

WEST VIRGINIA LEGISLATURE

2022 REGULAR SESSION

Committee Substitute

for

Senate Bill 694

BY SENATORS TARR AND NELSON

[Originating in the Committee on Finance; reported
on February 23, 2022]

1 A BILL to amend and reenact §22C-9-1, §22C-9-2, §22C-9-3, §22C-9-4, and §22C-9-5 of the
2 Code of West Virginia, 1931, as amended; and to amend said code by adding thereto a
3 new section, designated §22C-9-7a, all relating to oil and gas conservation; modifying the
4 membership of the Oil and Gas Conservation Commission; expanding duties of the
5 commission; providing further declaration of public policy and legislative findings; defining
6 terms; establishing a horizontal well unit application process; requiring certain conditions
7 be met prior to approval of an application; providing for a hearing on the application; setting
8 out factors for considering in the hearing; providing for notice; providing for an independent
9 third party review; setting forth time frames; providing for a horizontal well unit order;
10 defining order terms; providing for options for non-leased mineral interest owners;
11 providing options for nonconsenting operators; allowing for modification of the horizontal
12 well unit order; providing for compensation for unknown and unlocatable mineral interest
13 owners; establishing a process for surface owners to acquire mineral interest of unknown
14 or unlocatable interest owners; and modifying rulemaking

Be it enacted by the Legislature of West Virginia:

CHAPTER 22C. ENVIRONMENTAL RESOURCES.

ARTICLE 9. OIL AND GAS CONSERVATION.

§22C-9-1. Declaration of public policy; legislative findings.

- 1 (a) It is hereby declared to be the public policy of this state and in the public interest to:
- 2 (1) Foster, encourage, and promote exploration for and development, production,
3 utilization, and conservation of oil and gas resources;
- 4 (2) Prohibit waste of oil and gas resources and unnecessary surface loss of oil and gas
5 and their constituents;
- 6 (3) Encourage the maximum recovery of oil and gas; ~~and~~
- 7 (4) Safeguard, protect, and enforce the correlative rights of operators and royalty owners

8 in a pool of oil or gas to the end that each such operator and royalty owner may obtain his or her
9 just and equitable share of production from ~~such~~ that pool, unit or unconventional reservoir of oil
10 or gas; and

11 (5) Safeguard, protect, and enforce the property rights and interests of surface owners
12 and the owners and agricultural users of other interests in the land.

13 (b) The Legislature hereby determines and finds that oil and natural gas found in West
14 Virginia in shallow sands or strata have been produced continuously for more than 100 years;
15 that oil and gas deposits in ~~such~~ shallow sands or strata have geological and other characteristics
16 different than those found in deeper formations and unconventional reservoirs; and that in order
17 to encourage the maximum recovery of oil and gas from all productive formations in this state, it
18 is not in the public interest, with the exception of shallow wells utilized in a secondary recovery
19 program, to enact statutory provisions relating to the exploration for or production ~~from~~ of oil and
20 gas from vertical shallow wells, ~~as defined in section two of this article~~ but that it is in the public
21 interest to enact statutory provisions establishing regulatory procedures and principles to be
22 applied to the exploration for or production of oil and gas from deep wells, as defined in ~~said~~
23 section two and oil and gas produced from horizontal wells.

§22C-9-2. Definitions.

1 ~~(a) As used in this article:~~

2 ~~(1) "Commission" means the Oil and Gas Conservation Commission and "commissioner"~~
3 ~~means the Oil and Gas Conservation Commissioner as provided for in section four of this article;~~

4 ~~(2) "Director" means the Secretary of the Department of Environmental Protection and~~
5 ~~"chief" means the Chief of the Office of Oil and Gas;~~

6 ~~(3) "Person" means any natural person, corporation, partnership, receiver, trustee,~~
7 ~~executor, administrator, guardian, fiduciary or other representative of any kind, and includes any~~
8 ~~government or any political subdivision or any agency thereof;~~

9 ~~(4) "Operator" means any owner of the right to develop, operate and produce oil and gas~~

10 ~~from a pool and to appropriate the oil and gas produced therefrom, either for that person or for~~
11 ~~that person and others; in the event that there is no oil and gas lease in existence with respect to~~
12 ~~the tract in question, the owner of the oil and gas rights therein is the "operator" to the extent of~~
13 ~~seven-eighths of the oil and gas in that portion of the pool underlying the tract owned by such~~
14 ~~owner, and as "royalty owner" as to one-eighth interest in such oil and gas; and in the event the~~
15 ~~oil is owned separately from the gas, the owner of the substance being produced or sought to be~~
16 ~~produced from the pool is the "operator" as to that pool;~~

17 ~~(5) "Royalty owner" means any owner of oil and gas in place, or oil and gas rights, to the~~
18 ~~extent that the owner is not an operator as defined in subdivision (4) of this section;~~

19 ~~(6) "Independent producer" means a producer of crude oil or natural gas whose allowance~~
20 ~~for depletion is determined under Section 613A of the federal Internal Revenue Code in effect on~~
21 ~~July 1, 1997;~~

22 ~~(7) "Oil" means natural crude oil or petroleum and other hydrocarbons, regardless of~~
23 ~~gravity, which are produced at the well in liquid form by ordinary production methods and which~~
24 ~~are not the result of condensation of gas after it leaves the underground reservoir;~~

25 ~~(8) "Gas" means all natural gas and all other fluid hydrocarbons not defined as oil in~~
26 ~~subdivision (7) of this section;~~

27 ~~(9) "Pool" means an underground accumulation of petroleum or gas in a single and~~
28 ~~separate reservoir (ordinarily a porous sandstone or limestone). It is characterized by a single~~
29 ~~natural pressure system so that production of petroleum or gas from one part of the pool affects~~
30 ~~the reservoir pressure throughout its extent. A pool is bounded by geologic barriers in all~~
31 ~~directions, such as geologic structural conditions, impermeable strata, and water in the~~
32 ~~formations, so that it is effectively separated from any other pools that may be presented in the~~
33 ~~same district or on the same geologic structure;~~

34 ~~(10) "Well" means any shaft or hole sunk, drilled, bored or dug into the earth or~~
35 ~~underground strata for the extraction of oil or gas;~~

36 ~~(11) "Shallow well" means any well other than a coalbed methane well, drilled no deeper~~
37 ~~than one hundred feet below the top of the "Onondaga Group": *Provided*, That in no event may~~
38 ~~the "Onondaga Group" formation or any formation below the "Onondaga Group" be produced,~~
39 ~~perforated or stimulated in any manner;~~

40 ~~(12) "Deep well" means any well, other than a shallow well or coalbed methane well, drilled~~
41 ~~to a formation below the top of the uppermost member of the "Onondaga Group;"~~

42 ~~(13) "Drilling unit" means the acreage on which one well may be drilled;~~

43 ~~(14) "Waste" means and includes:~~

44 ~~(A) Physical waste, as that term is generally understood in the oil and gas industry;~~

45 ~~(B) The locating, drilling, equipping, operating or producing of any oil or gas well in a~~
46 ~~manner that causes, or tends to cause, a reduction in the quantity of oil or gas ultimately~~
47 ~~recoverable from a pool under prudent and proper operations, or that causes or tends to cause~~
48 ~~unnecessary or excessive surface loss of oil or gas; or~~

49 ~~(C) The drilling of more deep wells than are reasonably required to recover efficiently and~~
50 ~~economically the maximum amount of oil and gas from a pool. Waste does not include gas vented~~
51 ~~or released from any mine areas as defined in section two, article one, chapter twenty-two-a of~~
52 ~~this code or from adjacent coal seams which are the subject of a current permit issued under~~
53 ~~article two of chapter twenty-two-a of this code: *Provided*, That this exclusion does not address~~
54 ~~ownership of the gas;~~

55 ~~(15) "Correlative rights" means the reasonable opportunity of each person entitled thereto~~
56 ~~to recover and receive without waste the oil and gas in and under his tract or tracts, or the~~
57 ~~equivalent thereof; and~~

58 ~~(16) "Just and equitable share of production" means, as to each person, an amount of oil~~
59 ~~or gas or both substantially equal to the amount of recoverable oil and gas in that part of a pool~~
60 ~~underlying the person's tract or tracts.~~

61 ~~(b) Unless the context clearly indicates otherwise, the use of the word "and" and the word~~

62 ~~"or" are interchangeable, as, for example, "oil and gas" means oil or gas or both.~~

63 (a) As used in this article:

64 "Commission" means the Oil and Gas Conservation Commission and "commissioner"
65 means the Oil and Gas Conservation Commissioner as provided for in §22C-9-4 of this code;

66 "Correlative rights" means the reasonable opportunity of each person entitled thereto to
67 recover and receive without waste the oil and gas in and under his or her tract or tracts, or the
68 equivalent thereof;

69 "Deep well" means any well, other than a shallow well, deep horizontal well, or a coalbed
70 methane well, drilled to a formation below the top of the uppermost member of the "Onondaga
71 Group";

72 "Director" means the Secretary of the Department of Environmental Protection and "chief"
73 means the Chief of the Office of Oil and Gas;

74 "Drilling unit" or "unit" means the acreage on which one well or more wells may be drilled;

75 "Gas" means all natural gas and all other fluid hydrocarbons not defined as oil as that term
76 is defined in this section;

77 "Horizontal drilling" means a method of drilling a well for the production of oil and gas that
78 is intended to maximize the length of wellbore that is exposed to the formation and in which the
79 wellbore is initially vertical but is eventually curved to become horizontal, or nearly horizontal, to
80 parallel a particular geologic formation;

81 "Horizontal well" means an oil and gas well, other than a coalbed methane well, where the
82 wellbore is initially drilled using a horizontal drilling method. A horizontal well may include multiple
83 horizontal side laterals drilled into the same formation. A horizontal well may have completions
84 into multiple formations from the same well. Multiple horizontal wells may be drilled from the same
85 well pad. A horizontal well may be either a shallow well or a deep well so long as it is initially
86 drilled using a horizontal drilling method;

87 "Independent producer" means a producer of crude oil or natural gas whose allowance for

88 depletion is determined under Section 613A of the federal Internal Revenue Code in effect on
89 July 1, 1997;

90 “Just and equitable share of production” means, as to each person, an amount of oil or
91 gas or both substantially equal to the amount of recoverable oil and gas in that part of a pool, unit,
92 or unconventional reservoir underlying the person’s tract or tracts within a unit.

93 “Natural gas liquids” means the liquid hydrocarbons removed from the natural gas through
94 the process of fractionation or condensation.

95 “Oil” means natural crude oil or petroleum and other hydrocarbons, regardless of gravity,
96 which are produced at the well in liquid form by ordinary production methods and which are not
97 the result of condensation of gas after it leaves the underground reservoir;

98 “Operator” means any owner of the right to develop, operate, and produce oil and gas
99 from a pool and to appropriate the oil and gas produced therefrom, either for that person or for
100 that person and others; in the event that there is no oil and gas lease in existence with respect to
101 the tract in question, for all sections in this article other than section 7a, the owner of the oil and
102 gas rights therein is the “operator” to the extent of seven eighths of the oil and gas in that portion
103 of the pool underlying the tract owned by ~~such~~ the owner, and as “royalty owner” as to one-eighth
104 interest in ~~such~~ the oil and gas; and in the event the oil is owned separately from the gas, the
105 owner of the substance being produced or sought to be produced from the pool or the unit ~~is the~~
106 is the “operator” as to that pool or acreage included in a unit; the term operator includes owners
107 of working interests in a lease but does not include owners whose interest is limited to working
108 interests in a wellbore only, overriding royalties, or net profits interests;

109 “Person” means any natural person, corporation, limited liability company, partnership,
110 receiver, trustee, executor, administrator, guardian, fiduciary or other representative of any kind,
111 and includes any government or any political subdivision or any agency thereof;

112 “Pool” means an underground accumulation of petroleum or gas in a single and separate
113 reservoir (ordinarily a porous sandstone or limestone). It is characterized by a single natural-

114 pressure system so that production of petroleum or gas from one part of the pool affects the
115 reservoir pressure throughout its extent. A pool is bounded by geologic barriers in all directions,
116 such as geologic structural conditions, impermeable strata, and water in the formations, so that it
117 is effectively separated from any other pools that may be presented in the same district or on the
118 same geologic structure;

119 “Royalty owner” means any owner of oil and gas in place, or oil and gas rights, to the
120 extent that the owner is not: An operator as that term is defined in this section;

121 “Shallow well” means any well other than a shallow horizontal well or a coalbed methane
122 well, drilled no deeper than 100 feet below the top of the “Onondaga Group”: *Provided*, That in no
123 event may the “Onondaga Group” formation or any formation below the “Onondaga Group” be
124 produced, perforated or stimulated in any manner;

125 “Unconventional reservoir” means any geologic formation that contains or is otherwise
126 productive of oil or natural gas that generally cannot be produced at economic flow rates or in
127 economic volumes except by wells stimulated by multiple hydraulic fracture treatments, a
128 horizontal wellbore, or by using multilateral wellbores or some other technique to expose more of
129 the formation to the wellbore;

130 “Vertical well” means an oil and gas well that does not utilize horizontal drilling methods.
131 A vertical well may be either a shallow well or a deep well so long as it is initially drilled not using
132 a horizontal drilling method;

133 “Waste” means and includes:

134 (1) Physical waste, as that term is generally understood in the oil and gas industry;

135 (2) The locating, drilling, equipping, operating, or producing of any oil or gas well in a
136 manner that causes, or tends to cause, a reduction in the quantity of oil or gas ultimately
137 recoverable from a pool under prudent and proper operations, or that causes or tends to cause
138 unnecessary or excessive surface loss of oil or gas; or

139 (3) The drilling of more horizontal wells or deep wells than are reasonably required to

140 recover efficiently and economically the maximum amount of oil and gas from a pool, unit, or an
141 unconventional reservoir. Waste does not include gas vented or released from any mine areas
142 as defined in §22A-1-2 of this code or from adjacent coal seams which are the subject of a current
143 permit issued under §22A-2-1 et seq. of this code: *Provided*, That this exclusion does not address
144 ownership of the gas:

145 “Well” means any shaft or hole sunk, drilled, bored or dug into the earth or underground
146 strata for the extraction of oil or gas;

147 (b) Unless the context clearly indicates otherwise, the use of the word “and” and the word
148 “or” are interchangeable, as, for example, “oil and gas” means “oil or gas or both”.

149 (c) A person with an interest in oil and gas in a unit formed under this article who does not
150 consent to the unit shall have no liability in connection with well site preparation, drilling,
151 completion, maintenance, reclamation, plugging, and other operations with respect to wells drilled
152 in the unit: *Provided*, That this subsection shall not apply to any operator in a horizontal well unit,
153 including but not limited to any nonconsenting party who elects to participate in the horizontal well
154 unit on a carried basis pursuant to §22C-9-7a of this code.

§22C-9-3. Application of article; exclusions.

1 (a) Except as provided in subsection (b) of this section, the provisions of this article shall
2 apply to all lands located in this state, however owned, including any lands owned or administered
3 by any government or any agency or subdivision thereof, over which the state has jurisdiction
4 under its police power. The provisions of this article are in addition to and not in derogation of or
5 substitution for the provisions of §22-6-1 et seq. of this code.

6 (b) This article shall not apply to or affect:

7 (1) Shallow wells other than shallow horizontal wells and those utilized in secondary
8 recovery programs as set forth in in §22C-9-8 of this code and those provided for in §22C-9-4 of
9 this code;

10 (2) Any well commenced or completed prior to March 9, 1972, unless ~~such~~ the well is,

11 after completion (whether ~~such~~ the completion is prior or subsequent to that date):

12 (A) Deepened or drilled laterally subsequent to that date to a formation at or below the top
13 of the uppermost member of the Onondaga Group; ~~or~~

14 (B) Involved in secondary recovery operations for oil under an order of the commission
15 entered pursuant to §22C-9-8 of this code; or

16 (C) Drilled laterally as horizontal well at any depth;

17 (3) Gas storage operations or any well employed to inject gas into or withdraw gas from a
18 gas storage reservoir or any well employed for storage observation; ~~or~~

19 (4) Free gas rights; or

20 (5) Coalbed methane wells.

21 (c) The provisions of this article shall not be construed to grant to the commissioner or the
22 commission authority or power to:

23 (1) Limit production or output, or prorate production of any oil or gas well, except as
24 provided in §22C-9-7(a)(6) of this code; or

25 (2) Fix prices of oil or gas.

26 (d) Nothing contained in either this chapter or §22-1-1 *et seq.* of this code may be
27 construed so as to require, prior to commencement of plugging operations, a lessee under a lease
28 covering a well to give or sell the well to any person owning an interest in the well, including, but
29 not limited to, a respective lessor, or agent of the lessor, nor shall the lessee be required to grant
30 to a person owning an interest in the well, including, but not limited to, a respective lessor, or
31 agent of a lessor, an opportunity to qualify under §22-6-26 of this code to continue operation of
32 the well.

§22C-9-4. Oil and gas conservation commissioner and commission; commission membership; qualifications of members; terms of members; vacancies on commission; meetings; compensation and expenses; appointment and qualifications of commissioner; general powers and duties.

1 (a) The “oil and gas conservation commission” ~~shall be~~ is composed of ~~five~~ seven
2 members. The director of the Department of Environmental Protection, and the Chief of the Office
3 of Oil and Gas ~~shall be~~ are members of the commission ex officio. The remaining ~~three~~ five
4 members of the commission shall be appointed by the Governor, by and with the advice and
5 consent of the Senate, and may not be employees of the Department of Environmental Protection.
6 Of the ~~three~~ five members appointed by the Governor, one shall be an independent producer and
7 at least one shall be a public member not engaged in an activity under the jurisdiction of the Public
8 Service Commission or the Federal Energy Regulatory Commission. ~~and at least one shall be a~~
9 ~~public member not engaged in an activity under the jurisdiction of the Public Service Commission~~
10 ~~or the federal energy regulatory commission~~ The third appointee shall possess a degree from an
11 accredited college or university in engineering or geology and must be a registered professional
12 engineer with particular knowledge and experience in the oil and gas industry and shall serve as
13 commissioner and as chair of the commission. The fourth appointee shall be an individual who
14 has substantial experience in the agricultural industry, who is engaged in the business of farming
15 in this state, and who is not and never has been, either himself or herself nor through a member
16 of his or her immediate family, engaged in the business of oil and gas other than as a royalty
17 recipient. When this member is to be appointed, the Governor shall request from the primary
18 organization representing the agriculture industry in this state a list of three nominees for the
19 member to be appointed. The fifth appointee shall be a resident owner of minerals in this state
20 who is not and never has been affiliated with an operator of oil or gas wells. The term “affiliated”,
21 as used in the immediately preceding sentence, means someone who directly, or indirectly
22 through one or more intermediaries, controls, or is controlled by, or is under common control with
23 an operator of oil and gas wells by virtue of the power to direct or cause the direction of the
24 management and policies of that operator, whether through the ownership of voting shares, by
25 contract or otherwise.

26 (b) The members of the commission appointed by the Governor shall be appointed for

27 overlapping terms of six years each, except that the original appointments shall be for terms of
28 two, four, and six years, respectively. Each member appointed by the Governor shall serve until
29 the members successor has been appointed and qualified. Members may be appointed by the
30 Governor to serve any number of terms. The members of the commission appointed by the
31 Governor, before performing any duty hereunder, shall take and subscribe to the oath required
32 by section 5, article IV of the Constitution of West Virginia. Vacancies in the membership
33 appointed by the Governor shall be filled by appointment by the Governor for the unexpired term
34 of the member whose office is vacant and ~~such~~ the appointment shall be made by the Governor
35 within 60 days of the occurrence of such vacancy. Any member appointed by the Governor may
36 be removed by the Governor in case of incompetency, neglect of duty, gross immorality, or
37 malfeasance in office. A commission member's appointment ~~shall be~~ is terminated as a matter of
38 law if that member fails to attend three consecutive meetings. The Governor shall appoint a
39 replacement within 30 days of the termination.

40 (c) The commission shall meet at such times and places as ~~shall be~~ are designated by the
41 chair. The chair may call a meeting of the commission at any time, and shall call a meeting of the
42 commission upon the written request of two members or upon the written request of the oil and
43 gas conservation commissioner or the Chief of the Office of Oil and Gas. Notification of each
44 meeting shall be given in writing to each member by the chair at least 14 calendar days in advance
45 of the meeting. ~~Three~~ Four members of the commission, at least two of whom are appointed
46 members, ~~shall~~ constitute a quorum for the transaction of any business.

47 (d) The commission shall pay each member the same compensation as is paid to
48 members of the Legislature for their interim duties as recommended by the citizens legislative
49 compensation commission and authorized by law for each day or portion thereof engaged in the
50 discharge of official duties and shall reimburse each member for actual and necessary expenses
51 incurred in the discharge of official duties.

52 (e) The commission is hereby empowered and it is the commission's duty to execute and

53 carry out, administer and enforce the provisions of this article in the manner provided herein.
54 Subject to the provisions of §22C-9-3 of this code, the commission has jurisdiction and authority
55 over all persons and property necessary therefor. The commission is authorized to make such
56 investigation of records and facilities as the commission ~~deems~~ considers proper. In the event of
57 a conflict between the duty to prevent waste and the duty to protect correlative rights, the
58 commission's duty to prevent waste ~~shall be~~ is paramount.

59 (f) Without limiting the commission's general authority, the commission ~~shall have~~ has
60 specific authority to:

61 (1) Regulate the spacing of deep wells;

62 (2) Issue horizontal well unit orders;

63 ~~(2)(3)~~ (3) Make and enforce reasonable rules and orders reasonably necessary to prevent
64 waste, protect correlative rights, govern the practice and procedure before the commission and
65 otherwise administer the provisions of this article;

66 ~~(3)(4)~~ (4) Issue subpoenas for the attendance of witnesses and subpoenas duces tecum for
67 the production of any books, records, maps, charts, diagrams, and other pertinent documents,
68 and administer oaths and affirmations to ~~such~~ the witnesses, whenever, in the judgment of the
69 commission, it is necessary to do so for the effective discharge of the commission's duties under
70 the provisions of this article; and

71 ~~(4)(5)~~ (5) Serve as technical advisor regarding oil and gas to the Legislature, its members and
72 committees, to the Chief of Office of Oil and Gas, to the Department of Environmental Protection
73 and to any other agency of state government having responsibility related to the oil and gas
74 industry.

75 (g) The commission may delegate to the commission staff the authority to approve or deny
76 an application for new well permits, to establish drilling units or special field rules if:

77 (1) The application conforms to the rules of the commission; and

78 (2) No request for hearing has been received.

- 79 (h) The commission may not delegate its authority to:
- 80 (1) Propose legislative rules;
- 81 (2) Approve or deny an application for new well permits, to establish drilling units or special
- 82 field rules if the conditions set forth in subsection (g) of this section are not met; or
- 83 (3) Approve or deny an application for the pooling of interests within a drilling unit.
- 84 (i) Any exception to the field rules or the spacing of wells which does not conform to the
- 85 rules of the commission, and any application for the pooling of interests within a drilling unit, must
- 86 be presented to and heard before the commission.
- 87 (j) The commission is hereby empowered and it is the commission's duty to execute and
- 88 carry out, administer, and enforce the relevant provisions of §37B-1-1 *et seq.* of this code
- 89 concerning mineral development by cotenants for all wells at all depths. The commission has
- 90 jurisdiction and authority over all persons and property necessary therefor. The commission is
- 91 authorized to make such investigation of records and facilities as the commission deems proper.

§22C-9-5. Rules; notice requirements.

- 1 (a) The commission may propose rules for legislative approval in accordance with the
- 2 provisions of §29A-3-1 *et seq.* of this code, to implement and make effective the provisions of this
- 3 article and the powers and authority conferred and the duties imposed upon the commission
- 4 under the provisions of this article.
- 5 (b) Notwithstanding the provisions of §29A-7-2 of this code, any notice required under the
- 6 provisions of this article shall be given at the direction of the commission by personal or
- 7 substituted service or by certified United States mail, addressed, postage prepaid, to the last-
- 8 known mailing address, if any, of the person being served, with the direction that the same be
- 9 delivered to addressee only, return receipt requested. In the case of providing notice upon the
- 10 filing of an application with the commission, the commission ~~shall cause~~ shall, within 14 days of
- 11 the filing of an application, submit for publication notice of the application notice to be published
- 12 as a Class II legal advertisement in compliance with the provisions of §59-3-1 *et seq.* of this code,

13 and the publication area for ~~such~~ the publication shall be the county or counties wherein any land
14 which may be affected by ~~such~~ the order is situate.

15 In addition, the commission shall mail a copy of ~~such~~ the notice to all other persons who
16 have specified to the commission an address to which all such notices may be mailed. The notice
17 shall issue in the name of the state, shall be signed by the one of the commission members, shall
18 specify the style and number of the proceeding, the time and place of any hearing and shall briefly
19 state the purpose of the proceeding. Each notice of a hearing must be provided no fewer than 20
20 days preceding the hearing date. Personal or substituted service and proof thereof may be made
21 by an officer authorized to serve process or by an agent of the commission in the same manner
22 as is now provided by the ~~“West Virginia Rules of Civil Procedure for Trial Courts of Record”~~ West
23 Virginia Rules of Civil Procedure for service of process in civil actions in the various courts of this
24 state.

25 A certified copy of any pooling or unit order entered under the provisions of this article
26 shall be presented by the commission to the clerk of the county commission of each county
27 wherein all or any portion of the pooled or unit tract is located, for recordation in the record book
28 of ~~such~~ the county in which oil and gas leases are normally recorded. The recording of the order
29 from the time noted thereon by ~~such~~ the clerk shall be notice of the order to all persons.

§22C-9-7a. Unitization of interests in horizontal well drilling units.

1 (a) Declaration of public policy; legislative findings regarding unitization for all horizontal
2 wells.

3 The Legislature finds that horizontal drilling is a technique that effectively and efficiently
4 recovers natural resources and should be encouraged as a means of production of oil and gas
5 and it is hereby declared to be the public policy of this state and in the public interest to:

6 (1) Foster, encourage, and promote exploration for and development, production,
7 utilization, and conservation of oil and gas resources by horizontal drilling in deep and shallow
8 formations;

9 (2) Prohibit waste of oil and gas resources and unnecessary surface loss of oil and gas
10 and their constituents;

11 (3) Encourage the maximum recovery of oil and gas; and

12 (4) Safeguard, protect, and enforce the correlative rights of operators and royalty owners
13 of oil and gas in a horizontal well unit to the end that each such operator and royalty owner may
14 obtain his or her just and equitable share of production from that pool, horizontal well unit or
15 unconventional reservoir of oil or gas; and

16 (5) Safeguard, protect, and enforce the property rights and interests of surface owners
17 and the owners and agricultural users of other interests in the land.

18 (b) Definitions.— Unless the context in which used clearly requires a different meaning,
19 as used in this section:

20 “Bonded operator” means a person that has posted a bond under §22-6-1 et seq. or §22-
21 6A-1 et seq. of this code; is registered as an oil and gas well operator with the West Virginia
22 Department of Environmental Protection, Office of Oil and Gas; and operates eight or more oil
23 and gas wells, as defined in §22-6-1 et seq. or §22-6A-1 et seq. of this code, in West Virginia that
24 are active, producing oil and gas wells;

25 “Executive interest” and “executory interest” means the interest entitling the owner to lease
26 the oil and gas estate or amend an existing oil and gas lease. For purposes of this section, the
27 owner of the executive interest is considered to be the royalty owner and interested party for
28 purposes of notice and participation in proceedings here in this article, and all horizontal well unit
29 orders are binding on the owners of executive interests and nonexecutive interests in a horizontal
30 well unit. The owners of the executive interest and the associated nonexecutive interest owners
31 are considered to be the same interest for purposes of computing percentages pursuant to §22C-
32 9-7a(c)(2)(A) and §22C-9-7a(c)(2)(B) of this code;

33 “Horizontal well unit” means an area in which horizontal drilling may occur, and that is
34 designated for the allocation of production from one or more horizontal wells drilled in the unit to

35 all oil and gas tracts, or portions of the tracts, included in the unit for production of oil and gas and
36 payment of royalty and proceeds of production regardless of the tract or tracts in which the
37 horizontal well is drilled or completed, and the corresponding authorization to drill and produce oil
38 and gas from that area as a unit, notwithstanding the lack of adequate consensual rights allowing
39 pooling or unitization of oil and gas or allowing drilling horizontally across tract lines. When a
40 horizontal well unit is formed, that portion of the production allocated to each tract or portion of
41 the unit included in the horizontal well unit shall, when produced, be considered for all purposes
42 to have been actually produced from the tract by an oil and gas well drilled, completed and
43 producing on the tract;

44 “Lateral” means the portion of a well bore that deviates from approximate vertical
45 orientation to approximate horizontal orientation and all wellbore beyond the initial deviation to
46 total depth or terminus of the wellbore;

47 “Overriding royalty” means an interest carved out of the leasehold or out of the working
48 interest and is not included within the meaning of royalty;

49 “Royalty owner” means any owner of oil and gas in place, or oil and gas rights, to the
50 extent that the owner is not an operator as defined in §22C-9-2(a) of this code. A royalty owner
51 does not include a person whose interest is limited to: (A) A working interest in a wellbore only;
52 (B) overriding royalties; (C) nonparticipating royalty interests; (D) nonexecutive mineral interests;
53 or (E) net profits interests;

54 “Target formation” means the primary geologic formation from which oil or gas is intended
55 to be produced from a horizontal drilling operation and, where completions can reasonably be
56 expected to produce from formations above or below the target formation, includes the formations
57 from which production can reasonably be expected;

58 “Unitization” means the combination of two or more tracts of oil and gas, or portions
59 thereof, or leases, for drilling of horizontal wells and production of oil and gas from the unit with
60 allocation of production to the net acreage of each tract included in the unit to operate as a

61 consolidated horizontal well unit;

62 “Unitization consideration” means consideration provided as set forth in subsection (f) of
63 this section. Unitization consideration relates to the net acreage of the nonconsenting royalty
64 owner included in a horizontal well unit;

65 “Unknown and unlocatable interest owner” means a royalty owner, executive interest
66 owner, operator or other person vested with an interest in oil and gas in the target formation to be
67 included in a horizontal well unit, whose present identity or location cannot be determined from:

68 (A) A reasonable review of the records of the clerk of the county commission for the county
69 or counties where the oil and gas is located and any immediately adjacent counties within this
70 state;

71 (B) Diligent inquiry to known interest owners in the same tract;

72 (C) Inquiry to the sheriff’s and assessor’s offices of the county or counties in which the oil
73 and gas interest is located;

74 (D) A reasonable inquiry utilizing available internet resources that could reasonably lead
75 to the identification of the person; and

76 (E) A mailing to the last known address, if available, of the person as reflected in the
77 records of the sheriff’s or assessor’s office, and includes the unknown heirs, representatives,
78 successors and assigns of the person.

79 “Weighted average sales price” means a weighted average sales price obtained each
80 month for amounts received at the applicant’s various delivery points to unaffiliated, third-party
81 purchasers accessible by the owner’s production, without deduction of post-production, third-
82 party costs and expenses charged to or incurred by applicant and/or its affiliates other than costs
83 and expenses charged to or incurred by applicant and/or its affiliates after the first liquid trading
84 point or, if the production does not undergo processing, after delivery to the first interstate pipeline.

85 (c) Applicability. —

86 (1) For all horizontal wells, including shallow horizontal wells and deep horizontal wells,

87 the commission may unitize tracts, or portions of tracts, in a horizontal well unit established under
88 this section upon the filing of an application with the commission by a person that controls the
89 horizontal well unit and upon the issuance of a horizontal well unit order pursuant to this section.

90 (2) Before filing an application under this section, an applicant must have:

91 (A) With respect to the royalty interest, for shallow horizontal wells and deep horizontal
92 wells, obtained by ownership, lease, lease amendment, assignment, farmout, compliance with
93 §37B-1-1, et seq. of this code with respect to unknown or unlocatable interest owners defined in
94 §37B-1-3 of this code only, contract or other agreement the right, consent or agreement to pool
95 or unitize the acreage to be included in the horizontal well unit from executory interest royalty
96 owners of 75 percent or more of the net acreage in the target formation proposed to be included
97 in the horizontal well unit, as provided and determined in subdivision (3) of this subsection; and

98 (B) With respect to the operator interest:

99 (i) For shallow horizontal wells, obtained by ownership, lease, lease amendment,
100 assignment, farmout, contract, or other agreement, the right, consent or agreement to pool or
101 unitize as to 55 percent or more of the net acreage in the target formation proposed to be included
102 in the horizontal well unit owned, leased, or operated by operators and the applicant, collectively,
103 by ownership, lease, farmout, assignment, contract or other agreement, as provided and
104 determined in subdivision (3) of this subsection; or

105 (ii) For deep horizontal wells, obtained by ownership, lease, lease amendment,
106 assignment, farmout, compliance with §37B-1-1, et seq. of this code with respect to unknown or
107 unlocatable interest owners defined in §37B-1-3 of this code only, contract or other agreement
108 the right, consent or agreement to develop the acreage to be included in the horizontal well unit
109 from executory interest royalty owners of 55 percent or more of the net acreage in the target
110 formation proposed to be included in the horizontal well unit, as provided and determined in
111 subdivision (3) of this subsection;

112 (C) (i) Made good faith offers to consent or agree to development, and has negotiated in

113 good faith with, all known and locatable royalty owners having executory interests in the oil and
114 gas in the target formation within the acreage to be included in the proposed horizontal well unit
115 who have not previously consented or agreed to the development of the interests and whose
116 interests are not subject to development under §37B-1-1, et seq. of this code; and

117 (ii) Made good faith offers to participate or consent or agree to the proposed horizontal
118 well unit, and has negotiated in good faith with, all known and locatable operators who have not
119 previously agreed to participate or consent or agree to development of the acreage to be included
120 in a proposed horizontal well unit.

121 (iii) A person who satisfies the conditions of paragraphs (A) through (C) of this subdivision
122 is referred to in this section as a person that controls the horizontal well unit.

123 (3) For purposes of determining whether a person has obtained the requisite control of the
124 proposed horizontal well unit, the commission may not include overriding royalty owners,
125 nonexecutive interest royalty owners or acreage owned or otherwise held by unleased unknown
126 and unlocatable interest owners whose acreage is not subject to development pursuant to §37B-
127 1-1, et seq. of this code, or acreage owned or otherwise held by operators who are not bonded
128 operators, unless such operators have consented or otherwise agreed to develop their operator
129 interest in the net acreage in the target formation proposed to be included in the horizontal well
130 unit. Furthermore, for purposes of determining whether a person has the requisite control of the
131 proposed horizontal well unit, the identity and rights of royalty owners and operators shall be
132 determined as of the date on which the application for a horizontal well unit is filed.

133 (4) If the applicant has not met all the provisions of this subsection, the application shall
134 be dismissed without prejudice.

135 (5) If the applicant meets all of the provisions of this subsection, the commission shall
136 authorize unitization of tracts, or portions of the tracts, as to all interests in oil and gas in the target
137 formation acreage proposed to be unitized for horizontal drilling, including interests of unknown
138 and unlocatable interest owners, for production of oil and gas from the target formation as a

139 horizontal well unit, and shall issue a horizontal well unit order in accordance with this section.

140 (d) Application requirements. —

141 (1) An applicant who is a person that controls the horizontal well unit proposed for a
142 horizontal well unit order and has drilled or plans to drill one or more horizontal wells in the
143 proposed horizontal well unit may file an application with the commission for a horizontal well unit
144 order. The application shall contain:

145 (A) A description of the proposed horizontal well unit and identification of the target
146 formation or formations;

147 (B) A statement of the nature of the operations contemplated;

148 (C) A plat that depicts the boundaries and acreage of the proposed horizontal well unit,
149 the tracts in the horizontal well unit, the surface tax map and parcel numbers of the tracts to be
150 included in the horizontal well unit in accordance with county assessor's records, and the
151 district(s) and county or counties where the proposed horizontal well unit is located. The plat shall
152 show the surface location of the vertical borehole of the horizontal well(s) to be included in the
153 proposed horizontal well unit determined by survey, the courses and distances of the surface
154 location from two permanent points or landmarks on those tracts, the deviation from vertical, and
155 also the proposed horizontal lateral portion of each proposed horizontal well to be included in the
156 proposed horizontal well unit. The plat shall show the proposed horizontal well unit name, the
157 proposed horizontal well names, and if known, the well number of each horizontal well to be drilled
158 in the horizontal well unit. The plat shall also show the location of each permitted, active oil and
159 gas well located in the horizontal well unit, and the name of the operator of the well as shown by
160 the records of the Department of Environmental Protection, Office of Oil and Gas: *Provided, That*
161 the applicant is not required to depict or identify any abandoned or plugged well that is not required
162 to be depicted or identified on the plat required by §22-6A-5(a)(6) of this code;

163 (D) A listing of all oil and gas tracts, or portions thereof, within the proposed horizontal well
164 unit, the size of each tract, and the extent to which each tract is leased;

165 (E) The names and last known addresses of royalty owners of the target formation of each
166 tract within the proposed horizontal well unit, specifying:

167 (i) Which, if any, of them are unknown and unlocatable;

168 (ii) Which of them hold executive rights; and

169 (iii) With respect to owners of an executory interest, whether they have consented to
170 pooling or unitization of the acreage proposed to be included in the horizontal well unit;

171 (F) The names and last known addresses of operators of proposed horizontal well unit
172 target formation acreage whose interest is of record in the county where the property is located,
173 specifying:

174 (i) Which, if any, of them are unknown and unlocatable; and

175 (ii) Which, if any of them, are bonded operators, and if a bonded operator, whether he or
176 she has consented to development as to the acreage proposed to be included in the horizontal
177 well unit;

178 (G) Information regarding the applicant's actions to identify and locate unknown and
179 unlocatable interest owners of target formation acreage to be included in the horizontal well unit;

180 (H) The percentage of the net acreage in the proposed horizontal well unit owned by
181 executory interest target formation royalty owners who have consented to pooling or unitization;

182 (I) The percentage of the net acreage in the proposed horizontal well unit held by bonded
183 operators and the applicant, collectively, as to which consent or agreement to development has
184 been granted;

185 (J) A percentage allocation to the separately owned tracts, or portions thereof, in the
186 proposed horizontal well unit of the oil and gas that will be produced from the horizontal well unit
187 as determined by the proportion that each tract's net acreage within the horizontal well unit bears
188 to the total net acreage in the horizontal well unit;

189 (K) A certification that the applicant meets the requirements of subsection (c) of this
190 section with respect to the proposed horizontal well unit, a list of the instruments granting the

191 control and a certification that the applicant has mailed a copy of the application to all known and
192 locatable interested parties by United States certified mail, return receipt requested, to their last
193 known address and to the most current address filed with the West Virginia Department of
194 Environmental Protection, Office of Oil and Gas, if any;

195 (L) A statement whether the applicant has submitted, either previously or
196 contemporaneously with the application filed pursuant to this section, an application for a well
197 work permit with the Department of Environmental Protection for one or more horizontal wells to
198 be completed within the boundaries of the proposed horizontal well unit; and

199 (M) A proposed joint operating agreement that will govern the contractual relationship
200 between the applicant and any unleased royalty owners following an election by the executive
201 interest owners to participate in the drilling in the horizontal well unit on a carried basis under
202 §22C-9-7a(f)(9) of this code.

203 (2) Upon the filing of an application for a horizontal well unit order, the commission shall
204 provide notice of a hearing to all interested parties, as defined in this section, in accordance with
205 §22C-9-5 of this code and subsection (g) of this section.

206 (e) Standard of review. —

207 (1) The commission shall evaluate the application and shall consider:

208 (A) The ownership and control of the tracts, or portions of the tracts, in the proposed
209 horizontal well unit;

210 (B) Whether the tracts, or portions of the tracts, proposed to be made subject to a
211 horizontal well unit order are owned, in whole or in part, by unknown and unlocatable interest
212 owners;

213 (C) Information regarding the applicant's actions to locate unknown and unlocatable
214 interest owners for the tracts, or portions of the tracts, sought to be included in the horizontal well
215 unit;

216 (D) The percentage of executory interest royalty owner target formation acreage to be

217 included in the horizontal well unit as to which consent or agreement for pooling or unitization has
218 been granted;

219 (E) The percentage of proposed horizontal well unit target formation acreage held,
220 collectively, by the applicant and bonded operators who have consented or agreed to the unit in
221 accordance with subsection (c) of this section;

222 (F) Whether the applicant is a person that controls the horizontal well unit proposed for
223 unitization;

224 (G) The area to be drained by well(s) completed or to be completed in the horizontal well
225 unit;

226 (H) Correlative rights;

227 (I) The extent to which the application will prevent waste including the stranding of acreage
228 of oil and gas formations between units that would be uneconomical to produce;

229 (J) Whether the applicant has complied with subsection (c) of this section;

230 (K) Whether notice has been provided in accordance with this section; and

231 (L) Whether the applicant demonstrates the intent and ability to drill all the wells proposed
232 in the unit.

233 (2) The commission may not issue a horizontal well unit order pursuant to this section
234 unless it finds that the applicant has before the filing of the application met the requirements of
235 subsection (c) of this section.

236 (3) The commission may not change the operator of an existing well drilled in the proposed
237 horizontal well unit, or a well actually being drilled within the proposed horizontal well unit as of
238 the date the application is filed under this section and shall consider and protect the interests of
239 owners of the well when issuing a horizontal well unit order.

240 (f) Horizontal well unit orders. —

241 (1) A horizontal well unit order under this section shall specify:

242 (A) The size and boundaries of the horizontal well unit giving due regard for maximization

243 of the amount of oil and gas produced to prevent waste and protect correlative
244 rights: *Provided*, That a horizontal well unit's size may not exceed 640 acres: *Provided, however*,
245 That the commission may exceed the acreage limitation if the applicant demonstrates that the
246 proposed horizontal well unit area would be drained efficiently and economically by a larger
247 horizontal well unit: *Provided further*, That a horizontal well unit containing one or more shallow
248 horizontal wells may not contain more than 128 net acres controlled by nonconsenting royalty
249 owners determined as of the date that the application for the horizontal well unit application is
250 filed.

251 (B) The horizontal wells which may be drilled in the horizontal well unit, and whether the
252 horizontal wells to be drilled are shallow or deep;

253 (C) If there are vertical wells completed in the target formation in the horizontal well unit,
254 the area where a horizontal well may not be completed;

255 (D) The target formation or target formations to which the horizontal well unit applies; and

256 (E) Any unitization consideration due.

257 (2) An order authorizing unitization of tracts with unknown and unlocatable interest owners
258 shall contain a finding that identifies the persons as unknown and unlocatable.

259 (3) An order shall specify that the allocation of the percentage of production of the
260 horizontal wells drilled in the horizontal well unit to the separately owned tracts, or portions of the
261 tracts, included within the horizontal well unit shall be in the proportion that each tract's net
262 acreage within the horizontal well unit bears to the total net acreage within the horizontal well unit.

263 (4) A horizontal well unit order shall authorize and perfect unitization of all interests in the
264 target formation as to the tracts, or portions of the tracts, included in the horizontal well unit.

265 (5) If the applicant is a person that controls the horizontal well unit proposed for a
266 horizontal well unit order under this section, the commission shall form a horizontal well unit
267 pursuant to this section and authorize the drilling and operation of one or more horizontal wells in
268 the unit for the production of oil or gas from the target formation from any tract within the horizontal

269 well unit.

270 (6) With respect to royalty owners of leased tracts who have not consented to pooling or
271 unitization, the commission shall require that unitization consideration be paid to executive
272 interest royalty owners in an amount equal to 25 percent of the weighted average monetary bonus
273 amount on a net mineral acre basis and a production royalty percentage equal to 80 percent of
274 the weighted average production royalty percentage rounded to the nearest one tenth of one
275 percent paid to other executive interest owners of leased tracts in the unit in the same target
276 formation: *Provided*, That the weighted average calculation shall not include any fixed amounts
277 paid to royalty owners or payments made on any basis other than a net mineral acre basis.
278 Further, the royalty percentage cannot be less than the production royalty percentage in the
279 existing lease or twelve and one-half percent for a flat rate lease. The applicant, all royalty owners,
280 and owners of leasehold, working interest, overriding royalty interest and other interests in the oil
281 and gas are bound by the order and the remaining lease terms, including other terms related to
282 the payment of royalties. Unitization consideration shall be paid by the participating operators,
283 including the applicant, to the extent of their interest in the horizontal well unit.

284 (7) With respect to interests in oil and gas as to which there is no lease in existence:

285 (A) Executive interest owners may elect to surrender the oil and gas underlying the tract
286 to the participating operators, including the applicant, to the extent of their interest in the horizontal
287 well unit for consideration, which if not agreed upon, shall be an amount equal to the weighted
288 average amount paid, per net mineral acre, by the applicant to executive interest owners in bona
289 fide, third-party transactions for the acquisition of the oil and gas mineral estate in the same target
290 formation underlying the horizontal well unit: *Provided*, That the weighted average calculation
291 shall not include any fixed amounts paid to royalty owners or payments made on any basis other
292 than a net mineral acre basis; or

293 (B) Executive interest owners may make an election for unitization consideration, and if
294 the executive interest owner elects unitization consideration, the interests of the executive interest

295 owner and the associated nonexecutive interest owners shall be considered leased to the
296 participating operators, including the applicant, to the extent of their interest in the horizontal well
297 unit on terms which, if not agreed upon, shall consist of the following:

298 (i) A bonus payment per net mineral acre equal to the weighted average monetary bonus
299 paid, per net mineral acre, to executive interest owners by the applicant in connection with other
300 leases in the same target formation controlled by the applicant within the horizontal well unit:
301 Provided, That the weighted average calculation shall not include any fixed amounts paid as
302 bonus payments to executive interest owners or payments made on any basis other than a net
303 mineral acre basis; and

304 (ii) A production royalty for the natural gas, oil and natural gas liquids produced and sold
305 equal to the highest production royalty percentage in connection with other leases in the same
306 target formation controlled by the applicant within the horizontal well unit and dated within the
307 twenty four months preceding the application date. Executive interest owners may make a one-
308 time election prior to the issuance of a horizontal well unit order by the commission to be paid
309 production royalties for natural gas based on either: (a) An index price in effect at the beginning
310 of each calendar month, as published in an independent, third-party publication reflecting arm's-
311 length, market-based sales, for natural gas applicable to the first interstate pipeline into which the
312 natural gas is delivered, and shall not be reduced by post-production expenses; or (b) the
313 weighted average sales price.

314 Production royalties for natural gas liquids will be calculated using the sum of the proceeds
315 received at the tailgate of the processing facility for each natural gas liquid product during each
316 month divided by the volume of such natural gas liquid product that was sold during such month
317 and shall not be reduced by post-production expenses. If an executive interest owner does not
318 make the one-time election regarding the price on which royalties for natural gas shall be paid
319 prior to the issuance of a horizontal well unit order by the commission, the applicant shall
320 determine whether it will pay royalties to the executive interest owner and the associated

321 nonexecutive interest owners based on either the index price described in this subparagraph or
322 the weighted average sales price, and such determination shall be binding on the applicant,
323 operators, executive interest owners and the associated nonexecutive interest owners for the
324 term of the lease. The applicant and all royalty owners and owners of leasehold, working interest,
325 overriding royalty interest and other interests in the associated unleased oil and gas shall be
326 bound by the order. Nothing contained in paragraph (B) applies to any lease in this state now in
327 existence or entered into in the future, or to any award of unitization consideration made by the
328 commission other than unitization consideration awarded to an executive interest owner of an
329 unleased tract who elects to be considered leased pursuant to this paragraph; or

330 (C) Executive interest owners may make an election to participate in a horizontal well unit
331 consistent with §22C-9-7a(f)(9) and §22C-9-7a(f)(10) of this code.

332 (D) Owners of oil and gas interests as to which there is no lease in existence who do not
333 elect (A), (B) or (C) of this subdivision shall be considered to have made an election to receive
334 unitization consideration and lease their interest in the oil and gas mineral estate in the target
335 formation to the applicant pursuant to §22C-9-7a(f)(7)(B) of this code.

336 (8) No unitization consideration may be required to be paid to any royalty owner who has
337 consented or agreed to development by virtue of the terms contained in an oil and gas lease, or
338 other agreement which permits development.

339 (9) An operator may elect to consent to and participate in a horizontal well unit after an
340 application is filed. Subject to subdivision (7) of this subsection, when the commission issues a
341 horizontal well unit order pursuant to this section, the commission shall allow each nonconsenting
342 operator, who does not elect to participate in the risk and cost of drilling in the horizontal well unit
343 through a voluntary agreement with the applicant, to participate in the drilling in the horizontal well
344 unit on a carried basis on terms and conditions which, if not agreed upon, shall be consistent with
345 the terms and conditions contained in the proposed joint operating agreement submitted by the
346 applicant in accordance with §22C-9-7a(d)(1)(M) of this code: *Provided*, That the commission

347 determines that the proposed terms and conditions of the joint operating agreement are consistent
348 with terms typically found in other similarly situated, arm's-length joint operating agreements
349 within the horizontal well unit that were entered into by the applicant for the same target formation
350 prior to the filing of the application for the horizontal well unit.

351 (10) If a nonconsenting operator participates in the drilling in the horizontal well unit on a
352 carried basis under the horizontal well unit order and an owner of any operating interest in any
353 portion of the horizontal well unit drills and operates, or pays the costs of drilling, completing,
354 equipping and operating a horizontal well for the benefit of a nonconsenting operator as provided
355 in the horizontal well unit order, then the operating owner is entitled to the share of production
356 from the tracts or portions thereof subject to the horizontal well unit order accruing to the interest
357 of the nonconsenting operator, exclusive of any unitization consideration, and royalty and
358 overriding royalty reserved in any leases, assignments thereof or agreements relating thereto, of
359 the tracts or portions of the tracts, until the net revenue from the nonconsenting operator's share
360 of the production, exclusive of the unitization consideration, royalty and overriding royalty, equals
361 double the share of the costs payable by or charged to the interest of the nonconsenting operator,
362 as set forth in the accounting procedures included within the joint operating agreement submitted
363 by the applicant in accordance with §22C-9-7a(d)(1)(M) of this code.

364 (11) If all wells proposed in a horizontal well unit approved by the commission are not
365 drilled and completed as approved in the horizontal well unit order, the applicant shall file a
366 request to modify the horizontal well unit with the commission within 60 days from the later of:
367 Completion of all drilling activities within the horizontal well unit; or the date that is five years after
368 the most recent drilling activity in the horizontal well unit occurs.

369 (12) Any interested party may file an application to correct a clerical error in a horizontal
370 well unit order at any time.

371 (13) The applicant may file a request to modify a horizontal well unit order at any time.

372 (14) If an operator has not drilled and completed a well in a horizontal well unit formed by

373 the commission within three years after the latter of either the drilling and completion of the initial
374 horizontal well in the horizontal well unit or the drilling and completion of the most recent horizontal
375 well within the horizontal well unit, as the case may be, an interested party may file a request to
376 modify the horizontal well unit, and the commission may modify the horizontal well unit. Upon the
377 modification of the horizontal well unit, the commission shall recalculate the allocation of
378 production from the tracts in the modified horizontal well unit from and after the modification order
379 date and the modification order shall be binding on the property subject to the horizontal well unit
380 order, and all owners thereof, their heirs, representatives, successors and assigns for so long as
381 the horizontal well unit order remains in effect. Following the entry of a modified horizontal well
382 unit order containing the commission's recalculation of the allocation of production from the tracts
383 in the modified horizontal well unit order, the applicant and all other operators shall have no liability
384 whatsoever to pay royalty in any manner other than that set forth in the modified horizontal well
385 unit order.

386 (15) All operations, including, but not limited to, the commencement, drilling, or operation
387 of a horizontal well upon any portion of a horizontal well unit for which a unit order has been
388 entered pursuant to this section, shall be considered for all purposes the conduct of the operations
389 upon each separate tract or portion of the tract in the horizontal well unit. That portion of the
390 production allocated to each tract or portion of the tract included in a horizontal well unit shall,
391 when produced, be considered for all purposes to have been actually produced from the tract by
392 an oil and gas well drilled, completed, and producing on the tract.

393 (16) Subject to the provisions of subsection (o) of this section, where the commission finds
394 that the interest of one or more unknown and unlocatable interest owners are included in the
395 horizontal well unit, the horizontal well unit operator shall deposit the moneys payable to unknown
396 and unlocatable interest owners into an escrow account bearing a market rate of interest to be
397 held, administered and disbursed in accordance with an order of the commission and this section.

398 (17) A horizontal well unit order under this section shall expire if a horizontal well has not

399 been drilled in the horizontal well unit within three years of the date the order is final and is
400 nonappealable, unless the commission extends the order for good cause, and if a well has been
401 drilled within three years the horizontal well unit shall continue in force and effect until the last
402 producing horizontal well in the horizontal well unit is no longer capable of producing oil and gas.

403 (18) So long as the order remains in effect, a horizontal well unit order shall be binding on
404 the property subject to the horizontal well order and all owners of the property and their heirs,
405 representatives, successors, and assigns.

406 (g) Notice, timelines, hearings, and orders. —

407 (1)(A) For purposes of this section and the West Virginia Administrative Procedures Act,
408 “interested parties” and “parties” mean owners of the executive interest in the oil and gas in the
409 target formation within the horizontal well unit, including the unknown and unlocatable interest
410 owner of the executive interest in the tracts, or portions of the tracts, to be included in the
411 horizontal well unit subject to an application for a horizontal well unit order; owners of unleased
412 oil and gas to be included in the horizontal well unit; operators of all target formation acreage in
413 the horizontal well unit; and operators of all oil and gas wells located in the unit that have been
414 drilled to or through the target formation.

415 (B) Bonded operators of wells drilled to or through the target formation that are not within
416 the horizontal well unit but are located within 500 feet of a proposed horizontal well unit boundary
417 and executive interest owners owning an interest in the target formation that is not located within
418 the horizontal well unit but is located within 500 feet of a proposed horizontal well unit boundary
419 may submit written comments regarding the horizontal well unit application at any time before the
420 start of any hearing regarding the application, but are not interested parties and may not
421 participate in the hearing nor have the right to appeal the commission’s decision regarding the
422 application.

423 (2) Each notice issued in accordance with this section shall describe the area for which a
424 horizontal well unit order is proposed in recognizable, narrative terms and contain such other

425 information as is essential to the giving of proper notice, including the time and date and place of
426 a hearing. As soon as practicable the commission shall establish a website. Within three business
427 days of the filing of an application under this section, the commission shall publish on its website
428 a copy of: (i) The horizontal well unit application notice required to be published pursuant to this
429 section and section five of this article; and (ii) the proposed horizontal well unit plat filed with the
430 application, both identified as a horizontal well unit application and indexed by county and district
431 where the majority of the acreage to be included in the proposed horizontal well unit is located,
432 so that the plat and notice of the application are readily accessible. Timely publication on the
433 website for a period of 10 business days shall be notice to all operators.

434 (3) Upon request of any interested party or the commission, the commission shall conduct
435 a hearing and receive evidence regarding the application. All interested parties may participate in
436 any hearing. If a hearing has been held regarding an application, the order shall be a final order.
437 If no hearing has been requested by the commission or an interested party within 15 days after
438 notice of the application is posted on the commission website in accordance with subdivision (2)
439 of this subsection, the commission may issue a proposed order and provide a copy of the
440 proposed order, together with notice of the right to appeal to the commission and request a
441 hearing, to all interested parties. Any interested party aggrieved by the proposed order may
442 appeal the proposed order to the commission and request a hearing. Notice of appeal and request
443 for hearing shall be made within 15 days of entry of the proposed order. If no appeal and request
444 for hearing have been received within 15 days, the proposed order shall become final. If a hearing
445 is requested, the hearing shall commence within 45 days of issuance of the initial notice. The
446 commission may, upon written request, extend the date for the hearing: *Provided*, That the
447 hearing must be convened within 45 days of the initial notice issued by the commission. The
448 commission shall, within 20 days of the hearing, enter an order authorizing the unit, dismiss the
449 application, or for good cause continue the process.

450 (4) At least 10 days prior to a hearing to consider an application for a horizontal well unit

451 order, the applicant shall file with an independent, third-party attorney, or accountant selected by
452 the chair of the commission a summary of:

453 (A) The prevailing economic terms of the leases within the proposed horizontal well unit
454 relating to the target formation where the applicant is the operator, including the bonus payment
455 per net mineral acre and production royalty rate, including whether the production royalty is
456 subject to reduction for post-production expenses; and

457 (B) The prevailing amounts paid to the executive interest royalty owners, per net mineral
458 acre, for the modification of leases relating to the target formation within the proposed unit where
459 the applicant is the operator to allow the lessee to unitize the leased tract with other tracts for
460 purposes of drilling horizontal wells.

461 (C) The independent, third-party selected by the chair of the commission shall review the
462 economic information filed by the applicant to determine its accuracy and, upon completion of his
463 or her review, shall submit a report to the commission specifying the following information for
464 inclusion by the commission in the horizontal well unit order:

465 (i) The weighted average monetary bonus paid, per net mineral acre, to executive interest
466 owners by the applicant in connection with other leases in the same target formation controlled
467 by the applicant within the horizontal well unit, as provided in §22C-9-7a(f)(6) and §22C-9-
468 7a(f)(7)(B)(ii) of this code; and

469 (ii) The weighted average production and highest royalty percentage, calculated on a net
470 mineral acre basis, of the leases in the same target formation controlled by the applicant within
471 the horizontal well unit, as provided in §22C-9-7a(f)(6) of this code.

472 (D) The reasonable fees and expenses of the independent, third-party selected by the
473 chair of the commission to review the information filed by the applicant and render his or her report
474 to the commission pursuant to this subsection shall be paid by the applicant.

475 (E) When filing information with the independent third-party selected by the chair of the
476 commission, the applicant may mark the summary of the prevailing economic terms of leases and

477 amounts paid for lease modifications, and any associated documents or information, as
478 “CONFIDENTIAL” to the extent that the documents contain confidential, commercial information.
479 Any information marked “CONFIDENTIAL” may only be used by the independent third-party
480 selected by the chair of the commission for the purpose of performing his or her review and
481 preparation and submission of his or her report to the commission, and by the court for the
482 purpose of any appeal pursuant to §22C-9-7a(g)(5) of this code. All information marked
483 “CONFIDENTIAL” pursuant to this subdivision shall retain that character in any court of competent
484 jurisdiction on appeal, and the applicant may file a motion with the court seeking to have the
485 documents sealed and withheld from the public record throughout the appeal from a final order of
486 the commission pertaining to a horizontal well unit order. Furthermore, any information marked
487 “CONFIDENTIAL” pursuant to this subdivision is exempt from disclosure under §29B-1-1 et seq.
488 of this code.

489 (5) An order establishing a horizontal well drilling unit or dismissing an application shall be
490 a final order. Any interested party aggrieved by the order may seek judicial review pursuant to
491 section eleven of this article. Notice of appeal shall be made in accordance with §22C-9-11 of this
492 code within 15 days of entry of the order. If no appeal has been received within 15 days, the order
493 shall become final.

494 (h) Unit order does not grant surface rights. — A horizontal well unit order under this
495 section does not grant or otherwise affect surface use rights: *Provided*, That without limiting the
496 foregoing, in no event shall drilling be initiated upon, or other surface disturbance occur upon, the
497 surface of or above a tract of minerals that was forced into the unit pursuant to this section without
498 the owner’s consent.

499 (i) Commission approval required for certain additional drilling. — After the filing of an
500 application for a horizontal well unit order, no well may be drilled or completed to or through the
501 target formation of the proposed horizontal well unit unless authorized by the commission.

502 (j) Contemporaneous permit applications authorized. -- Notwithstanding anything to the

503 contrary in §22-6A-1 et seq. of this code, upon the filing of an application for a horizontal well unit
504 order pursuant to this section, an applicant may file an application for a well work permit under
505 §22-6A-1 et seq. of this code for any proposed development within the horizontal well unit for
506 which the unit order is sought.

507 (k) A party may appear in person. — At any hearing an interested party may represent
508 themselves or be represented by an attorney-at-law.

509 (l) No provision of this section alters the common law of this state regarding the deduction
510 of post-production expenses for the purpose of calculating royalty.

511 (m) Conflict resolution. — After the effective date of this section, all applications requesting
512 unitization for horizontal wells shall be filed pursuant to this section. Deep well horizontal unit
513 applications filed before the effective date of this section shall continue to proceed under and be
514 governed by the provisions of section seven of this article. With respect to horizontal well unit
515 applications filed after the effective date of this section, if this section conflicts with section seven
516 of this article, the provisions of this section shall prevail. When considering an application pursuant
517 to this section, rules regarding deep wells promulgated before the effective date of this section
518 shall not apply. The commission may modify any special field rules, spacing orders, and deep
519 well units in connection with horizontal well unit orders under this section to protect correlative
520 rights, prevent waste, or ensure that operators and royalty owners receive their just and equitable
521 share of production.

522 (n) Unknown and unlocatable interest owners. — Notwithstanding the existence of
523 unknown and unlocatable interest owners, a horizontal well unit order may be entered and
524 development, drilling and production may occur in the horizontal well unit. Unknown and
525 unlocatable interest owners of oil and gas in place not subject to lease shall be considered to
526 have made an election to receive unitization consideration and lease their interest in the oil and
527 gas mineral estate in the target formation to the applicant pursuant to §22C-9-7a(f)(7)(B) of this
528 code. Unknown and unlocatable interest owners of working interest in property subject to lease

529 before an application for a horizontal well unit is filed pursuant to this section shall be considered
530 to have elected to participate in the drilling in the horizontal well unit on a carried basis pursuant
531 to §22C-9-7a(f)(9) and §22c-9-7a(f)(10) of this code.

532 (o) Opportunity of surface owners to acquire interests of unknown and unlocatable interest
533 owners in oil and gas underlying horizontal well unit. —

534 (1) When the interests of unknown and unlocatable interest owners' property is included
535 in a horizontal well unit, if the applicant has not filed a proceeding pursuant to §55-12A-1 et seq.
536 of this code (entitled Lease and Conveyance of Mineral Interests Owned by Missing or Unknown
537 Owners or Abandoning Owners) with respect to the interest of an unknown and unlocatable
538 interest owner in the horizontal well unit, and taxes on the unknown and unlocatable interest
539 owners' property are not delinquent, then, after a horizontal well unit order is entered by the
540 commission, the applicant shall inform the parties paying taxes on the surface overlying that
541 portion of the oil and gas included in the horizontal well unit that the surface owner(s) (TSO) may
542 acquire the underlying interest of the unknown and unlocatable interest owners in the horizontal
543 well unit in a proceeding pursuant to this subsection. Upon written request to the applicant by any
544 TSO, the applicant shall, to the extent practicable under the circumstances, furnish the requesting
545 TSO the following information: *Provided*, That applicant is not required to provide confidential,
546 trade secret, attorney client communications or attorney work product:

547 (A) An identification of the last known owner, and information in the possession of the
548 applicant regarding the last known identity and address of, the interest believed to be held by
549 unknown and unlocatable interest owners;

550 (B) The efforts to locate unknown and unlocatable interest owners;

551 (C) Such other information known to the applicant which might be helpful in identifying or
552 locating the present owners thereof; and

553 (D) A copy of the most recently recorded instrument embracing the interest of the unknown
554 and unlocatable interest owners as necessary to show the vesting of title to the minerals in the

555 last record owner of the title to the minerals.

556 (2) When an unknown and unlocatable interest in oil and gas is included in a horizontal
557 well unit, the owners of the surface overlying the interest may file a verified petition with respect
558 to all the interests of unknown and unlocatable interest owners included in a horizontal well unit
559 and underlying the surface owner's property. The circuit court in which the majority of the property
560 subject to the petition authorized by this subsection is located has jurisdiction of the proceeding.
561 The petition shall refer to this subsection and identify the oil and gas property subject to the
562 petition. The prayer in any such petition shall be for the court to order, in the case of any defendant
563 or heir, successor or assign of any defendant who does not appear to claim ownership of the
564 defendant's interest for five years after the date the petition is filed, a conveyance of the
565 defendants' oil and gas mineral interest under this subsection, subject to the horizontal well unit
566 order and lease terms approved by the commission, to the petitioners.

567 (3) In any proceeding authorized in this subsection the circuit court in which the petition is
568 filed shall consider the property subject to the petition leased to the participating operators in the
569 horizontal well unit on the terms determined by the commission.

570 (4) The person filing a petition under this subsection shall join as defendants to the action
571 all unknown and unlocatable interest owners having record title to the particular oil and gas
572 minerals subject to the petition, and the unknown heirs, successors and assigns of all such owners
573 not known to be alive. All persons not in being who might have some contingent or future interest
574 therein, and all persons whether in being or not in being, having any interest, present, future or
575 contingent, in the mineral interests subject to the petition, shall be fully bound by the proceedings
576 under this subsection.

577 (5) Any owner of the overlying surface tract may join as a petitioner in the proceeding. Any
578 person purporting to be the unknown and unlocatable interest owner, or any heir, successor or
579 assign of an unknown and unlocatable interest owner, may appear as a matter of right at any time
580 prior to the entry of judgment confirming the deed authorized by this subsection, for the purpose

581 of establishing his or her title to a mineral interest subject to the petition. If the appearing unknown
582 and unlocatable interest owner's claim is established to the satisfaction of the court, the court
583 shall dismiss the action as to the appearing owner's interest without cost, fees, or damages:
584 Provided, That if the appearance of the formerly unknown and unlocatable interest owner was as
585 a result of the filing of the petition by the surface owner pursuant to this subsection, then the court
586 may order the petitioner's reasonable attorney's fees and costs to be paid to the petitioner out of
587 the amounts payable to the formerly unknown and unlocatable interest owner.

588 (6) If a petition is filed pursuant to this subsection, the amounts payable to unknown and
589 unlocatable interest owners subject to the petition shall be paid to the Oil and Gas Reclamation
590 Fund established pursuant to §22-6-29 of this code three years after the petition is filed, unless
591 and until an unknown and unlocatable interest owner appears in the proceeding. The court may
592 appoint a special commissioner at any time to deliver a deed to the petitioners in the form provided
593 herein five years after the petition is filed. The special commissioner shall be an attorney duly
594 admitted to practice before the West Virginia Supreme Court of Appeals and in good standing but
595 may not be required to give bond. If the petitioners do not agree as to the interest each is to
596 acquire by the deed contemplated herein, or the division of any moneys associated therewith, the
597 court shall equitably determine the interests of the petitioners.

598 (7) In any action under this subsection, if personal service of process is possible, it shall
599 be made as provided by the West Virginia Rules of Civil Procedure. In addition, immediately upon
600 the filing of the petition, the petitioner shall: (1) Publish a Class III legal advertisement in
601 compliance with the provisions of §59-3-1 et seq. of this code, and in the county wherein the larger
602 part of the oil and gas mineral estate described in the petition lies; and (2) no later than the first
603 day of publication, file a lis pendens notice in the county clerk's office of the county where the
604 petition is filed and the county wherein the larger part of the oil and gas mineral estate described
605 in the petition lies. Both the advertisement and the lis pendens notice shall set forth: (1) The
606 names of the petitioner and the defendants, as they are known to be by the exercise of reasonable

607 diligence by the petitioner, and their last known addresses; (2) the date and record data of the
608 instrument or other conveyance which immediately created the oil and gas mineral interest; (3)
609 an adequate description of the land as contained therein; (4) the source of title of the last known
610 owners of the oil and gas mineral interests; and (5) a statement that the action is brought for the
611 purpose of authorizing payments from a horizontal well unit, and thereafter, in the case of any
612 defendant or heir, successor or assign of any defendant who does not appear to claim ownership
613 of the defendant's interest within five years after the date the petition is filed, for the court to order
614 a conveyance of the defendant's oil and gas mineral interest under this subsection, subject to the
615 lease terms determined by the commission and horizontal well unit order, to the owner of the
616 surface overlying the oil and gas mineral interest. In addition, the petitioner shall send notice by
617 certified mail, return receipt requested, to the last known address, if there is one, of all named
618 defendants. In addition, the court may order advertisement elsewhere or by additional means if
619 there is reason to believe that additional advertisement might result in identifying and locating the
620 unknown and unlocatable interest owners.

621 (8) Upon a finding by the court of the present ownership of the petitioners of the surface
622 estate, the court shall order the special commissioner to convey to the proven surface owners,
623 subject to the horizontal well unit order and lease terms approved by the commission, the mineral
624 interest specified in the petition authorized herein, by a deed substantially in the form as follows:

625 This deed, made the _____ day of _____, 20____, between
626 _____, special commissioner, grantor and
627 _____, grantee,

628 Witnesseth, that whereas, grantor, in pursuance of the authority vested in him or her by
629 an order of the circuit court of _____ County, West Virginia, entered on the _____ day
630 of _____, 20____, in civil action no. _____ therein pending, to convey the mineral
631 interest more particularly described below to the grantee,

632 Now, therefore, this deed witnesseth: That grantor grants unto grantee, subject to the

633 provisions of the horizontal well unit order of the Oil and Gas Conservation Commission in
634 _____ and lease terms provided therein, and further subject to all other liens and
635 encumbrances of record, that certain oil and gas mineral interest in _____ County,
636 West Virginia, more particularly described in the cited order of the circuit court as follows: (here
637 insert the description in the order).

638 Witness the following signature.

639 _____

640 Special Commissioner

641 (9) After the date of the special commissioner's deed authorized herein, the surface owner
642 grantee is entitled to receive all proceeds due and payable under a horizontal well unit order
643 attributable to the mineral interests specified in the special commissioner's deed accruing from
644 and after the date of the special commissioner's deed. Prior to the issuance of the special
645 commissioner's deed pursuant to this subsection, all proceeds due and payable under a
646 horizontal well unit order attributable to the mineral interests specified in the special
647 commissioner's deed accruing prior to the date of the special commissioner's deed shall be paid
648 to the Oil and Gas Reclamation Fund established pursuant to §22-6-29 of this code.

649 (10) The applicant may not be joined as a party but shall be served with copies of all
650 pleadings and other papers filed in the proceeding and may intervene at any time. A surface
651 owner must provide a copy of the recorded Special Commissioner deed to the applicant and any
652 other necessary information reasonably requested by the applicant before the applicant or any
653 other operator has an obligation to provide payment to the surface owner.

654 (11) Payment by the applicant to the Oil and Gas Reclamation Fund established pursuant
655 to §22-6-29 of this code or petitioners, as applicable, pursuant to this subsection shall relieve the
656 participating operators of all liability whatsoever that the participating operators may have had to
657 any unknown and unlocatable interest owners, their heirs, successors, and assigns with respect
658 to the payment and all operations in the horizontal well unit, all operations therein and all

659 production from the operations.

660 (12) If a surface owner does not file a petition pursuant to this subsection within three
661 years of the date notice is given to a TSO as provided herein, amounts payable with respect to
662 the unknown and unlocatable interest owners' interests included in a horizontal well unit shall be
663 paid to the Oil and Gas Reclamation Fund established pursuant to §22-6-29 of this code, and the
664 payment shall relieve the participating operators of all liability of the participating operators with
665 respect to the horizontal well unit and all operations therein and production therefrom to any
666 unknown and unlocatable interest owners, their heirs, successors, and assigns and to any owners
667 of surface overlying the unknown and unlocatable interest owners' interest, their heirs,
668 successors, and assigns, with respect to the payment.

669 (13) After the recording of the special commissioner's deed, no action may be brought by
670 any unknown and unlocatable interest owner or any heir, successor or assign thereof either to
671 recover any past or future proceeds accrued or to be accrued from the property subject to the
672 deed, or to recover any right, title or interest in and to the mineral interest subject to the deed.

673 (14) If any unknown and unlocatable interest owner or heir, successor or assign thereof
674 appears in the proceeding in circuit court later than three years after the proceeding is filed, the
675 unknown and unlocatable interest owner, if he or she establishes his or her claim to the
676 satisfaction of the circuit court, shall only be entitled to receive amounts payable in connection
677 with the horizontal well unit or production therefrom after the date of appearance in the
678 proceeding. Further, the participating operators and the petitioning surface owners shall have no
679 liability to the unknown and unlocatable interest owner or their heirs, successors or assigns for
680 any amount paid with respect to the unknown and unlocatable interest or the horizontal well unit
681 or production therefrom paid in accordance with this subsection.

682 (p) If any part of this section is adjudged to be unconstitutional or invalid, the invalidation
683 shall not affect the validity of the remaining parts of this section; and to this end, the provisions of
684 this section are hereby declared to be severable.