,000 feet produced on some high-quality material, and prepared by a licensed land surveyor or registered engineer, showing all wells within 2.5 miles of the well for which certification is sought and also showing all wells which are producing, or produced after January 1, 1970, natural gas within said 2.5 mile radius and identifying each such well by the last four digits of the API permit number;

(7) A separate sheet tabulating all wells identified on the plat required by subsection (a)(9) as to linear distance, depth of the top of the producing formation, and the geological name of the formation;

(8) Electric logs and directional drilling surveys, if performed in the normal course of drilling and completion of the well; and

(9) Satisfactory proof of service that a copy of the complete filing has been served on the first purchaser, if known.

(b) For wells more than 1,000 feet deeper than a marker well:

(1) 3 copies of FERC Form 121;

(2) 1 copy of Form IV-6, "Well Plat";

(3) 1 copy of Form IV-35, "Well Operator's Drilling Report";

(4) 3 copies of Form IV-48WC, "State Application for Well Classification";

(5) 1 copy of Form IV-52WC, Well Classification Form; "Wells Drilled More Than 1,000 Feet Deeper Than a Marker Well";

(6) A plat to the scale of 1-inch equals 4,000 feet produced on some high-quality material and prepared by a licensed land surveyor or registered engineer showing all wells within 2.5 miles of the well for which certification is sought and also showing all wells which are producing or produced after January 1, 1970, natural gas within said 2.5 mile radius and identifying each such well by the last four digits of the API permit number; including specific identification of all marker wells within the 2.5 mile radius, and also indicating the deepest completion locations for each such marker well identified on the plat;

(7) A separate sheet tabulating all wells identified on the plat required by subsection (b)(9) as to linear distance, depth of the top of the producing formation, and the geological name of the formation;

(8) Electric logs and directional drilling surveys if performed in the normal course of drilling and completion of the well; and

(9) Satisfactory proof of service that a copy of the complete filing has been served on the first purchaser, if known.

(c) For new onshore reservoir wells:

(1) 3 copies of FERC Form 121;

(2) 1 copy of Form IV-6, "Well Plat";

(3) 1 copy of Form IV-35, "Well Operator's Drilling Report";

(4) 3 copies of Form IV-48WC, "State Application for Well Classification";

(5) 1 copy of Form IV-53WC, "Well Classification Form; New Onshore Reservoir Wells";

(6) Subsurface cross-section charts;

(7) Formation structure map;

(8) A gas analysis;

(9) Electric logs and directional drilling surveys if performed in the normal course of drilling and completion of the well; and

(10) Satisfactory proof of service that a copy of the complete filing has been served on the first purchaser, if known.

**34.03. New Onshore Production Wells Under §103 of the NGPA.** For each well for which certification is sought under §274.204 of the FERC regulations implementing the NGPA, the following shall be submitted by the Operator:

(a) 3 copies of FERC Form 121;

(b) 1 copy of Form IV-6, "Well Plat";

(c) 1 copy of Form IV-35, "Well Operator's Drilling Report";

(d) 3 copies of Form IV-48WC, "State Application for Well Classification";

(e) 1 copy of Form IV-54WC, "Well Classification Form; New Onshore Production Wells"; and

(f) Satisfactory proof of service that a copy of the complete filing has been served on the first purchaser, if known.

**34.04. High Cost - Natural Gas Under §107 of the NGPA.**

For each well for which certification is sought under §274.205 of the FERC regulations implementing the NGPA, the following shall be submitted by the Operator:

(a) 3 copies of FERC Form 121;

(b) 1 copy of Form IV-6, "Well Plat";

(c) 1 copy of Form IV-35, "Well Operator's Drilling Report";

(d) 3 copies of Form IV-48WC, "State Application for Well Classification";

(e) 1 copy of Form IV-55WC, "Well Classification Form; High Cost Natural Gas";

(f) Electric logs;

(g) Directional drilling surveys if made in the ordinary course of drilling and completing the well; and

(h) Satisfactory proof of service that a copy of the complete filing has been served on the first purchaser, if known.

**34.05. Stripper Wells Under §108 of the NGPA.** For each well for which certification is sought under §274.206 of the FERC regulations implementing the NGPA, the following shall be submitted by the Operator:

(a) 3 copies of FERC Form 121;

(b) 1 copy of Form IV-6, "Well Plat";

(c) 1 copy of Form IV-35, "Well Operator's Drilling Report";

(d) 1 copy of Form IV-39, "Report of Production", for 12 consecutive months ending within 120 days of the date of application;

(e) Production records for a period of 90 consecutive days ending within 120 days of the date of application;

(f) If items (d) and (e) are not available, tax records or verified copies of billing statements for 12 calendar months ending within 120 days of the date of filing.

(g) If the well for which a determination is sought has produced nonassociated natural gas at an average rate not in excess of 60 Mcf per production day for a 90-day production period ending within 120 days of the date of filing, but such an average rate of production has not been experienced for a 12-month period, the operator shall file as soon as practicable but no later than 10 months after the date of application, production records, if available, and if not, tax records or verified copies of billing statements for a 12-month period including any part of the indicated 90-day production period.

(h) 3 copies of Form IV-48WC, "State Application for Well Classification";

(i) 1 copy of Form IV-56WC, "Well Classification Form; Stripper Wells"; and

(j) Satisfactory proof of service that a copy of the complete filing has been served on the first purchaser, if known.

#### **34.06. Report of Increase in Production; Enhanced Recovery; Seasonally Affected Wells.**

(a) Whenever a well, which had previously received a certification as being qualified as a stripper well, produced nonassociated natural gas at a rate exceeding an average 60 Mcf per production day for any 90-day production period, the operator or purchaser shall file a notice containing the following information with the Administrator:

(1) The names and addresses of the operator and purchaser indicating whether it is the operator or the purchaser who is filing the notice;

(2) Identification of the subject well and an accurate record reference to the original determination qualifying the well as a stripper well;

(3) The monthly production reports, tax records or billing statements upon which the notice is based for the period of production in question;

(4) A statement of the average production per production day for the period in question;

(5) A statement that all the information contained in the notice is true to the best of his information, knowledge and belief; and

(6) If the notice is filed by a purchaser, a statement that the notice has been served on the Operator.

(b) An Operator desiring a determination that an increase in production has been the result of enhanced recovery techniques shall file with the Administrator, within 30 days of the date of the notice of an increase in production:

(1) 1 copy of Form IV-57WC, "Request for Determination that Increased Production is the result of Enhanced Recovery Techniques"; and

(2) 1 copy of Form IV-48WC, "State Application for Well Classification".

(c) An operator desiring a determination that a well previously certified to be a stripper well is seasonally affected, shall file with the Administrator within 30 days of the date of the notice of an increase in production:

(1) 1 copy of Form IV-58WC, "Request for Determination of a Seasonally Affected Well";

(2) Production records, tax records or billing statements for a period of 24 months, including the 90-day or 12-month period which is the subject of a notice of an increase of production; and

(3) 1 copy of Form IV-48WC, "State Application for Well Classification".

#### **35. Certification Procedures.**

**35.01. Initial Action by the Office of Oil and Gas.** Upon receipt of an application to certify a well for the maximum lawful price under §§102, 103, 107 or 108 of the NGPA, the Office of Oil and Gas will conduct a review of the submitted data along with other information available to it, and prepare a summary report for the Administrator. A file number and a hearing date will be assigned. One copy of FERC Form 121 and one copy of Form IV-48WC will be mailed to the Operator and the Purchaser (if known) notifying them of the file number, hearing date and the date of filing with the Office of Oil and Gas.

**35.02. Weekly circular.** (a) The office of oil and Gas will publish each week a circular indicating the status of various applications filed under the Regulations. Publication will be on the last regular working day of each week and copies of the circular will be filed with the Secretary of State and the Capitol News Media.

(b) The weekly circular will identify each well by applicant and by a file number which will indicate:

- (1) The date received by the Office of Oil and Gas;
- (2) The NGPA category for which application is made; and
- (3) The A.P.I. county and permit number.

(c) The weekly circular will constitute notice of the following:

- (1) That the initial application was complete or incomplete as received;
- (2) The scheduled hearing date;
- (3) The determination made by the Office of Oil and Gas and the date of determination;
- (4) The date on which the determination order was filed with FERC; and
- (5) The date marking the end of the 45-day FERC review period provided for under the NGPA and applicable federal regulations.

**35.03. Notice of Hearing.** Notice of all filings and hearing dates for applications for certification under these regulations will be filed by the Office of Oil and Gas with the Secretary of State and the Capitol News Media, indicating that interested persons may intervene in the application by filing written comments with the Office of Oil and Gas within 15 days from the date that the notice of hearing is published in the Weekly Circular and filed with the Secretary of State. If objections are made by any interested person, or by the Office of Oil and Gas, or if the Administrator determines that other information may be necessary in order to make a determination, a public hearing will be held on the date designated on Form IV-48WC, "State Application for Well Classification", and the notices filed with the Secretary of State and the Capitol News Media. On the hearing date, the applicant and all persons who have timely filed objections on or before the date of the hearing will be given an opportunity to present additional evidence.

**35.04. Determinations.** After a hearing has been held, a determination as to whether the well qualifies for certification will be made by the Administrator. If no objection is made within the time prescribed by Regulation 35.03, the Administrator will make a determination as to whether the well qualifies for certification at the time and date originally set for a hearing. A copy of FERC Form 121 and the order as described in Regulation 36.10 will be mailed to the FERC for final review pursuant to §503 of the NGPA.

### **36. Hearing Procedures.**

**36.01. Hearings.** All hearings conducted by the Office of Oil and Gas pursuant to Chapter 22 of the Code or these Regulations shall be conducted in accordance with the provisions of Article 5, chapter 29-A of the Code. If any provision of these Regulations is inconsistent with any provision of said Article 5, the provision of said Article 5 shall control.

Notice to the public shall be given as follows:

(1) The Office of Oil and Gas shall file with the Secretary of State's Office a Notice or Notices containing the time, date and place of all hearings held under these Regulations pursuant to Code §22-4-7. Said Notice shall be filed with the Secretary of State at least ten (10) days before the date set for the hearing.

(2) Copies of all Notices required to be filed by this Regulation with the Secretary of State's Office shall also be delivered to the Capitol News Media Office W-123, State Capitol Building.

**36.02. Consolidation of Proceedings.** The Office of Oil and Gas may at any time order a proceeding set for hearing under Chapter 22 of the Code or these Regulations consolidated with any other such proceeding then pending which involves similar issues of law and fact.



**36.03. Filing and Service Documents.** (a) **Where to File.** All documents required to be filed in a proceeding under Chapter 22 of the Code or these Regulations shall be filed with the Office of Oil and Gas, 1615 Washington Street, East, Charleston, West Virginia.

(b) **How to File.** All filing may be accomplished by personal delivery or first class mail.

(c) **When Filing Effected.** Filing is effective upon delivery.

(d) **Copies to be Served.** Executed copies of the application filed in any proceeding under Chapter 22 of the Code or these Regulations shall be served upon all other parties to the proceeding.

(e) **Method of Service; Service of Attorney.** Service of documents shall be accomplished by personal delivery or by registered or certified mail, return receipt requested, unless otherwise provided in Chapter 22 of the Code or these Regulations. Whenever a person is represented by an attorney who has signed any document filed on behalf of such person, service thereafter shall be made upon the attorney and may be made by first class mail.

(f) **When Service Effected.** In the case of personal delivery, service is effective upon delivery. In the case of mailing, service is effective upon mailing.

(g) **Proof of Service.** All documents required to be served in a proceeding under Chapter 22 of the Code or these Regulations shall be accompanied by proof of service in the form of a Certificate of Service. The Certificate of Service shall include a statement of how service was accomplished.

**36.04 Notice of Hearings.** Unless otherwise specified in Chapter 22 of the Code, no hearing shall be conducted on less than 10 days written notice to the parties.

**36.05. Presiding Officer.** The Administrator or his designee shall preside over every hearing conducted pursuant to Chapter 22 of the code or these Regulations.

**36.06. Powers of Presiding Officer.** The Presiding Officer over every hearing, subject to the rules set forth in this section, may:

- (1) Administer oaths and affirmations;
- (2) Rule upon offers of proof and receive relevant evidence.
- (3) Regulate the course of a hearing;
- (4) Dispose of procedural requests or similar matters;
- (5) Hold conferences for the settlement or simplification of the issues with the consent of the parties; and
- (6) Take any other action in connection with such hearing authorized by law.

**36.07 Representation at Hearings.** At hearings held pursuant to Chapter 22 of this Code or these Regulations, any party may represent himself or be represented by an attorney at law admitted to practice before the courts of any state or the District of Columbia.

**36.08. Conduct of Hearing.** (a) **Conduct of attorneys before the Office of Oil and Gas** shall be the same as required of attorneys before the Circuit Courts of the State of West Virginia. Any person testifying in support of an application or in opposition thereto shall be required to do so under oath or affirmation administered by the Presiding Officer. Witnesses shall be examined with courtesy and respect, and their good faith shall be presumed.

(b) At the Presiding Officer's discretion, or on motion of any person, a transcript of testimony shall be taken and preserved as part of the permanent record. The person requesting that a transcript be made shall bear the costs of transcription. Persons may examine the official transcript or purchase copies thereof from the court reporter or Office of Oil and Gas.

**36.09. Hearings to be Public.** All hearings to be conducted under these rules shall be open to the public.

**36.10. Written Orders.** (a) Upon determination, the Administrator shall consider the evidence and issue a written order which shall include a statement of findings and conclusions and the reasons therefor on the material issues.

(b) A copy of the order shall be served by first class mail upon all persons at the time the order is issued.

**WEST VIRGINIA  
OIL AND GAS CONSERVATION COMMISSION**

1613 Washington Street, East  
Charleston, West Virginia 25311  
Office Telephone - 304-348-3092

**STAFF**

**THOMAS E. HUZZEY  
COMMISSIONER**

**FRANCES H. FARLEY  
SECRETARY**

**COMMISSION MEMBERS:**

Thomas E. Huzzey ..... Office of Oil and Gas  
1613 Washington Street, East (Administrator)  
Charleston, West Virginia 25311

JAMES N. RYAN ..... (Term Expires July 27, 1986)  
P. O. Box 26  
Bridgeport, West Virginia 26330

JAMES B. GEHR, CHAIRMAN ..... (Term Expires July 27, 1984)  
P. O. Box 1479  
Clarksburg, West Virginia 26301

CARL E. SMITH ..... (Term Expires July 27, 1982)  
P. O. Box 4  
Sandyville, West Virginia 25275

DAVID C. CALLAGHAN (EX-OFFICIO)  
Director, Department of Natural Resources

THOMAS E. HUZZEY (EX-OFFICIO)  
Deputy Director, Oil and Gas Division, Department of Mines

# ARTICLE 4A OIL & GAS CONSERVATION

(Passed March 9, 1972; In effect from passage.)

AN ACT to amend chapter twenty-two of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article four-a, relating generally to the conservation of oil and gas; setting forth a declaration of public policy in this regard; making certain legislative findings with respect to deep oil or gas wells; providing certain definitions of terms; specifying the lands to which said article shall be applicable; providing certain exclusions; creating the West Virginia oil and gas conservation commission and providing for its authority and responsibility; authorizing the appointment of the oil and gas conservation commissioner and providing for his qualifications, compensation and expenses; relating to the membership of such commission, the qualifications and terms of its members, vacancies in such membership, meetings of the commission, the compensation and expenses of its members and general powers and duties of the commissioner; authorizing the commissioner to issue subpoenas and subpoenas duces tecum; authorizing the promulgation by the commissioner of reasonable rules and regulations; specifying certain notice requirements; making applicable certain provisions of the West Virginia rules of civil procedure for trial courts of record; prohibiting the waste of oil or gas; requiring the establishment of drilling units and the pooling of interests in drilling units in connection with deep oil or gas wells; relating to the rights and duties of nonparticipating owners in the event of a pooled tract; relating to the recovery of oil and unit operations; validating unit agreements; establishing hearing procedures; authorizing the commissioner to hold hearings; providing a time and place for such hearings; expressly providing that the provisions of chapter twenty-nine-a of the code shall govern such hearings and otherwise be applicable; providing for judicial review of decisions of the commissioner entered following such hearings; providing for appeals to the supreme court of appeals; providing for legal counsel for the commissioner; providing for injunctive relief; authorizing injunctive relief without bond or other undertaking; providing for a special oil and gas conservation tax; establishing criminal penalties; providing for construction of article; and providing a severability clause.

Be it enacted by the Legislature of West Virginia:

That chapter twenty-two of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto a new article, designated article four-a, to read as follows:

## ARTICLE 4A. OIL AND GAS CONSERVATION.

### §22-4A-1. Declaration of public policy; legislative findings.

(a) It is hereby declared to be the public policy of this state and in the public interest to:

- (1) Foster, encourage and promote exploration for and development, production, utilization and conservation of oil and gas resources;
- (2) Prohibit waste of oil and gas resources and unnecessary surface loss of oil and gas and their constituents;
- (3) Encourage the maximum recovery of oil and gas; and
- (4) Safeguard, protect and enforce the correlative rights of operators and royalty owners in a pool of oil or gas to the end that each such operator and royalty owner may obtain his just and equitable share of production from such pool of oil or gas.