

House Amd. #2 8/4 -Consideration of comments/protest,public hearing

Delegates Manchin, Fleischauer, Ireland, Anderson and Campbell move to amend the bill on page 52, line 3, by inserting the following as a new section.

**"§22-6A-11. Procedure for filing comments; certification of notice; procedures for considering objections and protests; public hearing option; issues to be considered; public notice and hearing procedures.**

(a) All persons described in subsections(b) and (c), section ten of this article may file comments with the Secretary as to the location or construction of the applicant's proposed well work within thirty days after the application is filed with the Secretary. The public comment period shall end no earlier than 30 days after the date of the second publication required under subsection e, section 10 of this article.

(b) The applicant shall tender proof of publication and certify to the Secretary that the individual and public notice requirements of section ten of this article have been completed by the applicant. Such certification of individual notice to the person may be made by affidavit of personal service, the return receipt card, or other postal receipt for certified mailing.

(c) (1) The Secretary shall review and consider the comments filed to the permit application. The Secretary shall notify the applicant of the character of the objections made by the public

commentators, no later than fifteen days after the close of the public comment period or forty-five days after the date of the permit application, whichever is later.

(2) The objections of the affected coal operators and coal seam owners and lessees shall be addressed through the processes and procedures that exist under sections 15, 16 and 17 of article 6 of this chapter, as applicable.

(3) The applicant and the objecting surface property owners and the water purveyors may agree on the location of the drilling activities and associated land disturbances to be made, agree upon an alternate location, or agree upon the conditions under which the drilling activity is to take place. Any modified drilling site location or additional drilling conditions agreed to by the applicant which would constitute an amendment of the proposed permit application shall be submitted for the Secretary's review and approval, with the proposed modifications reflected on a revised plat which shall become a part of the permit application, and submitted for the Secretary's review and approval.

(d) (1) The Secretary shall have the discretion to hold a public hearing on the permit application prior to issuing a decision on the permit, based upon the comments received or to receive testimony and documentation on any of the factors the Secretary is required to consider in the issuance of a permit under section seven of this article. Any such public hearing scheduled by the director shall be conducted no later than 30 days after the conclusion of the comment period.

(2) If a public hearing is scheduled by the Secretary to review the permit application, the time and place of the scheduled public hearing shall be provided as a Class I legal advertisement no later than seven days prior to the scheduled hearing. Additional written notice of the hearing shall be provided to each individual submitting written comments within the comment period. Persons previously provided with individual notice of the application notice pursuant to subsection b, section ten of this article shall be given at least ten days written notice of the scheduled hearing. Notice of the scheduled hearing shall also be published on the Secretary's public website. Persons registered to receive electronic notices from the Secretary pertaining to permit applications filed in the affected county shall also be provided with electronic notice of the scheduled public hearing.

(3) At any such public hearing, the proposed well operator, the objecting property owner or adjacent property owners on which the proposed drilling activity is to be conducted, water purveyors, coal seam operators, owners or lessors, municipalities and county commissions located in the county where the permitted activity is to be conducted, if any are present and represented, and any other parties granted intervenor status by the Secretary shall be provided the opportunity to present documents and testimony for the Secretary's consideration. The Secretary will have the discretion to limit and identify the scope of the issues on which testimony and documents will be presented at any public hearing. Any persons or entities not granted intervenor status and other members of the

general public appearing at such hearing shall be provided the opportunity to tender a written or oral statement for the Secretary's consideration.

(4) In reviewing the permit, after any public hearing is conducted pursuant to this section, the Secretary shall consider and receive documents and testimony filed at the hearing, as a part of the record on the permit application, along with the previously filed protests and comments.

(5) The Secretary shall prepare a record of the proceedings, which record shall include all applications, plats and other documents filed with the Secretary, any proposed revisions thereto, all notices given and proof of service thereof, all orders issued, all permits issued and a transcript of the hearing. The record prepared by the Secretary shall be open to inspection by the public.