

§ 22-3-6. Penalties.

Any person who fails or refused [refuses] to discharge any provision of this article, rule and regulation promulgated or order issued pursuant to the provisions of this article, shall be guilty of a misdemeanor, and, upon conviction thereof, shall be punished by a fine of not less than one hundred nor more than one thousand dollars or by imprisonment not exceeding six months, or by both. (1969, c. 75.)

Editor's note. — The bracketed word was inserted by the editor.

ARTICLE 4.
OIL AND GAS WELLS.

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Michie's Jurisprudence. — See generally 13A M.J., Mines and Minerals.

W. Va. Law Review. — For article on underground storage of natural gas, see 68 W. Va. L. Rev. 136 (1966).

"Development of the Law of Coal, Oil and Gas from 1951 to 1971," 74 W. Va. L. Rev. 260 (1972).

§ 22-4-1. Definitions.

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

- (a) "Casing" means a string or strings of pipe commonly placed in wells drilled for natural gas or petroleum or both;
- (b) "Cement" means hydraulic cement properly mixed with water;
- (c) "Chairman" means the chairman of the West Virginia shallow gas well review board as provided for in section four [§ 22-4B-4], article four-B of this chapter;
- (d) "Chief" means chief of the division of water resources of the department of natural resources;
- (e) "Coal operator" means any person or persons, firm, partnership, partnership association or corporation that proposes to or does operate a coal mine;

(f) "Coal seam" and "workable coal bed" are interchangeable terms and mean any seam of coal twenty inches or more in thickness, unless a seam of less thickness is being commercially worked, or can in the judgment of the department foreseeably be commercially worked and will require protection if wells are drilled through it;

(g) "Deep well" means any well drilled and completed in a formation at or below the top of the uppermost member of the "Onondaga Group" or at a depth of or greater than six thousand feet, whichever is shallower;

(h) "Department" or "department of mines" means, for purposes of this article and articles five and seven [§ 22-5-1 et seq. and § 22-7-1 et seq.] of this chapter, the office of oil and gas of the department of mines.

(i) "Administrator" means the head of the office of oil and gas of the department of mines and all references to the "deputy director" shall be defined to mean the administrator of the office of oil and gas.

(j) "Expanding cement" means any cement approved by the office of oil and gas which expands during the hardening process, including but not limited to regular oil field cements with the proper additives;

(k) "Facility" means any facility utilized in the oil and gas industry in this State and specifically named or referred to in this article or in articles five or seven [§ 22-5-1 et seq. or § 22-7-1 et seq.] of this chapter, other than a well or well site;

(l) "Gas" means all natural gas and all other fluid hydrocarbons not defined as oil in subdivision (m) of this section;

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

(n) "Owner" when used with reference to any well, shall include any person or persons, firm, partnership, partnership association or corporation that owns, manages, operates, controls or possesses such well as principal, or as lessee or contractor, employee or agent of such principal;

(o) "Owner" when used with reference to any coal seam, shall include any person or persons who own, lease or operate such coal seam;

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

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

(r) "Review board" means the West Virginia shallow gas well review board as provided for in section four [§ 22-4B-4], article four-B of this chapter;

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

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

(u) "Inherent fracturing" means a fracture in a rock which is formed by the natural stresses and strains of the rock and which is not the result of drilling or other artificial means.

(v) "Liquid" means a substance which is in the liquid state at normal atmospheric pressure and temperature.

(w) "Partnership" means a partnership, partnership association or corporation.

(x) "Provision" means a provision of a statute, regulation or contract.

(y) "Thousand" means one thousand.

(z) "Section" means a section of a statute, regulation or contract.

ALR 1980-1
land as specified in the deed, lease, mortgage, or other instrument used, including income taxes, 11-1-80.
Oil and gas lease, 11-1-80.
Railroad oil in its place from ALR 880.
Joint and gas tax sale, 11-1-80.

§ 22-4

(a) The department of mines shall set up a shallow gas well review board as provided in section four [§ 22-4B-4], article four-B of this chapter.

(b) The department of mines shall set up a shallow gas well review board as provided in section four [§ 22-4B-4], article four-B of this chapter.

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

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

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

(x) "Office of oil and gas" or "office" means the office of oil and gas within the department of mines charged with the responsibility of administering the provisions of chapter twenty-two, articles four, five and seven [§ 22-4-1 et seq., § 22-5-1 et seq., and § 22-7-1 et seq.] of the Code of West Virginia, one thousand nine hundred thirty-one, as amended. (1897, c. 58, § 5; Code 1923, c. 62D, § 5; 1929, c. 86, § 1; 1963, c. 95; 1969, c. 76; 1973, c. 79; 1977, c. 123; 1978, c. 84; 1979, c. 83.)

ALR references. — Right to oil and gas in land as affected by language in conveyance specifying purpose for which the property is to be used, 5 ALR 1498; 39 ALR 1340.

Income taxes, deductions from, for oil and gas losses, 11 ALR 508; 51 ALR 536.

Oil and gas as minerals within meaning of deed, lease or license, 17 ALR 162; 86 ALR 983.

Railroad company's right in respect of gas or oil in its right-of-way, 21 ALR 1141.

Severance of title or rights to oil and gas in place from title to surface, 29 ALR 586; 146 ALR 880.

Joint adventure, agreement concerning oil and gas as, 63 ALR 917; 138 ALR 968.

Tax sale of property as affecting rights of

owner of gas and oil thereunder, 75 ALR 434.

Taxes, what property is exempted from ad valorem tax under statute or constitution providing for payment of production tax by producers of oil and gas in lieu of other taxes, 77 ALR 1078.

Potential possession or ownership, doctrine of, as applied to sale or mortgage of interest in oil or gas to be produced, 88 ALR 1281.

Railroad company's right to permit laying of oil or gas pipeline under its right-of-way, 94 ALR 532; 149 ALR 378.

Contract to search for oil or gas, of a prospecting or exploratory nature, right to recover for breach of, and measure of recovery, 4 ALR3d 284.

§ 22-4-1a. Office of oil and gas — Purposes; rules and regulations; administration; appointment; powers and duties; public records.

(a) There is hereby created, under the jurisdiction of the director of the department of mines, an office of oil and gas which shall have as its purpose the supervision of the execution and enforcement of matters related to oil and gas set out in this article and in articles five and seven [§ 22-5-1 et seq. and § 22-7-1 et seq.] of this chapter.

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

(c) There shall be an employee of the office of oil and gas whose title shall be "administrator of the office of oil and gas" who shall be appointed by the director of the department of mines to serve at the will and pleasure of the director and whose salary shall be set by the director. The administrator shall have full charge of the oil and gas matters set out in this article and in articles five and seven [§ 22-5-1 et seq. and § 22-7-1 et seq.] of this chapter, subject always to the direct supervision and control of the director of the department of mines. As such the administrator shall have the power and duty to:

(1) Supervise and direct the activities of the office of oil and gas and see that the purposes set forth in subsections (a) and (b) of this section are carried out;

(2) Employ a supervising oil and gas inspector and not more than twelve oil and gas inspectors upon approval by the director;

(3) Supervise and direct such oil and gas inspectors and supervising inspector in the performance of their duties;

(4) Suspend for good cause any oil and gas inspector or supervising inspector without compensation for a period not exceeding thirty days in any calendar year;

(5) Prepare report forms to be used by oil and gas inspectors or the supervising inspector in making their findings, orders and notices, upon inspections made in accordance with this chapter;

(6) Employ a hearing officer and such clerks, stenographers and other employees, as may be necessary to carry out his duties and the purposes of the office of oil and gas, and fix their compensation;

(7) Hear and determine applications made by owners, well operators, and coal operators for the annulment or revision of orders made by oil and gas inspectors or the supervising inspector, and to make inspections, in accordance with the provision of this article and articles five and seven [§ 22-5-1 et seq. and § 22-7-1 et seq.] of this chapter;

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

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

(10) Conduct such research and studies as the director shall deem necessary to aid in protecting the health and safety of persons employed within or at potential or existing oil or gas production fields within this State, to improve drilling and production methods and to provide for the more efficient protection and preservation of oil and gas-bearing rock strata and property used in connection therewith;

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

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

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

(d) All records of the department shall be open to the public. (1963, c. 95; 1969, c. 76; 1979, c. 83.)

§ 22-4-1b. Administrator — Eligibility.

The administrator of the office of oil and gas shall be a citizen of West Virginia, shall be a competent person of good reputation and temperate habits and be a registered professional engineer and shall have had at least ten years' practical experience in the oil and gas industry. A degree in geology or in mining or petroleum engineering shall be counted as two years' practical experience. The administrator shall devote all of his time to his duties, and shall not be directly or indirectly interested financially in any oil or gas production or drilling or in any coal mine in this State. (1963, c. 95; 1969, c. 77; 1972, c. 68; 1979, c. 83.)

Cross reference. — Oil and gas conservation commissioner as acting administrator, § 22-4-11a.

§ 22-4-1c. Oil and gas inspectors — Supervising inspectors; tenure; oath and bond.

Notwithstanding any other provisions of law, oil and gas inspectors shall be selected, serve and be removed as in this article provided.

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

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

thereon. Such reinstatement shall be effective from the date of removal from the register.

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

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

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

Editor's note. — For "deputy director," see § 22-4-1(i).

§ 22-4-1d. Same — Eligibility for appointment; qualifications; salary; expenses; removal.

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

(b) In order to qualify for appointment as an oil and gas inspector or supervising inspector, an eligible applicant shall submit to a written and oral examination by the oil and gas inspectors' examining board and shall furnish such evidence of good health, character and other facts establishing eligibility as such board may require. If such board finds after investigation and examination that an applicant (1) is eligible for appointment and (2) has passed all written and oral examinations, the board shall add such applicant's name and grade to the register of qualified eligible candidates and certify its action to the

deputy director for oil and gas. No candidate's name shall remain on the register for more than three years without requalifying.

(c) The salary of the supervising inspector shall be not less than fifteen thousand two hundred twenty-two dollars per annum and not more than fifteen cents per mile traveling expenses. Salaries of inspectors shall be not less than thirteen thousand three hundred twenty-five dollars per annum and traveling expenses for personal car not more than fifteen cents per mile. Within the limits provided by law, the salary of each inspector and of the supervising inspector shall be fixed by the deputy director for oil and gas, subject to the approval of the director of the department of mines and oil and gas inspectors' examining board. In fixing salaries of the oil and gas inspectors and of the supervising inspector, the deputy director for oil and gas shall consider ability, performance of duty and experience. No reimbursement for traveling expenses shall be made except upon an itemized account of such expenses submitted by the inspector or supervising inspector, as the case may be, who shall verify, upon oath, that such expenses were actually incurred in the discharge of his official duties.

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

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

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

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

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

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

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

Editor's note. — For "deputy director," see § 22-4-1(i).

§ 22-4-1e. Oil and gas inspectors' examining board created; composition; appointment, term and compensation of members; chairman; oaths of members; meetings; powers and duties generally.

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

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

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

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

The public member shall serve as chairman of the board.

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

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

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

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

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

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

(4) Prepare and certify to the deputy director for oil and gas and the director of the department of mines a register of qualified eligible candidates for appointment as oil and gas inspectors or as supervising inspectors, with such differentiation, if any, between the certification of candidates for oil and gas inspectors and for supervising inspectors as the board may from time to time deem necessary or advisable. The register shall list all qualified eligible candidates in the order of their grades, the candidate with the highest grade appearing at the top of the list. After each meeting of the board held to examine such candidates and at least annually, the board shall prepare and submit to the deputy director for oil and gas and the director of the department of mines a revised and corrected register of qualified eligible candidates for appoint-

ment, deleting from such revised register all persons (a) who are no longer residents of West Virginia, (b) who have allowed a calendar year to expire without, in writing, indicating their continued availability for such appointment, (c) who have been passed over for appointment for three years, (d) who have become ineligible for appointment since the board originally certified that such persons were qualified and eligible for appointment, or (e) who, in the judgment of at least three members of the board, should be removed from the register for good cause;

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

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

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

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

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

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

Editor's note. — As to the termination of the oil and gas inspectors' examining board effective July 1, 1984, see § 4-10-4.

For "deputy director," see § 22-4-1(i).

§ 22-4-1f. Authority and duty of deputy director and inspectors to visit and inspect wells and facilities; inspectors to devote full time to duties.

The deputy director for oil and gas of the department of mines shall have authority to visit and inspect any well or well site and any other oil or gas facility in this State and may call for the assistance of any oil and gas inspector or inspectors or supervising inspector whenever such assistance is necessary in the inspection of any such well or well site or any other oil or gas facility.

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Similarly, all oil and gas inspectors and the supervising inspector shall have authority to visit and inspect any well or well site and any other oil or gas facility in this State. Any well operator, coal operator operating coal seams beneath the tract of land, or the coal seam owner or lessee, if any, if said owner or lessee is not yet operating said coal seams beneath said tract of land may request the deputy director to have an immediate inspection made. The operator or owner of every well or well site or any other oil or gas facility shall cooperate with the deputy director for oil and gas, all oil and gas inspectors and the supervising inspector in making inspections or obtaining information.

Oil and gas inspectors shall devote their full time and undivided attention to the performance of their duties, and they shall be responsible for the inspection of all wells or well sites or other oil or gas facilities in their respective districts as often as may be required in the performance of their duties. (1963, c. 95; 1969, c. 76; 1977, c. 123.)

Editor's note. — For "deputy director," see § 22-4-1(i).

§ 22-4-1g. Findings and orders of inspectors concerning violations; determination of reasonable time for abatement; extensions of time for abatement; special inspections; notice of findings and orders.

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

(b) The period of time so found by such oil and gas inspector to be a reasonable period of time may be extended by such inspector, or by any other oil and gas inspector duly authorized by the deputy director for oil and gas, from time to time, but on not more than three occasions, upon the making of a special inspection to ascertain whether or not such violation has been totally abated. The deputy director for oil and gas shall cause a special inspection to be made: (A) Whenever an operator of a well or well site or any other oil or gas facility, prior to the expiration of any such period of time, requests him to cause a special inspection to be made at such well or well site or any other oil or gas facility; and (B) upon expiration of such period of time as originally fixed or as extended, unless the deputy director for oil and gas is satisfied that the viola-

tion has been abated. Upon making such special inspection, such oil and gas inspector shall determine whether or not such violation has been totally abated. If he determines that such violation has not been totally abated, he shall determine whether or not such period of time as originally fixed, or as so fixed and extended, should be extended. If he determines that such period of time should be extended, he shall determine what a reasonable extension would be. If he determines that such violation has not been totally abated, and if such period of time as originally fixed, or as so fixed and extended, has then expired, and if he also determines that such period of time should not be further extended, he shall thereupon make an order requiring the operator of such well or well site or other oil or gas facility to cease further operations of such well, well site or facility, as the case may be. Such findings and order shall contain reference to the specific provisions of this article which are being violated.

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

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

Editor's note. — For "deputy director," see § 22-4-1(i).

§ 22-4-1h. Review of findings and orders by deputy director for oil and gas; special inspection; annulment, revision, etc., of order; notice.

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

The deputy director for oil and gas shall cause notice of each finding and order made under this section to be given promptly to the operator of the well, well site or other oil or gas facility to which such findings and order pertain, and the complainant under section one-f [§ 22-4-1f], if any.

At any time while an order made pursuant to section one-g [§ 22-4-1g] of this article is in effect, the operator of the well, well site or other oil or gas facility

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such oil and gas has been totally abated, he has been totally fixed, or as so at such period of time as the order is made, the order shall be promptly annulled, and the order shall contain no provision which is not in section 22-4-1j.

Deputy director annulment,

lessee, if any, shall apply to the deputy director pursuant to section 22-4-1g of this article. Upon the making of such finding and order, the deputy director shall make a copy of the finding and order, other than the name of the operator, and one copy shall be given to the operator and one copy shall be given to the operator who caused such special inspection, as provided in section 22-4-1g of this article, as an order which shall be annulled by the deputy director of the oil and gas facility.

Each finding and order of the well, and each order which shall be annulled by the deputy director of the oil and gas facility.

22-4-1g] of this article, as an order which shall be annulled by the deputy director of the oil and gas facility.

affected by such order may apply to the deputy director for oil and gas for annulment or revision of such order. The deputy director for oil and gas shall thereupon proceed to act upon such application in the manner provided in this section.

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

Editor's note. — For "deputy director," see § 22-4-1(i).

§ 22-4-1i. Requirements for findings, orders and notices; posting of findings and orders.

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

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

§ 22-4-1j. Judicial review of final orders of deputy director for oil and gas.

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

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

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

Editor's note. — For "deputy director," see review of administrative decisions, see 1A M.J., § 22-4-1(i). Administrative Law, §§ 16-24.

Michie's Jurisprudence. — As to judicial

§ 22-4-1k. Permits required; application for permit; information; responsible agent; drilling permit number; when permits not to be issued; penalty.

It shall be unlawful for any well to be drilled, redrilled, deepened, fractured, stimulated, plugged, pressured, converted, combined or physically changed to allow the migration of fluid from one formation to another unless a permit therefor has been issued by the department. An application for any such permit shall be filed with the deputy director and shall contain the following:

- (a) The name and address of the well operator;
- (b) The name and address of the owner of the surface lands upon which the well is or may be located;
- (c) The name and address of every coal operator operating coal seams under the tract of land on which the well is or may be located, and the coal seam owner of record and lessee of record required to be given notice by section two [§ 22-4-2], if any, if said owner or lessee is not yet operating said coal seams;
- (d) The name and address of the agent of the well operator, if any such agent is required to be designated under the provisions of this section;
- (e) The approximate depth to which the well is to be drilled;
- (f) The proposed casing program of such well including the sizes of all such casing, the depth to which all casing is to be run and the extent to which such casing is to be cemented;
- (g) The proposed method of reclamation which shall comply with the requirements of section twelve-b [§ 22-4-12b] of this article; and
- (h) Any other information which the deputy director by rule or regulation may require.

If the well operator named in such application is a corporation, partnership or a nonresident of the State of West Virginia, then there shall be designated the name and address of an agent for such operator who shall be the attorney-in-fact for the operator and who shall be a resident of the State of West Virginia upon whom notices, orders or other communications issued pursuant

to this article or article five-A [§ 20-5A-1 et seq.], chapter twenty, may be served, and upon whom process may be served. Every well operator required to designate an agent under this section shall within five days after the termination of such designation notify the department of such termination and designate a new agent.

The well owner or operator shall install the permit number as issued by the deputy director in a legible and permanent manner to the well upon completion of any permitted work. The dimensions, specifications and manner of installation shall be in accordance with the administrative rules and regulations of the department.

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

Any person who violates any provision of this section shall be guilty of a misdemeanor, and, upon conviction thereof, shall be punished by a fine not exceeding two thousand dollars, or imprisonment in jail for not exceeding twelve months, or both such fine and imprisonment. (1969, c. 76; 1973, c. 79; 1976, c. 71; 1977, c. 123; 1978, c. 84.)

Editor's note. — For "deputy director," see § 22-4-1(i).

Power of commissioner to prevent waste. — Although there is no authority for the commissioner to issue notice for a show cause hearing, the provisions of this section and regu-

lations hereunder contain adequate procedures whereby the commissioner can successfully perform his duty to prevent waste. Op. Att'y Gen., July 30, 1973.

Quoted in *Traverse Corp. v. Latimer*, 157 W. Va. 855, 205 S.E.2d 133 (1974).

§ 22-4-2. Plats prerequisite to drilling or fracturing wells; preparation and contents; notice and information furnished to coal operators, owners or lessees; issuance of permits; performance bonds or securities in lieu thereof; bond forfeiture.

Before drilling for oil or gas, or before fracturing or stimulating a well on any tract of land, the well operator shall have a plat prepared by a licensed land surveyor or registered engineer showing the district and county in which the tract of land is located, the name and acreage of the same, the names of the owners of adjacent tracts, the proposed or actual location of the well determined by survey, the courses and distances of such location from two permanent points or landmarks on said tract and the number to be given the well and the date of drilling completion of a well when it is proposed that such well be fractured and shall forward by registered or certified mail a copy of the plat to the department of mines. In the event the tract of land on which the said well

proposed to be drilled or fractured is located is known to be underlaid with one or more coal seams, copies of the plat shall be forwarded by registered or certified mail to each and every coal operator operating said coal seams beneath said tract of land, who has mapped the same and filed his maps with the department in accordance with article two [§ 22-2-1 et seq.] of this chapter, and the coal seam owner of record and lessee of record, if any, if said owner or lessee has recorded the declaration provided in section twenty [§ 22-4-20] of this article, and if said owner or lessee is not yet operating said coal seams beneath said tract of land. With each of such plats there shall be enclosed a notice (form for which shall be furnished on request by the department of mines) addressed to the department of mines and to each such coal operator, owner and lessee, if any, at their respective addresses, informing them that such plat and notice are being mailed to them respectively by registered or certified mail, pursuant to the requirements of this article. If no objections are made, or are found by the department, to such proposed location or proposed fracturing within fifteen days from receipt of such plat and notice by the department of mines, the same shall be filed and become a permanent record of such location or fracturing subject to inspection at any time by any interested person, and the department may forthwith issue to the well operator a permit reciting the filing of such plat, that no objections have been made by the coal operators, owners and lessees, if any, or found thereto by the department, and authorizing the well operator to drill at such location, or to fracture the well. Unless the department has objections to such proposed location or proposed fracturing or stimulating, such permit may be issued prior to the expiration of such fifteen-day period upon the obtaining by the well operator of the consent in writing of the coal operator or operators, owners and lessees, if any, to whom copies of the plat and notice shall have been mailed as herein required, and upon presentation of such written consent to the department. The notice above provided for may be given to the coal operator by delivering or mailing it by registered or certified mail as above to any agent or superintendent in actual charge of mines.

A permit to drill, or to fracture or stimulate an oil or gas well, shall not be issued unless the application therefor is accompanied by a bond of the operator in the sum of two thousand five hundred dollars, payable to the State of West Virginia, with a corporate bonding or surety company authorized to do business in this State as surety thereon, conditioned on full compliance with all laws, rules and regulations relating to the drilling, redrilling, deepening, casing, plugging, abandonment and reclamation of wells and for furnishing such reports and information as may be required by the department: Provided, that when such operator makes or has made application for permits to drill a number of wells or fracture or stimulate a well or wells the operator may in lieu of furnishing a separate bond furnish a blanket bond in the sum of fifteen thousand dollars, payable to the State of West Virginia, with a corporate bonding or surety company authorized to do business in this State as surety thereon, and conditioned as aforesaid: Provided, however, that in lieu of corporate surety on a separate or blanket bond, as the case may be, the operator may elect to deposit with the deputy director for oil and gas cash or the following

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collateral securities or any combination thereof: (1) Bonds of the United States or agency thereof, or those guaranteed by, or for which the credit of the United States or agency therefor is pledged for the payment of the principal and interest thereof; (2) direct general obligation bonds of this State, or any other state, or territory of the United States, or the District of Columbia, unconditionally guaranteed as to the principal and interest by such other state or territory of the United States, or the District of Columbia if such other state, territory, or the District of Columbia has the power to levy taxes for the payment of the principal and interest of such securities, and if at the time of the deposit such other state, territory, or the District of Columbia is not in default in the payment of any part of the principal or interest owing by it upon any part of its funded indebtedness; (3) direct general obligation bonds of any county, district, city, town, village, school district or other political subdivision of this State issued pursuant to law and payable from ad valorem taxes levied on all the taxable property located herein, that the total indebtedness after deducting sinking funds and all debts incurred for self-sustaining public works does not exceed five percent of the assessed value of all taxable property therein at the time of the last assessment made before the date of such deposit, and that the issuer has not, within five years prior to the making thereof, been in default for more than ninety days in the payment of any part of the principal or interest on any debt, evidenced by its bonds; (4) revenue bonds issued by this State or any agency of this State when such bonds are payable from revenues or earnings specifically pledged for the payment of principal and interest, and a lawful sinking fund or reserve fund has been established and is being maintained for the payment of such bonds; (5) revenue bonds issued by a municipality in this State for the acquisition, construction, improvement or extension of a waterworks system, or a sewerage system, or a combined waterworks and sewerage system, when such bonds are payable from revenue or earnings specifically pledged for the payment of principal and interest, and a lawful sinking fund or reserve fund has been established and is being maintained for the payment of such bonds; (6) revenue bonds issued by a public service board of a public service district in this State for the acquisition, construction, improvement or extension of any public service properties, or for the reimbursement or payment of the costs and expenses of creating the district, when such bonds are payable from revenue or earnings specifically pledged for the payment of principal and interest, and a lawful sinking fund or reserve fund has been established and is being maintained for the payment of such bonds; (7) revenue bonds issued by a board of trustees of a sanitary district in this State for the corporate purposes of such district, when such bonds are payable from revenue or earnings specifically pledged for the payment of principal and interest, and a lawful sinking fund or reserve fund has been established and is being maintained for the payment of such bonds; and (8) bonds issued by a federal land bank or home owners' loan corporation. The cash deposit or market value, or both, of the collateral securities shall be equal to or greater than the penalty of the separate or blanket bond, as the case may be. Upon receipt of any such deposit or cash or collateral securities, the deputy director for oil and gas shall immediately deliver the same to the treasurer of

the State of West Virginia. The treasurer shall determine whether any such securities satisfy the requirements of this section. If the securities are approved they shall be accepted by the treasurer. If the securities are not approved, they shall be rejected and returned to the operator and no permit shall be issued until a corporate surety bond is filed or cash or proper collateral securities are filed in lieu of such surety. The treasurer shall hold any cash or securities in the name of the State in trust for the purposes for which the deposit was made. The operator shall be entitled to all interest and income earned on the collateral securities filed by such operator so long as the operator is in full compliance with all laws, rules and regulations relating to the drilling, re-drilling, deepening, casing, plugging, abandonment and reclamation of wells and for furnishing such reports and information as may be required by the department. The operator making the deposit shall be entitled from time to time to receive from the treasurer, upon the written order of the deputy director for oil and gas, the whole or any portion of such securities upon depositing with the treasurer in lieu thereof cash equal to or greater than the penalty of the bond, or other approved securities of the classes herein specified having a market value equal to or greater than the penalty of the bond, or a corporate surety bond.

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

by the treasurer of the State of West Virginia. If the operator does not furnish a new bond or collateral securities, as provided in the next preceding paragraph of this section, with the department, he shall immediately plug, fill and reclaim the well in accordance with all of the provisions of law, rules and regulations applicable thereto. In such case, the corporate or surety company which issued the original bond shall be liable for any plugging, filling or reclamation not performed in accordance with such laws, rules and regulations.

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

If any of the requirements of this article or rules and regulations promulgated pursuant thereto or the orders of the deputy director for oil and gas have not been complied with within the time limit set by the violation notice as defined in sections one-g, one-h and one-i [§§ 22-4-1g, 22-4-1h and 22-4-1i], article four, chapter twenty-two of this Code the performance bond shall then be forfeited.

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

All forfeitures shall be deposited in the treasury of the State of West Virginia in the special reclamation fund as defined in section twelve-a [§ 22-4-12a], article four, chapter twenty-two of this Code. (1929, c. 86, § 2; 1963, c. 95; 1969, c. 76; 1973, c. 79; 1976, c. 71; 1977, c. 123; 1978, c. 84.)

Editor's note. — For "deputy director," see § 22-4-1(i).

§ 22-4-2a. Notice to coal operators, owners or lessees and department of mines of intention to fracture certain other wells; contents of such notice; permit required.

Before fracturing any well the well operator shall, by registered or certified mail, forward a notice of intention to fracture such well to the department of mines and to each and every coal operator operating coal seams beneath said tract of land, who has mapped the same and filed his maps with the department in accordance with article two [§ 22-2-1 et seq.] of this chapter, and the coal seam owner and lessee, if any, if said owner of record or lessee of record has recorded the declaration provided in section twenty [§ 22-4-20] of this article, and if said owner or lessee is not yet operating said coal seams beneath said tract of land.

The notice shall be addressed to the department of mines and to each such coal operator at their respective addresses, shall contain the number of the drilling permit for such well and such other information as may be required by

the department to enable the department and the coal operators to locate and identify such well and shall inform them that such notice is being mailed to them, respectively, by registered or certified mail, pursuant to the requirements of this article. (The form for such notice of intention shall be furnished on request by the department of mines.) If no objections are made, or are found by the department, to such proposed fracturing within fifteen days from receipt of such notice by the department of mines, the same shall be filed and become a permanent record of such fracturing, subject to inspection at any time by any interested person, and the department shall forthwith issue to the well operator a permit reciting the filing of such notice, that no objections have been made by the coal operators, or found thereto by the department, and authorizing the well operator to fracture such well. Unless the department has objections to such proposed fracturing, such permit shall be issued prior to the expiration of such fifteen-day period upon the obtaining by the well operator of the consent in writing of the coal operator or operators, owners or lessees, if any, to whom notice of intention to fracture shall have been mailed as herein required, and upon presentation of such written consent to the department. The notice above provided for may be given to the coal operator by delivering or mailing it by registered or certified mail as above to any agent or superintendent in actual charge of mines. (1963, c. 95; 1969, c. 76; 1973, c. 79; 1977, c. 123; 1978, c. 84.)

§ 22-4-2b. Plats prerequisite to introducing liquids or waste into wells; preparation and contents; notice and information furnished to coal operators, owners or lessees and chief of water resources; issuance of permits; performance bonds or security in lieu thereof.

Before drilling a well for the introduction of liquids for the purposes provided for in section ten-a [§ 22-4-10a] of this article or for the introduction of liquids for the disposal of sewage, industrial waste or other waste or the effluent therefrom on any tract of land, or before converting an existing well for such purposes, the well operator shall have a plat prepared by a registered engineer or licensed land surveyor showing the district and county in which the tract of land is located, the name and acreage of the same, the names of the owners of all adjacent tracts, the proposed or actual location of the well or wells determined by a survey, the courses and distances of such location from two permanent points of land marked on said tract and the number to be given to the well, and shall forward by registered or certified mail the original and one copy of the plat to the department of mines. In addition, the well operator shall provide the following information on the plat or by way of attachment thereto to the department in the manner and form prescribed by the department's rules and regulations: (a) The location of all wells, abandoned or otherwise located within the area to be affected; (b) where available, the casing records of all such wells; (c) where available, the drilling log of all such wells; (d) the maximum pressure to be introduced; (e) the geological formation into which such liquid or pressure

is to be introduced; (f) a general description of the liquids to be introduced; (g) the location of all water-bearing horizons above and below the geological formation into which such pressure, liquid or waste is to be introduced; and (h) such other information as the deputy director by rule and regulation may require.

In the event the tract of land on which said well proposed to be drilled or converted for the purposes provided for in this section is located is known to be underlaid with coal seams, copies of the plat and all information required by this section shall be forwarded by the operator by registered or certified mail to each and every coal operator operating coal seams beneath said tract of land, who has mapped the same and filed his maps with the department in accordance with article two [§ 22-2-1 et seq.] of this chapter, and the coal seam owner of record and lessee of record, if any, if said owner or lessee has recorded the declaration provided in section twenty [§ 22-4-20] of this article, and if said owner or lessee is not yet operating said seams beneath said tract of land. With each of such plats, there shall be enclosed a notice (form for which shall be furnished on request by the department of mines) addressed to the department of mines and to each such coal operator, owner or lessee, if any, at their respective addresses, informing them that such plat and notice are being mailed to them, respectively, by registered or certified mail, pursuant to the requirements of this section. The deputy director shall forward a copy of the plat, notice and all other information required by this section to the chief of the division of water resources of the department of natural resources.

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

A permit to drill a well or wells or convert an existing well or wells for the purposes provided for in this section shall not be issued until all of the bonding provisions required by the provisions of section two [§ 22-4-2] of this article have been fully complied with and all such bonding provisions shall apply to

all wells drilled or converted for the purposes provided for in this section as if such wells had been drilled for the purposes provided for in section two of this article, except that such bonds shall be conditioned upon full compliance with all laws, rules and regulations relating to the drilling of a well or the converting of an existing well for the purposes provided for in said section ten-a [§ 22-4-10a], or introducing of liquids for the disposal of sewage, industrial waste or other waste or the effluent therefrom including the redrilling, deepening, casing, plugging or abandonment of all such wells. (1969, c. 76; 1973, c. 79; 1977, c. 123; 1978, c. 84.)

Editor's note. — For "deputy director," see § 22-4-1(i).

§ 22-4-3. Objections to proposed drilling of deep wells and oil wells; objections to fracturing; notices and hearings; agreed location or conditions; indication of changes on plats, etc.; issuance of permits.

When a proposed deep well drilling site or oil well drilling site or any fracturing site is above a seam or seams of coal, then the coal operator operating said coal seams beneath the tract of land, or the coal seam owner or lessee, if any, if said owner or lessee is not yet operating said coal seams, may within fifteen days from the receipt by the department of the plat and notice required by section two [§ 22-4-2] of this article, or within fifteen days from the receipt by the department of notice required by section two-a [§ 22-4-2a] of this article, file objections in writing (forms for which will be furnished by the department on request) to such proposed drilling or fracturing with the department, setting out therein as definitely as is reasonably possible the ground or grounds on which such objections are based.

If any objection is filed, or if any objection is made by the department, the department shall notify the well operator of the character of the objections and by whom made and fix a time and place, not less than fifteen days from the end of said fifteen-day period, at which such objections will be considered of which time and place the well operator and all objecting coal operators, owners or lessees, if any, shall be given at least ten days' written notice by the department, by registered or certified mail, and summoned to appear. At the time and place so fixed the well operator and the objecting coal operators, owners or lessees, if any, or such of them as are present or represented, shall proceed to consider the objections. In the case of proposed drilling, such parties present or represented may agree upon either the location as made or so moved as to satisfy all objections and meet the approval of the department, and any change in the original location so agreed upon and approved by the department shall be indicated on said plat on file with the department, and the distance and direction of the new location from the original location shall be shown, and as so altered, the plat shall be filed and become a permanent record, and in the case of proposed fracturing, such parties present or represented may agree

upon conditions under which the well is to be fractured which will protect life and property and which will satisfy all objections and meet the approval of the department, at which time the plat and notice required by section two [§ 22-4-2] or the notice required by section two-a [§ 22-4-2a] as the case may be, shall be filed and become a permanent record. Whereupon the department shall forthwith issue to the well operator a drilling or fracturing permit, as the case may be, reciting the filing of the plat and notice required by said section two, or the notice required by said section two-a, as the case may be, that at a hearing duly held a location as shown on the plat or the conditions under which the fracturing is to take place for the protection of life and property were agreed upon and approved, and that the well operator is authorized to drill at such location or to fracture at the site shown on such plat, or to fracture the well identified in the notice required by section two-a, as the case may be.

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

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

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

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

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

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

- (1) That it refuses to issue a permit;
- (2) That it will issue a permit for the proposed drilling location;
- (3) That it will issue a permit for a drilling location different from that requested by the well operator.

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

If a permit is issued, the department shall indicate the new drilling location on the plat on file and shall number and keep an index of and docket each plat and notice mailed to it as provided in section two [§ 22-4-2] of this article, and each notice mailed to it as provided in section two-a [§ 22-4-2a] of this article, entering in such docket the name of the well operator, and the names and addresses of all persons notified, the dates of hearings and all actions taken by the department. The department shall also prepare a record of the proceedings, which record shall include all applications, plats and other documents filed with the department, all notices given and proof of service thereof, all orders issued, all permits issued and a transcript of the hearing. The record prepared by the department shall be open to inspection by the public.

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

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

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

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

If a permit is issued, the department shall indicate the well to be fractured on the plat on file and shall number and keep an index of and docket each plat and notice mailed to it as provided in section two [§ 22-4-2] of this article, and each notice mailed to it as provided in section two-a [§ 22-4-2a] of this article, entering in such docket the name of the well operator, the names and addresses of all persons notified, the dates of hearings and all actions taken by the department. The department shall also prepare a record of the proceedings, which record shall include all applications, plats and other documents filed with the department, all notices given and proof of service thereof, all orders issued, all permits issued and a transcript of the hearing. The record prepared by the department shall be open to inspection by the public. (1929, c. 86, § 3; 1963, c. 95; 1977, c. 123; 1978, c. 84.)

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The provisions of this section appear to apply only to deep mining operations, and not to surface or auger mining operations, as defined in former § 22-2A-2. 51 Op. Att'y Gen. 728 (1966).

§ 22-4-3a. Objections to proposed drilling or converting for introducing liquids or waste into wells; notices and hearings; agreed location or conditions; indication of changes on plats, etc.; issuance of permits; docket of proceeding.

When a well is proposed to be drilled or converted for the purposes provided for in section two-b [§ 22-4-2b] of this article, and is above a seam or seams of coal, then the coal operator operating said coal seams beneath the tract of land, or the coal seam owner or lessee, if any, if said owner or lessee is not yet operating said coal seams, may within fifteen days from the receipt by the department of the plat and notice required by section two [§ 22-4-2] of this article, file objections in writing (forms for which will be furnished by the department on request) to such proposed drilling or conversion.

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

If any objection or objections are so filed, or are made by the department, the department shall notify the well operator of the character of the objections and by whom made and fix a time and place, not less than thirty days from the end of said thirty-day period, at which such objections will be considered, of which time and place the well operator and all objecting coal operators, the owners or lessees, if any, or such chief, shall be given at least ten days' written notice by the department, by registered or certified mail, and summoned to appear. At the time and place so fixed the well operator and the objecting coal operators, owners or lessees, if any, or such of them as are present or represented, or such chief, shall proceed to consider the objections. In the case of proposed drilling or converting of a well for the purposes provided for in section two-b [§ 22-4-2b], such parties present or represented may agree upon either the location as made or so moved as to satisfy all objections and meet the approval of the department, and any change in the original location so agreed upon and approved by the department shall be indicated on said plat on file with the department, and the distance and direction of the new location from

the original location shall be shown, and, as so altered, the plat shall be filed and become a permanent record. In the case of proposed conversion, such parties present or represented may agree upon conditions under which the conversion is to take place for the protection of life and property or for protection of reasonable standards of purity and quality of the waters of the State. At which time the plat and notice required by section two-b [§ 22-4-2b] shall be filed and become a permanent record. Whereupon the department shall forthwith issue to the well operator a permit to drill or convert, as the case may be, reciting the filing of the plat and notice required by said section two-b [§ 22-4-2b] that at a hearing duly held a location as shown on the plat or the conditions under which the conversion is to take place for the protection of life and property and reasonable standards of purity and quality of the waters of the State where agreed upon and approved, and that the well operator is authorized to drill at such location or to convert at the site shown on such plat, as the case may be.

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

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

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

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

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

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

(1) That it refuses to issue a permit;

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

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

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

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

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

The department shall take into consideration upon its decision:

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

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

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

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

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

Editor's note. — The bracketed word in the next-to-last paragraph was inserted by the editor.

§ 22-4-3b. Objections to proposed drilling of shallow gas wells; notice to chairman of review board; indication of changes on plats; issuance of permits.

When a proposed shallow well drilling site is above a seam or seams of coal, then the owner of any such coal seam may, within fifteen days from the receipt by the department of the plat and notice required by section two [§ 22-4-2] of this article, file objections in writing (forms for which will be furnished by the department on request) to such proposed drilling with the department, setting out therein as definitely as is reasonably possible the ground or grounds on which such objections are based.

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

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

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

Upon receipt of such order, the department shall promptly undertake the action directed by the review board, except that the department shall not issue a drilling permit unless all other provisions of this article (except section three [§ 22-4-3]) pertaining to the application for and approval of a drilling permit have been complied with. All permits issued by the department pursuant to this section shall be effective ten days after issuance unless the review board orders the department to stay the effectiveness of a permit for a period not to exceed thirty days from the date of issuance.

If a permit is issued, the department shall indicate the approved drilling location on the plat filed with the department in accordance with the provisions of section two [§ 22-4-2] of this article and shall number and keep an index of and docket each plat and notice mailed to it as provided in section two [§ 22-4-2] of this article, and each notice mailed to it as provided in section two-a [§ 22-4-2a] of this article, entering in such docket the name of the well

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operator, and the names and addresses of all persons notified, the dates of conferences, hearings and all other actions taken by the department and the review board. The department shall also prepare a record of the proceedings, which record shall include all applications, plats and other documents filed with the department, all notices given and proof of service thereof, all orders issued, all permits issued and a transcript of the hearing. The record prepared by the department shall be open to inspection by the public. (1978, c. 84.)

Editor's note. — For "deputy director," see § 22-4-1(i).

§ 22-4-3c. Applicability.

The provisions of this act [Acts 1978, c. 84] affecting applications for permits to drill shallow gas wells shall only apply to such applications filed after 12:01 a.m., August first, one thousand nine hundred seventy-eight, and the provisions of this article affecting such applications which were in effect immediately prior to the effective date of this act [June 9, 1978] shall apply to all such applications filed prior to 12:01 a.m., August first, one thousand nine hundred seventy-eight, with like effect as if this act [Acts 1978, c. 84] had not been enacted. (1978, c. 84.)

Editor's note. — Acts 1978, c. 84, referred to in this section, amended several sections in this article and added new article 4B.

§ 22-4-4. Appeal from order of issuance or refusal of permit to drill or fracture; procedure.

Any party to proceedings under section three or section three-b [§ 22-4-3 or 22-4-3b] of this article or section seven [§ 22-4B-7], article four-B of this chapter, adversely affected by the issuance of a drilling permit, or to the issuance of a fracturing permit or the refusal of the department to grant a drilling permit or fracturing permit, is entitled to judicial review thereof. All of the pertinent provisions of section four [§ 29A-5-4], article five, chapter twenty-nine-A of this Code shall apply to and govern such judicial review with like effect as if the provisions of said section four were set forth in extenso in this section.

The judgment of the circuit court shall be final unless reversed, vacated or modified on appeal to the supreme court of appeals in accordance with the provisions of section one [§ 29A-6-1], article six, chapter twenty-nine-A of this Code. (1929, c. 86, § 4; 1963, c. 95; 1977, c. 123; 1978, c. 84.)

Rules of Civil Procedure. — As to review of decisions of administrative agencies see Rule 81(a)(1), appearing in volume 1, Appendix. The provisions of this section appear to

apply only to deep mining operations, and not to surface or auger mining operations, as defined in former § 22-2A-2. 51 Op. Att'y Gen. 728 (1966).

§ 22-4-4a. Appeal from order of issuance or refusal of permit for drilling location for introduction of liquids or waste or from conditions of converting procedure.

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

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

§ 22-4-5. Protective devices — When well penetrates workable coal bed.

When a well penetrates one or more workable coal beds, the well operator shall run and cement a string of casing in the hole through the workable coal bed or beds in such a manner as will exclude all oil, gas or gas pressure from the coal bed or beds, except such oil, gas or gas pressure as may be found in such coal bed or beds. Such string of casing shall be run to a point at least thirty feet below the lowest workable coal bed which the well penetrates and shall be circulated and cemented from such point to the surface in such a manner as provided for in reasonable rules and regulations promulgated by the director of the department in accordance with the provisions of chapter twenty-nine-A [§ 29A-1-1 et seq.]. After any such string of casing has been so run and cemented to the surface, drilling may proceed to the permitted depth. (1929, c. 86, § 5; 1978, c. 84.)

§ 22-4-6. Same — When gas is found beneath or between workable coal beds.

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

§ 22-4-7. Same — Continuance during life of well; dry or abandoned wells.

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

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

Editor's note. — For "deputy director," see § 22-4-1(i).

§ 22-4-8. Same — When well is drilled through horizon of coal bed from which coal has been removed.

When a well is drilled through the horizon of a coal bed from which the coal has been removed, the hole shall be drilled at least thirty feet below the coal bed, of a size sufficient to permit the placing of a liner which shall start not less than twenty feet beneath the horizon of the coal bed and extend not less than twenty feet above it. Within this liner, which may be welded to the casing to be used, shall be centrally placed the largest sized casing to be used in the well, and the space between the liner and casing shall be filled with cement as they are lowered into the hole. Cement shall be placed in the bottom of the hole to a depth of twenty feet to form a sealed seat for both liner and casing. Following the setting of the liner, drilling shall proceed in the manner provided above. Should it be found necessary to drill through the horizon of two or more workable coal beds from which the coal has been removed, such liner shall be started not less than twenty feet below the lowest such horizon penetrated and shall extend to a point not less than twenty feet above the highest such horizon. (1929, c. 86, § 8.)

§ 22-4-8a. Same — Installation of fresh water casings.

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

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

§ 22-4-8b. Well log to be filed; contents; authority to promulgate regulations.

Within a reasonable time after the completion of the drilling of a well, the well operator shall file with the deputy director an accurate log. Such log shall contain the character, depth and thickness of geological formations encountered, including fresh water, coal seams, mineral beds, brine, and oil and gas bearing formations and such other information as the deputy director may require to effectuate the purposes of this article.

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

Editor's note. — For "deputy director," see § 22-4-1(i).

§ 22-4-9. Plugging, abandonment and reclamation of well; notice of intention; performance bonds or securities in lieu thereof; affidavit showing time and manner.

All dry or abandoned wells or wells presumed to be abandoned under the provisions of section seven [§ 22-4-7] of this article shall be plugged and reclaimed in accordance with this section and the other provisions of this article and in accordance with the rules and regulations promulgated by the deputy director.

Prior to the commencement of plugging operations and the abandonment of any well, the well operator shall either (a) notify, by registered or certified mail, the department of mines and the coal operator operating coal seams, the coal seam owner of record or lessee of record, if any, to whom notices are required to be given by section two [§ 22-4-2] of this article, and the coal operators to whom notices are required to be given by section two-a [§ 22-4-2a] of this article, of its intention to plug and abandon any such well (using such

form of notice and its location will be common on which such by the department of the department present at the representative time fixed to first obtain operator, own abandoned continuously ment, first c or his design well operator commencement by subdivision

No well shall plugging of furnished a dollars, pay surety company conditioned the casing, and such reports number of well bond furnished the State of rized to do as said. In lieu be, the operator cash or collection All of the proceeds in lieu of corporate of the bond order to be operator shall as the operator relating to the furnishing ment. Any and the department thereof have any operator a separate drilling, co

of sewage, industrial waste or other waste or the effluent therefrom, or introducing pressure, whether liquid or gas, or introducing liquid for the purposes provided for in section ten-a [§ 22-4-10a] of this article or fracturing of the well it is now proposed be plugged and abandoned, or who, in accordance with the provisions of said section two of this article, has furnished a blanket bond which has not been released by the department shall not be required by this section to furnish any other bond. When the plugging, filling and reclamation of a well have been completed, an affidavit, in triplicate, shall be made (on a form to be furnished by the department) by two experienced men who participated in the work, the deputy director for oil and gas or his designated representative, in which affidavit shall be set forth the time and manner in which the well was plugged and filled and the land reclaimed. One copy of this affidavit shall be retained by the well operator, another (or true copies of same) shall be mailed to the coal operator or operators, if any, and the third to the department of mines. (1929, c. 86, § 9; 1963, c. 95; 1969, c. 76; 1973, c. 79; 1976, c. 71; 1977, c. 123; 1978, c. 84.)

Editor's note. — For "deputy director," see § 22-4-1(i).

An original bond for drilling may be held in force at the discretion of the department until a well is plugged. Absent any specific time

limit that a bond can continue, the department is given liberty to hold a bond throughout the life of a well. Op. Att'y Gen., June 8, 1973.

§ 22-4-10. Methods of plugging well.

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

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

cement plug shall be placed in the largest casing or in the annular space with mud, clay or other nonporous gas-bearing stratum, which shall follow either the casing or the annular space which cannot release gas. The plug shall follow either the casing or the annular space which cannot release gas.

(1) Should there be a protection string there shall be placed in the well twenty feet above the strata in the well completely sealed in the manner specified above one hundred and twenty feet below the bottom of the well which shall extend to a depth of twenty feet above the lowest strata in the well. If shooting has been specified it shall be sealed with sealing material.

(b) Where the protection string is not used, the well shall be plugged in the manner specified in subsection (a) of this section. If a regular hydraulic fracture is located at a point where a plug has been set, the plug shall be emptied and the well shall be plugged to the lowest workable stratum, whichever is lower. The well shall then be plugged in such a manner that it will permit the flow of casing or other device, but will permit the flow of casing or other device to be placed, a distance of not less than twenty feet permanently maintained.

(c) Where the protection string is used, the well shall be plugged in the manner specified in subsection (a) of this section. If a coal bed is located less than forty feet

cement plug shall be placed approximately ten feet below the bottom of the largest casing in the well; from this point to the surface the well shall be filled with mud, clay or other nonporous material. In case any of the oil or gas-bearing strata in a well shall have been shot, thereby creating cavities which cannot readily be filled in the manner above described, the well operator shall follow either of the following methods:

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

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

(c) Where the well penetrates one or more workable coal beds and a coal protection string of casing has not been circulated and cemented in to the surface, the well shall be filled and securely plugged in the manner provided in subsection (a) of this section to a point fifty feet below the lowest workable coal bed. Thereafter, a plug of cement shall be placed in the well at a point not less than forty feet below the lowest workable coal bed. After the cement plug

has been securely placed in the well, the well shall be filled with cement to a point twenty feet above the lowest workable coal bed. From this point the well shall be filled with mud, clay or other nonporous material to a point forty feet beneath the next overlying workable coal bed, if such there be, and the well shall then be filled with cement from this point to a point twenty feet above such workable coal bed, and similarly, in case there are more overlying workable coal beds. After the filling and plugging of the well to a point above the highest workable coal bed, filling and plugging of the well shall continue in the manner provided in subsection (a) of this section to a point fifty feet below the surface, and a plug of cement shall be installed from the point fifty feet below the surface to the surface with a monument installed therein extending thirty inches above ground level.

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

(2) Upon receipt of such request, the department shall issue an order staying the plugging of the well and shall promptly determine the cost of plugging the well in the manner provided in subdivision (3) of this subsection and the cost of plugging the well in the manner provided in subsection (c) of this section. In making such determination, the department shall take into consideration any agreement previously made between the well operator and the coal operator or coal seam owner making the request. If the department determines that the cost of plugging the well in the manner provided in subsection (c) of this section exceeds the cost of plugging the well in the manner provided in subdivision (3) of this subsection, the department shall grant the request of the coal operator or owner and shall issue an order requiring the well operator to plug the well in the manner provided in subdivision (3) of this subsection. If the department determines that the cost of plugging the well in the manner provided in subsection (c) of this section is less than the cost of plugging the well in the manner provided in subdivision (3) of this subsection, the department shall request payment into escrow of the difference between the determined costs by the coal operator or coal seam owner making the request. Upon receipt of satisfactory notice of such payment, or upon receipt of notice that the well operator has waived such payment, the department shall grant the request of the coal operator or coal seam owner and shall issue an order requiring the well operator to plug the well in the manner provided in subdivision (3) of this subsection. If satisfactory notice of payment into escrow, or notice that the well operator has waived such payment, is not received by the department within fifteen days after the request for payment into escrow, the

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

(f) All persons adversely affected by a determination or order of the department issued pursuant to the provisions of this section shall be entitled to judicial review thereof in accordance with the provisions of articles five and six [§§ 29A-5-1 et seq. and 29A-6-1 et seq.], chapter twenty-nine-A of this Code. (1891, c. 106, § 2; 1897, c. 58, § 2; Code 1923, c. 62D, § 2; 1929, c. 86, § 10; 1969, c. 76; 1973, c. 79; 1977, c. 123; 1978, c. 84.)

Right of action for injury caused by failure to plug well. — The lessor in an oil and gas lease, guaranteeing to him the payment of rental for gas wells and a supply of gas for his mansion house from the same, has a right of action at common law and also by virtue of the provisions of this section, for injury to a producing and paying gas well on his premises by the

percolation of water into the gas bearing sand from an abandoned well on adjacent land consequent upon the failure of the owner of such abandoned well to plug it or adopt any means or measures for the prevention of such injury to the neighboring well of the lessor. *Atkinson v. Virginia Oil & Gas Co.*, 72 W. Va. 707, 79 S.E. 647, 48 L.R.A. (n.s.) 167 (1913).

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§ 22-4-10a. Introducing liquid pressure into producing strata to recover oil contained therein.

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

§ 22-4-11. Coal operators — Procedure before operating near wells.

(a) Before a coal operator conducts underground mining operations within five hundred feet of any well, including the driving of an entry or passageway, or the removal of coal or other material, the coal operator shall file with the department of mines and forward to the well operator by certified mail, return receipt requested, its mining maps and plans (which it is required to prepare, file and update to and with the regulatory authority) for the area within five hundred feet of the well, together with a notice, on a form furnished by the department of mines, informing them that the mining maps and plans are being filed or mailed pursuant to the requirements of this section.

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

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

The petition shall notify the well operator that it may answer the petition within five days after receipt, and that in default of an answer the department of mines may approve the proposed operations as requested if it be shown by the petitioner or otherwise to the satisfaction of the department of mines that

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

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

The department of mines shall docket and keep a record of all such proceedings substantially as required in the last paragraph of section three [§ 22-4-3] of this article, and from any such final decision or order of the department of mines, either the well operator or coal operator, or both, may, within ten days, appeal to the circuit court of the county in which the well subject to said petition is located. The procedure in the circuit court shall be substantially as provided in section four [§ 22-4-4], article four, chapter twenty-two of this Code, with the department of mines being named as a respondent. From any final order or decree of the circuit court, an appeal may be taken to the supreme court of appeals as heretofore provided.

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

(c) Before a coal operator conducts surface or strip mining operations as defined in article six [§ 20-6-1 et seq.], chapter twenty of this code, within two hundred feet of any well, including the removal of coal and other material, the operator shall file with the department of mines and furnish to the well operator by certified mail, return receipt requested, its mining maps and plans (which it is required to prepare, file and update to and with the regulatory authority) for the area within two hundred feet of the well, together with a notice, on a form furnished by the department of mines, informing them that the mining maps and plans are being filed or mailed pursuant to the requirements of this section, and representing that the planned operations will not unreasonably interfere with access to or operation of the well and will not damage the well. In addition, the coal operator shall furnish the well operator with evidence that it has in force public liability insurance, with at least the

minimum insurance coverage required by article six [§ 20-6-1 et seq.], chapter twenty of this Code, and the rules and regulations promulgated thereto and thereunder.

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

(d) The filing of petitions and notices with the department of mines as herein provided may be complied with by mailing such petition or notice to the department of mines by certified mail, return receipt requested. (1929, c. 86, § 11; 1978, c. 84; 1981, c. 177.)

Effect of amendment of 1981. — The amendment rewrote the section.

The provisions of this section appear to apply only to deep mining operations, and

not to surface or auger mining operations, as defined in former § 22-2A-2. 51 Op. Att'y Gen. 728 (1966).

§ 22-4-11a. Oil and gas conservation commissioner as acting administrator; administrative assistant.

The director of the department of mines, with permission of the oil and gas conservation commission, may employ the oil and gas conservation commissioner as acting administrator of the office of oil and gas, providing the commissioner otherwise meets the qualifications for administrator of the office of oil and gas, and pay him an additional amount not to exceed the minimum salary provided for the administrator of the office of oil and gas; and additionally, the director may employ an administrative assistant to the oil and gas conservation commissioner, to be approved by the oil and gas conservation commissioner for purposes of acting as the assistant to the oil and gas conservation commissioner in carrying out his duties as acting administrator of the office of oil and gas, the salary of the administrative assistant to be paid from moneys collected by the oil and gas conservation commission for the special oil and gas conservation tax imposed pursuant to section thirteen [§ 22-4A-13], article four-A of this chapter. In no event shall the term of appointment of the oil and gas conservation commissioner as acting administrator or the administrative assistant to the oil and gas conservation commissioner extend beyond June thirtieth, one thousand nine hundred eighty-two. (1981, c. 177.)

§ 22-4-12. Supervision by department of mines over drilling, mining and reclamation operations; complaints; hearings; appeals.

The department shall exercise supervision over the drilling, casing, plugging, filling and reclamation of all wells and of all mining operations in close proximity to any well and shall have such access to the plans, maps and other records and to the properties of the well operators and coal operators as may be necessary or proper for this purpose, and, either as the result of its own

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

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

Rules of Civil Procedure. — As to review of decisions of administrative agencies, see Rule 81(a)(1), appearing in Volume 1, Appendix.

The provisions of this section appear to

apply only to deep mining operations, and not to surface or auger mining operations, as defined in former § 22-2A-2. 51 Op. Att'y Gen. 728 (1966).

§ 22-4-12a. Special reclamation fund; fees.

In addition to any other fees required by the provisions of this article, every applicant for a permit to drill a well shall, before the permit is issued, pay to the deputy director for oil and gas a special reclamation fee of one hundred dollars for each well to be drilled. Such special reclamation fee shall be paid at the time the application for a drilling permit is filed with the deputy director and the payment of such reclamation fee shall be a condition precedent to the issuance of said permit.

There is hereby created within the treasury of the State of West Virginia a special fund to be known as the oil and gas reclamation fund, and the deputy director shall deposit with the state treasurer to the credit of such special fund all special reclamation fees collected. The proceeds of any bond forfeited under the provisions of this article shall inure to the benefit of and shall be deposited in such oil and gas reclamation fund.

The oil and gas reclamation fund shall be administered by the director of the department of mines. The deputy director for oil and gas shall cause to be

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prepared plans for the reclaiming and plugging of abandoned wells which have not been reclaimed or plugged or which have been improperly reclaimed or plugged. The director of the department of mines, as funds become available in the oil and gas reclamation fund, shall reclaim and properly plug wells in accordance with said plans and specifications and in accordance with the provisions of this article relating to the reclaiming and plugging of wells and all rules and regulations promulgated thereunder. Such funds may also be utilized for the purchase of abandoned wells, where such purchase is necessary, and for the reclamation of such abandoned wells, and for any engineering, administrative and research costs as may be necessary to properly effectuate the reclaiming and plugging of all wells, abandoned or otherwise.

The director may avail himself of any federal funds provided on a matching basis that may be made available for the purpose of reclaiming or plugging any wells.

The director shall make an annual report to the governor and to the legislature setting forth the number of wells reclaimed or plugged through the use of the oil and gas reclamation fund provided for herein. Such report shall identify each such reclamation and plugging project, state the number of wells reclaimed or plugged thereby, show the county wherein such wells are located and shall make a detailed accounting of all expenditures from the oil and gas reclamation fund.

All wells shall be reclaimed or plugged by contract entered into by the director on a competitive bid basis as provided for under the provisions of article three [§ 5A-3-1 et seq.], chapter five-A of this Code and the rules and regulations promulgated thereunder. (1969, c. 76; 1976, c. 71.)

Editor's note. — For "deputy director," see § 22-4-1(i).

§ 22-4-12b. Reclamation requirements.

The operator of a well shall reclaim the land surface within the area disturbed in siting, drilling, completing or producing the well in accordance with the following requirements:

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

(b) Within six months after a well that has produced oil or gas is plugged, or after the plugging of a dry hole, the operator shall remove all production and storage structures, supplies and equipment, and any oil, salt water and debris,

and fill any remaining excavations. Within such period, the operator shall grade or terrace and plant, seed or sod the area disturbed where necessary to bind the soil and prevent substantial erosion and sedimentation.

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

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

Editor's note. — For "deputy director," see § 22-4-1(i).

§ 22-4-13. Rules and regulations; hearings before department of mines; appeals.

(a) The department of mines may promulgate such reasonable rules and regulations as it may deem necessary or desirable to implement and make effective the provisions of this article and the powers and authority conferred and the duties imposed upon it under the provisions of this article and for securing uniformity of procedure in the administration of the provisions of article three [§ 29A-3-1 et seq.], chapter twenty-nine-A of this Code.

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

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

Rules of Civil Procedure. — As to review of decisions of administrative agencies, see Rule 81(a)(1), appearing in Volume 1, Appendix.

§ 22-4-14. Preventing waste of gas; plan of operation required for wasting gas in process of producing oil; rejection thereof.

Natural gas shall not be permitted to waste or escape from any well or pipeline, when it is reasonably possible to prevent such waste, after the owner or operator of such gas, or well, or pipeline, has had a reasonable length of time to shut in such gas in the well, or make the necessary repairs to such well or pipeline to prevent such waste: Provided, that (a) if, in the process of drilling a well for oil or gas, or both, gas is found in such well, and the owner or operator thereof desires to continue to search for oil or gas, or both, by drilling deeper in search of lower oil or gas-bearing strata, or (b) if it becomes necessary to make repairs to any well producing gas, commonly known as "cleaning out,"

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

§ 22-4-15. Right of adjacent owner or operator to prevent waste of gas; recovery of cost.

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

§ 22-4-16. Restraining waste.

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

Rules of Civil Procedure. — As to abolition of procedural distinctions between law and equity, see Rule 2, appearing in Volume 1, Appendix. As to injunctions, see Rule 65.

§ 22-4-17. Offenses; penalties.

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

§ 22-4-18. Injunctive relief.

(a) In addition to other remedies, and aside from various penalties provided by law, whenever it appears to the department that any person is violating or threatening to violate any provision of this article, any order or final decision of the department, or any lawful rule or regulation promulgated hereunder, the department may apply in the name of the State to the circuit court of the county in which the violations or any part thereof has occurred, is occurring or is about to occur, or the judge thereof in vacation, for an injunction against such persons and any other persons who have been, are or are about to be involved

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in any practices, acts or admissions so in violation, enjoining such person or persons from any violation or violations. Such application may be made and prosecuted to conclusion, whether or not any violation or violations have resulted or shall result, in prosecution or conviction under the provisions of this article.

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

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

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

(e) If the department shall refuse or fail to apply for an injunction to enjoin a violation or threatened violation of any provision of this article, any order or final decision of the department, or any rules or regulations promulgated hereunder, within ten days after receipt of a written request to do so by any well operator, coal operator, operating coal seams beneath the tract of land, or the coal seam owner or lessee, if any, if said owner or lessee is not yet operating said coal seams beneath said tract of land, or the chief of the division of water resources of the department of natural resources, adversely affected by such violation or threatened violation, the person making such request may apply in his own behalf for an injunction to enjoin such violation or threatened violation in any court in which the department might have brought suit. The department shall be made party defendant in such application in addition to the person or persons violating or threatening to violate any provision of this article, any final order or decision of the department, or any rule or regulation promulgated hereunder. The application shall proceed and injunctive relief may be granted in the same manner as if the application had been made by the department: Except that the court may require a bond or other undertaking from the plaintiff. (1963, c. 95; 1977, c. 123.)

§ 22-4-19. Civil action for contamination or deprivation of fresh water source or supply; presumption.

In any action for contamination or deprivation of a fresh water source or supply within one thousand feet of the site of drilling for an oil or gas well,

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there shall be a rebuttable presumption that such drilling, and such oil or gas well, or either, was the proximate cause of the contamination or deprivation of such fresh water source or supply. (1973, c. 79.)

§ 22-4-20. Declaration of oil and gas notice by owners and lessees of coal seams.

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

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

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

"DECLARATION OF OIL AND GAS NOTICE"

"The undersigned hereby declares:

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

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

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

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

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

.....
(Signature)

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

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

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ARTICLE 4A.

OIL AND GAS CONSERVATION.

- | Sec. | | Sec. | |
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| 22-4A-1. | Declaration of public policy; legislative findings. | 22-4A-7. | Drilling units and the pooling of interests in drilling units in connection with deep oil or gas wells. |
| 22-4A-2. | Definitions. | 22-4A-8. | Secondary recovery of oil; unit operations. |
| 22-4A-3. | Application of article; exclusions. | 22-4A-9. | Validity of unit agreements. |
| 22-4A-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. | 22-4A-10. | Hearing procedures. |
| 22-4A-5. | Rules and regulations; notice requirements. | 22-4A-11. | Judicial review; appeal to supreme court of appeals; legal representation for commissioner. |
| 22-4A-6. | Waste of oil or gas prohibited. | 22-4A-12. | Injunctive relief. |
| | | 22-4A-13. | Special oil and gas conservation tax. |
| | | 22-4A-14. | Penalties. |
| | | 22-4A-15. | Construction and severability. |

Michie's Jurisprudence. — See generally, 13A M.J., Mines and Minerals.

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

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

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

(b) The legislature hereby determines and finds that oil and natural gas found in West Virginia in shallow sands or strata have been produced continuously for more than one hundred years; that oil and gas deposits in such shallow sands or strata have geological and other characteristics different than those found in deeper formations; and that in order to encourage the maximum recovery of oil and gas from all productive formations in this State, it is not in the public interest, with the exception of shallow wells utilized in a secondary recovery program, to enact new statutory provisions relating to the exploration for or production from oil and gas from shallow wells, as defined in section two [§ 22-4A-2] of this article, but that it is in the public interest to enact new statutory provisions establishing regulatory procedures and principles to be

applied to the exploration for or production of oil and gas from deep wells, as defined in said section two. (1972, c. 69.)

§ 22-4A-2. Definitions.

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

(1) "Commission" means the oil and gas conservation commission and "commissioner" means the oil and gas conservation commissioner as provided for in section four [§ 22-4A-4] of this article;

(2) "Director" means the director of the department of mines as defined in section one [§ 22-1-1], article one of this chapter;

(3) "Deputy director for oil and gas" means the deputy director for oil and gas provided for in section one-a [§ 22-4-1a], article four of this chapter;

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

(5) "Operator" means any owner of the right to develop, operate and produce oil and gas from a pool and to appropriate the oil and gas produced therefrom, either for himself or for himself and others; in the event that there is no oil and gas lease in existence with respect to the tract in question, the owner of the oil and gas rights therein shall be considered as "operator" to the extent of seven eighths of the oil and gas in that portion of the pool underlying the tract owned by such owner, and as "royalty owner" as to one-eighth interest in such oil and gas; and in the event the oil is owned separately from the gas, the owner of the substance being produced or sought to be produced from the pool shall be considered as "operator" as to such pool;

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

(7) "Independent producer" means a person who is actively engaged in the production of oil and gas in West Virginia, but whose gross revenue from such production in West Virginia does not exceed five hundred thousand dollars per year.

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

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

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

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

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

(13) "Deep well" means any well drilled and completed in a formation at or below the top of the uppermost member of the "Onondaga Group" or at a depth of or greater than six thousand feet, whichever is shallower;

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

(15) "Waste" means and includes: (a) Physical waste, as that term is generally understood in the oil and gas industry; (b) the locating, drilling, equipping, operating or producing of any oil or gas well in a manner that causes, or tends to cause, a reduction in the quantity of oil or gas ultimately recoverable from a pool under prudent and proper operations, or that causes or tends to cause unnecessary or excessive surface loss of oil or gas; or (c) the drilling of more deep wells than are reasonably required to recover efficiently and economically the maximum amount of oil and gas from a pool;

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

(17) "Just and equitable share of production" means, as to each person, an amount of oil or gas or both substantially equal to the amount of recoverable oil and gas in that part of a pool underlying his tract or tracts.

(b) Unless the context clearly indicates otherwise, the use of the word "and" and the word "or" shall be interchangeable, as, for example, "oil and gas" shall mean oil or gas or both. (1972, c. 69.)

Editor's note. — "Deputy director for oil and gas," defined in (a)(3) above, now refers to the administrator of the office of oil and gas. See § 22-4-1(i).

§ 22-4A-3. Application of article; exclusions.

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

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

(1) Shallow wells other than those utilized in secondary recovery program as set forth in section eight [§ 22-4A-8] of this article;

(2) Any well commenced or completed prior to the effective date of this article [March 9, 1972], unless such well is, after completion (whether such completion is prior or subsequent to the effective date of this article), (i) deepened subsequent to the effective date of this article to a formation at or below the top of the uppermost member of the "Onondaga Group" or at a depth of or greater than six thousand feet, whichever is shallower or (ii) involved in secondary recovery operations for oil under an order of the commissioner entered pursuant to section eight of this article;

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

(4) Free gas rights.

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

(1) Limit production or output, or prorate production of any oil or gas well, except as provided in subdivision (6), subsection (a), section seven [§ 22-4A-7] of this article; or

(2) Fix prices of oil or gas. (1972, c. 69.)

Drilling on state park property. — The oil and gas conservation commission, if all other preliminary conditions of this article are met, can approve a drilling unit that includes oil and gas owned by the State and underlying state park property and may approve a voluntary or involuntary pooling arrangement on that drilling unit which includes the oil and gas

located beneath the surface of the state park. The State may participate in the royalties from the production of such well, however, the commission may not approve drilling upon the surface of the state park property because of the prohibitions of §§ 20-1-7 and 20-4-3, when read together. Op. Att'y Gen., July 16, 1980, No. 1.

§ 22-4A-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.

(a) There is hereby created the "West Virginia Oil and Gas Conservation Commission" which shall be composed of five members. The director of the department of natural resources and the deputy director for oil and gas shall be members of the commission ex officio. The remaining three members of the commission shall be appointed by the governor, by and with the advice and consent of the senate. Of the three members appointed by the governor, one shall be an independent producer and at least one shall be a public member not engaged in full-time employment in an activity under the jurisdiction of the public service commission or the federal power commission. As soon as practical after appointment of the members of the commission, the governor shall call a meeting of the commission to be convened at the state capitol for the purpose of organizing and electing a chairman.

(b) The members of the commission appointed by the governor shall be appointed for overlapping terms of six years each, except that the original appointments shall be for terms of two, four and six years, respectively. Each member appointed by the governor shall serve until his successor has been appointed and qualified. Members may be appointed by the governor to serve any number of terms. The members of the commission appointed by the governor, before performing any duty hereunder, shall take and subscribe to the oath required by section 5, article IV of the Constitution of West Virginia.

Vacancies in the membership appointed by the governor shall be filled by appointment by him for the unexpired term of the member whose office shall be vacant and such appointment shall be made by the governor within sixty days of the occurrence of such vacancy. Any member appointed by the governor may be removed by the governor in case of incompetency, neglect of duty, gross immorality or malfeasance in office.

(c) The commission shall meet at such times and places as shall be designated by the chairman. The chairman may call a meeting of the commission at any time, and he shall call a meeting of the commission upon the written request of two members or upon the written request of the oil and gas conservation commissioner. Notification of each meeting shall be given in writing to each member by the chairman at least five days in advance of the meeting. Any three members, one of which may be the chairman, shall constitute a quorum for the transaction of any business as herein provided for. A majority of the commission shall be required to determine any issue brought before it.

(d) Each member of the commission appointed by the governor shall receive thirty-five dollars per diem not to exceed one hundred days per calendar year while actually engaged in the performance of his duties as a member of the commission. Each member of the commission shall also be reimbursed for all reasonable and necessary expenses actually incurred in the performance of his duties as a member of the commission.

(e) The commission shall appoint the oil and gas conservation commissioner, fix his salary within available funds, and advise him regarding his duties and authority under this article and consult with him prior to his reaching any final decisions and entering orders hereunder. However, the commissioner has full and final authority under this article with the commission serving in an advisory capacity to him. The commissioner shall possess a degree from an accredited college or university in petroleum engineering or geology and must be a registered professional engineer with particular knowledge and experience in the oil and gas industry.

(f) The oil and gas commissioner is hereby empowered and it shall be his duty to execute and carry out, administer and enforce the provisions of this article in the manner provided herein. Subject to the provisions of section three [§ 22-4A-3] of this article, the commissioner shall have jurisdiction and authority over all persons and property necessary therefor. The commissioner is authorized to make such investigation of records and facilities as he deems proper. In the event of a conflict between the duty to prevent waste and the duty to protect correlative rights, the commissioner's duty to prevent waste shall be paramount. He shall serve as secretary of the oil and gas conservation commission.

(g) Without limiting his general authority, the commissioner shall have specific authority to:

- (1) Regulate the spacing of deep wells;
- (2) Make and enforce reasonable rules and regulations and orders reasonably necessary to prevent waste, protect correlative rights, govern the practice and procedure before the commissioner and otherwise administer the provisions of this article;

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(3) Issue subpoenas for the attendance of witnesses and subpoenas duces tecum for the production of any books, records, maps, charts, diagrams and other pertinent documents, and administer oaths and affirmations to such witnesses, whenever, in the judgment of the commissioner, it is necessary to do so for the effective discharge of his duties under the provisions of this article; and

(4) Serve as technical advisor regarding oil and gas to the legislature, its members and committees, to the deputy director for oil and gas, to the department of natural resources and to any other agency of state government having responsibility related to the oil and gas industry. (1972, c. 69.)

Editor's note. — For "deputy director for oil and gas," see Editor's note to § 22-4A-2.

This section limits the issuance of spacing orders to occasions where there has been an application by an operator and a hearing pursuant thereto. Op. Att'y Gen., July 30, 1973.

Power of commissioner to issue order to

show cause. — The Commissioner's responsibility to prevent waste cannot, alone, justify a deviation from the manner of detection and enforcement contemplated by the statute to the broader and more far-reaching method of a show cause hearing. Op. Att'y Gen., July 30, 1973.

§ 22-4A-5. Rules and regulations; notice requirements.

(a) The commissioner may promulgate such reasonable rules and regulations as he may deem necessary or desirable to implement and make effective the provisions of this article and the powers and authority conferred and the duties imposed upon him under the provisions of this article and for securing uniformity or procedure in the administration of the provisions of article three [§ 29A-3-1 et seq.], chapter twenty-nine-A of this Code.

(b) Notwithstanding the provisions of section two [§ 29A-7-2], article seven, chapter twenty-nine-A of this Code, any notice required under the provisions of this article shall be given at the direction of the commissioner by (1) personal or substituted service and if such cannot be had then by (2) certified United States mail, addressed, postage prepaid, to the last known mailing address, if any, of the person being served, with the direction that the same be delivered to addressee only, return receipt requested, and if there be no known mailing address or if the notice is not so delivered then by (3) publication of such notices as a Class II legal advertisement in compliance with the provisions of article three [§ 59-3-1 et seq.], chapter fifty-nine of this Code, and the publication area for such publication shall be the county or counties wherein any land which may be affected by such order is situate. In addition, the commissioner shall mail a copy of such notice to all other persons who have specified to the commissioner an address to which all such notices may be mailed. The notice shall issue in the name of the State, shall be signed by the commissioner, shall specify the style and number of the proceeding, the time and place of any hearing, and shall briefly state the purpose of the proceeding. Personal or substituted service and proof thereof may be made by an officer authorized to serve process or by an agent of the commissioner in the same manner as is now provided by the "West Virginia Rules of Civil Procedure for Trial Courts of Record" for service of process in civil actions in the various courts of this State.

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A certified copy of any pooling order entered under the provisions of this article shall be presented by the commissioner to the clerk of the county court of each county wherein all or any portion of the pooled tract is located, for recordation in the record book of such county in which oil and gas leases are normally recorded. Such recording of such order from the time noted thereon by such clerk shall be notice of the order to all persons. (1972, c. 69.)

§ 22-4A-6. Waste of oil or gas prohibited.

Waste of oil or gas is hereby prohibited. (1972, c. 69.)

§ 22-4A-7. Drilling units and the pooling of interests in drilling units in connection with deep oil or gas wells.

(a) *Drilling units.*

(1) After one deep well has been drilled establishing a pool, an application to establish drilling units may be filed with the commissioner by the operator of such discovery deep well or by the operator of any lands directly and immediately affected by the drilling of such discovery deep well, or subsequent deep wells in said pool, and the commissioner shall promptly schedule a hearing on said application. Each application shall contain such information as the commissioner may prescribe by reasonable rules and regulations promulgated by him in accordance with the provisions of section five [§ 22-4A-5] of this article.

(2) Upon the filing of an application to establish drilling units, notice of the hearing shall be given by the commissioner. Each notice shall specify the date, time and place of hearing, describe the area for which a spacing order is to be entered, and obtain such other information as is essential to the giving of proper notice.

(3) On the date specified in such notice, the commissioner shall hold a public hearing to determine the area to be included in his spacing order and the acreage to be contained by each drilling unit, the shape thereof, and the minimum distance from the outside boundary of the unit at which a deep well may be drilled thereon. At such hearing the commissioner shall consider:

(i) The surface topography and property lines of the lands underlaid by the pool to be included in such order;

(ii) The plan of deep well spacing then being employed or proposed in such pool for such lands;

(iii) The depth at which production from said pool has been found;

(iv) The nature and character of the producing formation or formations, and whether the substance produced or sought to be produced is gas or oil;

(v) The maximum area which may be drained efficiently and economically by one deep well; and

(vi) Any other available geological or scientific data pertaining to said pool which may be of probative value to the commissioner in determining the proper deep well drilling units therefor.

To carry out the purposes of this article, the commissioner shall, upon proper application, notice and hearing as herein provided, and if satisfied after such

hearing that drilling units should be established, enter an order establishing drilling units of a specified and approximately uniform size and shape for each pool subject to the provisions of this section.

(4) When it is determined that an oil or gas pool underlies an area for which a spacing order is to be entered, the commissioner shall include in his order all lands determined or believed to be underlaid by such pool and exclude all other lands.

(5) No drilling unit established by the commissioner shall be smaller than the maximum area which can be drained efficiently and economically by one deep well: Provided, that if at the time of a hearing to establish drilling units, there is not sufficient evidence from which to determine the area which can be drained efficiently and economically by one deep well, the commissioner may enter an order establishing temporary drilling units for the orderly development of the pool pending the obtaining of information necessary to determine the ultimate spacing for such pool.

(6) An order establishing drilling units shall specify the minimum distance from the nearest outside boundary of the drilling unit at which a deep well may be drilled. The minimum distance provided shall be the same in all drilling units established under said order with necessary exceptions for deep wells drilled or being drilled at the time of the filing of the application. If the commissioner finds that a deep well to be drilled at or more than the specified minimum distance from the boundary of a drilling unit would not be likely to produce in paying quantities or will encounter surface conditions which would substantially add to the burden or hazard of drilling such deep well, or that a location within the area permitted by the order is prohibited by the lawful order of any state agency or court, the commissioner is authorized after notice and hearing to make an order permitting the deep well to be drilled at a location within the minimum distance prescribed by the spacing order. In granting exceptions to the spacing order, the commissioner may restrict the production from any such deep well so that each person entitled thereto in such drilling unit shall not produce or receive more than his just and equitable share of the production.

(7) An order establishing drilling units for a pool shall cover all lands determined or believed to be underlaid by such pool, and may be modified by the commissioner, from time to time, to include additional lands determined to be underlaid by such pool or to exclude lands determined not to be underlaid by such pool. An order establishing drilling units may be modified by the commissioner to permit the drilling of additional deep wells on a reasonably uniform pattern at a uniform minimum distance from the nearest unit boundary as provided above. Any order modifying a proper order shall be made only after application by an interested operator and notice and hearing as prescribed herein for the original order. However, drilling units established by order shall not exceed one hundred sixty acres for an oil well or six hundred forty acres for a gas well.

(8) After the date of the notice of hearing called to establish drilling units, no additional deep well shall be commenced for production from the pool until the order establishing drilling units has been made, unless the commencement of the deep well is authorized by order of the commissioner.

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proposed deep well, a certified copy which consent and easement shall be submitted by the operator to the commission.

(5) Upon request, any such pooling order shall provide just and equitable alternatives whereby an owner of an operating interest who does not elect to participate in the risk and cost of the drilling of a deep well may elect:

(i) Option 1. To surrender his interest or a portion thereof to the participating owners on a reasonable basis and for a reasonable consideration, which, if not agreed upon, shall be determined by the commissioner; or

(ii) Option 2. To participate in the drilling of the deep well on a limited or carried basis on terms and conditions which, if not agreed upon, shall be determined by the commissioner to be just and reasonable.

(6) In the event a nonparticipating owner elects Option 2, and an owner of any operating interest in any portion of the pooled tract shall drill and operate, or pay the costs of drilling and operating, a deep well for the benefit of such nonparticipating owner as provided in the pooling order, then such operating owner shall be entitled to the share of production from the tracts or portions thereof pooled accruing to the interest of such nonparticipating owner, exclusive of any royalty or overriding royalty reserved in any leases, assignments thereof or agreements relating thereto, of such tracts or portions thereof, or exclusive of one eighth of the production attributable to all unleased tracts or portions thereof, until the market value of such nonparticipating owner's share of the production, exclusive of such royalty, overriding royalty or one eighth of production, equals double the share of such costs payable by or charged to the interest of such nonparticipating owner.

(7) If a dispute shall arise as to the costs of drilling and operating a deep well, the commissioner shall determine and apportion the costs, within ninety days from the date of written notification to the commissioner of the existence of such dispute. (1972, c. 69.)

Drilling on state park property. — The oil and gas conservation commission, if all other preliminary conditions of this article are met, can approve a drilling unit that includes oil and gas owned by the State and underlying state park property and may approve a voluntary or involuntary pooling arrangement on that drilling unit which includes the oil and gas located beneath the surface of the state park.

The State may participate in the royalties from the production of such well, however, the commission may not approve drilling upon the surface of the state park property because of the prohibitions of §§ 20-1-7 and 20-4-3, when read together. Op. Att'y Gen., July 16, 1980, No. 1.

Stated in *Traverse Corp. v. Latimer*, 157 W. Va. 855, 205 S.E.2d 133 (1974).

§ 22-4A-8. Secondary recovery of oil; unit operations.

Upon the application of any operator in a pool productive of oil and after notice and hearing, the commissioner may enter an order requiring the unit operation of such pool in connection with a program of secondary recovery of oil, and providing for the unitization of separately owned tracts and interests within such pool, but only after finding that: (1) The order is reasonably necessary for the prevention of waste and the drilling of unnecessary deep wells; (2) the proposed plan of secondary recovery will increase the ultimate recovery of oil from the pool to such an extent that the proposed secondary recovery oper-

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ation will be economically feasible; (3) the production of oil from the unitized pool can be allocated in such a manner as to insure the recovery by all operators of their just and equitable share of such production; and (4) the operators of at least three fourths of the acreage (calculating partial interests on a pro rata basis for operator interests on any parcel owned in common) and the royalty owners of at least three fourths of the acreage (calculating partial interests on a pro rata basis for royalty interests on any parcel owned in common) in such pool have approved the plan and terms of unit operation to be specified by the commissioner in its order, such approval to be evidenced by a written contract setting forth the terms of the unit operation and executed by said operators and said royalty owners, and filed with the commissioner on or before the day set for hearing. The order requiring such unit operation shall designate one operator in the pool as unit operator and shall also make provision for the proportionate allocation to all operators of the costs and expenses of the unit operation, including reasonable charges for supervision and interest on past-due accounts, which allocation shall be in the same proportion that the separately owned tracts share in the production of oil from the unit. In the absence of an agreement entered into by the operators and filed with the commissioner providing for sharing the costs of capital investment in wells and physical equipment, and intangible drilling costs, the commissioner shall provide by order for the sharing of such costs in the same proportion as the costs and expenses of the unit operation: Provided, that any operator who has not consented to the unitization shall not be required to contribute to the costs or expenses of the unit operation, or to the cost of capital investment in wells and physical equipment, and intangible drilling costs, except out of the proceeds from the sale of the production accruing to the interest of such operator: Provided, however, that no credit to the well costs shall be adjusted on the basis of less than the average well costs within the unitized area: Provided further, that no order entered under the provisions of this section requiring unit operation shall vary or alter any of the terms of any contract entered into by operators and royalty owners under the provisions of this section. (1972, c. 69.)

Shallow wells be unitized in a secondary recovery program only if the enumerated conditions of this section are met. Op. Att'y Gen., Sept. 11, 1973.

§ 22-4A-9. Validity of unit agreements.

No agreement between or among operators, lessees or other owners of oil or gas rights in oil and gas properties, entered into pursuant to the provisions of this article or with a view to or for the purpose of bringing about the unitized development or operation of such properties, shall be held to violate the statutory or common law of this State prohibiting monopolies or acts, arrangements, contracts, combinations or conspiracies in restraint of trade or commerce. (1972, c. 69.)

§ 22-4A-10. Hearing procedures.

(a) Upon receipt of an application for an order of the commissioner for which a hearing is required by the provisions of this article, the commissioner shall set a time and place for such hearing not less than ten and not more than thirty days thereafter. Any scheduled hearing may be continued by the commissioner upon his own motion or for good cause shown by any party to the hearing. All interested parties shall be entitled to be heard at any hearing conducted under the provisions of this article.

(b) All of the pertinent provisions of article five [§ 29A-5-1 et seq.], chapter twenty-nine-A of this Code shall apply to and govern the hearing and the administrative procedures in connection with and following such hearing, with like effect as if the provisions of said article five were set forth in extenso in this subsection.

(c) Any such hearing shall be conducted by the commissioner. For the purpose of conducting any such hearing, the commissioner shall have the power and authority to issue subpoenas and subpoenas duces tecum which shall be issued and served within the time, for the fees and shall be enforced, as specified in section one [§ 29A-5-1], article five of said chapter twenty-nine-A, and all of the said section one provisions dealing with subpoenas and subpoenas duces tecum shall apply to subpoenas and subpoenas duces tecum issued for the purpose of a hearing hereunder.

(d) At any such hearing any interested person may represent himself or be represented by an attorney-at-law admitted to practice [practice] before any circuit court of this State. Upon request by the commissioner, he shall be represented at such hearing by the attorney general or his assistants without additional compensation. The commissioner, with the written approval of the attorney general, may employ special counsel to represent the commissioner at any such hearing.

(e) After any such hearing and consideration of all of the testimony, evidence and record in the case, the commissioner shall render his decision in writing. The written decision of the commissioner shall be accompanied by findings of fact and conclusions of law as specified in section three [§ 29A-5-3], article five, chapter twenty-nine-A of this Code, and a copy of such decision and accompanying findings and conclusions shall be served by certified mail, return receipt requested, upon all interested persons and their attorney of record, if any.

(f) The decision of the commissioner shall be final unless reversed, vacated or modified upon judicial review thereof in accordance with the provisions of section eleven [§ 22-4A-11] of this article. (1972, c. 69.)

Editor's note. — The bracketed word in (d) was inserted by the editor.

§ 22-4A-11. Judicial review; appeal to supreme court of appeals; legal representation for commissioner.

(a) Any person adversely affected by a decision of the commissioner rendered after a hearing held in accordance with the provisions of section ten [§ 22-4A-10] of this article shall be entitled to judicial review thereof. All of the pertinent provisions of section four [§ 29A-5-4], article five, chapter twenty-nine-A of this Code shall apply to and govern such judicial review with like effect as if the provisions of said section four were set forth in extenso in this section.

(b) The judgment of the circuit court shall be final unless reversed, vacated or modified on appeal to the supreme court of appeals in accordance with the provisions of section one [§ 29A-6-1], article six, chapter twenty-nine-A of this Code, except that notwithstanding the provisions of said section one the petition seeking such review must be filed with said supreme court of appeals within thirty days from the date of entry of the judgment of the circuit court.

(c) Legal counsel and services for the commissioner in all appeal proceedings in any circuit court and the supreme court of appeals shall be provided by the attorney general or his assistants and in any circuit court by the prosecuting attorney of the county as well, all without additional compensation. The commissioner, with the written approval of the attorney general, may employ special counsel to represent the commissioner at any such appeal proceedings. (1972, c. 69.)

Michie's Jurisprudence. — As to judicial review of administrative decisions, see 1A M.J., Administrative Law, §§ 16-24.

§ 22-4A-12. Injunctive relief.

(a) Whenever it appears to the commissioner that any person has been or is violating or is about to violate any provision of this article, any reasonable rule and regulation promulgated by the commissioner hereunder or any order or final decision of the commissioner, the commissioner may apply in the name of the State to the circuit court of the county in which the violations or any part thereof has occurred, is occurring or is about to occur, or the judge thereof in vacation, for an injunction against such person and any other persons who have been, are or are about to be, involved in any practices, acts or omissions, so in violation, enjoining such person or persons from any such violation or violations. Such application may be made and prosecuted to conclusion whether or not any such violation or violations have resulted or shall result in prosecution or conviction under the provisions of section fourteen [§ 22-4A-14] of this article.

(b) Upon application by the commissioner, the circuit courts of this State may by mandatory or prohibitory injunction compel compliance with the provisions of this article, the reasonable rules and regulations promulgated by the commissioner hereunder and all orders and final decisions of the commissioner. The court may issue a temporary injunction in any case pending a decision on

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the merits of any application filed. Any other section of this Code to the contrary notwithstanding, the State shall not be required to furnish bond or other undertaking as a prerequisite to obtaining mandatory, prohibitory or temporary injunctive relief under the provisions of this article.

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

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

(e) If the commissioner shall refuse or fail to apply for an injunction to enjoin a violation or threatened violation of any provision of this article, any reasonable rule and regulation promulgated by the commissioner hereunder or any order or final decision of the commissioner, within ten days after receipt of a written request to do so by any person who is or will be adversely affected by such violation or threatened violation, the person making such request may apply in his own behalf for an injunction to enjoin such violation or threatened violation in any court in which the commissioner might have brought suit. The commissioner shall be made a party defendant in such application in addition to the person or persons violating or threatening to violate any provision of this article, any reasonable rule and regulation promulgated by the commissioner hereunder or any order or final decision of the commissioner. The application shall proceed and injunctive relief may be granted without bond or other undertaking in the same manner as if the application had been made by the commissioner. (1972, c. 69.)

§ 22-4A-13. Special oil and gas conservation tax.

Owners of leases on oil or gas for the exploration, development or production of oil or natural gas shall pay to the commission a special oil and gas conservation tax of three cents for each acre under lease, excluding from the tax the first twenty-five thousand acres. The commission shall deposit with the treasurer of the State of West Virginia, to the credit of the special oil and gas conservation fund, all taxes collected hereunder. The special oil and gas conservation fund shall be a special fund and shall be administered by the commission for the sole purpose of carrying out all costs necessary to carry out the provisions of this article. This tax shall be paid as provided herein annually on or before the first day of July, one thousand nine hundred seventy-two, and on or before the first day of July in each succeeding year. (1972, c. 69.)

The commission may enforce the provisions of this section if it is not necessary to promulgate a proper rule or regulation to

effectuate the said Code provision. Op. Att'y Gen., Feb. 8, 1973.

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But commissioner is to promulgate necessary rules. — Under § 22-4A-5, the commissioner may promulgate such reasonable rules and regulations as he may deem necessary or

desirable. Accordingly, if any rule or regulation is necessary to effectuate this section, then it should be promulgated by the commissioner. Op. Att'y Gen., Feb. 8, 1973.

§ 22-4A-14. Penalties.

(a) Any person who violates any provision of this article, any of the reasonable rules and regulations promulgated by the commissioner hereunder or any order or any final decision of the commissioner, other than a violation covered by the provisions of subsection (b) of this section, shall be guilty of a misdemeanor, and, upon conviction thereof, shall be fined not more than one thousand dollars, and each day that a violation continues shall constitute a new and separate violation.

(b) Any person who, for the purpose of evading any provision of this article, any of the reasonable rules and regulations promulgated by the commissioner hereunder or any order or final decision of the commissioner, shall make or cause to be made any false entry or statement in a report required under the provisions of this article, any of the reasonable rules and regulations promulgated by the commissioner hereunder or any order or final decision of the commissioner, or shall make or cause to be made any false entry in any record, account or memorandum required under the provisions of this article, any of the reasonable rules and regulations promulgated by the commissioner, or who shall hereunder or any order or any final decision of the commissioner, or who shall omit, or cause to be omitted, from any such record, account or memorandum, full, true and correct entries, or shall remove from this State or destroy, mutilate, alter or falsify any such record, account or memorandum, shall be guilty of a misdemeanor, and, upon conviction thereof, shall be fined not more than five thousand dollars, or imprisoned in the county jail not more than six months, or both fined and imprisoned.

(c) Any person who knowingly aids or abets any other person in the violation of any provision of this article, any of the reasonable rules and regulations promulgated by the commissioner hereunder or any order of final decision of the commissioner, shall be subject to the same penalty as that prescribed in this article for the violation by such other person. (1972, c. 69.)

§ 22-4A-15. Construction and severability.

Except as provided in subsection (c), section three [§ 22-4A-3(c)] of this article, this article shall be liberally construed so as to effectuate the declaration of public policy set forth in section one [§ 22-4A-1] of this article.

If any section, subsection, subdivision, subparagraph, sentence or clause of this article is adjudged to be unconstitutional or invalid, such invalidation shall not affect the validity of the remaining portions of this article, and, to this end, the provisions of this article are hereby declared to be severable. (1972, c. 69.)

ARTICLE 4B.

SHALLOW GAS WELL REVIEW BOARD.

Sec.	Sec.
22-4B-1. Declaration of public policy; legislative findings.	22-4B-9. Application to establish a drilling unit; contents; notice.
22-4B-2. Definitions.	22-4B-10. Establishment of drilling units; hearings; orders.
22-4B-3. Application of article; exclusions.	22-4B-11. Pooling of interests in a drilling unit; limitations.
22-4B-4. West Virginia shallow gas well review board; membership; method of appointment; vacancies; compensation and expenses; staff.	22-4B-12. Effect of order establishing drilling unit or pooling of interests; recordation.
22-4B-5. Same — Meetings; notice; general powers and duties.	22-4B-13. Judicial review; appeal to supreme court of appeals; legal representation for board.
22-4B-6. Rules and regulations; notice requirements.	22-4B-14. Operation on drilling units.
22-4B-7. Objections to proposed drilling; conferences; agreed locations and changes on plats; hearings; orders.	22-4B-15. Validity of unit agreements.
22-4B-8. Distance limitations.	22-4B-16. Injunctive relief.
	22-4B-17. Penalties.
	22-4B-18. Construction.

Michie's Jurisprudence. — See generally 13A M.J., Mines and Minerals.

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

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

(1) Ensure the safe recovery of coal and gas;

(2) Foster, encourage and promote the fullest practical exploration, development, production, recovery and utilization of this state's coal and gas, where both are produced from beneath the same surface lands, by establishing procedures, including procedures for the establishment of drilling units, for the location of shallow gas wells without substantially affecting the right of the gas operator proposing to drill a shallow gas well to explore for and produce gas; and

(3) Safeguard, protect and enforce the correlative rights of gas operators and royalty owners in a pool of gas to the end that each such gas operator and royalty owner may obtain his just and equitable share of production from such pool of gas.

(b) The legislature hereby determines and finds that gas found in West Virginia in shallow sands or strata has been produced continuously for more than one hundred years; that the placing of shallow wells has heretofore been regulated by the State for the purpose of ensuring the safe recovery of coal and gas, but that regulation should also be directed toward encouraging the fullest practical recovery of both coal and gas because modern extraction technologies indicate the desirability of such change in existing regulation and because the

energy needs of this State and the United States require encouragement of the fullest practical recovery of both coal and gas; that in order to encourage and ensure the fullest practical recovery of coal and gas in this State and to further ensure the safe recovery of such natural resources, it is in the public interest to enact new statutory provisions establishing a shallow gas well review board which shall have the authority to regulate and determine the appropriate placing of shallow wells when gas well operators and owners of coal seams fail to agree on the placing of such wells, and establishing specific considerations, including minimum distances to be allowed between certain shallow gas wells, to be utilized by the shallow gas well review board in regulating the placing of shallow wells; that in order to encourage and ensure the fullest practical recovery of coal and gas in this State and to protect and enforce the correlative rights of gas operators and royalty owners of gas resources, it is in the public interest to enact new statutory provisions establishing a shallow gas well review board which shall also have authority to establish drilling units and order the pooling of interests therein to provide all gas operators and royalty owners with an opportunity to recover their just and equitable share of production. (1978, c. 84.)

§ 22-4B-2. Definitions.

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

- (1) "Board" means the West Virginia shallow gas well review board provided for in section four [§ 22-4B-4] of this article;
- (2) "Chairman" means the chairman of the West Virginia shallow gas well review board provided for in section four of this article;
- (3) "Coal operator" means any person who proposes to or does operate a coal mine;
- (4) "Coal seam" and "workable coal bed" are interchangeable terms and mean any seam of coal twenty inches or more in thickness, unless a seam of less thickness is being commercially worked, or can in the judgment of the department foreseeably be commercially worked and will require protection if wells are drilled through it;
- (5) "Commission" means the oil and gas conservation commission provided for in section four [§ 22-4A-4] article four-A of this chapter;
- (6) "Commissioner" means the oil and gas conservation commissioner provided for in section four, article four-A of this chapter;
- (7) "Correlative rights" means the reasonable opportunity of each person entitled thereto to recover and receive without waste the gas in and under a tract or tracts, or the equivalent thereof;
- (8) "Deep well" means any well drilled and completed in a formation at or below the top of the uppermost member of the "Onondaga Group" or at a depth of or greater than six thousand feet, whichever is shallower;
- (9) "Department" or "department of mines" means the state department of mines provided for in section two [§ 22-2-2], article two of this chapter;
- (10) "Deputy director" means the deputy director for oil and gas provided for in section one-a [§ 22-4-1a], article four of this chapter;

(11) "Drilling unit" means the acreage on which the board decides one well may be drilled under section ten [§ 22-4B-10] of this article;

(12) "Gas" means all natural gas and all other fluid hydrocarbons not defined as oil in subdivision (15) of this section;

(13) "Gas operator" means any person who owns or has the right to develop, operate and produce gas from a pool and to appropriate the gas produced therefrom either for himself or for himself and others. In the event that there is no gas lease in existence with respect to the tract in question, the person who owns or has the gas rights therein shall be considered a "gas operator" to the extent of seven eighths of the gas in that portion of the pool underlying the tract owned by such person, and a "royalty owner" to the extent of one eighth of such gas;

(14) "Just and equitable share of production" means, as to each person, an amount of gas in the same proportion to the total gas production from a well as that person's acreage bears to the total acreage in the drilling unit;

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

(16) "Owner" when used with reference to any coal seam, shall include any person or persons who own, lease or operate such coal seam.

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

(18) "Plat" means a map, drawing or print showing the location of one or more wells or a drilling unit;

(19) "Pool" means an underground accumulation of gas in a single and separate natural reservoir (ordinarily a porous sandstone or limestone). It is characterized by a single natural-pressure system so that production of gas from one part of the pool tends to or does affect the reservoir pressure throughout its extent. A pool is bounded by geologic barriers in all directions, such as geologic structural conditions, impermeable strata, and water in the formation, so that it is effectively separated from any other pools which may be present in the same district or in the same geologic structure;

(20) "Royalty owner" means any owner of gas in place, or gas rights, to the extent that such owner is not a gas operator as defined in subdivision (13) of this section;

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

(22) "Tracts comprising a drilling unit" means all separately owned tracts or portions thereof which are included within the boundary of a drilling unit;

(23) "Well" means any shaft or hole sunk, drilled, bored or dug into the earth or into underground strata for the extraction, injection or placement of any liquid or gas, or any shaft or hole sunk or used in conjunction with such extraction, injection or placement. The term "well" does not include any shaft

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or hole sunk, drilled, bored or dug into the earth for the sole purpose of core drilling or pumping or extracting therefrom potable, fresh or usable water for household, domestic, industrial, agricultural or public use; and

(24) "Well operator" means any person who proposes to or does locate, drill, operate or abandon any well. (1978, c. 84.)

Editor's note. — "Deputy director" for oil and gas, defined in (10) above, now refers to the administrator of the office of oil and gas. See § 22-4-1(i).

§ 22-4B-3. Application of article; exclusions.

(a) Except as provided in subsection (b) of this section, the provisions of this article shall apply to all lands located in this State, under which a coal seam as defined in section two [§ 22-4B-2], article four-B, chapter twenty-two and section one [§ 22-4-1], article four, chapter twenty-two of this Code, one thousand nine hundred thirty-one, as amended, is located, however owned, including any lands owned or administered by any government or any agency or subdivision thereof, over which the State has jurisdiction under its police power. The provisions of this article are in addition to and not in derogation of or substitution for the provisions of articles four and four-A [§§ 22-4-1 et seq. and 22-4A-1 et seq.] of this chapter.

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

(1) Deep wells;

(2) Oil wells and enhanced oil recovery wells associated with oil wells;

(3) Any shallow well permitted under article four of this chapter prior to 12:01 a.m., August first, one thousand nine hundred seventy-eight, unless such well is, after completion (whether such completion is prior or subsequent to the effective date of this article [June 9, 1978]), deepened subsequent to the effective date of this article through another coal seam to another formation above the top of the uppermost member of the "Onondaga Group" or to a depth of less than six thousand feet, whichever is shallower;

(4) Any shallow well as to which no objection is made under section three-b [§ 22-4-3b], article four of this chapter;

(5) Wells as defined in subdivision (4), section one [§ 22-7-1], article seven of this chapter; or

(6) Free gas rights.

(c) The provisions of this article affecting applications for permits to drill shallow gas wells shall only apply to such applications filed after 12:01 a.m., August first, one thousand nine hundred seventy-eight, and the provisions of article four of this chapter affecting such applications which were in effect immediately prior to the effective date of this article shall apply to all such applications filed prior to 12:01 a.m., August first, one thousand nine hundred seventy-eight, with like effect as if this article had not been enacted. (1978, c. 84.)

§ 22-4B-4. West Virginia shallow gas well review board; membership; method of appointment; vacancies; compensation and expenses; staff.

(a) There is hereby created the "West Virginia Shallow Gas Well Review Board" which shall be composed of three members, two of whom shall be the commissioner and the deputy director. The remaining member of the board shall be a registered professional mining engineer with at least ten years practical experience in the coal mining industry and shall be appointed by the governor, by and with the advice and consent of the senate: Provided, that any person so appointed while the senate of this State is not in session shall be permitted to serve in an acting capacity for one year from his appointment or until the next session of the legislature, whichever is less. As soon as practical after appointment and qualification of the member appointed by the governor, the governor shall convene a meeting of the board for the purpose of organizing and electing a chairman, who shall serve as such until his successor is elected by the board.

(b) The member of the board appointed by the governor shall be appointed within three months of the effective date of this article [June 9, 1978]. A vacancy in the membership appointed by the governor shall be filled by appointment by the governor within sixty days after the occurrence of such vacancy. Before performing any duty hereunder, each member of the board shall take and subscribe to the oath required by section 5, article IV of the Constitution of West Virginia, and shall serve thereafter until his successor has been appointed and qualified.

(c) The member of the board appointed by the governor shall receive not less than seventy-five dollars per diem while actually engaged in the performance of his duties as a member of the board. Each member of the board shall also be reimbursed for all reasonable and necessary expenses actually incurred in the performance of his duties as a member of the board.

(d) The department shall furnish office and clerical staff and supplies and services, including reporters for hearings, as required by the board. (1978, c. 84.)

Editor's note. — For "deputy director," see Editor's note to § 22-4B-2.

§ 22-4B-5. Same — Meetings; notice; general powers and duties.

(a) The board shall meet and hold conferences and hearings at such times and places as shall be designated by the chairman. The chairman may call a meeting of the board at any time. The chairman shall call a meeting of the board (1) upon receipt of a notice from the deputy director that an objection to the proposed drilling or deepening of a shallow well has been filed by a coal seam owner pursuant to section three-b [§ 22-4-3b], article four of this chapter or that an objection has been made by the department, (2) upon receipt of an application to establish a drilling unit filed with the board pursuant to section

nine [§ 22-4B-4] request by provisions (1) nor more objection c shall be gi in advance (b) At le the provis chairman operator an tion to esta application (d), section objections section nin (c) A ma transaction required to (d) The b carry out, a provided he article, the property ne not be const or output fr (e) The b (1) Take permits and (2) Promu [§ 29A-1-1 e necessary to (3) Make proper; and (4) Issue s and subpoen charts, diag affirmations necessary to of this articl

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nine [§ 22-4B-9] of this article, or (3) within twenty days upon the written request by another member of the board. Meetings called pursuant to subdivisions (1) and (2) of this subsection shall be scheduled not less than ten days nor more than twenty days from receipt by the chairman of the notice of objection or the application to establish a drilling unit. Notice of all meetings shall be given to each member of the board by the chairman at least ten days in advance thereof, unless otherwise agreed by the members.

(b) At least ten days prior to every meeting of the board called pursuant to the provisions of subdivisions (1) and (2), subsection (a) of this section, the chairman shall also notify (1) in the case of a notice of objection, the well operator and all objecting coal seam owners, and (2) in the case of an application to establish a drilling unit, the applicant, all persons to whom copies of the application were required to be mailed pursuant to the provisions of subsection (d), section nine of this article and all persons who filed written protests or objections with the board in accordance with the provisions of subsection (c), section nine of this article.

(c) A majority of the members of the board shall constitute a quorum for the transaction of any business. A majority of the members of the board shall be required to determine any issue brought before it.

(d) The board is hereby empowered and it shall be its duty to execute and carry out, administer and enforce the provisions of this article in the manner provided herein. Subject to the provisions of section three [§ 22-4B-3] of this article, the board shall have jurisdiction and authority over all persons and property necessary therefor: Provided, that the provisions of this article shall not be construed to grant to the board authority or power to (1) limit production or output from or prorate production of any gas well, or (2) fix prices of gas.

(e) The board shall have specific authority to:

(1) Take evidence and issue orders concerning applications for drilling permits and drilling units in accordance with the provisions of this article;

(2) Promulgate, pursuant to the provisions of chapter twenty-nine-A [§ 29A-1-1 et seq.] of this Code, and enforce reasonable rules and regulations necessary to govern the practice and procedure before the board;

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

(4) Issue subpoenas for the attendance of and sworn testimony by witnesses and subpoenas duces tecum for the production of any books, records, maps, charts, diagrams and other pertinent documents, and administer oaths and affirmations to such witnesses, whenever, in the judgment of the board, it is necessary to do so for the effective discharge of its duties under the provisions of this article. (1978, c. 84.)

Editor's note. — For "deputy director," see
Editor's note to § 22-4B-2.

§ 22-4B-6. Rules and regulations; notice requirements.

(a) The board may promulgate, pursuant to the provisions of chapter twenty-nine-A [§ 29A-1-1 et seq.] of this Code, such reasonable rules and regulations as are deemed necessary or desirable to implement and make effective the provisions of this article.

(b) Notwithstanding the provisions of section two [§ 29A-7-2], article seven, chapter twenty-nine-A of this Code, any notice required under the provisions of this article shall be given at the direction of the chairman by (1) personal or substituted service and if such cannot be had then by (2) certified United States mail, addressed, postage and certification fee prepaid, to the last known mailing address, if any, of the person being served, with the direction that the same be delivered to addressee only, return receipt requested, and if there be no known mailing address or if the notice is not so delivered then by (3) publication of such notice as a Class II legal advertisement in compliance with the provisions of article three [§ 59-3-1 et seq.], chapter fifty-nine of this Code, and the publication area for such publication shall be the county or counties wherein any land which may be affected by the order of the board is situate. The chairman shall also mail a copy of such notice to all other persons who have specified to the chairman an address to which all such notices may be mailed. All notices shall issue in the name of the State, shall be signed by the chairman, shall specify the style and number of the proceeding, the date, time and place of any meeting, conference or hearing, and shall briefly state the purpose of the proceeding. Proof of service or publication of such notice shall be made to the board promptly and in any event within the time during which the person served must respond to the notice. If service is made by a person other than the sheriff or the chairman, he shall make proof thereof by affidavit. Failure to make proof of service or publication within the time required shall not affect the validity of the service of the notice. (1978, c. 84.)

§ 22-4B-7. Objections to proposed drilling; conferences; agreed locations and changes on plats; hearings; orders.

(a) At the time and place fixed by the chairman for the meeting of the board and for consideration of the objections to proposed drilling filed by coal seam owners pursuant to section three-b [§ 22-4-3b], article four of this chapter, the well operator and the objecting coal seam owners present or represented, shall hold a conference with the board to consider the objections. Such persons present or represented at the conference may agree upon either the drilling location as proposed by the well operator or an alternate location. Any change in the drilling location from the drilling location proposed by the well operator shall be indicated on the plat enclosed with the notice of objection filed with the chairman by the deputy director in accordance with the provisions of section three-b, article four of this chapter, and the distance and direction to the new drilling location from the proposed drilling location shall also be shown on such plat. If agreement is reached at the conference by the well operator and such objecting coal seam owners present or represented at the

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conference, the board shall issue a written order stating that an agreement has been reached, stating the nature of such agreement, and directing the department to grant the well operator a drilling permit for the location agreed upon. The original of such order shall be filed with the department within five days after the conference of the board at which the drilling location was agreed upon and copies thereof shall be mailed by registered or certified mail to the well operator and the objecting coal seam owners present or represented at such conference.

(b) If the well operator and the objecting coal seam owners present or represented at the conference with the board are unable to agree upon a drilling location, then, unless they otherwise agree, the board shall, without recess for more than one business day, hold a hearing to consider the application for a drilling permit. All of the pertinent provisions of article five (§ 29A-5-1 et seq.), chapter twenty-nine-A of this Code shall apply to and govern such hearing. Within twenty days after the close of a hearing, the board shall issue and file with the department a written order directing it, subject to other matters requiring approval of the department, to:

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

(c) The written order of the board shall contain findings of fact and conclusions based thereon concerning the following safety aspects, and no drilling permit shall be issued for any drilling location where the board finds from the evidence that such drilling location will be unsafe:

- (1) Whether the drilling location is above or in close proximity to any mine opening or shaft, entry, travelway, airway, haulageway, drainageway or passageway, or to any proposed extension thereof, in any operated or abandoned or operating coal mine, or any coal mine already surveyed and platted but not yet being operated;
- (2) Whether the proposed drilling can reasonably be done through an existing or planned pillar of coal, or in close proximity to an existing well or such pillar of coal, taking into consideration the surface topography;
- (3) Whether the proposed well can be drilled safely, taking into consideration the dangers from creeps, squeezes or other disturbances due to the extraction of coal; and
- (4) The extent to which the proposed drilling location unreasonably interferes with the safe recovery of coal and gas.

The written order of the board shall also contain findings of fact and conclusions based thereon concerning the following:

- (5) The extent to which the proposed drilling location will unreasonably interfere with present or future coal mining operations on the surface including, but not limited to, operations subject to the provisions of article six (§ 20-6-1 et seq.), chapter twenty of this Code;

- (6) The feasibility of moving the proposed drilling location to a mined-out area, below the coal outcrop, or to some other location;
- (7) The feasibility of a drilling moratorium for not more than one year in order to permit the completion of imminent coal mining operations;
- (8) The methods proposed for the recovery of coal and gas;
- (9) The distance limitations established in section eight [§ 22-4B-8] of this article;
- (10) The practicality of locating the well on a uniform pattern with other wells;
- (11) The surface topography and use; and
- (12) Whether the order of the board will substantially affect the right of the gas operator to explore for and produce gas.

Any member of the board may file a separate opinion. Copies of all orders and opinions shall be mailed by the board, by registered or certified mail, to the parties present or represented at the hearing. (1978, c. 84.)

Editor's note. — For "deputy director," see Editor's note to § 22-4B-2.

§ 22-4B-8. Distance limitations.

(a) If the well operator and the objecting coal seam owners present or represented at the time and place fixed by the chairman for consideration of the objections to the proposed drilling location are unable to agree upon a drilling location, then the written order of the board shall direct the department to refuse to issue a drilling permit unless the following distance limitations are observed:

(1) For all shallow wells with a depth less than three thousand feet, there shall be a minimum distance of one thousand feet from the drilling location to the nearest existing well as defined in subsection (b) of this section; and

(2) For all shallow wells with a depth of three thousand feet or more, there shall be a minimum distance of one thousand five hundred feet from the drilling location to the nearest existing well as defined in subsection (b) of this section, except that where the distance from the drilling location to such nearest existing well is less than two thousand feet but more than one thousand five hundred feet and a coal seam owner has objected, the gas operator shall have the burden of establishing the need for the drilling location less than two thousand feet from such nearest existing well. Where the distance from the drilling location proposed by the operator or designated by the board to the nearest existing well as defined in subsection (b) of this section is greater than two thousand feet, distance criterion will not be a ground for objection by a coal seam owner.

(b) The words "existing well" as used in this section shall mean (i) any well not plugged within nine months after being drilled to its total depth and either completed in the same target formation or drilled for the purpose of producing from the same target formation, and (ii) any unexpired, permitted drilling location for a well to the same target formation.

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(c) The minimum distance limitations established by this section shall not apply if the proposed well will be drilled through an existing or planned pillar of coal required for protection of a preexisting oil or gas well and the proposed well will neither require enlargement of such pillar nor otherwise have an adverse effect on existing or planned coal mining operations.

(d) Nothing in this article shall be construed to empower the board to order the department to issue a drilling permit to any person other than the well operator filing the application which is the subject of the proceedings. (1978, c. 84.)

§ 22-4B-9. Application to establish a drilling unit; contents; notice.

(a) Whenever the board has issued an order directing the department to refuse a drilling permit, the gas operator may apply to the board for the establishment of a drilling unit encompassing a contiguous tract or tracts if such gas operator believes that such a drilling unit will afford one well location for the production of gas from under the tract on which the drilling permit was sought, and will be agreeable to the coal seam owners.

(b) An application to establish a drilling unit shall be filed with the board and shall contain:

(1) The name and address of the applicant;

(2) A plat prepared by a licensed land surveyor or registered professional engineer showing the boundary of the proposed drilling unit, the district and county in which such unit is located, the acreage of the proposed drilling unit, the boundary of the tracts which comprise the proposed drilling unit, the names of the owners of record of each such tract, the proposed well location on the proposed drilling unit, and the proposed well location for which the department refused to issue a drilling permit;

(3) The names and addresses of the royalty owners of the gas underlying the tracts which comprise the proposed drilling unit;

(4) The names and addresses of the gas operators of the tracts which comprise the proposed drilling unit;

(5) The approximate depth and target formation to which the well for the proposed drilling unit is to be drilled;

(6) A statement indicating whether a voluntary pooling agreement has been reached among any or all of the royalty owners of the gas underlying the tracts which comprise the proposed drilling unit and the gas operators of such tracts;

(7) An affidavit of publication of the notice of intent to file an application to establish a drilling unit as required in subsection (c) of this section; and

(8) Such other pertinent and relevant information the board may prescribe by reasonable rules and regulations promulgated in accordance with the provisions of section six [§ 22-4B-6] of this article.

(c) Prior to the filing of an application to establish a drilling unit, the applicant shall cause to be published, as a Class II legal advertisement in accordance with the provisions of article three [§ 59-3-1 et seq.], chapter fifty-nine of this Code, a notice of intent to file an application to establish a drilling unit. Such

notice shall contain the information required by subdivisions (1), (4) and (5), subsection (b) of this section, the name of the royalty owner of the gas underlying the proposed well location on the proposed drilling unit, plus an abbreviated description, or, at the applicant's option, a plat of the drilling unit, disclosing the county and district wherein the proposed drilling unit is to be located, the post office closest to the proposed drilling unit, a statement that the applicant will deliver a copy of the plat required by subdivision (2) of subsection (b) to any person desiring the same, the date upon which the applicant intends to file the application to establish a drilling unit, and a statement that written protests and objections to such application may be filed with the board until a specified date, which date shall be at least ten days after the date upon which the applicant intends to file the application to establish a drilling unit. The publication area of the notice required by this subsection shall be the county or counties in which the proposed drilling unit is to be located.

(d) At the time an application to establish a drilling unit is filed, the applicant shall forward a copy thereof by registered or certified mail to each and every person whose name and address were included on the application in accordance with the provisions of subdivisions (3) and (4), subsection (b) of this section. With each such application there shall be enclosed a notice (the form for which shall be furnished by the board on request) addressed to each such person to whom a copy of the application is required to be sent, informing him that such application is being mailed to him respectively by registered or certified mail, pursuant to the requirements of this article: Provided, that the application and notice need not be forwarded to those royalty owners or gas operators within the boundary of the proposed drilling unit who have previously agreed to voluntary pooling by separately stated document or documents empowering the gas operator, by assignment or otherwise, unilaterally to declare a unit. (1978, c. 84.)

§ 22-4B-10. Establishment of drilling units; hearings; orders.

(a) At the time and place fixed by the chairman for the meeting of the board and for consideration of an application to establish a drilling unit, the applicant shall present proof that the drilling location on the proposed drilling unit has been agreed to by all of the owners of the coal seams underlying such drilling location; and thereafter the applicant, the royalty owners of the gas underlying the tracts comprising the unit, and the gas operators of the tracts comprising the unit, or such of them as are present or represented, shall hold a conference with the board to consider the application. Such persons present or represented at the conference may agree upon the boundary of the drilling unit as proposed by the applicant or as changed to satisfy all valid objections of those persons present or represented. Any change in the boundary of the drilling unit from the boundary proposed by the applicant shall be shown on the plat filed with the board as part of the application. If agreement is reached at the conference upon the boundary of the drilling unit among the applicants, the royalty owners of the gas underlying the tracts comprising the drilling unit and the gas operators of the tracts comprising such unit, or such of them as are

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present or represented, and if such agreement is approved by the board, the board shall issue a written order establishing and specifying the boundary of the drilling unit.

(b) If the applicant, the royalty owners of the gas underlying the tracts comprising the drilling unit and the gas operators of the tracts comprising such unit, or such of them as are present or represented at the time and place fixed by the chairman for consideration of the application, are unable to agree upon the boundary of the drilling unit, then the board shall hold a hearing without recess of more than one business day to consider the application to establish a drilling unit. All of the pertinent provisions of article five [§ 29A-5-1 et seq.], chapter twenty-nine-A of this Code shall apply to and govern such hearing. Within twenty days after the close of the hearing, the board shall issue a written order either establishing a drilling unit or dismissing the application. If the board determines to establish a drilling unit, the order shall specify the boundary of such drilling unit. In determining whether to grant or deny an application to establish a drilling unit, the board shall consider:

- (1) The surface topography and property lines of the lands comprising the drilling unit;
- (2) The correlative rights of all gas operators and royalty owners therein;
- (3) The just and equitable share of production of each gas operator and royalty owner therein;
- (4) Whether a gas operator or royalty owner objecting to the drilling unit has proved by clear and convincing evidence that the drilling unit is substantially smaller than the area that will be produced by the proposed well; and
- (5) Other evidence relevant to the establishment of the boundary of a drilling unit.

(c) The board shall not grant an application to establish a drilling unit, nor shall it approve any drilling unit, unless the board finds that:

- (1) The applicant has proved that the drilling location on the drilling unit has been agreed to by all of the owners of the coal seams underlying such drilling location;
- (2) The department has previously refused to issue a drilling permit on one of the tracts comprising the drilling unit because of an order of the board;
- (3) The drilling unit includes all acreage within the minimum distance limitations provided by section eight [§ 22-4B-8] of this article, unless the gas operators and royalty owners of any excluded acreage have agreed to such exclusion; and
- (4) The drilling unit includes a portion of the acreage from under which the well operator intended to produce gas under the drilling permit which was refused.

(d) All orders issued by the board under this section shall contain findings of fact and conclusions based thereon as required by section three [§ 29A-5-3], article five, chapter twenty-nine-A of this Code and shall be filed with the department within twenty days after the hearing. Any member of the board may file a separate opinion. Copies of all orders and opinions shall be mailed by the board, by registered or certified mail, to the parties present or represented at the hearing. (1978, c. 84.)

§ 22-4B-11. Pooling of interests in a drilling unit; limitations.

(a) Whenever the board establishes a drilling unit pursuant to the provisions of sections nine and ten [§§ 22-4B-9 and 22-4B-10] of this article, the order establishing such drilling unit shall include an order pooling the separately owned interests in the gas to be produced from such drilling unit.

(b) If a voluntary pooling agreement has been reached between all persons owning separate operating interests in the tracts comprising the drilling unit, the order of the board shall approve such agreement.

(c) If no voluntary pooling agreement is reached prior to or during the hearing held pursuant to subsection (b), section ten of this article, then at such hearing the board shall also determine the pooling of interests in the drilling unit.

(d) Any order of the board pooling the separately owned interests in the gas to be produced from the drilling unit shall be upon terms and conditions which are just and equitable and shall authorize the production of gas from the drilling unit; shall designate the applicant as the operator to drill and operate such gas well; shall prescribe the procedure by which all owners of operating interests in the pooled tracts or portions of tracts may elect to participate therein; shall provide that all reasonable costs and expenses of drilling, completing, equipping, operating, plugging, abandoning and reclaiming such well shall be borne, and all production therefrom shared, by all owners of operating interests in proportion to the net gas acreage in the pooled tracts owned or under lease to each owner; and shall make provisions for payment of all reasonable costs thereof, including all reasonable charges for supervision and for interest on past-due accounts, by all those who elect to participate therein.

(e) Upon request, any such pooling order shall provide an owner of an operating interest an election to be made within ten days from the date of the pooling order, (i) to participate in the risks and costs of the drilling of the well, or (ii) to participate in the drilling of the well on a limited or carried basis on terms and conditions which, if not agreed upon, shall be determined by the board to be just and equitable. If the election is not made within the ten-day period, such owner shall be conclusively presumed to have elected the limited or carried basis. Thereafter, if an owner of any operating interest in any portion of the pooled tract shall drill and operate, or pay the costs of drilling and operating, a well for the benefit of such nonparticipating owner as provided in the order of the board, then such operating owner shall be entitled to the share of production from the tracts or portions thereof pooled accruing to the interest of such nonparticipating owner, exclusive of any royalty or overriding royalty reserved with respect to such tracts or portions thereof, or exclusive of one eighth of the production attributable to all unleased tracts or portions thereof, until the market value of such nonparticipating owner's share of the production, exclusive of such royalty, overriding royalty or one eighth of production, equals double the share of such costs payable by or charged to the interest of such nonparticipating owner.

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§ 22-4B-14. Operation on drilling units.

All operations including, but not limited to, the commencement, drilling or operation of a well upon a drilling unit for which a pooling order has been entered, shall be deemed for all purposes the conduct of such operations upon each separately owned tract in the drilling unit by the several owners thereof. That portion of the production allocated to a separately owned tract included in a drilling unit shall, when produced, be deemed for all purposes to have been actually produced from such tract by a well drilled thereon. (1978, c. 84.)

§ 22-4B-15. Validity of unit agreements.

No agreement between or among gas operators, lessees or other owners of gas rights in gas properties, entered into pursuant to the provisions of this article or with a view to or for the purpose of bringing about the unitized development or operation of such properties, shall be held to violate the statutory or common law of this State prohibiting monopolies or acts, arrangements, contracts, combinations or conspiracies in restraint of trade or commerce. (1978, c. 84.)

§ 22-4B-16. Injunctive relief.

(a) Whenever it appears to the board that any person has been or is violating or is about to violate any provision of this article, any rule and regulation promulgated by the board hereunder or any order or final decision of the board, the board may apply in the name of the State to the circuit court of the county in which the violations or any part thereof has occurred, is occurring or is about to occur, or to the judge thereof in vacation, for an injunction against such person and any other persons who have been, are or are about to be, involved in any practices, acts or omissions, so in violation, enjoining such person or persons from any such violation or violations. Such application may be made and prosecuted to conclusion whether or not any such violation or violations have resulted or shall result in prosecution or conviction under the provisions of section seventeen [§ 22-4B-17] of this article.

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

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

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

(e) If the board shall refuse or fail to apply for an injunction to enjoin a violation or threatened violation of any provision of this article, any rule and regulation promulgated by the board hereunder or any order or final decision of the board, within ten days after receipt of a written request to do so by any person who is or will be adversely affected by such violation or threatened violation, the person making such request may apply in his own behalf for an injunction to enjoin such violation or threatened violation in any court in which the board might have brought suit. The board shall be made a party defendant in such application in addition to the person or persons violating or threatening to violate any provision of this article, any rule and regulation promulgated by the board hereunder or any order of the board. The application shall proceed and injunctive relief may be granted without bond or other undertaking in the same manner as if the application had been made by the chairman. (1978, c. 84.)

§ 22-4B-17. Penalties.

(a) Any person who violates any provision of this article, any of the rules and regulations promulgated by the board hereunder or any order of the board other than a violation governed by the provisions of subsection (b) of this section, shall be guilty of a misdemeanor, and, upon conviction thereof, shall be fined not more than one thousand dollars.

(b) Any person who, with the intention of evading any provision of this article, any of the rules and regulations promulgated by the board hereunder or any order of the board shall make or cause to be made any false entry or statement in any application or other document permitted or required to be filed under the provisions of this article, any of the rules and regulations promulgated by the board hereunder or any order of the board, shall be guilty of a misdemeanor, and, upon conviction thereof, shall be fined not more than five thousand dollars, or imprisoned in the county jail not more than six months, or both fined and imprisoned.

(c) Any person who knowingly aids or abets any other person in the violation of any provision of this article, any of the rules and regulations promulgated by the board hereunder or any order or final decision of the board, shall be subject to the same penalty as that prescribed in this article for the violation by such other person. (1978, c. 84.)

§ 22-4B-18. Construction.

This article shall be liberally construed so as to effectuate the declaration of public policy set forth in section one [§ 22-4B-1] of this article. (1978, c. 84.)

ARTICLE 5.

TRANSPORTATION OF OILS.

Sec.	Sec.
22-5-1. Scope of article.	22-5-7. Same — Further provisions.
22-5-2. Duty of pipeline companies to accept and transport oil.	22-5-8. Dealing in oil without consent of owner.
22-5-3. Oil of 35° Baume at 60° Fahrenheit; inspection, grading and measurement; receipt; deduction for waste.	22-5-9. Monthly statements.
22-5-4. Oil over 35° Baume at 60° Fahrenheit; inspection and measurement; loss.	22-5-10. Statements of amount of oil.
22-5-5. Lien for charges.	22-5-11. Penalty — Wrongful issuance, sale or alteration of receipts, orders, etc.
22-5-6. Accepted orders and certificates for oil — Negotiability.	22-5-12. Same — Dealing in oil without consent of owner in interest.
	22-5-13. Same — Failure to make report and statement.

§ 22-5-1. Scope of article.

Every person, corporation or company now engaged, or which shall hereafter engage, in the business of transporting or storing petroleum, by means of pipeline or lines or storage by tanks, shall be subject to the provisions of this article and shall conduct such business in conformity herewith: Provided, that the provisions of this article shall be subject to all federal laws regulating interstate commerce on the same subject. (1891, c. 44, § 1; Code 1923, c. 62C, § 1.)

Michie's Jurisprudence. — As to regulation of pipelines generally, see 10B M.J., Interstate Commerce, §§ 6, 10.

§ 22-5-2. Duty of pipeline companies to accept and transport oil.

Any company heretofore or hereafter organized for the purpose of transporting petroleum or other oils or liquids by means of pipeline or lines shall be required to accept all petroleum offered to it in merchantable order in quantities of not less than two thousand gallons at the wells where the same is produced, making at its own expense all necessary connections with the tanks or receptacles containing such petroleum, and to transport and deliver the same at any delivery station, within or without the State, on the route of its line of pipes, which may be designated by the owners of the petroleum so offered. (1879, c. 27, § 1; 1891, c. 44, § 2; Code 1923, c. 62C, § 2.)

Applied in *Eureka Pipe Line Co. v. Public Serv. Comm'n*, 148 W. Va. 674, 137 S.E.2d 200 (1964).

Cited in *Charleston Natural Gas Co. v.*

Lowe, 52 W. Va. 662, 44 S.E. 410 (1901); *Hardman v. Cabot*, 60 W. Va. 664, 55 S.E. 756, 7 L.R.A. (n.s.) 506 (1906).

§ 22-5-3. Oil of 35° Baume at 60° Fahrenheit; inspection, grading and measurement; receipt; deduction for waste.

All petroleum of a gravity of thirty-five degrees Baume or under, at a temperature of sixty degrees Fahrenheit, offered for transportation by means of pipeline or lines, shall, before the same is transported, as provided by section two [§ 22-5-2] of this article, be inspected, graded and measured at the expense of the pipeline company, and the company accepting the same for transportation shall give to the owner thereof a receipt stating therein the number of barrels or gallons so received, and the grade, gravity and measurement thereof, and within a reasonable time thereafter, upon demand of the owner or his assigns, shall deliver to him at the point of delivery a like quantity and grade or gravity of petroleum in merchantable condition as specified in such receipt; except that the company may deduct for waste one percent of the amount of petroleum specified in such receipt. (1879, c. 27, § 2; 1891, c. 44, § 3; Code 1923, c. 62C, § 3.)

§ 22-5-4. Oil over 35° Baume at 60° Fahrenheit; inspection and measurement; loss.

All petroleum of a gravity exceeding thirty-five degrees Baume, at a temperature of sixty degrees Fahrenheit, offered for transportation by means of pipeline or lines, shall be inspected and measured at the expense of the company transporting the same, before the same is transported. The company accepting the same for transportation shall give to the owner thereof, or to the person in charge of the well or wells from which such petroleum has been produced and run, a ticket signed by its gauger, stating the number of feet and inches of petroleum which were in the tank or receptacle containing the same before the company began to run the contents from such tank, and the number of feet and inches of petroleum which remained in the tank after such run was completed. All deductions made for water, sediment or the like shall be made at the time such petroleum is measured. Within a reasonable time thereafter the company shall, upon demand, deliver from the petroleum in its custody to the owner thereof, or to his assignee, at such delivery station on the route of its line of pipes as he may elect, a quantity of merchantable petroleum, equal to the quantity of petroleum run from such tank, or receptacle, which shall be ascertained by computation; except that the company transporting such petroleum may deduct for evaporation and waste two percent of the amount of petroleum so run, as shown by such run ticket, and except that in case of loss of any petroleum while in the custody of the company caused by fire, lightning, storm or other like unavoidable cause, such loss shall be borne pro rata by all the owners of such petroleum at the time thereof. But the company shall be liable for all petroleum that is lost while in its custody by the bursting of pipes or tanks, or by leakage from pipes or tanks; and it shall also be liable for all petroleum lost from tanks at the wells produced before the same has been received for transportation, if such loss be due to faulty connections made to such tanks; and the company shall be liable for all petroleum lost by the

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overflow of any tanks with which pipeline connections have been made, if such overflow be due to the negligence of such company, and for all the petroleum lost by the overflow of any tanks with which pipeline connections should have been made under the provisions of this article, but were not so made by reason of negligence or delay on the part of the company. (1891, c. 44, § 6; Code 1923, c. 62C, § 6.)

Cited in Eureka Pipe Line Co. v. Hallanan, 257 U.S. 265, 42 S. Ct. 101, 66 L. Ed. 227 (1921).

§ 22-5-5. Lien for charges.

Any company engaged in transporting or storing petroleum shall have a lien upon such petroleum until all charges for transporting and storing the same are paid. (1879; c. 27, § 6; 1891, c. 44, § 11; Code 1923, c. 62C, § 11.)

§ 22-5-6. Accepted orders and certificates for oil — Negotiability.

Accepted orders and certificates for petroleum, issued by any company engaged in the business of transporting and storing petroleum in this State by means of pipeline or lines and tanks, shall be negotiable, and may be transferred by indorsement either in blank or to the order of another, and any person to whom such accepted orders and certificates shall be so transferred shall be deemed and taken to be the owner of the petroleum therein specified. (1891, c. 44, § 12; Code 1923, c. 62C, § 12.)

§ 22-5-7. Same — Further provisions.

No receipt, certificate, accepted order or other voucher shall be issued or put in circulation, nor shall any order be accepted or liability incurred for the delivery of any petroleum, crude or refined, unless the amount of such petroleum represented in or by such receipt, certificate, accepted order, or other voucher or liability, shall have been actually received by and shall then be in the tanks and lines, custody and control of the company issuing or putting in circulation such receipt, certificate, accepted order or voucher, or written evidence of liability. No duplicate receipt, certificate, accepted order or other voucher shall be issued or put in circulation, or any liability incurred for any petroleum, crude or refined, while any former liability remains in force, or any former receipt, certificate, accepted order or other voucher shall be outstanding and uncanceled, except such original papers shall have been lost, in which case a duplicate, plainly marked "duplicate" upon the face, and dated and numbered as the lost original was dated and numbered, may be issued. No receipt, voucher, accepted order, certificate or written evidence of liability of such company on which petroleum, crude or refined, has been delivered, shall be reissued, used or put in circulation. No petroleum, crude or refined, for which a receipt, voucher, accepted order, certificate or liability incurred, shall have been issued or put in circulation, shall be delivered, except upon the surrender of the receipt, voucher, order or liability representing such petroleum, except

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upon affidavit of loss of such instrument made by the former holder thereof. No duplicate receipt, certificate, voucher, accepted order or other evidence of liability, shall be made, issued or put in circulation until after notice of the loss of the original, and of the intention to apply for a duplicate thereof, shall have been given by advertisement over the signature of the owner thereof as a Class II legal advertisement in compliance with the provisions of article three [§ 59-3-1 et seq.], chapter fifty-nine of this Code, and the publication area for such publication shall be the county where such duplicate is to be issued. Every receipt, voucher, accepted order, certificate or evidence of liability, when surrendered or the petroleum represented thereby delivered, shall be immediately canceled by stamping and punching the same across the face in large and legible letters with the word "canceled," and giving the date of such cancellation; and it shall then be filed and preserved in the principal office of such company for a period of six years. (1891, c. 44, § 13; Code 1923, c. 62C, § 13; 1967, c. 105.)

§ 22-5-8. Dealing in oil without consent of owner.

No company, its officers or agents, or any person or persons engaged in the transportation or storage of petroleum, crude or refined, shall sell or encumber, ship, transfer, or in any manner remove or procure, or permit to be sold, encumbered, shipped, transferred, or in any manner removed from the tanks or pipes of such company engaged in the business aforesaid, any petroleum, crude or refined, without the written order of the owner or a majority of the owners in interest thereof. (1891, c. 44, § 14; Code 1923, c. 62C, § 14; 1977, c. 124.)

§ 22-5-9. Monthly statements.

Every company now or hereafter engaged in the business of transporting by pipelines or storing crude or refined petroleum in this State shall, on or before the tenth day of each month, make or cause to be made and posted in its principal business office in this State, in an accessible and convenient place for the examination thereof by any person desiring such examination, and shall keep so posted continuously until the next succeeding statement is so posted, a statement plainly written or printed, signed by the officer, agent, person or persons having charge of the pipes and tanks of such company, and also by the officer or officers, person or persons, having charge of the books and accounts thereof, which statement shall show in legible and intelligent form the following details of the business: (a) How much petroleum, crude or refined, was in the actual and immediate custody of such company at the beginning and close of the previous month, and where the same was located or held; describing in detail the location and designation of each tank or place of deposit, and the name of its owner; (b) how much petroleum, crude or refined, was received by such company during the previous month; (c) how much petroleum, crude or refined, was delivered by such company during the previous month; (d) for how much petroleum, crude or refined, such company was liable for the delivery or custody of to other corporations, companies or persons at the close of the month;

(e) how much of such liability was represented by outstanding receipts or certificates, accepted orders or other vouchers, and how much was represented by credit balances; (f) that all the provisions of this article have been faithfully observed and obeyed during the previous month. The statement so required to be made shall also be sworn to by such officer, agent, person or persons before some officer authorized by law to administer oaths, which shall be in writing, and shall assert the familiarity and acquaintance of the deponent with the business and condition of such company, and with the facts sworn to, and that the statements made in such report are true. (1891, c. 44, § 15; Code 1923, c. 62C, § 15.)

§ 22-5-10. Statements of amount of oil.

All amounts in the statements required by this article, when the petroleum is handled in bulk, shall be given in barrels and hundredths of barrels, reckoning forty-two gallons to each barrel, and when such petroleum is handled in barrels or packages, the number of such barrels or packages shall be given, and such statements shall distinguish between crude and refined petroleum, and give the amount of each. Every company engaged in the business aforesaid shall at all times have in their pipes and tanks an amount of merchantable oil equal to the aggregate of outstanding receipts, certificates, accepted orders, vouchers, acknowledgments, evidences of liability, and credit balances, on the books thereof. (1891, c. 44, § 16; Code 1923, c. 62C, § 16.)

§ 22-5-11. Penalty — Wrongful issuance, sale or alteration of receipts, orders, etc.

Any company, its officers or agents, who shall make or cause to be made, sign or cause to be signed, issue or cause to be issued, put in circulation or cause to be put in circulation, any receipt, accepted order, certificate, voucher or evidence of liability, or shall sell, transfer or alter the same, or cause such sale, transfer or alteration, contrary to the provisions of this article, or shall do or cause to be done any of the acts prohibited by section seven [§ 22-5-7] of this article, or omit to do any of the acts by said section directed, shall be guilty of a misdemeanor, and, upon conviction thereof, shall be fined not exceeding one thousand dollars, and, if the offender be a natural person, imprisoned not less than ten days nor exceeding one year. (1891, c. 44, § 17; Code 1923, c. 62C, § 17.)

§ 22-5-12. Same — Dealing in oil without consent of owner in interest.

Any company, its officers or agents, who shall sell, encumber, transfer or remove, or cause or procure to be sold, transferred or removed from the tanks or pipes of such company, any petroleum, crude or refined, without the written consent of the owner or a majority of the owners in interest thereof, shall be guilty of a misdemeanor, and, upon conviction thereof, shall be fined one thousand dollars and, if the offender be a natural person, imprisoned in the county jail not less than ninety days nor more than one year. (1891, c. 44, § 18; Code 1923, c. 62C, § 18; 1977, c. 124.)

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