

HB 4371

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WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1994



ENROLLED

Com. Sub. for
HOUSE BILL No. 4371

(By Delegate Mr. Speaker, Mr. Chambers,
and Delegates Staton, Browning,
Whitman, Collins, Frederick and
Burk)

Passed March 12, 1994

In Effect from Passage

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COMMITTEE SUBSTITUTE
FOR
H. B. 4371

(By MR. SPEAKER, MR. CHAMBERS, AND DELEGATES STATON,
BROWNING, WHITMAN, COLLINS, FREDERICK AND BURK)

[Passed March 12, 1994; 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 twenty-one, relating to coalbed methane wells; declaration of public policy; legislative findings; defining certain terms; establishing coalbed methane review board; application of article; exclusions; applications of certain provision of articles six, seven, eight, nine and ten of this chapter to coalbed methane wells; chief of office of oil and gas to enforce article; duties of same; duties of coalbed methane review board; meetings; notice; powers; duties; promulgation of rules; issuance of permit required for coalbed methane well; permit fee; application for permit; soil erosion control plan; criminal and civil penalties; consent and agreement of coal owner or operator; hearing in lieu of same; notice to owners of application; contents of same; publication; comments and procedure for filing same; hearings on objections or comments by coal owner or operator; review of application; issuance of permits; assessor to receive copy of permits; permit for plugging of wells; inspections; sediment control plan; review board hearing; findings; order; considerations for award or denial of permit; order granting permit to require

proof of financial security; forms of same; amount; term; required protective devices; notice of stimulation; results of stimulation; drilling units; pooling of interests; application; contents; notice to owners; review of application; hearing; pooling order; spacing; operation; elections; working interests; royalty interests; carried interests; escrow account for conflicting claims; division order; judicial determination of ownership; operation on drilling units; validity of unit agreements; spacing between wells; workable coal seams; dry or abandoned wells; notice of plugging and reclamation of well; right to take well; objection; plugging order; plugging for minethrough; method of plugging; existing mining rights; judicial review; appeal to supreme court; legal representation for review board; limitation on actions in trespass; injunctive relief; civil and criminal penalties; construction of article; and severability.

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 twenty-one, to read as follows:

ARTICLE 21. COALBED METHANE WELLS AND UNITS.

§22-21-1. Declaration of public policy; legislative findings.

1 (a) The Legislature hereby declares and finds that the
2 venting of coalbed methane from mine areas and
3 degasification of coal seams has been and continues to
4 be approved by the state for the purpose of ensuring the
5 safe recovery of coal; that the value of coal is far greater
6 than the value of coalbed methane and any development
7 of the coalbed methane should be undertaken in such a
8 way as to protect and preserve coal for future safe
9 mining and maximum recovery of the coal; that subject
10 to the above declarations and findings, commercial
11 recovery and marketing of coalbed methane should in
12 some cases be facilitated because the energy needs of
13 this state and the United States indicate that the fullest
14 practical recovery of both coal and coalbed methane
15 should be encouraged; that the Energy Policy Act of

16 1992 was enacted in part to encourage coalbed methane
17 development and the state of West Virginia should enact
18 legislation which carries out the purposes of said act;
19 that in order to encourage and ensure the fullest
20 practical recovery of coal and coalbed methane in this
21 state and to further ensure the safe recovery of both
22 natural resources, it is in the public interest to enact this
23 article authorizing coalbed methane well permits,
24 regulating the design of coalbed methane wells and
25 recovery techniques, authorizing coalbed methane well
26 units and pooling of interests therein to provide all
27 coalbed methane operators and coalbed methane owners
28 with an opportunity to recover their just and equitable
29 share of production.

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

32 (1) Preserve coal seams for future safe mining;
33 facilitate the expeditious, safe evacuation of coalbed
34 methane from the coalbeds of this state, and maintain
35 the ability and absolute right of coal operators at all
36 times to vent coalbed methane from mine areas;

37 (2) Foster, encourage and promote the commercial
38 development of this state's coalbed methane by estab-
39 lishing procedures for issuing permits and forming
40 drilling units for coalbed methane wells without
41 adversely affecting the safety of mining or the minea-
42 bility of coal seams;

43 (3) Safeguard, protect and enforce the correlative
44 rights of coalbed methane well operators and coalbed
45 methane owners in a pool of coalbed methane to the end
46 that each such operator and owner may obtain his or her
47 just and equitable share of production from coalbed
48 methane recovered and marketed under this article;

49 (4) Safeguard and protect the mineability of coal
50 during the removal of coalbed methane, as permitted
51 under this article;

52 (5) Create a state permitting procedure and authority
53 to provide for and facilitate coalbed methane develop-
54 ment as encouraged by the Energy Policy Act of 1992;

55 and

56 (6) Seek the deletion of the state of West Virginia from
57 the list of affected states by the secretary of the United
58 States department of the interior as provided for in the
59 Energy Policy Act of 1992.

§22-14-2. Definitions.

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

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

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

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

20 (d) "Coalbed methane owner" means any owner of
21 coalbed methane;

22 (e) "Coalbed methane well" means any hole or well
23 sunk, drilled, bored or dug into the earth for the
24 production of coalbed methane for consumption or sale,
25 including a gob well. The term "well" shall mean a
26 coalbed methane well unless the context indicates
27 otherwise. The term "coalbed methane well" does not
28 include any shaft, hole or well sunk, drilled, bored or
29 dug into the earth for core drilling, production of coal
30 or water, venting gas from a mine area, or degasifica-
31 tion of a coal seam;

32 (f) "Coalbed methane well operator" or "well operator"

33 means any person who has the right to operate or does
34 operate a coalbed methane well;

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

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

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

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

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

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

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

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

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

64 (p) "Stimulate" means any action taken to increase the
65 natural flow of coalbed methane or the inherent
66 productivity of a coalbed methane well, including, but
67 not limited to, fracturing, shooting, acidizing or water
68 flooding, but excluding cleaning out, bailing or work-
69 over operations;

70 (q) "Waste" means (i) physical waste as the term is
71 generally understood in the gas industry and as
72 provided for in article six of this chapter, but giving
73 special consideration to coal mining operations and the
74 safe recovery of coal; (ii) the locating, drilling, equip-
75 ping, operating, producing or transporting coalbed
76 methane in a manner that causes or tends to cause a
77 substantial reduction in the quantity of coalbed methane
78 recoverable from a pool under prudent and proper
79 operations, or that causes or tends to cause a substantial
80 or unnecessary or excessive surface loss of coalbed
81 methane; (iii) the drilling of more wells than are
82 reasonably required to recover efficiently and econom-
83 ically the maximum amount of coalbed methane from
84 a pool; or (iv) substantially inefficient, excessive or
85 improper use, or the substantially unnecessary dissipa-
86 tion of reservoir pressure. Waste does not include
87 coalbed methane vented or released from any mine area,
88 the degasification of a coal seam for the purpose of
89 mining coal, the plugging of coalbed methane wells for
90 the purpose of mining coal, or the conversion of coalbed
91 methane wells to vent holes for the purpose of mining
92 coal;

93 (r) "Workable coalbed" or "workable coal seam" means
94 any seam of coal twenty inches or more in thickness, or
95 any seam of less thickness which is being commercially
96 mined or can be shown to be capable of being commer-
97 cially mined.

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

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

6 (b) This article does not apply to or affect (1) any well
7 otherwise permitted, approved or regulated under
8 article six, seven, eight, nine or ten of this chapter or
9 article eight, chapter twenty-two-c of the code, or (2) any

10 ventilation fan, vent hole, mining apparatus, or other
11 facility utilized solely for the purpose of venting any
12 mine or mine area, (3) the ventilation of any mine or
13 mine area or degasification of any coal seam for the
14 mining of coal.

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

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

26 (1) The provisions of section three pertaining to the
27 findings and orders of inspectors concerning violations,
28 determination of reasonable time for abatement, exten-
29 sions of time for abatement, special inspections, notice
30 of findings and orders;

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

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

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

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

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

52 (6) The provisions of section twenty-eight providing
53 for supervision by the chief over drilling and reclama-
54 tion operations, complaints, hearings and appeals;

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

57 (8) The provisions of section thirty providing for
58 reclamation requirements;

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

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

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

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

70 (13) The provisions of section thirty-five providing for
71 civil action for contamination or deprivation of fresh-
72 water source or supply and presumption;

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

76 (15) The provisions of section thirty-nine providing for
77 injunctive relief.

78 In addition to the foregoing and subject to the same
79 qualifications, the provisions of article ten of this
80 chapter shall apply to coalbed methane wells. Any well
81 which is abandoned or presumed to be abandoned under
82 the provisions of this article shall be treated as an
83 abandoned well under said article ten.

§22-21-4. Chief; powers and duties generally.

1 (a) The chief of the office of oil and gas shall have the
2 duty of issuing permits and otherwise supervising the
3 execution and enforcement of the provisions of this
4 article, all subject to the review and approval of the
5 director.

6 (b) The chief of the office of oil and gas is authorized
7 to enact rules necessary to effectuate the purposes of this
8 article, subject to the review and approval by the
9 director.

10 (c) In addition to all other powers and duties conferred
11 upon the chief, the chief shall have the power and duty
12 to:

13 (1) Perform all duties which are expressly imposed
14 upon him by the provisions of this article, as well as
15 duties assigned to him by the director;

16 (2) Perform all duties as the permit issuing authority
17 for the state in all matters pertaining to the exploration,
18 development, production, and recovery of coalbed
19 methane in accordance with the provisions of this
20 article;

21 (3) Perform such acts as may be necessary or approp-
22 riate to secure to this state the benefits of federal
23 legislation by establishing programs relating to the
24 exploration, development, production, and recovery of
25 coalbed methane, which programs are assumable by the
26 state;

27 (4) Visit and inspect any coalbed methane well or well
28 site and call for the assistance of any oil and gas
29 inspectors or other employees of the office of oil and gas
30 in the enforcement of the provisions of this article;

31 (5) Collect the permit application fee for the drilling
32 of a coalbed methane well;

33 (6) Collect the permit application fee for a drilling
unit.

**§22-21-5. Duties of the coalbed methane review board;
meetings; notice, powers and duties
generally.**

1 (a) The board shall meet and hold conferences and
2 hearings at such times and places as are designated by
3 the chairman. The chairman may call a meeting of the
4 board at any time. The chairman shall call a meeting
5 of the board (1) upon receipt from the chief of a
6 completed application for a permit to establish one or
7 more coalbed methane gas drilling units pursuant to
8 this article, (2) upon receipt from the chief of a request
9 pursuant to section seven of this article or comments or
10 objections pursuant to sections ten and eleven of this
11 article, or (3) within twenty days upon the written
12 request by another member of the board. Notice of all
13 meetings shall be given to each member of the board
14 by the chairman at least ten days in advance thereof,
15 unless otherwise agreed by the members.

16 (b) At least ten days prior to every meeting of the
17 board called pursuant to the provisions of this section,
18 the chairman shall also notify the applicant, all persons
19 to whom copies of the application were required to be
20 mailed pursuant to the provisions of section nine of this
21 article and all persons who filed written protests or
22 objections with the board in accordance with the
23 provisions of sections ten or eleven of this article.

24 (c) A majority of the members of the board constitute
25 a quorum for the transaction of any business. A majority
26 of the members of the board is required to determine
27 any issue brought before it.

28 (d) The board shall execute and carry out, administer
29 and enforce the provisions of this article in the manner
30 provided herein. Subject to the provisions of section
31 three of this article, the board has jurisdiction and
32 authority over all persons and property necessary
33 therefor: *Provided*, That the provisions of this article do
34 not grant to the board authority or power to fix prices
35 of coalbed methane gas.

36 (e) Within eighteen months of the effective date of this
37 article, the board shall initiate rule-making proceedings
38 to investigate the feasibility of establishing blanket
39 bonds for financial security in addition to the provisions
40 for bonds for financial security under section thirteen

41 of this article.

42 (f) The board may:

43 (1) Take evidence and issue orders concerning appli-
44 cations for drilling permits and coalbed methane gas
45 drilling units in accordance with the provisions of this
46 article;

47 (2) Promulgate, pursuant to the provisions of chapter
48 twenty-nine-a of this code, and enforce reasonable rules
49 necessary to govern the practice and procedure before
50 the board;

51 (3) Make such relevant investigations of records and
52 facilities as it deems proper; and

53 (4) Issue subpoenas for the attendance of and sworn
54 testimony by witnesses and subpoenas duces tecum for
55 the production of any books, records, maps, charts,
56 diagrams and other pertinent documents in its own
57 name or at the request of any party pursuant to article
58 five, chapter twenty-nine-a.

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

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

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

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

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

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

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

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

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

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

50 (8) Except for a gob well or vent hole proposed to be
51 converted to a well, if the proposed coalbed methane
52 well will be completed in some but not all coal seams
53 for production, a plan and design for the well which will
54 protect all workable coal seams which will be pene-
55 trated by the well;

56 (9) If the proposed operations will include horizontal
57 drilling of a well commenced on the surface, a descrip-
58 tion of such operations, including both the vertical and
59 horizontal alignment and extent of the well from the
60 surface to total depth;

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

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

65 (1) The applicable bond prescribed by section eight of
66 this article.

67 (2) A permit application fee of two hundred fifty
68 dollars.

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

71 (4) The consent and agreement of the coal owner as
72 required by section seven and, if applicable, section
73 twenty of this article.

74 (5) A plat prepared by a licensed land surveyor or
75 registered engineer showing the district and county in
76 which the drill site is located, the name of the surface
77 owner of the drill site tract, the acreage of the same,
78 the names of the surface owners of adjacent tracts, the
79 names of all coal owners underlying the drill site tract,
80 the proposed or actual location of the well determined
81 by a survey, the courses and distances of such location
82 from two permanent points or landmarks on said tract,
83 the location of any other existing or permitted coalbed
84 methane well or any oil or gas well located within two
85 thousand five hundred feet of the drill site, the number
86 to be given the coalbed methane well, the proposed date
87 for completion of drilling, the proposed date for any
88 stimulation of the well, and if horizontal drilling of a
89 well commenced on the surface is proposed, the vertical
90 and horizontal alignment and extent of the well.

91 (6) A certificate by the applicant that the notice
92 requirements of section nine of this article have been
93 satisfied by the applicant. Such certification may be by

94 affidavit of personal service, or the return receipt card,
95 or other postal receipt, for certified mailing.

96 (d) An erosion and sediment control plan shall
97 accompany each application for a permit. Such plan
98 shall contain methods of stabilization and drainage,
99 including a map of the project area indicating the
100 amount of acreage disturbed. The erosion and sediment
101 control plan shall meet the minimum requirements of
102 the West Virginia erosion and sediment control manual
103 as adopted and from time to time amended by the office
104 of oil and gas in consultation with the several soil
105 conservation districts pursuant to the control program
106 established in this state through section 208 of the
107 federal Water Pollution Control Act Amendments of
108 1972 [33 U.S.C. 1288]. The erosion and sediment control
109 plan shall become part of the terms and conditions of
110 a permit and the provisions of the plan shall be carried
111 out where applicable in operations under the permit.
112 The erosion and sediment control plan shall set out the
113 proposed method of reclamation which shall comply
114 with the requirements of section thirty, article six of this
115 chapter.

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

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

133 (g) The chief shall deny the issuance of a permit if he

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

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

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

1 (a) No permit shall be issued for a coalbed methane
2 well unless and until the applicant has obtained and
3 filed with the chief a consent and agreement from each
4 owner and each operator of any workable coal seam
5 twenty-eight inches or more in thickness which is within
6 seven hundred fifty horizontal feet of the proposed well
7 bore and (i) which coal seam the applicant proposes to
8 stimulate or (ii) which coal seam is within one hundred
9 vertical feet above or below a coal seam which the
10 applicant proposes to stimulate. The requirement for
11 consent and agreement contained in this section shall
12 not be considered to impair, abridge or affect any
13 contractual rights or objections arising out of a contract
14 or lease which provides for the development of coalbed

15 methane and stimulation of wells between the applicant
16 and any coal owner or operator and the existence of any
17 such contract or lease shall constitute a waiver of the
18 requirement to file an additional signed consent and
19 agreement. Such consent and agreement must provide:
20 (i) that such coal owner or operator has been provided
21 with a copy of the application for permit as required by
22 section six of this article and with a copy of all plats
23 and documents which must accompany the application
24 and (ii) that such coal owner or operator consents and
25 agrees to the stimulation of the coal seam as described
26 in such application.

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

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

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

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

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

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

53 (d) If the authorization of a coal owner or operator has

54 been withheld based upon reasons related to safety the
55 chief shall, concurrent with submission of the request
56 and affidavit to the board, submit a copy of the
57 application to the director of the office of miners' health,
58 safety and training who shall review the application as
59 to issues of mine safety and within thirty days submit
60 recommendations to the board.

§22-21-8. Performance bonds; corporate surety or other security.

1 (a) No permit shall be issued pursuant to this article
2 unless a bond is or has been furnished as provided in
3 this section.

4 (b) A separate bond may be furnished for a particular
5 coalbed methane well in the sum of ten thousand dollars,
6 payable to the state of West Virginia, conditioned on full
7 compliance with all laws, rules and regulations relating
8 to the drilling, operation and stimulation of such wells,
9 to the plugging, abandonment and reclamation thereof,
10 and for furnishing such reports and information as may
11 be required by the chief.

12 (c) When an operator makes or has made application
13 for permits to drill, operate or stimulate more than one
14 coalbed methane well or a combination of coalbed
15 methane wells and wells regulated under article one,
16 chapter twenty-two-b of this code, the operator may in
17 lieu of furnishing a separate bond furnish a blanket
18 bond in the sum of fifty thousand dollars, payable to the
19 state of West Virginia, and conditioned as stated in
20 subsection (b) of this section.

21 (d) All bonds submitted hereunder shall have a
22 corporate bonding or surety company authorized to do
23 business in the state of West Virginia as surety thereon,
24 or in lieu of a corporate surety, the operator may elect
25 to deposit with the chief cash, collateral securities or any
26 combination thereof as provided for in subsection (d),
27 section twenty-six, article six of this chapter.

28 (e) For purposes of bonding requirements, a coalbed
29 methane well shall be treated as a well, as defined and
30 regulated in article one, chapter twenty-two-b of this

31 code, and the provisions of subsections (e), (g), (h), (i) and
32 (j) of section twenty-six thereof shall apply.

§22-21-9. Notice to owners.

1 (a) Prior to filing an application for a permit for a
2 coalbed methane well under this article, the applicant
3 shall deliver by personal service or by certified mail,
4 return receipt requested, copies of the application, well
5 plat and erosion and sediment control plan to the
6 following:

7 (1) The owners of record of the surface of the tract
8 on which the coalbed methane well is to be located;

9 (2) The owners of record of the surface of any tract
10 which is to be utilized for roads or other land
11 disturbance;

12 (3) Each coal owner and each coal operator (i) from
13 whom a consent and agreement provided for in section
14 seven of this article is required, or (ii) whose coal seam
15 will be penetrated by the proposed coalbed methane well
16 or is within seven hundred fifty feet of any portion of
17 the well bore; and

18 (4) Each owner and lessee of record and each operator
19 of natural gas surrounding the well bore and existing
20 in formations above the top of the uppermost member
21 of the "Onondaga Group" or at a depth less than six
22 thousand feet, whichever is shallower. Notices to gas
23 operators shall be sufficient if served upon the agent of
24 record with the office of oil and gas.

25 (b) If more than three tenants in common or other co-
26 owners of interests described in subsection (a) of this
27 section hold interests in such lands, the applicant may
28 serve the documents required upon the person described
29 in the records of the sheriff required to be maintained
30 pursuant to section eight, article one, chapter eleven-a
31 of this code: *Provided*, That all owners and operators
32 occupying or operating on the tracts where the well
33 work is proposed to be located at the filing date of the
34 permit application shall receive actual service of the
35 documents required by subsection (a) of this section.

36 (c) Prior to filing an application for a permit for
37 coalbed methane well under this article, the applicant
38 shall cause to be published in the county in which the
39 well is located or to be located a Class II legal
40 advertisement as described in section two, article three,
41 chapter fifty-nine of this code, containing such notice
42 and information as the chief shall prescribe by rule and
43 regulation, with the first publication date being no more
44 than ten days after the filing of the permit application.

45 (d) Materials served upon persons described in
46 subsections (a) and (b) of this section shall contain a
47 statement of the methods and time limits for filing
48 comment and objection, who may file comment and
49 objection, the name and address of the chief with whom
50 the comment and objection must be filed, the ability to
51 obtain additional information from the chief, the fact
52 that such persons may request notice of the permit
53 decision, and a list of persons qualified to test water as
54 provided in this section.

55 (e) Any person entitled to submit comment or objec-
56 tion shall also be entitled to receive a copy of the permit
57 as issued or a copy of the order denying the permit if
58 such person requests the receipt thereof as a part of the
59 comment or objection concerning said permit
60 application.

61 (f) Persons entitled to notice may contact the district
62 office of the office of oil and gas to ascertain the names
63 and location of water testing laboratories in the area
64 capable and qualified to test water supplies in accor-
65 dance with standard accepted methods. In compiling
66 such list of names the office of oil and gas shall consult
67 with the state and local health departments.

§22-21-10. Procedure for filing comments.

1 All persons described in subsection (a), section nine of
2 this article may file comments with the chief as to the
3 location or construction of the applicant's proposed well
4 within fifteen days after the application is filed with the
5 chief.

§22-21-11. Objections or comments to coalbed methane

wells by coal owner or operator; hearings.

1 The owner or operator of any coal seam whose
2 interests may be adversely affected by a coalbed
3 methane well may, within fifteen days from the receipt
4 of notice required by section nine of this article, file
5 objections in writing to such proposed drilling with the
6 chief, setting out the grounds on which such objections
7 are based.

**§22-21-12. Review of application; issuance of permit in
the absence of objections; copy of permits to
county assessor.**

1 The chief shall review each application for a permit
2 and shall determine whether or not a permit shall be
3 issued.

4 No permit shall be issued less than fifteen days after
5 the filing date of the application for any well work
6 except plugging or replugging; and no permit for
7 plugging or replugging shall be issued less than five
8 days after the filing date of the application except a
9 permit for plugging or replugging a dry hole: *Provided,*
10 That if the applicant certifies that all persons entitled
11 to notice of the application under the provisions of this
12 article have been served in person or by certified mail,
13 return receipt requested, with a copy of the permit
14 application, including the erosion and sediment control
15 plan, if required, and the plat required by section six
16 of this article, and further files written statements of no
17 objection by all such persons, the chief may issue the
18 permit at any time.

19 The chief may cause such inspections to be made of
20 the proposed location as to assure adequate review of the
21 application. The permit shall not be issued, or shall be
22 conditioned, including conditions with respect to the
23 location of the well and access roads, prior to issuance
24 if the chief determines that:

25 (1) The proposed well work will constitute a hazard
26 to the safety of persons; or

27 (2) The plan for soil erosion and sediment control is
28 not adequate or effective; or

29 (3) Damage would occur to publicly owned lands or
30 resources; or

31 (4) The proposed well work fails to protect fresh water
32 sources or supplies. Upon the issuance of any permit
33 pursuant to the provisions of this article, the chief shall
34 transmit a copy of such permit to the office of the
35 assessor for the county in which the well is located.

§22-21-13. Review board hearing; findings; order.

1 (a) If comment or objection is filed under sections ten
2 or eleven of this article, the chief shall forthwith provide
3 to the chairman of the coalbed methane review board
4 a copy of any such objection or comment, together with
5 the application for a permit for the coalbed methane
6 well in question, the plat filed therewith and such other
7 information accompanying the permit as may relate to
8 the comment or grounds for the objection.

9 (b) The review board shall forthwith schedule a
10 hearing for the purpose of considering such objection or
11 comment. Notice shall be given fifteen days in advance
12 of the hearing to any person filing comment or objection,
13 and to any person to whom notice of the application
14 required, and to any applicant, and the review board
15 shall hold such hearing within thirty days after the
16 deadline for filing objection or comment. At such
17 hearing the review board shall consider the matters
18 raised in any objection or comment, including surface
19 topography and use, and with respect to the ability to
20 mine any affected coal seam safely and the protection
21 of any such seam for future mining shall consider the
22 following:

23 (1) Whether the drilling location is above or in close
24 proximity to any mine opening, shaft, entry, travelway,
25 airway, haulageway, drainageway or passageway, or to
26 any proposed extension thereof, any abandoned, operat-
27 ing coal mine, or any coal mine already surveyed and
28 platted but not yet being operated;

29 (2) Whether the proposed drilling can reasonably be
30 done through an existing or planned pillar of coal, or
31 in close proximity to an existing or planned pillar of

32 coal, taking into consideration the surface topography;

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

37 (4) The extent to which the proposed drilling location
38 unreasonably interferes with the safe recovery of coal or
39 coalbed methane;

40 (5) The extent to which the proposed drilling location
41 will unreasonably interfere with present or future coal
42 mining operations on the surface including, but not
43 limited to, operations subject to the provisions of article
44 three of this chapter;

45 (6) The feasibility of moving the proposed drilling
46 location to a mined-out area, below the coal outcrop, or
47 to some other location;

48 (7) The feasibility of a drilling moratorium for not
49 more than one year in order to permit the completion
50 of imminent coal mining operations;

51 (8) The methods proposed for the recovery of coal and
52 coalbed methane;

53 (9) The practicality of locating the well on a uniform
54 pattern with other wells;

55 (10) The surface topography and use; and

56 (11) Whether any stimulation of the coal seam will
57 render such seam or any other workable coal seams
58 unmineable or unsafe for mining;

59 (12) Whether the director of the office of miners'
60 health, safety and training has submitted recommenda-
61 tions as to the safety of any proposed stimulation. In
62 considering any recommendations made by the director
63 of the office of miners' health, safety and training, the
64 board shall incorporate such recommendations in its
65 findings, conclusions, and order unless the board
66 determines that there is clear and convincing evidence
67 on the record supporting a finding, conclusion, or order
68 inconsistent with such recommendations.

69 (c) In weighing the evidence presented to the board
70 the applicant shall have the burden of proving by clear
71 and convincing evidence, that stimulation of a workable
72 coal seam of twenty-eight inches or more in thickness
73 will not render such seam or any other workable coal
74 seam of twenty-eight inches or more in thickness
75 unmineable or unsafe for mining.

76 (d) Upon consideration of the matters raised at the
77 hearing, the review board shall render a decision based
78 upon the ability to mine any affected coal seam safely
79 and the protection of any coal seam for safe future
80 mining, shall enter a written order containing findings
81 of fact and conclusions which address any relevant
82 considerations in subsection (b) of this section and based
83 thereon shall issue and file with the chief a written
84 order directing him to:

85 (1) Refuse a drilling permit; or

86 (2) Issue a drilling permit for the proposed drilling
87 location; or

88 (3) Issue a drilling permit for an alternate drilling
89 location different from that requested by the applicant;
90 or

91 (4) Issue a drilling permit either for the proposed
92 drilling location or for an alternative drilling location
93 different from that requested by the applicant, provided
94 such alternate location is covered by the agreement and
95 consent required by section seven of this article, but not
96 allow the drilling of the well for a period of not more
97 than one year from the date of issuance of such permit;
98 or

99 (5) Issue a permit authorizing the applicant to
100 stimulate the well in the absence of consent of the
101 affected coal operators or owners of workable coal seams
102 of twenty-eight inches or more in thickness as described
103 in subsection (a) of section seven of this article, as
104 proposed or as modified by the order of the board. Such
105 order shall further provide for the applicant to furnish
106 evidence of financial security in one of the following
107 forms: (a) A corporate surety bond having on it a

108 company authorized to do business in this state as
109 surety; (b) bonds of the United States or agency thereof,
110 or those guaranteed by, or for which the credit of the
111 United States or agency therefor is pledged for the
112 payment of the principal and interest thereof; (c) direct
113 general obligation bonds of this state, or any other state,
114 or territory of the United States, or the District of
115 Columbia if such other state, territory, or the District
116 of Columbia has the power to levy taxes for the payment
117 of the principal and interest of such securities, and if
118 at the time of the deposit such other state, territory, or
119 the District of Columbia is not in default in the payment
120 of any part of the principal or interest owing by it upon
121 any part of its funded indebtedness; (d) direct general
122 obligation bonds of any county, district, city, town,
123 village, school district or other political subdivision of
124 this state issued pursuant to law and payable from ad
125 valorem taxes levied on all taxable property located
126 herein, that the total indebtedness after deducting
127 sinking funds and all debts incurred for self-sustaining
128 public works does not exceed five percent of the assessed
129 value of all taxable property therein at the time of the
130 last assessment made before the date of such deposit,
131 and that the issuer has not, within five years prior to
132 the making thereof, been in default for more than ninety
133 days in the payment of any part of the principal or
134 interest on any debt, evidenced by its bonds; (e) revenue
135 bonds issued by this state or any agency of this state
136 when such bonds are payable from revenues or earnings
137 specifically pledged for the payment of principal and
138 interest, and a lawful sinking funds or reserve fund has
139 been established and is being maintained for the
140 payment of such bonds; (f) revenue bonds issued by a
141 municipality in this state for the acquisition, construc-
142 tion, improvement or extension of a waterworks system,
143 or a sewerage system, or a combined waterworks and
144 sewerage system, when such bonds are payable from
145 revenue or earnings specifically pledged for the pay-
146 ment of principal and interest, and a lawful sinking
147 fund or reserve fund has been established and is being
148 maintained for the payment of such bonds; (g) revenue
149 bonds issued by a public service board of a public

150 service district in this state for the acquisition, construc-
151 tion, improvement or extension of any public service
152 properties, or for the reimbursement of payment of the
153 costs and expenses of creating the district, when such
154 bonds are payable from revenue or earnings specifically
155 pledged for the payment of principal and interest, and
156 a lawful sinking fund or reserve fund has been estab-
157 lished and is being maintained for the payment of such
158 bonds; (h) revenue bonds issued by a board of trustees
159 of a sanitary district in this state for the corporate
160 purposes of such district, when such bonds are payable
161 from revenue or earnings specifically pledged for the
162 payment of principal and interest, and a lawful sinking
163 fund or reserve fund has been established and is being
164 maintained for the payment of such bonds; and (i) bonds
165 issued by a federal land bank or home owners' loan
166 corporation; (j) cash; or (k) any combination of the above.
167 The operator of the well shall be entitled to all interest
168 and income earned on the collateral securities provided
169 pursuant to the order. Such security given shall be
170 placed in an escrow account. The operator providing
171 security shall be entitled from time to time to receive,
172 upon written order of the board, the whole or any
173 portion of such securities upon depositing in lieu thereof
174 cash equal to the approved securities of the classes
175 herein specified.

176 The amount of such financial security shall be set by
177 order of the board but shall in no event exceed an
178 amount of fifty thousand dollars. In setting the amount
179 of financial security, the board shall consider the total
180 amount of coal which could be at risk of economic harm,
181 demonstrated experience in the locale and seams of the
182 proposed stimulation, the probability of damages to the
183 seam, and the likelihood of commercial recovery within
184 thirty years of the date of stimulation.

185 Such financial security shall remain in force until two
186 years after the affected coal is mined or for a period of
187 thirty years after stimulation of the coal seam or until
188 final resolution of any action timely instituted to collect
189 the bond proceeds, whichever first occurs.

190 Any coal owner or operator may assert a claim to the

191 posted financial security by instituting an action
192 therefor in the circuit court of the county where the well
193 is located or where the damages occurred.

194 Upon receipt of such review board order, the chief
195 shall promptly undertake the action directed by the
196 review board, provided that all other provisions of this
197 article have been complied with. All permits issued by
198 the chief pursuant to this section shall be effective ten
199 days after issuance unless the review board orders the
200 chief to stay the effectiveness of a permit for a period
201 not to exceed thirty days from the date of issuance.

202 If a permit is issued, the chief shall indicate the
203 approved drilling location on the plat filed with the
204 application for a permit and shall number and keep an
205 index of and docket each plat, the name of the well
206 operator, the names and addresses of all persons
207 notified, the dates of conferences, hearings and all other
208 actions taken by the chief and the review board. The
209 chief shall also prepare a record of the proceedings,
210 which record shall include all applications, plats and
211 other documents filed with the chief, all notices given
212 and proof of service thereof, all orders issued, all
213 permits issued and a transcript of the hearing. The
214 record prepared by the chief shall be open to inspection
215 by the public.

216 (e) Notwithstanding any finding or determination
217 made by the board, in the event a workable coal seam
218 twenty-eight inches or more in thickness is stimulated
219 absent the consent of the coal owner or operator, the
220 applicant and well operator shall be liable in tort
221 without proof of negligence for any damage to such coal
222 seam stimulated or any other workable coal seam
223 twenty-eight inches or more in thickness within seven
224 hundred and fifty horizontal feet or one hundred
225 vertical feet of the stimulation and for damages to any
226 mining equipment proximately caused by such stimula-
227 tion. Such applicant and well operator shall indemnify
228 and hold the coal owner and coal operator harmless
229 against any liability for injury, death or damage to
230 property proximately caused by the stimulation.

§22-21-14. Protective devices required when a coalbed methane well penetrates workable coal bed; when a coalbed methane well is drilled through horizon of coal bed from which coal has been removed; notice of stimulation; results of stimulation.

1 (a) Except for those coalbeds which the coalbed
2 methane operator proposes to complete for production of
3 coalbed methane or where a ventilation hole is being
4 converted to a well, when a well penetrates one or more
5 workable coal beds, the well operator shall run and
6 cement a string of casing in the hole through the
7 workable coalbed or beds in such a manner as will
8 exclude all oil, gas or gas pressure as may be found in
9 such coalbed or beds. Such string of casing shall be
10 circulated and cemented in such a manner as provided
11 for in reasonable rules promulgated by the chief in
12 accordance with the provisions of chapter twenty-nine-
13 a. After any such string of casing has been so run and
14 cemented to the surface, drilling may proceed to the
15 permitted depth.

16 (b) When a coalbed methane well is drilled through
17 the horizon of a coalbed from which the coal has been
18 removed, the hole shall be drilled at least thirty feet
19 below the coalbed, of a size sufficient to permit the
20 placing of a liner which shall start not less than twenty
21 feet above it. Within this liner, which may be welded
22 to the casing to be used, shall be centrally placed the
23 largest sized casing to be used in the well, and the space
24 between the liner and casing shall be filled with cement
25 as they are lowered into the hole. Cement shall be placed
26 in the bottom of the hole to a depth of twenty feet to
27 form a sealed seat for both liner and casing. Following
28 the setting of the liner, drilling shall proceed in the
29 manner provided above. Should it be found necessary to
30 drill through the horizon of two or more workable
31 coalbeds from which the coal has been removed, such
32 liner shall be started not less than twenty feet below the
33 lowest such horizon penetrated and shall extend to a
34 point not less than twenty feet above the highest such
35 horizon.

36 (c) At least five days prior to the stimulation of any
37 coal seam the well operator shall give the coal owner
38 and operator notice of the date and time of stimulation
39 and shall allow the coal owner or operator to have an
40 observer present at the site at the coal owner or
41 operator's risk and cost. Within thirty days after
42 stimulation is completed, the well operator shall certify
43 the actual stimulation procedure used including, but not
44 limited to, the fluid injection rate, the injection pressure,
45 the volume and components of fluid injected and the
46 amount and components of the propping agent, if any.

47 (d) The chief may grant variances to the requirements
48 of this section where such variance would promote the
49 extraction of coalbed methane without affecting mine
50 safety.

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

1 (a) In the absence of a voluntary agreement, an
2 operator, owner or other party claiming an ownership
3 interest in the coalbed methane may file an application
4 with the chief to pool (i) separately owned interests in
5 a single tract, (ii) separately owned tracts, (iii) separ-
6 ately owned interests in any tract, and (iv) any combi-
7 nation of (i), (ii) and (iii) to form a drilling unit for the
8 production of coalbed methane from one or more coalbed
9 methane wells.

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

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

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

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

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

23 (5) The names and addresses of the owners of the coal
24 and coalbed methane underlying each separate tract, or
25 the portion thereof which is to be included in the unit,
26 any lessees or operators thereof, any coalbed methane
27 owners not otherwise named, and any other claimants
28 thereto known to the applicant. When any coal seam is
29 separately owned, the list of names shall identify such
30 separate ownership giving the names of the separately
31 owned seams.

32 (6) A statement describing the actions taken by the
33 applicant to obtain a voluntary agreement from each
34 interest owner or claimant named in the application
35 from which agreement has not been obtained.

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

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

40 (1) A plat prepared by a licensed land surveyor or
41 registered professional engineer showing the location of
42 the coalbed methane well or wells, or proposed well or
43 wells, the boundary and acreage of the proposed drilling
44 unit, the boundary and acreage of each tract contained
45 in the unit and, where parts of tracts are included, the
46 boundary and acreage of such parts, a name identifica-
47 tion of each tract, and the district and county in which
48 the unit is located. All boundaries must be shown with
49 courses and distances.

50 (2) A permit application fee of two hundred fifty
51 dollars.

52 (3) A certificate by the applicant that the notice
53 requirements of section sixteen of this article were
54 satisfied by the applicant. Such certification may be by
55 affidavit of personal service, or the return receipt card,
56 or other postal receipt, for certified mailing.

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

§22-21-16. Notice to owners.

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

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

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

15 (3) Any coalbed methane owner to the extent not
16 otherwise named; and

17 (4) Any other person or entity known to the operator
18 to have an interest in the coal or coalbed methane.

19 (b) The notice required by subsection (a) of this section
20 shall specify a time and place for a conference and a
21 hearing on this application, shall advise the persons
22 notified that the applicant has filed an application for
23 a drilling unit for the production of coalbed methane,
24 that they may be present and object or offer comments
25 to the formation of the proposed unit, and shall be
26 accompanied with copies of (i) the permit application for
27 the coalbed methane well, (ii) the permit application for
28 the drilling unit, and (iii) the plat of the drilling unit.

**§22-21-17. Review of application; hearing; pooling order;
spacing; operator; elections; working inter-
ests, royalty interests, carried interests,
escrow account for conflicting claims,
division order.**

1 (a) Prior to the time fixed for a hearing under
2 subsection (b) of this section, the board shall also set a
3 time and place for a conference between the proposed
4 applicant to operate a coalbed methane drilling unit and
5 all persons identified in the application as having an
6 interest in the coalbed methane or being a claimant if

7 such interests are disputed, who have not entered into
8 a voluntary agreement. At such conference the applicant
9 and such other persons present or represented having
10 an interest in the proposed unit shall be given an
11 opportunity to enter into voluntary agreements for the
12 development of the unit upon reasonable terms and
13 conditions.

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

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

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

33 (2) The plan of development of the coal and the need
34 for proper ventilation of any mines or degasification of
35 any affected coal seams;

36 (3) The nature and character of any coal seam or
37 seams which will be affected by the coalbed methane
38 well or wells;

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

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

44 (6) The nature and extent of ownership of each coalbed

45 methane owner or claimant and whether conflicting
46 claims exist;

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

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

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

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

67 (c) The review board shall take into account the
68 evidence introduced, comments received and any
69 objections at the hearing, and if satisfied that a drilling
70 unit should not be established, shall enter an order
71 denying the application. If the review board is satisfied
72 that a drilling unit should be established, it shall enter
73 a pooling order establishing a drilling unit. Such pooling
74 order shall:

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

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

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

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

85 (5) Establish a reasonable fee for the operator for
86 operating costs, which shall include routine mainte-
87 nance of the well and all accounting necessary to pay
88 all expenses, royalties and amounts due working interest
89 owners;

90 (6) Such other findings and provisions as are approp-
91 riate for each order.

92 (d) The operator designated in such order shall be
93 responsible for drilling, completing, equipping, operat-
94 ing, plugging and abandoning the well, shall market all
95 production therefrom, shall collect all proceeds therefor,
96 and shall distribute such proceeds in accordance with
97 the division order issued by the review board.

98 (e) Upon issuance of the pooling order the coalbed
99 methane owners or any lessee of any such owners or any
100 claimants thereto may make one of the following
101 elections within thirty days after issuance of the order:

102 (1) An election to sell or lease its interest to the
103 operator on such terms as the parties may agree, or if
104 unable to agree, upon such terms as are set forth by the
105 board in its order;

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

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

110 Any entity which does not make an election within
111 said thirty days prescribed herein shall be deemed to
112 have elected to sell or lease under election (1) above.

113 (f) The working interest in the well shall include (i)
114 the right to participate in decisions regarding expendi-
115 tures in excess of operating costs, taxes, any royalties
116 in excess of one-eighth, and other costs and expenses
117 allowed in the pooling order and (ii) the obligation to pay
118 for all expenditures. The working interest shall exist in
119 (i) all owners who participate in the risk and cost of
120 drilling and completing the well and (ii) carried interest

121 owners after recoupment provided in subsection (h) of
122 this section. The working interest owners' net revenue
123 share shall be seven eighths of the proceeds of sales of
124 coalbed methane at the wellhead after deduction of
125 operating costs, taxes, any royalties in excess of one-
126 eighth, and other costs and expenses allowed in a
127 pooling order. Unless the working interest owners
128 otherwise agree, the working interest owners shall share
129 in all costs and decisions in proportion to their owner-
130 ship interest in the unit. If any working interest owner
131 deposits or contributes amounts in the escrow account
132 which exceed actual costs, such owner shall be entitled
133 to a refund; and if amounts deposited or contributed are
134 less than actual costs, such owner shall make a deposit
135 or contribution for the deficiency.

136 (g) The royalty interest in a well shall include the
137 right to receive one eighth of the gross proceeds
138 resulting from the sale of methane at the wellhead and
139 such interest shall exist in the coalbed methane owners,
140 provided that any coalbed methane owner who in good
141 faith has entered a lease or other contract prior to
142 receiving notice of an application to form the drilling
143 unit as provided herein, shall be entitled to such owner's
144 fractional interest in the royalty calculated at a rate
145 provided for in such contract. Each such owner shall be
146 entitled to share in the royalty in proportion to his or
147 her fractional interest in the unit.

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

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

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

165 (2) The operator shall deposit in the escrow account
166 all proceeds attributable to the conflicting interests of
167 any coalbed methane owners who lease, or are deemed
168 to have leased, their interest, plus all proceeds in excess
169 of operational expenses, as allowed in the pooling order,
170 attributable to the conflicting working and carried
171 interest owners.

172 (j) After each coalbed methane owner has made, or
173 has been deemed to have made, an election under
174 subsection (e) of this section, the review board shall
175 enter a division order which shall set out the net revenue
176 interest of each working interest owner, including each
177 carried interest owner, and the royalty interest of each
178 coalbed methane owner. Thereafter payments shall be
179 made to working interest owners, carried interest
180 owners, and royalty interest owners in accordance with
181 the division order, except that payments attributable to
182 conflicting claims shall be deposited in the escrow
183 account. The fractional interest of each owner shall be
184 expressed as a decimal carried to the sixth place.

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

191 (1) Each legally entitled working interest owner shall
192 receive its proportionate share of the proceeds attribu-
193 table to the conflicting ownership interests;

194 (2) Each legally entitled carried interest owner shall
195 receive its proportionate share of the proceeds attribu-
196 table to the conflicting ownership interests, after
197 recoupment of amounts provided in subsection (h) of this
198 section;

199 (3) Each legally entitled entity leasing, or deemed to

200 have leased, its coalbed methane shall receive a share
201 of the royalty proceeds attributable to the conflicting
202 interests; and

203 (4) The operator shall receive the costs contributed to
204 the escrow account by each legally entitled participating
205 working interest owner.

206 (l) The review board shall enact rules for the admin-
207 istration and protection of funds delivered to escrow
208 accounts.

209 (m) No provision of this section or article shall obviate
210 the requirement that the coal owner's consent and
211 agreement be obtained prior to the issuance of a permit
212 as required under section seven of this article.

§22-21-18. Operation on drilling units.

1 All operations including, but not limited to, the
2 commencement, drilling or operation of a well upon a
3 drilling unit for which a pooling order has been entered,
4 are hereby deemed to be operations on each separately
5 owned tract in the drilling unit by the several owners.
6 That portion of the production allocated to a separately
7 owned tract included in a drilling unit is hereby deemed
8 to be produced from that tract.

§22-21-19. Validity of unit agreements.

1 No agreement between or among coalbed methane
2 operators or owners entered into for the development of
3 coalbed methane or forming drilling units therefor may
4 be held to violate the statutory or common law of this
5 state prohibiting monopolies or acts, arrangements,
6 contracts, combinations or conspiracies in restraint of
7 trade or commerce.

§22-12-20. Spacing.

1 No coalbed methane well may be drilled closer than
2 one hundred feet of the outside boundary of the coal
3 tract from which coalbed methane is or will be produced
4 or within one thousand six hundred linear feet of the
5 location of an existing well for which a permit applica-
6 tion is on file, unless all owners and operators of any
7 affected workable coal seams agree in writing. Affected

8 workable coal seams for purposes of this section shall
 9 be those which will be penetrated or those seams more
 10 than twenty-eight inches in thickness from which
 11 production is targeted. Spacing shall otherwise be as
 12 provided in a pooling order issued by the chief, an order
 13 establishing special field rules or an order issued by the
 14 review board.

§22-21-21. Dry or abandoned wells.

1 Any coalbed methane well which is completed as a dry
 2 hole or which has not produced coalbed methane in
 3 paying quantities for a period of twelve consecutive
 4 months shall be presumed to have been abandoned and
 5 the operator shall promptly plug the well and reclaim
 6 all surface land affected by the well in accordance with
 7 the provisions of this article, unless the operator
 8 furnishes satisfactory proof to the chief that there is a
 9 bona fide future use for such well in accordance with
 10 the rules promulgated under article six of this chapter.

**§22-21-22. Notice of plugging and reclamation of well;
 right to take well; objection; plugging
 order; plugging for minethrough.**

1 (a) Prior to the commencement of plugging operations
 2 the operator shall give thirty days' advance notice to the
 3 chief and to all coal owners and operators whose names
 4 and addresses would be required for a permit applica-
 5 tion under subdivision two, subsection (b), section six of
 6 this article as of the date of the notice. Such notice shall
 7 set out the number and other identification of the well,
 8 a copy of the well plat, the date plugging will com-
 9 mence, and the manner and method of plugging.

10 (b) Any coal owner or operator whose coal seam is
 11 affected by such well shall have the following rights:

12 (1) To convert the well to a vent hole or otherwise take
 13 the well. In such event the chief, upon determination
 14 that the coal owner or operator has placed the well
 15 under a mining permit, shall release the well operator's
 16 bond and the well operator shall be relieved of further
 17 responsibility for the well; and

18 (2) To file comment or objection with the chief, within

19 fifteen days after receipt of notice of intent to plug, with
20 respect to the proposed manner or method of plugging.
21 The chief shall consider any such comment or objection
22 and issue an order specifying the manner and method
23 of plugging and reclamation.

24 (c) Whenever any coalbed methane well is located in
25 that portion of a coal seam which will be mined within
26 six months, the well operator shall, within sixty days
27 after notice from the coal owner or coal operator that
28 the well is to be mined through, plug the well in such
29 manner that the well can be safely mined through.

§22-21-23. Method of plugging.

1 All coalbed methane wells shall be plugged in such
2 a manner that any workable coal seam surrounding the
3 well can be safely mined and that the well can be mined
4 through. The chief shall promulgate rules specifying the
5 manner and method of plugging coalbed methane wells
6 and in doing so, or in entering any order for such
7 plugging and reclamation, shall give special considera-
8 tion to the ability to mine any affected coal seam safely
9 and the protection of any affected coal seam for future
10 mining.

§22-21-24. Existing mining rights.

1 Nothing in this article shall be construed to affect the
2 mining and other property rights of any coal owner nor
3 shall any provision of this article be construed to
4 preclude a coal operator from removing support of the
5 surface and any structure or facilities thereon and other
6 strata as such rights may exist in any severance deed
7 or other contract.

**§22-21-25. Judicial review; appeal to supreme court of
appeals; legal representation for review
board.**

1 (a) Any person adversely affected by an order of the
2 chief or review board is entitled to judicial review. All
3 of the pertinent provisions of section four, article five,
4 chapter twenty-nine-a of this code apply to and govern
5 the judicial review.

6 (b) The judgment of the circuit court is final unless
7 reversed, vacated or modified on appeal to the supreme
8 court of appeals in accordance with the provisions of
9 section one, article six, chapter twenty-nine-a of this
10 code.

11 (c) Legal counsel and services for the chief or review
12 board in all appeal proceedings in any circuit court and
13 the supreme court of appeals shall be provided by the
14 attorney general or his or her assistants and in any
15 circuit court by the prosecuting attorney of the county,
16 all without additional compensation. The chief or review
17 board, with the written approval of the attorney general,
18 may employ special counsel to represent the chief or
19 review board at any appeal proceedings.

§22-21-26. Limitation on actions in trespass.

1 In any case where title to subsurface minerals has
2 been severed in such a way that title to natural gas
3 underlying such tract and title to coal underlying such
4 tract are in different persons, it shall be an affirmative
5 defense to any action for willful trespass arising from
6 the drilling and commercial production of methane from
7 any coal seam underlying such tract, that the operator
8 of such well permitted, drilled and completed such well
9 under color of title of any instrument, deed, or lease for
10 oil and gas purposes from the gas owner, or an
11 instrument, deed or lease for coal mining purposes from
12 the coal owner.

§22-21-27. Injunctive relief.

1 (a) Whenever it appears to the chief or review board
2 that any person has been or is violating or is about to
3 violate any provision of this article, any rule promul-
4 gated by the chief or review board, any order or any
5 final decision of the chief or review board, the chief or
6 review board may apply, in the name of the state, to the
7 circuit court of the county in which the violation
8 occurred, is occurring or is about to occur, or to the
9 judge thereof in vacation, for injunctive relief against
10 the person and any other persons who have been, are or
11 are about to be, involved in any practices, acts or
12 omissions, in violation, enjoining the violation or

13 violations. The application may be made and prosecuted
14 to conclusion whether any violation or violations have
15 resulted or may result in prosecution or conviction
16 under the provisions of section six or twenty-eight of this
17 article.

18 (b) Upon application by the chief or review board, the
19 circuit courts of this state may by mandatory or
20 prohibitory injunction compel compliance with the
21 provisions of this article, the rules promulgated by the
22 chief or review board and all orders of the chief or
23 review board. The court may issue a temporary injunc-
24 tion in any case pending a decision on the merits of any
25 application filed. Any other section of this code to the
26 contrary notwithstanding, the state may not be required
27 to furnish bond or other undertaking as a prerequisite
28 to obtaining mandatory, prohibitory or temporary
29 injunctive relief under the provisions of this article.

30 (c) The judgment of the circuit court upon any
31 application permitted by the provisions of this section
32 is final unless reversed, vacated, or modified on appeal
33 to the supreme court of appeals.

34 (d) The chief or review board shall be represented in
35 all such proceedings by the attorney general or his or
36 her assistants and in proceedings in the circuit courts
37 by the prosecuting attorneys of the several counties as
38 well, all without additional compensation. The chief or
39 review board, with the written approval of the attorney
40 general, may employ special counsel to represent the
41 chief or review board in any proceedings.

42 (e) If the chief or review board refuses or fails to apply
43 for an injunctive relief to enjoin a violation or threatened
44 violation of any provision of this article, any rule
45 promulgated by the chief or review board hereunder or
46 any order or final decision of the chief or review board,
47 within ten days after receipt of a written request to do
48 so by any person who is or will be adversely affected
49 by such violation or threatened violation, the person
50 making such request may apply in his or her own behalf
51 for an injunction to enjoin the violation or threatened
52 violation in any court in which the chief or review board

53 might have brought suit. The chief or review board shall
54 be made a party defendant in the application in addition
55 to the person or persons violating or threatening to
56 violate any provision of this article, any rule promul-
57 gated by the chief or review board hereunder or any
58 order of the chief or review board. The application shall
59 proceed and injunctive relief may be granted without
60 bond or other undertaking in the same manner as if the
61 application had been made by the chief or review board.

§22-21-28. Penalties.

1 (a) Any person, who violates any term or condition of
2 a permit issued under this article, and the violation is
3 found by the chief or review board to have rendered
4 unmineable all or a portion of a workable coal seam, is
5 subject to civil penalties, to be imposed and collected by
6 the chief or review board in an amount not to exceed
7 the reasonably expected net profit lost to the coal owner
8 as a result. All penalties collected shall be transferred
9 to the special reclamation fund as provided by section
10 twenty-nine, article six of this chapter.

11 (b) Any person who violates any provision of this
12 article, any of the rules promulgated by the chief or
13 review board or any order of the chief or review board
14 other than a violation governed by the provisions of
15 subsection (c) of this section, is guilty of a misdemeanor,
16 and, upon conviction thereof, shall be fined not more
17 than one thousand dollars.

18 (c) Any person who, with the intention of evading any
19 provision of this article, any of the rules promulgated
20 by the chief or any order of the chief or review board,
21 who makes or causes to be made any false entry or
22 statement in any application or other document permit-
23 ted or required to be filed under the provisions of this
24 article, shall be guilty of a misdemeanor, and, upon
25 conviction thereof, shall be fined not more than five
26 thousand dollars, or imprisoned in the county jail not
27 more than six months, or both fined and imprisoned.

28 (d) Any person who knowingly aids or abets any other
29 person in the violation of any provision of this article,
30 any of the rules promulgated hereunder or any order or

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31 final decision of the chief or review board or director,
32 shall be subject to the same penalty as that prescribed
33 in this article for the violation by such other person.

§22-21-29. Construction.

1 This article shall be liberally construed so as to
2 effectuate the declaration of public policy set forth in
3 section one of this article.

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

[Handwritten Signature]
Chairman Senate Committee

Ernest C. Moore
Chairman House Committee

Originating in the House.

Takes effect from passage.

Russell E. Selman
Clerk of the Senate

Donald L. Kopp
Clerk of the House of Delegates

Neal Bondette
President of the Senate

Carl W. Macken
Speaker of the House of Delegates

The within is approved this the 30th day of March, 1994.

Gaston Caperton
Governor

PRESENTED TO THE

GOVERNOR

Date 3/29/94

Time 11:46 AM