



Series 1

STATE OF WEST VIRGINIA  
DEPARTMENT OF ENERGY  
DIVISION OF OIL AND GAS  
1615 Washington Street, East  
Charleston, West Virginia 25311  
Telephone: 348-3500

ARCH A. MOORE, JR.  
Governor

JOHN H. JOHNSTON  
Director

NOTICE OF PUBLIC HEARING OR COMMENT PERIOD ON A PROPOSED RULE

PUBLIC HEARING

AGENCY: DEPARTMENT OF ENERGY

RULE TYPE: LEGISLATIVE

RULE TITLE: SERIES 1 THROUGH 10 OF THE OIL AND GAS  
REGULATIONS

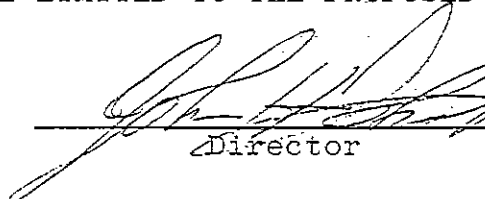
A PUBLIC HEARING ON THE ABOVE PROPOSED RULE WILL BE HELD AT 10:00 a.m.  
ON JULY 1, 1986, AT SOUTH BRIEFING ROOM, CULTURAL CENTER, STATE  
CAPITOL COMPLEX, CHARLESTON, WEST VIRGINIA.

COMMENTS ARE LIMITED TO: ORAL        WRITTEN        BOTH X

COMMENTS MAY ALSO BE MAILED TO: ROGER T. HALL, DEPARTMENT OF ENERGY,  
1615 WASHINGTON STREET, EAST, CHARLESTON, WEST VIRGINIA, 25311.

THE DEPARTMENT REQUESTS THAT PERSONS WISHING TO MAKE COMMENTS AT THE  
HEARING MAKE AN EFFORT TO SUBMIT WRITTEN COMMENTS IN ORDER TO  
FACILITATE A REVIEW OF THESE COMMENTS.

THE ISSUES TO BE HEARD SHALL BE LIMITED TO THE PROPOSED RULE.

  
Director

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SERIES 1000 STATE

1986 MAY 16 PM 2:54

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STATE OF WEST VIRGINIA  
DEPARTMENT OF ENERGY  
DIVISION OF MINES AND MINERALS  
1615 Washington Street, East  
Charleston, West Virginia 25311  
Telephone: 348-3500

ARCH A. MOORE, JR.  
Governor

May 14, 1986

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OFFICE OF THE  
SECRETARY OF STATE

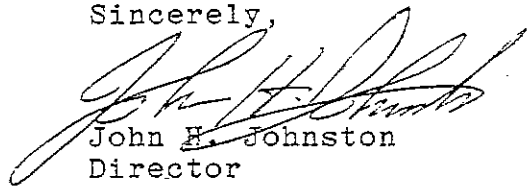
Honorable Ken Hechler  
Secretary of State  
State Capitol Building  
Charleston, West Virginia 25305

Dear Secretary Hechler:

Please find enclosed one copy of proposed legislative rules for the West Virginia Department of Energy to be recorded and filed with your office. This submittal includes the proposed rule "West Virginia Department of Energy, Division of Oil and Gas, Chapter 22-1, Chapter 22B-1, Series 1-10", a preamble to the regulations, the public hearing and comment notice, and the accompanying fiscal note.

I respectfully request that these documents be appropriately processed by your office. If you have any questions regarding this matter, please feel free to contact Roger T. Hall at 348-3500.

Sincerely,

  
John H. Johnston  
Director  
Division of Oil and Gas

JHJ/rha

# FISCAL NOTE FOR PROPOSED RULES

Rule Title: West Virginia Legislative Rules, Department of Energy,  
Division of Oil and Gas, Chapters 22-1 and 22B-1, Series 1-10

Type of Rule:   X   Legislative        Interpretive        Procedural

Agency: WV Department of Energy Address: 1615 Washington Street, East  
Division of Oil and Gas Charleston, WV 25311

1. Effect of Proposed Rule	ANNUAL		FISCAL YEAR		
	Increase	Decrease	Current	Next	Thereafter
Estimated Total Cost	\$ -0-	\$ -0-	\$ -0-	\$ -0-	\$ -0-
Personal Services	\$ -0-	\$ -0-	\$ -0-	\$ -0-	\$ -0-
Current Expense	\$ -0-	\$ -0-	\$ -0-	\$ -0-	\$ -0-
Repairs and Alterations	\$ -0-	\$ -0-	\$ -0-	\$ -0-	\$ -0-
Equipment	\$ -0-	\$ -0-	\$ -0-	\$ -0-	\$ -0-
Other	\$ -0-	\$ -0-	\$ -0-	\$ -0-	\$ -0-

2. Explanation of above estimates.  
 No anticipated economic impact.

3. Objectives of these rules:  
 See attached preamble.

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 U.S. DEPT. OF JUSTICE  
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4. Explanation of Overall Economic Impact of Proposed Rule.

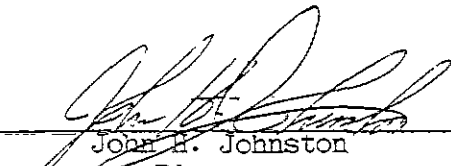
A. Economic Impact on State Government.

B. Economic Impact on Political Subdivisions; specific Industries;  
Specific groups of citizens.

C. Economic Impact on Citizens/Public at Large.

Date May 14, 1986

Signature of Agency Head or Authorized Representative

  
\_\_\_\_\_  
John H. Johnston  
Director  
Division of Oil and Gas

WEST VIRGINIA LEGISLATIVE RULE  
DEPARTMENT OF ENERGY  
DIVISION OF OIL AND GAS  
CHAPTER 22-1 AND 22B-1  
SERIES 1

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SECRETARY OF STATE

Title: Oil and Gas Wells and Other Wells

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Section 1. General

1.1 Scope - This rule shall govern and apply to proceedings under W. Va. Code §22B-1 governing oil and gas wells and other wells, except proceedings with respect to the "Natural Gas Policy of 1978" covered by Series 2 of the Division's rules.

1.2 Authority and Related Code Citation(s) - W. Va. Code §§22-1-13; 22-1-15; 22-1-16; and 22B-1-2

1.3 Filing Date -

1.4 Effective Date -

1.5 Former Rule Superseded - This legislative rule supersedes West Virginia Legislative Rule "Office of Oil and Gas, Department of Mines, Chapter 22-4, Series V, Oil and Gas Wells and other Wells," in effect on July 11, 1985. Such rule was continued in effect pursuant of W. Va. Code §22-1-15 for the benefit of the Department of Energy inasmuch as it pertained to the provisions of The West Virginia Energy Act.

1.6 Forms - An index of all current forms and copies of any forms currently used under or required by this rule may be obtained from the Director. The Division of Oil and Gas reserves the right to amend any forms prospectively to accord more fully with The West Virginia Energy Act on this rule.

Section 2. Definitions

Unless the context in which used clearly requires a different meaning, the definitions contained in W. Va. Code §22-1-3 and §22B-1-1 shall apply to this rule in addition to those definitions set forth below:

2.1 "W. Va. Code" shall mean the West Virginia Code of 1931, as amended.

2.2 "Barrel" shall mean 42 U. S. gallons of 231 cubic inches each of liquids, including slurries, at a temperature of 60 degrees Fahrenheit.

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2.3 "Completion of the drilling process," as used in W. Va. Code §22B-1, shall mean the date on which a drilling rig ceases operation on the drilling site for more than 30 consecutive days.

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

2.5 "Day" shall mean a period of 24 consecutive hours.

2.6 "Designated agent" shall mean a resident of the State of West Virginia designated by an operator as the agent or attorney in fact of the operator upon whom process, notices, orders, or other communications issued pursuant to W. Va. Code §22B may be served. See Section 5.1.

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

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

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

2.10 "Log" or "well log" shall mean a systematic, detailed geological record of all formations, including coal, fresh water, and salt water encountered in the drilling of a well.

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

2.12 "Surface owner of record," and the term "owner of record of the surface" as used in W. Va. Code §22B-1-9, shall mean any person who is an owner of record of surface land or an undivided interest therein, whether or not the surface ownership is severed from the oil and gas or other mineral ownership.

2.13 "Underground storage well" shall mean a gas well subject to the provisions of W. Va. Code §22B-4.

### Section 3. Inspectors Forms, Forms, Departmental Records

3.1 Notice and Application Forms - Forms WW-2(A), WW-2(B), WW-3(A), WW-3(B), WW-4(A), and WW-4(B) shall accord the interested parties essentially the same notice, rights and statements of those rights and be in substantially the same form as the versions of those forms issued at the same time as this rule.

3.2 Report Forms - The report forms to be used by oil and gas inspectors or the supervising inspector upon inspection pursuant to W. Va. Code §22B are as follows:

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

3.2.2 Form VI-27, "Notice of Violation;"

3.2.3 Form VI-28, "Imminent Danger Order;"

3.2.4 Form VI-29, "Notice Extending Abatement Time;"

3.2.5 Form VI-30, "Order for Failure to Abate Violation;"

3.2.6 Form VI-31, "Notice of Abatement;"

### Section 4. Inspectors Findings of Violation, Abatement

4.1 Violations, Findings, and Orders - Findings and orders of oil and gas inspectors concerning violations discovered during an inspection shall be recorded on the appropriate form listed in Section 3.1. Such findings and orders shall not be construed to limit the Division's power to initiate any other lawful proceedings concerning violations of W. Va. Code §22B-1, or this rule.

### Section 5. Permits, Notice, Review

5.1 Registration; Designated Agent; Transfer of Title

5.1.1 All persons owning or operating or proposing to own or operate any well in West Virginia shall register with the Director. In all cases an agent or attorney in fact shall be

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designated on Form OP-1, "Designation of Agent by Well Owner or Operator" by and for each well owner or operator, upon whom process, notices, orders and other communications issued pursuant to Chapter 22B of the W. Va. Code may also be served; but the designation shall not be effective until it has been accepted in writing by the Designee and approved by the Division. Every well owner or operator who has designated such agent or attorney in fact shall, within five days after termination of such designation, notify the Division of such termination and designate a new agent on Form OP-1. This rule applies to all well operators, not merely those whom W. Va. Code §22B-1-6 specifically requires to designate an agent; provided, that a well operator who is a natural person and a resident of the State of West Virginia may list himself instead of an agent for service of all such papers.

5.1.2.1 When title to a well or the right to operate a well is transferred from one well owner to another, the Director shall be notified in writing within five days by the transferor well owner of the name and address of the transferee well owner. A copy of such notification shall be delivered to the transferee well owner. Failure to notify the Director of such transfer shall be a violation of this rule by said transferor and shall be punishable under W. Va. Code §22B-1-34; and in addition, all bonds of such transferor under W. Va. Code §22B-1 shall be forfeited.

5.1.2.2 The transferee well owner shall forthwith register with the Division if he has not previously registered such ownership. In any event, said transferee shall forthwith notify the Division of his designated agent or attorney in fact pursuant to Section 5.1 unless a designation has already been made and approved.

5.1.2.3 No assignment or transfer by the transferor owner shall relieve the transferor well owner of any obligations and liabilities pursuant to these rules or the West Virginia Energy Act unless and until the transferee well owner files with the Division the well name and the permit number of the subject well, the county and district in which the subject well is located, the names and addresses of the transferor well owners and the transferee well owners, a copy of the instrument of assignment or transfer, or a certification of such assignment or transfer acceptable to the Director, the bond, cash, or collateral security, which satisfies the requirements of W.Va. Code §22B-1-26, and the name and address of the transferee well owner's designated agent if the transferee well owner would be required to designate such an agent under W.Va. Code §22B-1-6.



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5.1.2.4 Upon compliance with the requirements of Section 5.1.2.1, 5.1.2.2 and 5.1.2.3 the transferor well owner and transferee well owner, the Director shall release the transferor well owner from all duties and requirements of this rule, and the Director shall give written notice of release to the transferor well owner of any bond and return to the transferor well owner any cash or collateral securities deposited pursuant to W.Va. Code §22B-1-12, §22B-1-12, §22B-1-14 or §22B-1-26.

5.2 Application for Permit; Issuance, Conditions, and Modifications

5.2.1 An application for any well work permit required for an oil or gas well or an underground storage well by W. Va. Code §22B-1-6, except for permits to plug a well, shall be made on Form WW-2(B), "Application for a Well Work Permit," and shall be accompanied by:

5.2.1.1 a "Notice of Application for a Well Work Permit" in the form prescribed by Section 5.4,

5.2.1.2 a plat in the form prescribed by Section 9,

5.2.1.3 a bond in one of the forms prescribed by Section 10, or in lieu thereof cash or collateral security allowed by W. Va. Code §22B-1-26,

5.2.1.4 Form WW-9, "Construction and Reclamation Plan," applicable to the plan required by W. Va. Code §22B-1-6(d) and a plan for performing the reclamation required by W. Va. Code §22B-1-30 and Section 16,

5.2.1.5 with any initial application to drill a well, the fees required by W. Va. Code §§22B-1-2 and 22B-1-29, and

5.2.1.6 if applicable, the consent required by W. Va. Code §22B-1-21. A separate application shall not be required for stimulating a well where stimulating is to be a part of the well work for which a permit is sought and is noted as such on the Form WW-2(B) filed in connection therewith.

5.2.2 An application for any liquid or waste disposal well permit required by W. Va. Code §22B-1-6, except a permit to plug a well, shall be made on Form WW-3(B), "Liquid Injection or Waste Disposal Well Work Permit Application," and shall be accompanied by

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5.2.2.1 a "Notice of Liquid Injection or Waste Disposal Application" in the form prescribed by Section 5.4,

5.2.2.2 a plat in the form prescribed by Section 9,

5.2.2.3 a bond in one of the forms prescribed by Section 10, or in lieu thereof the cash or collateral security allowed by W. Va. Code §22B-1-14,

5.2.2.4 Form WW-9, "Construction and Reclamation Plan," applicable to the reclamation required by W. Va. Code §22B-1-30 and Section 10, and

5.2.2.5 with the initial application to drill a well, the fees required by W. Va. Code §§22B-1-2 and 22B-1-29. A separate application for permit shall not be required for stimulating a well where stimulating is to be a part of the well work for which a permit is sought and such fact is noted on the Form WW-3(B) filed in connection therewith.

5.2.3 An application for a permit to plug a well shall be made on Form WW-4(B), "Application to Plug and Abandon a Well," and shall be accompanied by:

5.2.3.1 a "Notice of Application to Plug and Abandon a Well," in the form prescribed by Section 5.4,

5.2.3.2 a plat in the form prescribed by Section 9, and

5.2.3.3 a bond in one of the forms prescribed by Section 10, or in lieu thereof cash or collateral security required by W. Va. Code §22B-1-23,

5.2.4 The applicant for any permit mentioned in this rule must file an original and two copies of the Application and an original and four copies of the Notice, plat and, except for applications for a permit to plug a well, a Construction and Reclamation Plan.

5.2.5 The permit and any conditions to or modifications of the proposed permitted well work shall be issued by endorsement on or attachment to the "Permit" copy of the Application (Form WW-2(B), WW-3(B), or WW-4(B), as applicable).

5.2.6 Any permit issued under Section 5 shall expire automatically unless the permitted well work is commenced within

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24 months of the date the permit was issued. No permit shall be extended to authorize the commencement of well work after the expiration date of 24 months.

5.2.7 No permit issued under Section 5 shall be transferable.

5.2.8 The determination to deny a permit under the provisions of W. Va. Code §22B-1-6(h), or to deny or condition a permit under the provisions of W. Va. Code §22B-1-11, shall be in writing and issued within 60 days from the date the Notice and Application in complete form with the required documents are filed.

5.2.9 Irrespective of the scope of the well work for which a permit was originally issued, a new application shall be filed for any well work subsequent to the expiration of the six-month or extended period for reclamation prescribed by W. Va. Code §22B-1-30.

5.3 Flat Well Royalty Leases -

5.3.1 Any Application for a well work permit subject to the provisions of W. Va. Code §22B-1-8 shall include the data required by subsection c thereof. Such information may be recorded on the applicable form of the Notice of Application in lieu of filing copies of the well operator's lease or leases or other continuing contract or contracts.

5.3.2 If the applicant's right to extract, produce, or market the oil or gas is based upon a lease or leases or other continuing contract or contracts providing for flat well royalty or any similar provision for compensation to the owner of the oil or gas in place which is not inherently related to the volume of oil and gas so extracted, produced, and marketed, then the affidavit to be furnished pursuant to W. Va. Code §22B-1-8(e) shall be submitted on Form IV-60.

5.4 Notice to Surface Owners of Record; Proof of Notice; Comments -

5.4.1.1 For purposes of notice to surface owners of record, pursuant to W. Va. Code §22B-1-9, the applicant well operator shall be entitled to assume, subject to performing the public record review described in Section 5.4.1.2 below, that the specific person(s) listed on the relevant tax ticket(s) maintained by the Sheriff pursuant to W. Va. Code §11A-1-8 (as

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distinguished from the listing of an estate, or of person(s) as "agent" or with "et al." or "heirs" or other designation indicating unspecified owners of record) were in fact surface owners of record when the tax ticket was prepared.

5.4.1.2 To establish that a surface owner identified on a tax ticket has not transferred an interest in the surface, the well operator must review, from the date the surface owner acquired the surface, or for ten years prior to the date of the review, whichever period is shorter, the "Grantor Index" and the "Fiduciary Index" maintained in the office of the Clerk of the County Commission. If the review identifies surface owner(s) in replacement of or in addition to the tax ticket listing, all successor names shall likewise be checked in the Grantor and Fiduciary Indexes to establish the surface owner(s) of record on the date the review is made.

5.4.1.3 Where the relevant tax ticket(s) list an estate, or list person(s) as "agent" or with "et al." or "heirs" or other designation indicating unspecified owners of record, the applicant well operator shall review the records in the office of the Clerk of the County Commission to determine whether the total number of such owners is more than three and, if the total number of such owners is three or less, the name(s) of the surface owner(s) of record on the date the review is made.

5.4.1.4 If the identification of the surface owners of record is made pursuant to the criteria of Sections 5.4.1.1 and 5.4.1.2 or 5.4.1.3 within 90 days of the date of filing of the application for a permit, the well operator need not review the records again prior to the filing.

5.4.2 Except where notice by publication is permissible under the provisions of W. Va. Code §22B-1-9(b), the notice to surface owners of record required by W. Va. Code §22B-1-9 shall consist of true, complete copies of:

5.4.2.1 obverse and reverse sides of Form WW-2(A), WW-3(a), or WW-4(A), as applicable,

5.4.2.2 obverse and reverse sides of the surface owner's copy of Form WW-2(B), WW-3(B), or WW-4(B), as applicable,

5.4.2.3 the plat in the form described in Section 9, and

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- 5.4.2.4 for any application (except for an application to plug a well) all sides of the Construction and Reclamation Plan on Form WW-9. Photocopies are acceptable if all faces of the documents are included in the proper order. The verification of Form WW-2(A), WW-3(A), or WW-4(A) will be accepted as compliance with the requirement of prima facie "certification and evidence" of notice as required by W. Va. Code §22B-1-6(c)(1) (iii).

5.4.3 Proof of personal service may be made by the return of any sheriff or other official empowered by law to serve process, or by affidavit of personal service on Form IV-70 by any person, including but not limited to any employee or agent of the well operator. If service is effected by certified mail, service is effective upon mailing and the return receipt card or other postal receipt for certified mailing with postal stamp affixed or photocopy will be accepted as proof of service.

5.4.4 Notice of publication under the provisions of W. Va. Code §22B-1-9(b) shall be substantially as provided in Form IV-71. Proof shall be supplied by affidavit of publication from the newspaper.

5.4.5 No permit will be issued until all required proof of notice has been filed with the Director.

5.4.6 All comments filed pursuant to the provisions of W. Va. Code §22B-1-10 shall be in writing, and should contain the name, address and telephone number of the person filing the comment, the well operator's name and well number, and the approximate location of the proposed well site including district and county as indicated in the permit application. Comments may be accompanied by other pertinent documents in support of the comment. Other than as prescribed in this rule, no particular form for the comment is prescribed.

## 5.5 Identification Markings -

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

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5.5.2 Except as provided below, upon the completion of the plugging and filling of any abandoned well, a permanent monument or marker consisting of a length of pipe (minimum diameter size, 6") filled with concrete (or the equivalent thereof if approved by the Director) shall be erected over the well; the marker shall extend no less than 30 inches above the surface and not less than 10 feet below the surface and into the well, and shall be sealed with concrete for the purpose of making the marker permanent. The API well identification number which consists of the State (47), County (001 through 109), and permit number shall be attached or stamped in a permanent manner to said monument; and such numbering shall be no less than one half inch in height and detectable by any interested person approaching the marker. The erection of the marker shall in no way interfere with the bleeder pipe from the well where such pipe is required, or the vent or other device installed pursuant to W. Va. Code §22B-1-24. Such marker shall be accurately described on Form IV-38, "Affidavit of Plugging and Filling Well" (see Section 13.6) as to time and manner of plugging and filling the well and shall be approved by the Director as a satisfactory landmark which may be used as such in the location of adjacent wells. Two permanent reference points with courses and distances from the abandoned well shall be designated and described on the plat required by Section 13.1 in the form prescribed by Section 9, accompanying Form WW-4, "Notice of Intention to Plug and Abandon a Well", or, if any change in the plat is necessary, accompanying Form IV-38, "Affidavit of Plugging and Filling Well" (see Section 13.6).

5.6 Parties Responsible - All contractors and drillers, including all service companies carrying on business or doing work in oil and gas fields in West Virginia, as well as lease holders and operators generally, shall take notice of and are hereby directed to observe and apply the provisions of W. Va. Code §22B-1 and this rule; and all contractors, drillers, service companies and operators shall be held responsible for violations thereof.

5.7 Evidence of Performance -

5.7.1 After the completion of the work authorized to be done by any permit required by W. Va. Code §22B-1-6, the permittee shall comply with the filing requirements of W. Va. Code §22B-1-22 and Section 12.

5.7.2 In addition to the requirements of Section 5.7.1, following completion of plugging a well, the permittee

shall also comply with the affidavit requirements of W. Va. Code §22B-1-23 and Section 13.

Section 6. Plats, Notice to Coal Owner, Operator or Lessee

6.1 Plats -

6.1.1 The plat submitted pursuant to W. Va. Code §22B-1-12 before "drilling for oil or gas, or before fracturing or stimulating a well," shall contain the information required by W. Va. Code §22B-1-12 and otherwise by this rule in the form and manner provided in Section 9. A separate plat shall not be required for stimulating a well where stimulating is to be a part of the work for which a permit is sought and such fact is noted on Form WW-2(B), "Application for a Well Work Permit."

6.1.2 A plat is hereby required to accompany all applications for "fracturing any well" under W. Va. Code §22B-1-13 by means subsequent to and not an incident of previously permitted drilling, redrilling, deepening, pressuring or converting of such well. If the well to be fractured is an oil or gas well, the plat shall contain the same information required for plats by W. Va. Code §22B-1-12 and otherwise by this rule, and shall be in the form and manner provided in Section 9; and if the well is a liquid injection or waste disposal well, the plat shall contain the same information required for plats by W. Va. Code §22B-1-14 and otherwise by this rule, and shall be in the form and manner provided in Section 9.

6.1.3 The plat required by W. Va. Code §22B-1-14 before drilling a well for the introduction of liquids for the purposes provided for in W. Va. Code §22B-1-25 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, shall contain the information required by W. Va. Code §22B-1-25 and otherwise by this rule and shall be in the form and manner provided in Section 9. Submission of a separate plat shall not be required before stimulating such a well where stimulating is to be a part of the well work for which a permit is sought and such fact is noted on Form WW-3(B), "Liquid Injection or Waste Disposal Well Work Permit Application."

6.2 Notice to Coal Operators, Owners or Lessees - A copy of the completed notice and application for any permit required by W. Va. Code §22B-1-6, including the associated plat and Construction and Reclamation Plan required by Section 5,

shall be used as the form of the notice to Coal Operators, Owners or Lessees required by W. Va. Code §§22B-1-12, 22B-1-13, and 22B-1-14, and shall be mailed by registered or certified mail to coal operators, owners or lessees.

Section 7.        Operational Regulations on Liquid Injection and Waste Disposal Wells

7.1    Tubing and Packer Arrangements; Variance; Regulation of Pressure -

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

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

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

7.3    Pre-Operation Certificate -

7.3.1    The Director or his appointed representative shall be notified no less than 24 hours prior to mechanical integrity testing to allow the Director or his representative the



opportunity to witness the tests. Copies of the results of all tests shall be submitted along with Form IV-37 as provided in Section 7.3.2.

7.3.2 Upon successful completion and mechanical integrity testing, and prior to first injection into a permitted liquid injection or waste disposal well, the operator shall furnish the Division with a certification on Form IV-37, "Pre-Operation Certificate for Liquid Injection or Waste Disposal Well," indicating that all requirements of Sections 7.1 and 7.2 have been satisfied. The certification shall include:

7.3.2.1 Identification of the injection zone by name of geological target formation and depth (top and bottom of zone), the number of perforations, if applicable, or the interval of open hole;

7.3.2.2 The maximum bottom hole pressure in pounds per square inch and maximum rate of injection in barrels of liquids per hour or cubic feet of gases per hour;

7.3.2.3 A detailed identification of the materials being injected, including additives;

7.3.2.4 Specification of cathodic protection and other corrosion control measures;

7.3.2.5 Filters, if any;

7.3.2.6 The entire casing and cementing record, any packers and other special downhole equipment, and cement bond logs; Provided, that this data need not be included on Form IV-37, where the casing and cementing record is furnished on Form IV-35, "Well Operator's Report of Drilling, Fracturing and/or Stimulating," associated with the project;

7.3.2.7 Certification that the mechanical integrity of the well has been tested, and statement of the test method;

7.3.2.8 Facilities or systems to protect the integrity of the geological target formation or to prevent fracturing the confining strata; and

7.3.2.9 Application for variance, if any, from Section 7.1.

- 7.4 Partial Exemption for Certain Wells - Any liquid injection or waste disposal well in existence and used as such prior to July 1, 1969 shall be exempted from the requirements of Section 7.1, 7.2 or 7.3, provided the operator has, on or before July 1, 1979, filed an area plat or plats showing all of such operator's liquid injection or waste disposal wells. Such exemption shall remain effective until such time as, in the opinion of the Director and upon notification thereof to the well owner or operator, it is determined that said well is leaking liquids to other wells or the surface.

7.5 Monitoring by Operator - The well owner or well operator of a liquid injection or waste disposal well shall monitor daily and submit to the Division monthly the injection pressures and volumes on Form IV-40 "Report for Liquid Injection, Waste Disposal or Enhanced Recovery." The Director may require more frequent or continuous monitoring and more frequent reporting if, in his opinion, good reason exists therefor.

7.6 Limitation - W. Va. Code §22B-1-14 and Section 7.1 through 7.5 do not apply to injection of water or other liquids into a well for the purpose of fracturing or stimulating a well or underground gas storage well operations, including injection periods.

#### 7.7 Authorization and Re-testing of Wells -

7.7.1 No liquid injection or waste disposal well shall be permitted to inject until a Pre-Operation Certificate (Form IV-37) is reviewed and approved by the Director.

7.7.2 The mechanical integrity of a liquid injection or waste disposal well must be demonstrated to the approval of the Director again within five years from the last test date in order for injection to continue.

#### Section 8. Objections to Applications; Notice

8.1 Objection Filed by Coal Operators, Owners or Lessees - Objections by coal operators, owners, or lessees filed pursuant to W. Va. Code §§22B-1-15, 22B-1-16, or 22B-1-17, shall be made on Form IV-13, "Objection under W. Va. Code §22B-1-15, W. Va. Code §22B-1-16, or W. Va. Code §22B-1-17 to Proposed Permitted Work."

8.2 Objection By the Division - Objections by the Division to any proposed well work under W. Va. Code §§22B-1-15,

22B-1-16, 22B-1-17, shall be made in writing, and in the same detail required of objections by coal operators, owners or lessees.

### 8.3 Notice to Applicant of Objection -

8.3.1 If a coal operator, owner, or lessee files or the Division makes objection to proposed work under W. Va. Code §22B-1-15 or W. Va. Code §22B-1-16, the Division shall notify the applicant well operator by Form IV-14, "Notice to Well Operator of Objection under W. Va. Code §22B-1-15 or W. Va. Code §22B-1-16," attaching copies of all such objections.

8.3.2 If a coal operator, owner or lessee files or the Division makes objection under W. Va. Code §22-1-17, the Division shall notify the applicant well operator as provided by Section 8.4.

8.4 Notice to Shallow Gas Well Review Board of Objection; Copies to Applicant - If a coal operator, owner or lessee files or the Division makes objection under W. Va. Code §22B-1-17, the Division shall notify the Chairman of the Shallow Gas Well Review Board by Form IV-15, "Notice to Shallow Gas Well Review Board of Objection under W. Va. Code §22B-1-17 to a Proposed Drilling Site," attaching copies of all objections made pursuant to Sections 8.1 and 8.2 and all other information required by W. Va. Code §22B-1-17. Copies of all such documents shall be sent to the applicant well operator as his notice of objection.

## Section 9. Form and Contents of Plats

9.1 Statutory Requirements for Plats - Any plats required to be furnished under W. Va. Code §§22B-1-12 or 22B-1-14 (see Section 5.2) shall contain all information specified in the statutory section requiring the plat.

9.2 Additional Requirements for Plats - Any plat required to be furnished under W. Va. Code §§22B-1-12 or 22B-1-14, or under Sections 6.1.2 or 13.1, shall be recorded on Form IV-6, "Well Plat," and shall conform to the following standards of accuracy and depiction:

9.2.1 Accuracy - An accuracy of one part in 2500 is required for location of wells on land containing workable coal beds which are tributary to operator coal mines. All other plats

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require a minimum accuracy of one part in 200. The attained accuracy standard shall be stated on every plat.

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

9.2.3 Physical Location of Well - Every well shall be drilled within ten feet of the exact well location designated on the plat. To facilitate compliance and verification, the plat for a new well shall designate at least two reference points from which, after the drilling site has been cleared and graded, the proposed well location can be accurately reestablished by the well operator and, if desired, subsequently verified by the oil and gas inspector or any interested person. When the survey party stakes the proposed well location, it shall flag or otherwise mark the reference points, which may be permanent (such as standing trees) or temporary (such as set stakes) and such reference points shall be beyond the limits of the drilling site but within 300 feet of the well location. A description of the reference points and their location with reference to the well location shall be indicated on a detail drawing or a narrative statement on the face of the plat.

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

9.2.5 Method of Showing Property Lines - The courses and distances of all farm lines adjoining and those connecting the landmarks or permanently established property corners within the scope of the well location plat shall be shown thereon. All lines actually surveyed shall be shown on such plat in solid lines. Lines taken from deed descriptions only shall be shown by broken lines.

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

9.2.7 North-South Line - A north and south line shall be given and point to the top of the plat.

9.2.8 Scale and Size of Plat - If practicable, all plats shall be drawn to a scale of 1" = 2000' (1:24,000) or to even multiples thereof for each reduction of the plat photographically to a scale of 1" = 2000'. The plat shall be 8 1/2 inches by 14 inches in size.

9.2.9 Topographic Map Location of Well - The topographic map location of the well for which any permit application is made pursuant to W. Va. Code §22B-1-6 shall be shown on the plat by a "cross" with the measured distance in feet from the nearest 5 minute latitude and longitude intersection using the North East (upper right) border of the plat on the 15 minute (1:62,5000) topographic map. If the 7.5 minute (1:24,000) topographic map is used, the topographic location shall be shown on the plat at a "cross" with the measured distance in feet from the nearest 2.5 minute latitude and longitude intersection using the North East (upper right) border of the plat. Each plat shall indicate the topographic map name and series and indicate whether 7.5 minute or 15 minute is used to show the well location.

9.2.10 Wells - All wells within the scope of the plat, whether active, drilling, or abandoned, shall be shown. The scope of every plat shall be sufficient to show all wells within 1,200 feet of the well which is the subject of the application and, in the case of an application for a shallow gas well with a depth of 3,000 feet or more and which will penetrate a coal seam, the scope of the plat shall be sufficient to show all wells within 2,400 feet of the well which is the subject of the application. Each well so shown, including the subject well, shall bear a designation that permits the type (oil, gas, liquid injection under W. Va. Code §22B-1-41, underground storage, or storage observation) and status (active, abandoned, or drilling) of each such well to be determined by the use of:

9.2.10.1 API permit number (excluding State and County) for each well having such a permit number,

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9.2.10.2 in parentheses, and following the API number if such is listed, the type and the status numbers provided below, and

9.2.10.3 the symbols provided below.

9.2.11 The kind and status numbers to be used shall be as follows:

9.2.11.1 Oil wells:

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

9.2.11.2 Deep gas wells:

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

9.2.11.3 Shallow gas wells:

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

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- 28- 3,000 feet or more, underground storage, active
- 29- 3,000 feet or more, underground storage, abandoned
- 30- 3,000 feet or more, underground storage, drilling
- 31- 3,000 feet or more, storage observation, active
- 32- 3,000 feet or more, storage observation, abandoned
- 33- 3,000 feet or more, storage observation, drilling

9.2.11.4 Liquid injection wells:

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

9.2.11.5 Waste disposal wells:

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

9.2.11.6 Gas injection wells:

- 40- Active            41- Abandoned
- 42- Drilling or being converted

9.2.12 The symbols to be used shall be as follows:

New drilling location	○
New fracturing or stimulating location	○ F/S
Cancelled application or permit	○ CMC
Oil well	●
Gas well	☀
Dry hole	⊙
Liquid injection well under W. Va. Code §22B-1-25	⊙ LI
Waste disposal well	⊙ WD
Abandoned well	● - ☀ - ⊙ LI - ⊙ WD

9.2.13 Other Surface Features - In addition to the surface features and owner identification data required by statute or by the foregoing specifications of Section 9.2, the plat shall also show the following surface features lying within the scope of the plat:

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- 9.2.13.1 water wells within two hundred feet of the well for which any permit under W. Va. Code §22B-1-7 is being sought, except for liquid injection or waste disposal wells, in which case water wells within one thousand feet of the well shall be shown;

9.2.13.2 dwellings within two hundred feet of the well for which any such permit is being sought;

9.2.13.3 streams;

9.2.13.4 roads and highways; and

9.2.13.5 railroads with indication of the owners' names.

9.2.14 Names - The plat shall state the names of the surface owners and the royalty owners of the land at the well location.

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

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

9.4 Re-use of Plats - Following issuance of the initial permit for drilling a well, any subsequent application for a new permit involving the same well may be accompanied by an accurate copy of the plat accepted by the Division for use with the permit issued for the most recent previous application, updated as necessary to reflect new data or additional data now required by statute or this rule; provided, that a new certification shall be necessary in the form required by Section 9.3.

9.5 Permanent Character of Plats - Every plat submitted under Section 9 shall be of permanent character, that is, on linen or plastic or other material of comparable quality and with india or other ink resulting in a depiction not subject to



substantial degradation through time from exposure to ordinary conditions of temperature, humidity, and light

Section 10. Performance Bonds for Well Operators

10.1 Separate Bonds - Each permit application filed after the effective date of these regulations shall be accompanied by a separate bond with corporate surety or cash, or other collateral security in compliance with W. Va. Code §22B-1-26 and shall be submitted with Form IV-7, "Bond for Single Oil or Gas Well, Single Liquid Injection Well or Single Waste Disposal Well", except where (a) a blanket bond is being furnished pursuant to W. Va. Code §22B-1-26(c); or (b) the permit application is for a permit to plug a well which is already subject to corporate surety, cash or collateral security which satisfied applicable requirements at the time such corporate surety, cash or collateral security was furnished. Any corporate surety bond, cash or collateral security furnished in connection with a permit issued prior to July 11, 1985 shall remain in effect for the benefit of the Department until such time as the well operator is issued any additional permit concerning the bonded well and such operator has furnished such new or additional corporate surety, cash or collateral security as may be required by these rules.

10.2 Blanket Bonds - Any blanket bond furnished after the effective date of these regulations shall have corporate surety or cash or other collateral security and shall be submitted with Form IV-8, "Blanket Bond for Oil and Gas Wells, Liquid Injection Wells, and Waste Disposal Wells". Any blanket bond with corporate surety, cash or collateral security furnished in connection with any permit or permits issued prior to July 11, 1985 shall remain in effect for the benefit of the Department until such time as the well operator is issued any additional permit and such well operator has furnished new or additional corporate surety, cash or collateral security complying with the Act; provided, that if a blanket bond furnished prior to July 11, 1985, complies with the requirements of the Act, a new blanket bond shall not be required to be submitted with a permit application; provided further, that if a permit application is for a permit to plug a well which is already subject to corporate surety, cash, or collateral security which satisfied applicable requirements at the time such corporate surety, cash or collateral security was furnished, no additional corporate security, cash or collateral security shall be required.

Section 11. Operational Criteria

11.1 Casing Not Exclusive - In addition to the casing required by W. Va. Code §§22B-1-18, 22B-1-19, 22B-1-20 and 22B-1-21, there shall be used in each well such material and equipment and there shall be employed such additional procedures as are necessary for the purpose of separating high pressure zones from low pressure zones, the producing horizons, the water bearing strata, and mineable coal zones for the life of the well.

11.2 Multiple Casing Through Coal Seams -

11.2.1 The coal protection casing required by W. Va. Code §§22B-1-18 through 22B-1-20 to be installed through the workable coal seam or seams shall be in addition to the production casing.

11.2.2 The coal protection casing required by W. Va. Code §22B-1-18 shall have cement circulated in the annular space outside said casing. The volume of cement needed shall be calculated by using approved engineering methods to assure the return of the cement to the surface. In the event cement does not return to the surface, every reasonable attempt will be made to fill the annular space by introducing cement from the surface.

11.3 Fresh Water Casing - The fresh water protective casing required by W. Va. Code §22B-1-21 shall extend 30 feet below the deepest fresh water horizon (that being the deepest horizon which will replenish itself and from which fresh water or usable water for household, domestic, industrial, agricultural, or public use may be economically and feasibly recovered) and shall have cement circulated in the annular space outside said casing. The volume of cement needed shall be calculated using approved engineering methods to assure the return of the cement to the surface. In the event cement does not return to the surface, every reasonable attempt will be made to fill the annular space by introducing cement from the surface. If the coal protection casing is cemented to the surface in accordance with prescribed procedure, this may also be considered a fresh water protective casing for water strata above the coal.

11.4 Cement Strength - Cement placed in the annular space around any casing shall be allowed to set to a minimum compressive strength of 500 pounds per square inch using approved engineering data for the type of cement used. The waiting time for cement used in compliance with Section 11.5 shall be eight

hours. The waiting time on any other cement shall in no case be less than eight hours.

11.5 Cement Type - Cement used to fill the annular space around the casing required in Sections 11.2 and 11.3 shall be American Petroleum Institute Class A Ordinary Portland cement with no greater than three percent calcium chloride and no other additives; provided, that if the well operator furnishes satisfactory proof that different cement types are adequate, the Director may approve use of such different cement types.

## Section 12. Well Records

12.1 Well Records Made During Permitted Work - The well operator or his drilling contractor or driller shall keep at the well location a copy of the application as permitted, including the associated plat and Construction and Reclamation Plan required by Section 5.2, and the well operator or his drilling contractor or driller shall also make and preserve at the well location accurate records of all well work performed pursuant to the permit. The records shall be complete enough to support, as applicable, the entries of well work done and related data on Form WR-35, "Well Operator's Report of Drilling, Stimulating or Physical Change," Form WR-36, "Well Operator's Report of Initial Gas-Oil Ratio Test," Form WR-37, "Pre-Operation Certificate for Liquid Injection or Waste Disposal Well," and Form WR-38, "Affidavit of Plugging and Filling Well;" but such forms WR-35 through WR-38 shall reflect data discovered or changes made after the permitted well work has been finished and before the forms are filed. Unless such records of well work performed are prepared by the well operator or owner, a copy of all such records shall be delivered to the well owner or operator.

### 12.2 Filing of Well Record and Related Forms -

12.2.1 Within 90 days after the completion of permitted well work, two copies of Form WR-35, "Well Operator's Report of Drilling, Fracturing and/or Stimulating or Physical Change," containing in proper form the geological information required by W. Va. Code §22B-1-22, Form WR-36, "Well Operator's Report of Initial Gas-Oil Ratio Test," (except that, where the well has not been connected within such 90-day period to pipelines or production tanks, Form WR-36 shall be filed no more than 15 days after such connection), Form WR-37, "Pre-Operation Certificate for Liquid Injection or Waste Disposal Well," and Form WR-38, "Affidavit of Plugging and Filling Well," shall be filed by the well owner or operator with the Director. Such forms need not repeat

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well record information for any work (whether permitted or not) performed prior to and not part of the permitted work to which said forms apply. Such forms shall correct or add to the well log and other records made and preserved at the well location by specifying the casing, treatment, or physical changes performed after completion of the permitted work, and the additional formations or corrected information discovered, by electric logs or other means, after completion of the permitted work.

12.2.2 Deep Well Confidential Information; Filing of Well Logs -

12.2.2.1 Within 90 days after the completion of drilling or recompletion of a deep well, the well operator shall file a copy of the well log and the electrical, radioactive or other similar conventional log if such logs have been performed. In addition, as soon as practicable, the well operator shall file a copy of drill stem test charts, formation water analysis, porosity, permeability or fluid saturation measurements, core analysis, and lithologic log or sample description as compiled; provided, that no such additional information shall be required unless the well operator has compiled such information in the ordinary course of business. No interpretation of the data is required to be filed.

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

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

12.3 Restriction of New Application - Except for good cause shown, no application required by W. Va. Code §22B-1-6 may be filed for any work after the initial completion of a well unless all forms required by Section 12.2 have been completed and filed with the Division.

Section 13. Plugging, Abandonment and Reclamation

13.1 Notice and Application to Plug and Abandon; Time of Filing -

13.1.1.1 The Notice of intention to plug and abandon a well required by W. Va. Code §22B-1-23 shall conform to Section 5.2.3.

13.1.1.2 The well operator shall also submit copies of all logs in his possession upon specific request by the Director pursuant to W. Va. Code §22B-1-6(c)(10)(ii).

13.1.2 Completed Forms WW-4(A) and WW-4(B) shall in all cases be filed with the Division and delivered to the coal operator, owner or lessee in the manner and within the time limits set out in subsections (a), (b), and (c) of W. Va. Code §22B-1-23 for "notices" referred to therein.

13.1.3 The owner or operator of every well presumed to have been abandoned under the provisions of W. Va. Code §22B-1-19 shall file Form WW-4 within 60 days after such abandonment, unless the Division waives this requirement for good cause shown.

13.2 Work Order; Manner and Method of Plugging -

13.2.1 An applicant for a permit to plug a well shall set forth a detailed statement of the manner in which the work of plugging and filling such well is to be performed, including:

13.2.1.1 location (by depth),

13.2.1.2 kind and length of plugs to be used and the method chosen to insure that no gap exists between the bottom of the coal protection string of casing and the expanding cement plug thereunder,

13.2.1.3 plans for mudding, cementing, and filling,

13.2.1.4 plans for testing, and for shooting and removing casing, and

13.2.1.5 all other pertinent information regarding said plugging and filling, all of which shall be in compliance with W. Va. Code §22B-1-24. The information shall be submitted on Form WW-4(B), "Application to Plug and Abandon a Well".

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13.2.2 Any well operator proposing to plug or to clean out and replug a well in the manner specified by W. Va. Code §22B-1-24(c), shall furnish the alternate cost estimates for performing such well work in the manner specified by W. Va. Code §22B-1-24(d)(3) only in the event a coal operator, owner, or lessee has filed a Form IV-16, "Request by Coal Operator, Owner, or Lessee for Plugging under W. Va. Code §22B-4-10(d)".

13.3 "Verbal Permission" to Plug -

13.3.1 Verbal permission may be given pursuant to W. Va. Code §22B-1-33(c) in the event the well to be plugged and abandoned is one on which drilling or reworking operations have been continuously progressing pursuant to authorization granted by the Division. Any such verbal permission shall be given by the Director, or the supervising inspector, or any inspector who is available to supervise the plugging work. Unless such verbal approval is given by the Director, the well operator shall notify the Director's office by telephone of such verbal approval no later than the next regular working day.

13.3.2 Unless the well operator proposes to plug the well in a manner allowed by W. Va. Code §22B-1-24(d)(3), the well operator shall contact the coal operator or the coal owner or lessee who has filed a declaration under W. Va. Code §22B-1-36, so as to provide the coal owner, operator or lessee the best feasible opportunity to make a plugging request under Section 13.5.

13.4 Objections to Proposed Plugging - Objections to the proposed plugging of a well, whether by the Division or by any affected person, shall not be made except for violation or impending violation of the provisions of W. Va. Code §22B-1-23 or this regulation or of W. Va. Code §22B-1-24 or Section 15. The Director shall promptly rule on such objections at a hearing to be held after providing no less than five days' notice to the applicant and objectors.

13.5 Plugging Method Request by Coal Operator or Coal Seam Owner -

13.5.1 The request by a coal operator or coal seam owner made pursuant to W. Va. Code §22B-1-24(d), for a well to be plugged in any manner allowed by W. Va. Code §22B-1-24(d)(3) rather than by the method provided in W. Va. Code §22B-1-24(c), shall be made on Form IV-16, "Request by Coal Operator, Owner, or Lessee for Plugging under W. Va. Code §22B-1-24(d)".

13.5.2 The well operator or owner in his sole discretion may waive the provision in W. Va. Code §22B-1-24(d) that such request "must be filed in writing with the Division prior to the scheduled plugging of the well". In the event of such waiver, the cost of undoing any part of the plugging work in order to comply with the coal operator's or coal seam owner's request shall be treated as a part of the cost of complying.

13.5.3 The Division shall make findings and issue an order in accordance with W. Va. Code §22B-1-24(d)(2) by endorsement on or attachment to Form WW-4.

13.6 Statutory Affidavit - The affidavit required by W. Va. Code §22B-1-23 and Section 12.2 shall be made on Form IV-38, "Affidavit of Plugging and Filling Well". The affidavit shall be executed by at least two parties doing the actual work, whether they are employees of a service company or a plugging contractor, or of the well owner or well operator.

#### Section 14. Plugging Methods

14.1 Materials Used in Plugging - The non-porous materials and cements mentioned in W. Va. Code §22B-1-24 must be specified in the work order portion of Form WW-4(B), "Application to Plug and Abandon a Well". Materials and cements must be of a kind and quality accepted by the oil and gas industry and approved by the Division as suitable for the intended purpose and which otherwise comply with all provisions of law and accepted standards. The Director may approve use of non-standard material or cement.

#### 14.2 Cleaning Out and Replugging Application; Objections; Order -

14.2.1 Application pursuant to W. Va. Code §22B-1-24(e) to clean out and replug a previously plugged well shall be made by completed Form WW-4, "Notice of Intention and Application to Plug and Abandon a Well", and by the associated comments required by Section 13.1 to accompany Form WW-4.

14.2.2 Objections to a Form WW-4 application to clean out and replug a well, whether by the Division or by any affected person, shall not be made except for violation or impending violation of the provisions of W. Va. Code §22B-1-23 or Section 13 or of W. Va. Code §22B-1-24. If such an objection is filed or made, a hearing date shall be set and notice given by the Division by endorsement on the objection, mailed in accordance with

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W. Va. Code §22B-1-24(e). The endorsement shall indicate the date, time and location of the hearing, identifying the well by reference to the API number.

14.2.3 The Division's order permitting or rejecting such application shall be endorsed on the Form WW-4 application and shall be mailed to the parties indicated in the method provided by W. Va. Code §22B-1-24(e).

## Section 15. Reports

### 15.1 Annual Report of Oil and Gas Production -

15.1.1 An annual report of oil and gas production from each lease or tract shall be filed with the Director on or before the succeeding March 31. This report shall be on Form WR-39, "Report of Annual Production" or in such other form as the Director may approve. The report must identify and state the production from every oil and gas well not yet plugged and abandoned, regardless of the status of the well. The data shall be submitted by either the well operator or the well owner and shall be in the smallest units of measurement available, by well, lease or unit. Oil shall be measured in barrels, and gas shall be measured in thousand cubic feet.

15.1.2 Measurement of Oil - The volume of oil production shall be determined through the standard practices of common carriers in the State of West Virginia. The report on volume of oil shall be the same volume on which the royalty interest was determined and shall be of acceptable "pipeline quality".

### 15.1.3 Measurement of Gas -

15.1.3.1 If a meter has been set for each well, the gas production for each well shall be reported, with each well identified by API number or, if no API number exists, by the operator's well number.

15.1.3.2 If common or master meter measurement is in use, the production from each common or master meter shall be reported, and the wells subject to common measurement shall be identified by API well number or, if no API number exists, by the operator's well number, and the production estimated for each such well shall be reported if such estimates are made.

15.1.3.3 If calculated value is in use and no measurement of gas is available for an individual well or group of



wells, the calculated volume of gas production using accepted engineering methods shall be reported, and the wells so measured shall be identified by API well number or, if no API number exists, by the operator's well number, and the production estimate for each such well shall be reported if such estimates are made.

15.2 Accidents - If any explosion or other accident causing loss of life or serious personal injury occurs in or about a well or well work on a well, the well operator or his contractor shall give notice, stating the particulars of the explosion or accident, to the District Oil and Gas Inspector or the Director.

. Section 16. Reclamation

16.1 Reclamation under the Construction and Reclamation Plan -

16.1.1 A proposed reclamation method for construction of roads, drilling locations, and pits, if any, or alternative overflow prevention facilities, shall be submitted on Form WW-9 with the application for any permit required by W.Va. Code §22B-1-6, except a permit to plug a well. Such proposed reclamation methods shall be approved by the Director or his designate, prior to the issuance of the permit, all reclamation shall be done under the supervision of the Director. The reclamation may be altered from that set out in said Form WW-9, if found necessary, with the consent of the Director or his designate, due to topography or other conditions not apparent upon initial submission and approval of the proposed reclamation methods.

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

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

materials resulting therefrom shall be retained on the drilling site.

16.4 Pits - All drilling pits shall be constructed, maintained, and reclaimed in such a manner as to prevent seepage, leakage and overflow, to divert surface water from the pit, and to provide impervious materials for the pit lining if existing soil is not impervious. If an operator is unable to prevent overflow from any drilling pit, the District Inspector shall be notified by the well operator and additional drilling pits or alternative overflow facilities shall be constructed under the supervision of the Director to prevent said overflow. All drilling pits and alternative overflow prevention facilities shall be constructed, maintained and reclaimed so as not to be left in such condition as to constitute a hazard or to prevent use of the surface for agricultural purpose after the expiration of the six-month or extended period for reclamation prescribed by W. Va. Code §22B-1-30.

16.5 Surface and Underground Water Pollution -

16.5.1 Before commencing to drill any well for oil and gas, the well owner or operator shall make proper and adequate provision to prevent surface and underground water pollution.

16.5.2 When rotary drilling penetrates a formation known to contain substantial amounts of salt water, drilling will continue to the next casing point by drilling with mud, foaming, or other satisfactory method for the purpose of isolating the salt water in the formation or preventing the discharge of salt water per se into a fresh water horizon, or above the surface of the ground. In the case of foaming, it is recognized that a certain amount of salt water, mixed with cuttings, will be discharged above the surface of the ground which will be contained in sump pits no larger than necessary for this purpose.

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

16.7 Requirements for Production and Gathering Pipelines -

16.7.1 This rule prescribes the minimum requirements for the safe and efficient installation of all production and gathering pipelines installed, relocated or replaced after June 9, 1983, which are not regulated by United States Department of Transportation minimum safety standards applicable to pipelines.

16.7.2 The Director reserves the right to direct the burial of any line installed under this regulation to protect the public safety, by order issued after notice and hearing under Series 9.

16.7.3 Subject to the reservation in Section 16.7.2 of production and gathering lines subject to this rule shall conform with the following:

16.7.3.1 Lines shall be buried where practical and reasonable; and practical and reasonable shall be construed to mean lines should be buried in the following situations:

16.7.3.1.1 Where the line crosses agricultural land as defined in W. Va. Code §19-19-2;

16.7.3.2.3 Where an unburied line would prohibit use of a pre-existing private roadway or other means of access to a part or all of surface land;

16.7.3.1.3 Where the line cannot more practically and reasonably be securely suspended to cross stream beds;

16.7.3.1.4 Where the line crosses a public road, in which event it shall be buried and otherwise installed in accordance with the rules of the public agency having jurisdiction over the road; and

16.7.3.1.5 Where the Director decides prior to installation that burial would be practical and reasonable.

16.7.3.2 All buried lines shall be installed with a minimum of 18 inches of cover, except where solid rock is encountered, in which case the minimum cover shall be six inches;

16.7.3.3 Whenever a buried line crosses a pre-existing public or private roadway, the location of the line

shall be clearly marked at the point of crossing by an appropriate marker; and

16.7.3.4 A suitable conductive wire shall be installed with plastic pipe to facilitate locating it with an electronic pipe locator; provided, that any other suitable material or means for accomplishing this purpose may be employed.

16.7.4 Notwithstanding Section 16.7.3 of this rule, the surface owner(s) of record of any tract subject to the provisions of W. Va. Code §22B-1-30(d) shall have the right to prescribe that a pipeline or specified parts thereof need not be buried. The prescription shall be on Form WR-75, "Permission Not to Bury Production or Gathering Line", unless it is included in the recorded right-of-way or lease under which the pipeline is to be installed, which right-of-way or lease was granted by the then surface owner of record. Once executed and delivered to the person who proposes to install and operate the line, the prescription may not be revoked by any subsequent surface owner(s) of record.

16.7.5 This rule shall not be construed to prohibit a surface owner from preparing a safe crossing of a pipeline for a new means of access to another part of his tract.

#### Section 17. Preventing Waste

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

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

17.3 Protection of High Pressure Wells - On all wells where high pressure and large volumes can be reasonably expected,

properly working pressure blowout preventer equipment shall be used on the inner string of casing at all times. When the inner string of casing has been placed in the well and cemented in, said casing and blow-out equipment (both blind and pipe rams, or equivalent) shall be installed and tested by operation and pressure to a minimum pressure which is commensurate with the objective formation pressure before drilling is continued.

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

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

17.6 Drilling Deeper - Nothing in this rule shall be construed to prevent or discourage drilling deeper in search for oil or gas in any well.

#### 18. Variances

Upon request, or upon his own initiative, the Director may grant a variance from any other requirements of this Series upon a showing by an operator that alternative practices will satisfy the requirements of The West Virginia Energy Act and upon notice of such a request to the surface owners of record and any coal owner, operator or lessee.

PREAMBLE TO THE PROPOSED RULES  
OF THE DEPARTMENT OF ENERGY, DIVISION OF OIL AND GAS

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IV. Solicitation of Comments

I. LEGAL AUTHORITY

The regulations described in this notice are proposed under the authority of Chapters 22 and 22B of The West Virginia Energy Act.

II. BACKGROUND

On April 12, 1985, the West Virginia Legislature passed The West Virginia Energy Act making it effective 90 days from passage (July 11, 1985). The Act is codified at W.Va. Code §§22-1-1 through 22-13-3; 22A-1-1 through 22A-6-6; and 22B-1-1 through 22B-4-13 (1985 Repl. Vol.). In passing The West Virginia Energy Act, the Legislature found that there was need for the consolidation of regulatory power under a single department of state government to, among other things, achieve "more efficient administration, avoid unnecessary delays in permitting and other matters, provide better and more expeditious enforcement and

application of environmental and safety laws" with a view towards making the state's mineral development industry "more competitive with that in other energy producing states." W.Va. Code §22-1-2 (1985 Repl. Vol.).

In that Act, the Legislature found the public policy of the State to be:

(a) To foster, encourage and promote the exploration for and the development, production, utilization and conservation of coal, oil and gas and other mineral resources of the state through the fullest practical means, and at the same time promote economic development in the state, protect the environment and enhance safety and health in these vital industries;

(b) To provide a comprehensive program for the exploration, conservation, development protection, enjoyment, recovery and use of coal, oil and gas, and other mineral resources in this state;

(c) To aid in such a comprehensive program by creating a single department, designated the department of energy, to have the regulatory powers with respect to this industry and to have the general duties and responsibilities heretofore existing in the department of natural resources and department of mines, and that the department will perform such duties and functions in conjunction with the respective boards and commissions which are herein continued in effect;

(d) To expedite and facilitate the issuance of permits for mines, surface mining operations, oil and gas wells and other well work; to avoid conflicting permitting requirements and regulations in this state or with federal agencies; and to provide uniform policies with respect to this industry;

(e) To provide for a single agency of this state to implement requirements and programs of federal law affecting the exploration, development, production, recovery and

utilization of coal, oil and gas, and other mineral resources in this state;

(f) To provide for an agency of this state which can be consulted with by other agencies of this state prior to the adoption or implementation of rules, regulations, standards, programs or requirements affecting the exploration, development, production, recovery and utilization of coal, oil and gas, and other mineral resources in this state.

W.Va. Code §22-1-2 (1985 Repl. Vol.).

The West Virginia Energy Act vested exclusive jurisdiction in the Department of Energy over the issuance of regulations or any and all permits and other governmental authorizations required, or to be required, in all matters pertaining to the exploration, development, production, storage and recovery of coal, oil and gas and other mineral resources including all safety, conservation, land, water, waste disposal, reclamation and environmental regulations, permits and authorizations related to such activities as are called for pursuant to the following statutes:

W.Va. Code 20-5 (Water Resources)

W.Va. Code 20-5A (Water Pollution Control Act)

W.Va. Code 20-5D (Dam Control Act)

W.Va. Code 20-5F (Solid Waste Management Act)

The Department of Energy was specially designated to be the lead regulatory agency for West Virginia for purposes of federal legislation relating to such activities. In addition, the Department of Energy was empowered with the responsibility for



implementing certain provisions of the State Hazardous Waste Management Act, W.Va. Code 20-5E-1 through 23 (1985 Repl. Vol.).

Beyond these general requirements, Chapter 22B of The West Virginia Energy Act establishes a broad range of regulatory requirements impacting on the oil and gas industry and related matters. Many of the provisions in Chapter 22B were previously within the jurisdiction of the former Department of Mines. Other provisions were previously within the jurisdiction of the Department of Natural Resources. The regulations of other agencies are superseded, in part, as of July 11, 1985 (the effective date of the Energy Act) to the extent that those regulations conflict with the regulatory authority of the Department of Energy.

Under The West Virginia Energy Act, the Director of the Division of Oil and Gas is given the general power to propose or promulgate rules and regulations; however, the Director is obligated to submit his final action to the Commissioner of the Department of Energy for approval prior to the filing of any such regulations with the Legislative Rule-Making Review Committee.

There are several bases for the jurisdiction vested in the Department of Energy by The West Virginia Energy Act to implement the five designated environmental statutes identified above and found in Chapter 20 of the West Virginia Code. The Department's jurisdiction in this area is primarily established by W.Va. Code §22-1-16 (1985 Repl. Vol.).

Except as otherwise expressly provided in this chapter or in chapters twenty-two-a or twenty-two-b of this code, jurisdiction over the issuance of regulations, or any and all permits and other governmental authorizations required or to be required in all matters

pertaining to the exploration, development, production, storage and recovery of coal, oil and gas, and other mineral resources in this state, including all safety, conservation, land, water, waste disposal, reclamation and environmental regulations, permits and authorizations called for pursuant to articles five, five-a, five-d, and five-f, chapter twenty of this code, and the enforcement and implementation thereof is vested exclusively in the department of energy. The department of energy is hereby designated as the lead regulatory agency for this state for all purposes of federal legislation relating to such activities.

W.Va. Code §22-1-16. (1985 Repl. Vol.)

Additionally, the Department of Energy was empowered with the responsibility for implementing certain provisions of W.Va. Code §20-5E relating to the State Hazardous Waste Management Act.

W.Va. Code §20-5E-7(h) provides, in relevant part, that:

(h) To the extent that this article relates to activities with respect to oil and gas wells, liquid injection wells and waste disposal wells now regulated by articles four, four-b and seven, chapter twenty-two of this code, the administrator of the office of oil and gas and the shallow gas well review board has the jurisdiction with respect to the regulation of such activities and shall promulgate such rules and regulations as may be necessary to comply with the requirements of this article.

W.Va. Code §20-5E-7(h) (1985 Repl. Vol.).

Finally, other provisions of the West Virginia Energy Act clearly provide that specific activities are within the scope of jurisdiction of the Department of Energy.

The Department believes that each of the three previously mentioned bases of jurisdiction has a definite scope which authorizes regulation (through rules, permits, or other governmental authorizations), certain activities carried on in this

State. In order to better facilitate the understanding of the regulated community and the public, a more complete discussion of the scope of the Department's jurisdiction is set forth below.

"Exploration, Development, Production, Storage and Recovery" - In defining the scope of the jurisdiction of the Department of Energy, an interpretation of the phrase "exploration, development, production, storage and recovery of . . . oil and gas, and other mineral resources in this State" is essential. There appear to be two distinct sources for the phrase "exploration, development, production storage and recovery."

The terms "exploration, development, production" appear to have been taken from the State Hazardous Waste Management Act, W.Va. Code §20-5E-1 through 23 (1985 Repl. Vol.). That Act exempts from the coverage of its provisions, pending satisfactory completion of certain conditions precedent, "drilling fluids, produced waters and other wastes associated with the exploration, development or production of crude oil or natural gas or geothermal energy." W.Va. Code §20-5E-6(a)(2)(A) (iv) (1985 Repl. Vol.) (emphasis added). An analysis of the comparable federal provisions found in sections 3001(b)(2)(A) and 8002(m) of the Resource Conservation and Recovery Act, 42 U.S.C.S. §6901 et seq. (1982 & 1985 Cumm. Supp.) ["RCRA"] (after which the State provisions were obviously modeled) indicates, in addition to excluding drilling fluids and produced waters from regulation, that a specific universe of wastes was contemplated within the terms "other wastes associated with the exploration,

development or production of crude oil or natural gas or geothermal energy."

The term 'other wastes associated' is specifically included to designate waste materials intrinsically derived from the primary field operations associated with the exploration, development or production of crude oil, natural gas, or geothermal energy. It should cover such substances as: Hydrocarbon bearing soil in and around the related facilities; drill cuttings; materials (such as hydrocarbons, water, sand and emulsion) produced from a well in conjunction with crude oil, natural gas, or geothermal energy; and the accumulated material (such as hydrocarbon, water, sand and emulsion) from production separators, fluid testing vessels, storage vessels and production impoundments.

The phrase 'intrinsically derived from the primary field operations . . . ' is intended to differentiate exploration, development and production operations from transportation (from the point of custody transfer or of production separation and dehydration) and manufacturing operations.

H. Conf. Rep. No. 96-1444, 96th Cong., reprinted in 1980 U.S. Code Cong. & Ad. News 5019, 5031.

EPA has recently offered one possible interpretation of the scope of the terms "exploration, development or production of crude oil or natural gas or geothermal energy" in its draft sampling strategy for completion for the study required by section 8002(m) of RCRA. Office of Water Regulations and Standards-Industrial Technology Division, U.S.E.P.A., Oil and Gas Exploration, Development and Production - Sampling Strategy - Draft (May 5, 1986) [hereinafter "Draft Sampling Strategy"].

According to legislative history for the 1980 RCRA amendments, Congress intended to exempt only those waste streams associated with exploration, development, and production activities for oil and gas, and for

geothermal resources. Wastes generated from the transportation of oil, gas, or geothermal fluids, from natural gas processing, or from oil refining would not be considered to be within the scope of the exemption. Based on the legislative history, EPA interprets the exemption to include only those waste streams generated from exploration, development, and production of oil and geothermal resources.

Some of the waste streams include:

- drilling fluids
- well treatment fluids
- completion fluids
- workover fluids
- produced water
- produced sand
- tank bottom sludges

However for the oil and gas extraction industry, the exemption is not interpreted to include those wastes produced from pipelines (for example, from hydrostatic testing or from pipeline operations). Nor does the exemption include waste streams from gas processing facilities (for example, spent iron sponge).

#### Draft Sampling Strategy at 12.

EPA then went on to further elaborate on the scope of the terms "exploration and development" and "production."

Exploration and development activities for the extraction of oil and gas include work necessary to locate, drill, stimulate, and complete wells.

\* \* \*

Production activities include all post-completion work necessary to bring hydrocarbon reserves or geothermal fluids from the producing formation(s) to the point of transmission. These activities include basic oil/water/sediment separation, separation of gas liquids from natural gas, gas dehydration, pumping, collection, storage, and other production practices.

#### Draft Sampling Strategy at 13, 15.

The Division will interpret the terms "exploration, development, production" as conferring on it the jurisdiction to regulate the following sources related to activities carried forth pursuant to W.Va. Code §§20-5; 20-5A; 20-5D; and 20-5F:

1. The exploration, development and production of oil up to the point of custody transfer at the metering unit;

2. The exploration, development and production of gas up to the point of entry into the transmission line.

Additionally, the Energy Act also includes the terms "storage and recovery" in defining the agency's jurisdiction over these programs. This language clearly recognizes the Department of Energy's expressed authority to regulate the storage of gas in underground storage reservoirs and the subsequent operation of recovering the stored gas from the reservoir.

West Virginia Hazardous Waste Management Act - As previously noted, W.Va. Code §20-5E-7(h) vests regulatory jurisdiction over hazardous waste activities relating to oil and gas wells, liquid injection wells and waste disposal wells regulated, at that time, by the Administrator of the Office of Oil and Gas and the Shallow Gas-Well Review Board. Because The West Virginia Energy Act replaced the Administrator of the Office of Oil and Gas with the Director of the Division of Oil and Gas, the Director now has the regulatory authority formerly given to the Administrator by that provision. The Division interprets this language as conferring jurisdiction on it in the following areas:

1. Should it be necessary at some point in the future for "drilling fluids, produced waters and other wastes associated with the exploration, development or production of crude oil or natural gas or geothermal energy" to be regulated as a hazardous waste following action by U.S.EPA, and both houses of Congress, and declaration by the Governor [pursuant to W.Va. Code §20-5E-6(a)(2)(A)], it will be the responsibility of the Division to determine how such wastes will be identified or listed as hazardous waste and how such wastes will be managed;

2. To the extent that it is appropriate to regulate under the state Hazardous Waste Management Act any waste associated with the storage and recovery of gas, that regulation will be undertaken by the Division; and

3. Class I and Class IV wells under the State Underground Injection Control Program (Series 3 of these proposed rules) would be appropriately regulated by the Department of Energy, if such wells are related to the disposal of hazardous waste associated with the wastes described in paragraphs 1. and 2. above.

Other Specific Statutory Provisions Vesting Jurisdiction in the Department of Energy - Remaining terms of The West Virginia Energy Act also make it clear that the following activities, among others, are within the scope of jurisdiction of the Division:

1. Transportation of Oils, W.Va. Code §22B-3;
2. Underground Gas Storage Reservoirs, W.Va. Code §22B-4.

### III. PROPOSED RULES

#### A. Series 1 - Oil and Gas Wells and Other Wells

This series is based upon regulations of the former Department of Mines relating to this topic. The previous regulations have been edited to the extent necessary to reflect the enactment of The West Virginia Energy Act which, among other things, repealed W.Va. Code §22-4 and enacted new articles. Thus, cross-reference have been updated, as well as authority sections. Textual revisions have been made, where appropriate, to create consistency and clarity in the use of language, particularly where technical criteria are defined. Regulations governing hearing and appeal procedures, formerly found in Series 1 of the Department of Mines regulation, have been deleted from this proposed Series 1 and are now contained in the proposed Series 9 rules, Hearing and Appeal Procedures.

In addition to these technical and editing changes, the proposed Series 1 differs from the previous rule in two principal areas.

Section 5, among other things, details requirements related to the designation of operator agents for service of process and notice to the Director of ownership and transfer of title by well owners. The proposed rule provides for designation of agents of operators for purposes of service of process, and requires notice of each change of well ownership and designation of an agent by the transferee operator. The rule encourages designation of a successor agent as an integral part of any well



transfer transaction by providing that the bond furnished by the transferor will not be released until designation of a successor agent for service has been made by the new owner.

Section 10 pertains to the furnishing of bonds with a corporate surety, cash or alternative collateral security required pursuant to The West Virginia Energy Act. The section now addresses the sufficiency of bonds furnished prior to July 11, 1985, in certain cases, and making provisions for additional surety or security with applications where single well or blanket bonds in effect do not meet current requirements and new work is proposed.

In Section 15.1.1 the Division proposes to allow the annual report of oil and gas production to be filed on a report form or in any other form authorized by the Director. This change should facilitate the use of electronic data transfer where the operator has that capability.

Section 16.5.2 is proposed to be changed by deleting the absolute prohibition against the discharge of salt water into fresh water. This change is necessitated by the development of discharge permits which regulate this discharge in a way that assures compliance with technology based and water quality based criteria.

Finally, the Division proposes to add a new section that would allow the Director to address site specific circumstances by deviating from generally applicable requirements in certain cases.

B. Series 2 - Certification of Gas Wells

The Natural Gas Policy Act of 1978, 15 U.S.C.S. §3301 et seq. (1982), was signed into law on November 9, 1978. Pursuant to the provisions of that statute and the regulations promulgated by the Federal Energy Regulatory Commission, various states are permitted to make findings as to certain classes of natural gas wells located within the state. As successor to the former Office of Oil and Gas of the Department of Mines, the Division of Oil and Gas has been authorized to act as the jurisdictional agency for the State to implement the requirements of the Natural Gas Policy Act of 1978.

Series 2 governs and applies to proceedings under W.Va. Code §22B-1-2(c) (11) (1985 Repl. Vol.) concerning gas wells and implementation of the Natural Gas Policy Act of 1978 and pertinent federal regulations.

The proposed Series 2 is based upon a regulation of the former Department of Mines. Series 2 has been edited to the extent necessary to reflect the enactment of The West Virginia Energy Act. This editing of former Part II (now proposed Series 2) required renumbering of sections. In this connection, the former Regulation 36 has been combined with the former Regulations 14 and 24 of Part I and included in Series 4 of these proposed rules.

C. Series 3 - Underground Injection Control

Title XIV of the Public Health Service Act, known commonly as the Safe Drinking Water Act, 42 U.S.C.S. §300f et seq. (1982), requires, among other things, that the EPA

Administrator issue regulations establishing minimum requirements for the regulation of the injection of fluids in order to protect underground sources of drinking water. The Safe Drinking Water Act provides further that states may develop programs known as State Underground Injection Control ["UIC"] Programs based on federally established regulations. If a state program is judged to be "as stringent as" the federal program, a state may obtain primacy for that program and become responsible for its subsequent implementation and enforcement.

In West Virginia, prior to 1985, the State Water Resources Board served as the sole authority for the promulgation of rules and regulations for the control of the State UIC program. West Virginia received delegation of the federal UIC program, effective January 9, 1984. 48 Fed. Reg. 55127 (Dec. 9, 1983). The current version of the Water Resources Board's UIC regulations were filed as emergency regulations on January 6, 1986. Those regulations list as authority for their promulgation, W.Va. Code §20-5A-3(b)(2), which refers generally to the power and authority of that Board to adopt regulations for the prevention, control, and abatement of pollution and to facilitate the State's participation in the National Pollutant Discharge Elimination System under the federal Clean Water Act. Authority for the Department of Natural Resources to issue permits for underground injection wells can be found in W.Va. Code §20-5A-5(b)(7), which provides, in pertinent part, that:

(b) It shall be unlawful for any person, unless he holds a permit therefor from the department, which is in full force and effect, to:

\* \* \*

(7) Operate any disposal well for the injection or reinjection underground of any industrial wastes, including, but not limited to, liquids or gases, or convert any well into such a disposal well or plug or abandon any such disposal well.

W.Va. Code §20-5A-5(b)(7) (1985 Repl. Vol.).

The sole authority of the State Water Resources Board to promulgate regulations and of the Department of Natural Resources to issue permits concerning the underground injection into wells of wastes associated with the exploration, development, production, storage and recovery of oil and gas and related minerals was superceded by the passage of The West Virginia Energy Act. The Energy Act has, as one of its declared purposes:

(e) To provide for a single agency of this state to implement requirements of programs of federal law affecting the exploration, development, production, recovery and utilization of coal, oil and gas, and other mineral resources in this state. . . .

W.Va. Code §22-1-2(e) (1985 Repl. Vol.).

The Department of Energy is to play a lead role in the new regulatory scheme. This is clearly contemplated by W.Va. Code §22-1-6, which provides, in pertinent part, as follows:

Except as otherwise expressly provided in this chapter or in chapters twenty-two-a or twenty-two-b of this code, jurisdiction over the issuance of regulations, or any and all permits and other governmental authorizations required or to be required in all matters pertaining to the exploration, development, production, storage and recovery of coal, oil and gas, and other mineral resources in this state including all safety, conservation, land, water, waste disposal, reclamation and environmental regulations, permits and authorizations of such activities called for pursuant to articles five, five-a, five-d,

and five-f, chapter 20 of this code, and the enforcement and implementation thereof is vested exclusively in the Department of Energy. The Department of Energy is hereby designated as the lead regulatory agency for this state for all purposes of federal legislation relating to such activities.

W.Va. Code §22-1-16 (1985 Repl. Vol.) (emphasis added).

The assumption of the State UIC program by the Department of Energy's Division of Oil and Gas is specifically supported by several statutory provisions found in Chapter 22B of the Energy Act. The Director of the Division of Oil and Gas is required to adopt rules and regulations to assure that the regulations, permits and authorizations issued by the Director are adequate to satisfy the purposes of the Energy Act, particularly with respect to the consolidation of the various state and federal programs which place permitting requirements on the exploration, development, production, storage and recovery of the state's oil and gas. W.Va. Code §22B-1-2(c)(16) (1985 Repl. Vol.).

Additionally, the Director is required to perform such acts as may be necessary or appropriate to secure to the state the benefits of federal legislation establishing programs relating to the exploration, development, production, storage, and recovery of the state's oil and gas, which programs are assumable by the state. W.Va. Code §22B-1-2(c)(17) (1985 Repl. Vol.).

Finally, as it relates to any person conducting activities which are subject to the jurisdiction of the Division of Oil and Gas, the Director is empowered to issue water pollution control permits for the operation of any disposal well for the

injection or reinjection underground of any pollutant, including, but not limited to, liquids or gases, or convert any well into such a disposal well or plug or abandon any such disposal well. W.Va. Code §22B-1-7(b)(6) (1985 Repl. Vol.).

Specific provisions on the drilling of wells for the introduction of liquids to recover oil or for the introduction of liquids for the disposal of pollutants or effluent therefrom and for converting any existing well for such purposes are found in W.Va. Code §22B-1-14 (1985 Repl. Vol.). This section requires the issuance of a permit to drill or convert such wells contingent upon compliance with all of the bonding provisions found in W.Va. Code §22B-1-12 (1985 Repl. Vol.). The well operator additionally must provide a plat prepared by a registered engineer or licensed land surveyor indicating certain statutorily required information. When a well is proposed to be drilled or converted for the purpose, as provided for in W.Va. Code §22B-1-14, and the wells are located above a seam of coal, certain other limitations apply. These limitations are set forth in W.Va. Code §22B-1-16 (1985 Repl. Vol.).

Additional authority for the regulation by the Department of Energy of underground injection wells which inject hazardous waste from oil and gas activities may be found in the State Hazardous Waste Management Act, W.Va. Code §20-5E-1 et seq. (1985 Repl. Vol.). W.Va. Code §20-5E-7(h) provides, in pertinent part, as follows:

(h) To the extent that this article relates to activities with respect to oil and gas wells, liquid injection wells and waste disposal wells now regulated by articles

four, four-b and seven [§§22-4-1 et seq.; repealed; 22-4B-1 et seq.; repealed; 22-7-1 et. seq.; repealed], chapter twenty-two of this code, the administrator of the office of oil and gas and the shallow gas-well review board has the jurisdiction with respect to the regulation of such activities and shall promulgate such rules and regulations as may be necessary to comply with the requirements of this article.

The Department of Energy interprets this language as vesting jurisdiction in itself to regulate those wells which inject hazardous waste from facilities relating to the "exploration, development, production, storage and recovery of coal, oil and gas and other mineral resources." A more detailed explanation of this phrase, which defines the scope of the Department of Energy's regulatory jurisdiction in W.Va. Code §22-1-16 (1985 Repl. Vol.), is found in Part II of this Preamble.

It is clear from a review of the previously cited statutory authority that the Division has authority to regulate the great majority of underground injection wells that are presently classified under the existing Series IX regulations of the State Water Resources Board to the extent that those wells, are related to the "exploration, development, production, storage and recovery" of oil and gas and other mineral resources in this State. Under the system of classification used by the Water Resources Board, injection wells are categorized into five classes of wells. These detailed classifications are presently found in Section 4, Series IX of the Board's regulations. An examination of the descriptions of the underground injection wells covered by the State program at the present time indicates

that the great majority of wells in those categories effect the exploration, development, production, storage and recovery of oil and gas and other mineral resources in West Virginia. Under this classification system, it is clear that all Class II and Class III wells fall into this category. Additionally, certain injection wells described in Class I also fall within this description, most specifically those injection wells described in subsections 4.5.b, 4.5.d, 4.5.f, 4.5.g, 4.5.h, and 4.5.j. Finally, those wells in Classes I and IV which inject hazardous waste from mineral resource facilities and those wells in Class V related to mineral resource facilities would also fall under the jurisdiction of the Department of Energy. In short, those wells remaining within the clear jurisdiction of the Department of Natural Resources (DNR) and the Water Resources Board (WRB) would only be a very narrow portion of Class I, IV and V wells unrelated to the exploration, development, production, storage and recovery of oil and gas and other mineral resources in the State. Even those wells that would remain within the jurisdiction of DNR and WRB would be required to obtain permits from DOE under other authority.

The United States Environmental Protection Agency has promulgated regulations on state underground injection control program requirements in 40 C.F.R. Part 145, which relate to the assumption of primacy by states of the underground injection control program. Under the provisions of these regulations, the Agency does not require that authority for state programs reside in a single agency. However, 40 C.F.R. §145.23(b) provides that



if more than one agency is responsible for the administration of the UIC program, each agency must have statewide jurisdiction over a class of activities. The responsibilities of each agency must be delineated, their procedures for coordination set forth, and an agency may be designated as a "lead agency" to facilitate communications between EPA and the various state agencies having program responsibilities. Any state seeking to administer the UIC program must submit a Memorandum of Agreement to EPA for approval. 40 C.F.R. §145.25. The West Virginia Energy Act designates the Department of Energy to be the "lead agency" in the formation and implementation of the State Underground Injection Control Program. Accordingly, these proposed regulations constitute the first step in the assumption of that role. The proposed regulations reflect the adoption of a regulatory scheme for the control of underground injection wells designed to maintain primacy. The concept of incorporation by reference has been used throughout the regulations as a mechanism to assure a more efficient and simple program, from the viewpoint of the regulated community, the Division of Oil and Gas and the public at large. Where provisions are different from, or in addition to, the federal program have been deemed desirable, those provisions have been included in the proposed rule.

The proposed UIC regulations generally incorporate by reference federal language or set forth separately language of the existing UIC regulations of the Water Resources Board where no comparable federal language exists. In two instances, however, language is being proposed by the Director which has no

counterpart in either the federal or Water Resources Board UIC regulations.

First, proposed section 17.4.6 provides that only one permit shall be issued for the construction and operation of any underground injection well covered by the Department of Energy's regulations. Operation of the well shall be conditioned only upon a subsequent mechanical integrity test. This provision was included in the proposed regulations to make it clear that issuance of the UIC permit constitutes approval to commence operation of the well, subject only to acceptable results as a mechanical integrity test.

Second, proposed section 17.4.7 provides that injection pressures at levels up to 90% of the fracture pressure of the injection zone will be allowed in the operation of the well. Injection at pressures in excess of 90% may be approved at the Director's discretion on a case-by-case demonstration by the applicant.

D. Series 4 - State National Pollutant Discharge  
Elimination System (NPDES)

This series governs the State National Pollutant Discharge Elimination System (NPDES) Program for all facilities and activities affecting the exploration, development, production, storage and recovery of oil and gas, and related mineral resources for point source discharges to surface waters of the State. It is recognized that the Director of the Division of Oil and Gas also has authority to issue other types of water pollution control permits pursuant to W.Va. Code §22B-1-7. These

Series 4 regulations, however, deal with NPDES requirements necessary for the delegation of that program from EPA to the Division of Oil and Gas as outlined in 40 C.F.R. Part 123.

Similar NPDES regulations of the State Water Resources Board were continued in effect by The West Virginia Energy Act until the Division promulgated superseding regulations. These proposed regulations are part of the transition from the Division of Water Resources of the Department of Natural Resources to the Division of Oil and Gas of the Department of Energy for purposes of permit issuance.

The NPDES program implements provisions of the federal Clean Water Act. In order to administer and enforce that program in lieu of EPA, it is necessary that the Division of Oil and Gas promulgate regulations which must be approved by EPA to delegate the program to West Virginia for these point sources.

The proposed regulations essentially incorporate by reference all of the EPA regulations which are necessary to achieve delegation of the NPDES program for the oil and gas industry. Some provisions, which are fully set out in the text of the proposed regulations, differ from the federal regulations or are in addition to those federal regulations, where state law requires deviations. Also, some additional provisions have been included which increase the flexibility of the Director in administering the permit program to take account of fact-specific cases or to deal with areas of regulatory control or permit conditions which have no counterpart EPA regulations, but which

serve to improve the State program. Set forth below are significant features of the proposed regulations.

1. Continuation of expiring permits - The provisions of Section 3.2.4 are modeled on the Water Resources Board rules and W.Va. Code §20-5A-7 which statutorily limits the amount of time a permit can be extended.
2. Confidentiality - EPA has extensive confidentiality regulations in 40 C.F.R. Part 2; however, the Division's proposed rules in Section 3.3 are simple, brief and tied to our State Freedom of Information Act which protects trade secrets. EPA does not at present require adoption of its 40 C.F.R. Part 2 rules for program delegation. The Division's proposed confidentiality rule is similar to that of the Water Resources Board.
3. Separate storm sewers - The existing storm water provisions of the Water Resources Board have been used in these proposed rules in Section 4.3. U.S. EPA's rules are currently in litigation and may well change. The Division will review this requirement in the future when U.S. EPA's rule becomes more certain.
4. Inspection and entry - These provisions in Section 5.3 are more limited than EPA's to conform the rules to state law, W.Va. Code §20-5A-3(d). See 40 C.F.R. §122.41(i).
5. Analytical variability - Sections 5.5 and 6.6.1 recognize the obligation of the permittee to certify as accurate test results which inherently contain analytical variability.

The proposed rule sets forth a mechanism to take this into account in the Division's regulatory program.

6. Real time water quality control - Section 6.2.1 recognizes the control technique of flow management to meet water quality criteria and sets out rules by which toxicity testing and limits may be imposed. The Division's provision includes additional requirements establishing when toxicity testing may be imposed and when water-quality based limits should be imposed. These new provisions are consistent with U.S. EPA's policy on water-quality based permit limits for toxicity pollutants (47 Fed. Reg. 9016-19, Mar. 9, 1984) which recognizes the need for a threshold test on toxicity monitoring and points out that the primary focus of toxicity monitoring should be the protection of the receiving stream.
7. Schedules of compliance - The proposed rules in Section 6.5.1 specifically refer to W.Va. Code §20-5A-7 which deals with when phased abatement may be allowed under state law. This authority is in addition to the provisions incorporated by reference in 40 C.F.R. 122.47.
8. Issuance and effective date of permit - Section 8.11 is in conformity with EPA rules establishing the effective date of a permit but would also allow an earlier effective date if the permittee so requests (less than 30 days).
9. Emergency permit modifications and temporary permits - Section 8.21 provides for an emergency or temporary permit (up to 6 months) and would allow them to be issued for experimental practices. These new provisions would enhance

the Director's regulatory flexibility and allow limited duration permits for special needs.

E. Series 5 - Special Water Pollution Control

This series consists of a number of miscellaneous regulations which relate to the control of water pollution. Initially, the subject matter for each section was derived from counterpart regulations of the State Water Resources Board.

Section 3 of the proposed regulations contains requirements for reporting certain spills and accidental discharges to waters of the State from facilities operated in connection with the exploration, development, production, storage and recovery of oil and gas and related mineral resources in this State. This section requires reporting in three different instances:

(1) Where reporting is required under Section 311 of the federal Clean Water Act;

(2) Where effluent limitations established in any oil and gas general permits are exceeded as a result of an upset or bypass;

(3) Where a pit fails and the result is a discharge to a surface water of the state.

The report is initially made by telephone. A written verification of the report is to be submitted if requested by the Director of the Division of Oil and Gas.

Section 4 sets forth the procedure for determining wasteload allocations for discharges of sewage and other wastes from facilities operated in connection with the exploration,

development, production, storage and recovery of oil and gas and related mineral resources.

Section 5 applies to sewage treatment plants with capacities of 40,000 gallons per day or less which are operated in connection with the exploration, development, production, storage and recovery of oil and gas and related mineral resources.

Section 6 establishes filing fees for permits issued pursuant to W.Va. Code §22B-1-7, including the registration of wells pursuant to the oil and gas general permit for drilling fluids issued by the Division. The \$50.00 fee applies to initial submittals of site specific permit applications only.

F. Series 6 - Dam Control

The Energy Act empowers the Division of Oil and Gas to establish regulatory requirements with respect to the Dam Control Act, W.Va. Code §§20-5D-1 through 14 (1985 Repl. Vol.), to the extent that those requirements pertain to the exploration, development, production, storage and recovery of oil and gas and related mineral resources in this State. Accordingly, Series 6 is made expressly applicable to these activities and the regulations of the Department of Natural Resources related to dam control are superceded to the extent that they apply to these sources.

The substantive regulatory requirements which are being proposed are identical to the substantive regulations of the Department of Natural Resources relating to dam control. Certain

changes have been made to streamline the regulations and to conform the regulatory authority to that of the Division of Oil and Gas.

E. Series 7 - Solid Waste Management

The Energy Act also vests exclusive jurisdiction in the Department of Energy with respect to the regulation of the exploration, development, production, storage and recovery of oil and gas and related mineral resources in the State pursuant to the Solid Waste Management Act, W.Va. Code §§20-5F-1 through 8 (1985 Repl. Vol.).

In proposed Series 7, the applicability of the regulation is limited to those activities involving exploration, development, production, storage and recovery of oil and gas and related mineral resources in the State. To the extent that the regulations of the Department of Natural Resources relate to these activities, their rules are superceded.

The Division of Oil and Gas has proposed the establishment of a permit by rule, to the extent that a solid waste facility complies with the regulatory and permitting requirements of Series 1 of these proposed regulations wherein the Division already takes into account the disposal of solid waste. In those cases in which a facility would not be subject to the permitting requirements of Series 1, the proposed regulations call for a specific permit to be issued by the Division upon application and in accordance with such reasonable terms and conditions as may be prescribed by the Director of the Division. In issuing the



permit, the Division would also be bound to assure compliance with the requirements of the State Solid Waste Management Act.

F. Series 8 - Hazardous Waste Management

Under the terms of the Energy Act, the Department of Energy is authorized to exercise all power and duties vested in the Administrator of the Office of Oil and Gas and the Shallow Gas Well Review Board pursuant to W.Va. Code §20-5E-7(h). That section reads, in pertinent part, as follows:

(h) To the extent that this article relates to activities with respect to oil and gas wells, liquid injection wells and waste disposal wells now regulated by [W.Va. Code §§22B-1-1 et seq.; 22-7-1 et seq. and 22B-4-1 et seq.] the [Department of Energy] has the jurisdiction with respect to the regulation of such activities and shall promulgate such rules and regulations as may be necessary to comply with the requirements of this article  
. . . .

The Division of Oil and Gas interprets this provision as placing on it the obligation to regulate all hazardous waste activities involving the injection of such wastes into wells to the extent that such wastes are associated with the exploration, development, production, storage and recovery of oil and gas and related mineral resources of this State. A more detailed explanation of the scope of the Department of Energy's regulatory jurisdiction can be found in Part II of this Preamble. Accordingly, Series 8 includes a permit by rule which authorizes a hazardous waste permit for facilities which receive hazardous waste exclusively from oil and gas operations where those

facilities have underground injection control permits issued by the Division and otherwise comply with the regulatory permitting requirements of Series 1 of these proposed rules. Facilities receiving hazardous waste from activities other than oil and gas operations must obtain such additional authorizations from DNR and other agencies as may be required by law.

In addition, the Division of Oil and Gas interprets the State Hazardous Waste Management Act to place on it the responsibility to regulate those waste materials that are associated with the exploration, development or production of crude oil or natural gas or geothermal energy which are currently exempt from regulation as hazardous waste pursuant to W.Va. Code 20-5E-6(a)(2)(A) (1985 Repl. Vol.). Accordingly, the Division proposes to adopt a regulation exempting such wastes from regulation as hazardous waste. These wastes will be subject only to other applicable provisions of federal or state law in lieu of their regulation as hazardous waste until such time as the United States Environmental Protection Agency completes its study of these wastes mandated pursuant to Section 8002 of RCRA and promulgates regulations with respect to such wastes and that the regulation of such waste has been authorized by an act of Congress in accordance with §3001(b)(2) of RCRA. At the time the Governor issues a proclamation finding that at least 6 months have elapsed since the satisfaction of these requirements as required by State law, the Division will undertake whatever regulatory action would be necessary to discharge its responsibilities under the State Hazardous Waste Management Act.

G. . Series 9 - Hearing and Appeal Procedures

The provisions of Series 9 govern and apply to all hearings before the Division of Oil and Gas under the provisions of W.Va. Code §22B-1 and the Natural Gas Policy Act of 1978. Series 9 is a procedural rule which consolidates the hearing and appeal procedures contained in various provisions of the rules of the former Department of Mines.

H. Series 10 - Requests for Information

Series 10 of the proposed regulations is a procedural regulation setting forth the Division's policy on disclosure of information pursuant to the State Freedom of Information Act (W.Va. Code §29B-1-1 et seq. (1980 & 1985 Cum. Supp.)).

IV. Solicitation of Comments

The Division of Oil and Gas invites public participation in this rulemaking and requests comments on the proposed rules discussed in this notice. The Agency asks that comments be as specific as possible and that suggested revisions or corrections be supported by data. Comments should identify the section number of the proposed rules to which they are directed.

WEST VIRGINIA LEGISLATIVE RULE  
DEPARTMENT OF ENERGY  
DIVISION OF OIL AND GAS  
CHAPTERS 22-1 and 22B-1  
SERIES 1

FILED IN THE OFFICE OF  
THE SECRETARY OF STATE

THIS DATE May 14, 1986  
ADMINISTRATIVE LAW DIVISION

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Department of Energy  
Division of Oil and Gas  
Leg. Rule, 22-1 and 22B-1  
Series 1

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Department of Energy  
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DEPARTMENT OF ENERGY  
DIVISION OF OIL AND GAS

FILED  
1986 MAY 14 PM 1:45  
DEPARTMENT OF ENERGY  
DIVISION OF OIL AND GAS  
STATE OF WEST VIRGINIA

NOTICE OF PUBLIC HEARING  
AND COMMENT PERIOD ON PROPOSED RULES

SUMMARY: The Department of Energy, Division of Oil and Gas proposes to promulgate legislative and procedural rules to satisfy the requirements of The West Virginia Energy Act applicable to the responsibilities of the Division of Oil and Gas. The regulations being proposed have as their objective the full implementation of the statutory responsibilities imposed by The West Virginia Energy Act on the Division of Oil and Gas.

After considering comments received in response to this proposal, the Division of Oil and Gas will revise the proposed rules and submit them to the Commissioner of the Department of Energy for his review. Subsequently, the rules will be submitted to the Legislative Rule-Making Review Committee prior to presentation to the Legislature.

PUBLIC HEARING: The Department of Energy, Division of Oil and Gas will hold a public hearing on these proposed rules on July 1, 1986, at 10:00 a.m. The public hearing will be held in the South Briefing Room, Cultural Center, State Capitol Complex, Charleston, West Virginia. Requests to participate in the public hearing should be filed with Roger T. Hall, Department of Energy, 1615 Washington Street, East, Charleston, West Virginia, 25311 on or before June 24, 1986. Priority for oral presentations will be



given to those persons who have filed a timely request to make an oral presentation. The Division cannot guarantee an opportunity to speak to persons who have not made such a timely request. The hearing will begin at 10:00 a.m. Registration for speakers and attendees will begin at 9:30 a.m. Oral and written statements may be submitted at the public hearings. Speakers will be restricted to 20 minutes.

WRITTEN COMMENTS: The Department of Energy, Division of Oil and Gas will accept and consider written public comments on these proposals which are received at its offices in Charleston on or before 4:30 p.m. on July 8, 1986. Send comments to Roger T. Hall, Department of Energy, 1615 Washington Street, East, Charleston, West Virginia 25311. The Agency asks that comments be as specific as possible and that suggested revisions or corrections be supported by data where appropriate. All comments should identify the section number of the proposed rules to which they are directed.

All comments on this proposal will be available for inspection and copying at the Department of Energy, Division of Oil and Gas, 1615 Washington Street, East, Charleston, West Virginia 25311. A reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: Questions regarding this notice and the proposed rules should be addressed to Roger T. Hall, at (304) 348-3500.



STATE OF WEST VIRGINIA  
DEPARTMENT OF ENERGY

ARCH A. MOORE, JR.  
Governor

August 15, 1986

DOE/DO&G-0189

Honorable Ken Hechler  
Secretary of State  
State Capitol Building  
Charleston, West Virginia 25305

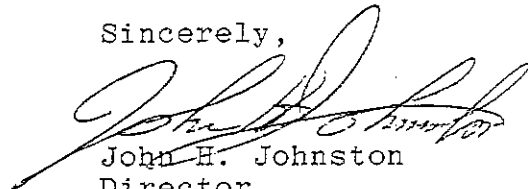
Dear Secretary Hechler:

Please find enclosed one copy of proposed legislative rules for the West Virginia Department of Energy to be recorded and filed with your office. This submittal includes:

- (a) The Agency Approved Rule
- (b) Fiscal Note
- (c) Statement of Agency Approval
- (d) Statement of Submission to the Legislative Rule-Making Committee
- (e) Public Hearing Notice
  - 1) Attendees
  - 2) Transcript of Hearing
  - 3) Comments
  - 4) Response to Comments

I respectfully request that these documents be appropriately processed by your office. If you have any questions regarding this matter, please feel free to contact me at 348-3741, 3742, 3743 or 3744.

Sincerely,

  
John H. Johnston  
Director  
Division of Oil and Gas

JHJ:las

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1986 AUG 11 PM 2:22  
OFFICE OF THE SECRETARY OF STATE

FILED

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U.S. DEPT. OF JUSTICE  
SECRETARY OF STATE

FISCAL NOTE

# FISCAL NOTE FOR PROPOSED RULES

Rule Title: West Virginia Legislative Rules, Department of Energy,  
Division of Oil and Gas, Chapters 22-1 and 22B-1, Series 1-10

Type of Rule: X Legislative        Interpretive        Procedural

Agency: WV Department of Energy Address: 322 70th Street, S.E.  
Division of Oil and Gas Charleston, WV 25304

1. Effect of Proposed Rule	ANNUAL		FISCAL YEAR		
	Increase	Decrease	Current	Next	Thereafter
Estimated Total Cost	\$ -0-	\$ -0-	\$ -0-	\$ -0-	\$ -0-
Personal Services	\$ -0-	\$ -0-	\$ -0-	\$ -0-	\$ -0-
Current Expense	\$ -0-	\$ -0-	\$ -0-	\$ -0-	\$ -0-
Repairs and Alterations	\$ -0-	\$ -0-	\$ -0-	\$ -0-	\$ -0-
Equipment	\$ -0-	\$ -0-	\$ -0-	\$ -0-	\$ -0-
Other	\$ -0-	\$ -0-	\$ -0-	\$ -0-	\$ -0-

2. Explanation of above estimates.  
 No anticipated economic impact.

3. Objectives of these rules:  
 See attached preamble.

4. Explanation of Overall Economic Impact of Proposed Rule.

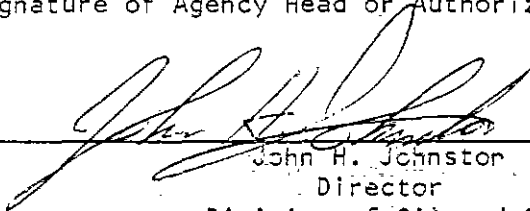
A. Economic Impact on State Government.

B. Economic Impact on Political Subdivisions; specific Industries;  
Specific groups of citizens.

C. Economic Impact on Citizens/Public at Large.

Date August 15, 1986

Signature of Agency Head or Authorized Representative

  
\_\_\_\_\_  
John H. Johnston  
Director  
Division of Oil and Gas

STATEMENT OF SUBMISSION  
TO THE  
LEGISLATIVE RULE-MAKING COMMITTEE



STATE OF WEST VIRGINIA  
DEPARTMENT OF ENERGY

August 15, 1986

ARCH A. MOORE, JR.  
Governor

DOE/DO&G-0190

Senator Ralph D. Williams  
Co-Chairman  
Legislative Rule-Making Review Committee  
Room E-228, State Capitol  
Charleston, West Virginia 25305

Dear Senator Williams:

Please find enclosed fifteen copies of the package filed with the Secretary of State and fifteen copies of the completed LRMRC questionnaire of proposed legislative rules for the West Virginia Department of Energy. This submittal includes:

- (a) The Agency Approved Rule
- (b) Fiscal Note
- (c) Statement of Agency Approval
- (d) Statement of Submission to the Legislative Rule-Making Committee
- (e) Public Hearing Notice
  - 1) Attendees
  - 2) Transcript of Hearing
  - 3) Comments
  - 4) Response to Comments

I respectfully request that these documents be appropriately processed by your office. If you have any questions regarding this matter, please feel free to contact me at 348-3741, 3742, 3743 or 3744.

Sincerely,

A handwritten signature in dark ink, appearing to read "John H. Johnston".

John H. Johnston  
Director  
Division of Oil and Gas

JHJ:las

Encls. (as stated)

DATE: August 15, 1986

TO: LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

FROM: John H. Johnston, Director - Oil and Gas Division

LEGISLATIVE RULE TITLE:

1. Authorizing statute(s) citation Chapter 22 and 22B  
of the West Virginia Energy Act

2. a. Date filed in State Register with Notice of Hearing:

May 14, 1986

b. What other notice, including advertising, did you  
give of the hearing?

List attached

c. Date of hearing (s): July 1, 1986

d. Attach list of persons who appeared at hearing, comments  
received, amendments, reasons for amendments.

Attached X

No comments received

e. Date you filed in State Register the agency approved  
proposed Legislative Rule following public hearing:  
(be exact)

August 15, 1986

f. Name and phone number of agency person to contact  
for additional information:

John H. Johnston, Director Oil and Gas Division

348-3741, 3741, 3743 and 3744



3. If the statute under which you promulgated the submitted rules requires certain findings and determinations to be made as a condition precedent to their promulgation:

a. Give the date upon which you filed in the State Register a notice of the time and place of a hearing for the taking of evidence and a general description of the issues to be decided.

N/A

N/A

b. Date of hearing: N/A

c. On what date did you file in the State Register the findings and determinations required together with the reasons therefor?

N/A

d. Attach findings and determinations and reasons:

Attached N/A

PUBLIC HEARING NOTICE

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COPY  
DEPARTMENT OF ENERGY  
The Capitol Center  
Capitol Complex  
Charleston, West Virginia 25303  
5-30-86

DEPARTMENT OF ENERGY  
DIVISION OF OIL AND GAS

MAY 22 1986

NOTICE OF PUBLIC HEARING  
AND COMMENT PERIOD ON PROPOSED RULES

SUMMARY: The Department of Energy, Division of Oil and Gas proposes to promulgate legislative and procedural rules to satisfy the requirements of The West Virginia Energy Act applicable to the responsibilities of the Division of Oil and Gas. The regulations being proposed have as their objective the full implementation of the statutory responsibilities imposed by The West Virginia Energy Act on the Division of Oil and Gas.

After considering comments received in response to this proposal, the Division of Oil and Gas will revise the proposed rules and submit them to the Commissioner of the Department of Energy for his review. Subsequently, the rules will be submitted to the Legislative Rule-Making Review Committee prior to presentation to the Legislature.

PUBLIC HEARING: The Department of Energy, Division of Oil and Gas will hold a public hearing on these proposed rules on July 1, 1986, at 10:00 a.m. The public hearing will be held in the South Briefing Room, Cultural Center, State Capitol Complex, Charleston, West Virginia. Requests to participate in the public hearing should be filed with Roger T. Hall, Department of Energy, 1615 Washington Street, East, Charleston, West Virginia, 25311 on or before June 24, 1986. Priority for oral presentations will be

given to those persons who have filed a timely request to make an oral presentation. The Division cannot guarantee an opportunity to speak to persons who have not made such a timely request. The hearing will begin at 10:00 a.m. Registration for speakers and attendees will begin at 9:30 a.m. Oral and written statements may be submitted at the public hearings. Speakers will be restricted to 20 minutes.

WRITTEN COMMENTS: The Department of Energy, Division of Oil and Gas will accept and consider written public comments on these proposals which are received at its offices in Charleston on or before 4:30 p.m. on July 8, 1986. Send comments to Roger T. Hall, Department of Energy, 1615 Washington Street, East, Charleston, West Virginia 25311. The Agency asks that comments be as specific as possible and that suggested revisions or corrections be supported by data where appropriate. All comments should identify the section number of the proposed rules to which they are directed.

All comments on this proposal will be available for inspection and copying at the Department of Energy, Division of Oil and Gas, 1615 Washington Street, East, Charleston, West Virginia 25311. A reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: Questions regarding this notice and the proposed rules should be addressed to Roger T. Hall, at (304) 348-3500.



STATE OF WEST VIRGINIA  
DEPARTMENT OF ENERGY  
DIVISION OF MINES AND MINERALS  
1815 Washington Street, East  
Charleston, West Virginia 25311  
Telephone: 348-3500

ARCH A. MOORE, JR.  
Governor

May 14, 1986

Honorable Ken Hechler  
Secretary of State  
State Capitol Building  
Charleston, West Virginia 25305

Dear Secretary Hechler:

Please find enclosed one copy of proposed legislative rules for the West Virginia Department of Energy to be recorded and filed with your office. This submittal includes the proposed rule "West Virginia Department of Energy, Division of Oil and Gas, Chapter 22-1, Chapter 22B-1, Series 1-10", a preamble to the regulations, the public hearing and comment notice, and the accompanying fiscal note.

I respectfully request that these documents be appropriately processed by your office. If you have any questions regarding this matter, please feel free to contact Roger T. Wall at 348-3500.

Sincerely,

John H. Johnston  
Director  
Division of Oil and Gas

JHJ/rha

## PUBLIC NOTICE MAILING LIST

1. Clarksburg Publishing Company  
Clarksburg Exponent and Telegram  
324-326 Hewes Avenue  
Clarksburg, West Virginia 26301
2. Inter-Mountain  
Post Office Box 1339  
Elkins, West Virginia 26241
3. Herald Dispatch  
946 Fifth Avenue  
Huntington, West Virginia 25720
4. Beckley Newspapers, Inc.  
Raleigh Register and Beckley Post-Herald  
Post Office Drawer P or R  
Beckley, West Virginia 25801
5. The Dominion Post  
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Morgantown, West Virginia 26505
6. The Ogden Newspapers, Inc.  
Wheeling News Register and Intelligencer  
1500 Main Street  
Wheeling, West Virginia 26003
7. The Charleston Gazette  
Post Office Box 2993  
Charleston, West Virginia 25330
8. Independent Oil & Gas Association  
22 Capitol Street  
Charleston, West Virginia 25301
9. West Virginia Oil and Natural Gas Association  
Post Office Box 3231  
Charleston, West Virginia 25332

REGISTRATION FORM

PUBLIC HEARING  
JULY 1, 1986

ADMINISTRATIVE HEARING  
for the

WEST VIRGINIA DEPARTMENT OF ENERGY  
DIVISION OF OIL AND GAS  
WV CODE CHAPTER 22 B  
SERIES 1-10

NAME Row Shipley  
(print)

REPRESENTING W.V. Department of Natural Resources

ADDRESS 1800 Washington St. E  
Room 842  
Charleston, WV 25305

COMMENTS:

NONE ☐

WRITTEN ☒

ORAL ☒

REGISTRATION FORM

PUBLIC HEARING  
JULY 1, 1986

ADMINISTRATIVE HEARING  
for the

WEST VIRGINIA DEPARTMENT OF ENERGY  
DIVISION OF OIL AND GAS  
WV CODE CHAPTER 22 B  
SERIES 1-10

NAME

Rex Burford

(print)

REPRESENTING

W VA Oil AND Natural Gas Association

ADDRESS

R Box 3231

Chas WVA

25332

COMMENTS:

NONE

WRITTEN

ORAL

X



REGISTRATION FORM

PUBLIC HEARING  
JULY 1, 1986

ADMINISTRATIVE HEARING  
for the

WEST VIRGINIA DEPARTMENT OF ENERGY  
DIVISION OF OIL AND GAS  
WV CODE CHAPTER 22 B  
SERIES 1-10

NAME Mary S. Friend  
(print)

REPRESENTING Columbia Gas Transmission Corp  
ADDRESS Storage Department  
Box 1273  
Charleston, WV 25325-1273

COMMENTS:

NONE

☒

WRITTEN

☐

ORAL

☐

REGISTRATION FORM

PUBLIC HEARING  
JULY 1, 1986

ADMINISTRATIVE HEARING  
for the

WEST VIRGINIA DEPARTMENT OF ENERGY  
DIVISION OF OIL AND GAS  
WV CODE CHAPTER 22 B  
SERIES 1-10

NAME

JOHN PISANEK

(print)

REPRESENTING

COLUMBIA GAS TRANSMISSION COOP

ADDRESS

STORAGE DEPARTMENT

Box 1273

CHARLESTON WV 25325

COMMENTS:

NONE

X

WRITTEN

ORAL

REGISTRATION FORM

PUBLIC HEARING  
JULY 1, 1986

ADMINISTRATIVE HEARING  
for the

WEST VIRGINIA DEPARTMENT OF ENERGY  
DIVISION OF OIL AND GAS  
WV CODE CHAPTER 22 B  
SERIES 1-10

NAME Fred Kolb  
(print)

REPRESENTING Kolb Enterprises Ltd.

ADDRESS P. O. Box 3855  
Charleston, W. Va. 25338

COMMENTS:

NONE

☒

WRITTEN

☐

ORAL

☐

REGISTRATION FORM

PUBLIC HEARING  
JULY 1, 1986

ADMINISTRATIVE HEARING  
for the

WEST VIRGINIA DEPARTMENT OF ENERGY  
DIVISION OF OIL AND GAS  
WV CODE CHAPTER 22 B  
SERIES 1-10

NAME McCoy Landley Et. al.  
(print)

REPRESENTING DNR DNR

ADDRESS 1201 Granby

COMMENTS:

NONE ☒

WRITTEN ☐

ORAL ☐

REGISTRATION FORM

PUBLIC HEARING  
JULY 1, 1986

ADMINISTRATIVE HEARING  
for the

WEST VIRGINIA DEPARTMENT OF ENERGY  
DIVISION OF OIL AND GAS  
WV CODE CHAPTER 22 B  
SERIES 1-10

NAME JUDY BOCKSTAHLER  
(print)

REPRESENTING League of Women Voters W.V.

ADDRESS 1525 Ravina Rd.  
Charleston W.V. 25314

COMMENTS:

NONE ☒ WRITTEN ☐ ORAL ☐

REGISTRATION FORM

PUBLIC HEARING  
JULY 1, 1986

ADMINISTRATIVE HEARING  
for the

WEST VIRGINIA DEPARTMENT OF ENERGY  
DIVISION OF OIL AND GAS  
WV CODE CHAPTER 22 B  
SERIES 1-10

NAME

H. L. Snyder

(print)

REPRESENTING

WVa Oil & Natural Gas Ass'n

ADDRESS

PO Box 1273

Charleston, WV 25325

COMMENTS:

NONE

☒

WRITTEN

☐

ORAL

☐

REGISTRATION FORM

PUBLIC HEARING  
JULY 1, 1986

ADMINISTRATIVE HEARING  
for the

WEST VIRGINIA DEPARTMENT OF ENERGY  
DIVISION OF OIL AND GAS  
WV CODE CHAPTER 22 B  
SERIES 1-10

NAME

ROBERT C. WEIDNER

(print)

REPRESENTING

COLUMBIA GAS TRANSMISSION CORP.

ADDRESS

STORAGE DEPARTMENT

BOX 1273

CHARLESTON WV 25325-1273

COMMENTS:

NONE

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WRITTEN

☐

ORAL

☐

REGISTRATION FORM

PUBLIC HEARING

JULY 1, 1986

ADMINISTRATIVE HEARING  
for the

WEST VIRGINIA DEPARTMENT OF ENERGY  
DIVISION OF OIL AND GAS  
WV CODE CHAPTER 22 B  
SERIES 1-10

NAME Linda M. Cable  
(print)

REPRESENTING Capitol Soil Conservation District

ADDRESS Westmoreland Place, 2nd floor  
400 Allen Dr.  
Charleston, WV 25302

COMMENTS:

NONE ☐

WRITTEN ☒

ORAL ☐

to be submitted by 7-8-86



REGISTRATION FORM

PUBLIC HEARING  
JULY 1, 1986

ADMINISTRATIVE HEARING  
for the

WEST VIRGINIA DEPARTMENT OF ENERGY  
DIVISION OF OIL AND GAS  
WV CODE CHAPTER 22 B  
SERIES 1-10

NAME Lawrence J. Malone  
(print)

REPRESENTING

ADDRESS Independent Oil & Gas Association of W. Va.  
22 Capitol St.  
Charleston, WV 25301

COMMENTS:

NONE

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WRITTEN

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ORAL

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REGISTRATION FORM

PUBLIC HEARING  
JULY 1, 1986

ADMINISTRATIVE HEARING  
for the

WEST VIRGINIA DEPARTMENT OF ENERGY  
DIVISION OF OIL AND GAS  
WV CODE CHAPTER 22 B  
SERIES 1-10

NAME DAVID M FLANNERY  
(print)

REPRESENTING ROBINSON & McELWEE

ADDRESS PO Box 1791

Charleston WVa 25326

COMMENTS:

NONE ☒

WRITTEN ☐

ORAL ☐

REGISTRATION FORM

PUBLIC HEARING  
JULY 1, 1986

ADMINISTRATIVE HEARING  
for the

WEST VIRGINIA DEPARTMENT OF ENERGY  
DIVISION OF OIL AND GAS  
WV CODE CHAPTER 22 B  
SERIES 1-10

NAME JERRY RAY  
(print)

REPRESENTING DIVISION OF WATER RES - DNR

ADDRESS 1201 GREENBRIER ST.

CHAS., W. V. 25311

COMMENTS:

NONE



WRITTEN

☐

ORAL

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REGISTRATION FORM

PUBLIC HEARING  
JULY 1, 1986

ADMINISTRATIVE HEARING  
for the

WEST VIRGINIA DEPARTMENT OF ENERGY  
DIVISION OF OIL AND GAS  
WV CODE CHAPTER 22 B  
SERIES 1-10

NAME Brian Long  
(print)

REPRESENTING WVDNR - Water Resources

ADDRESS 1201 Greenview Street  
Charleston WV 25311

COMMENTS:

NONE ☒

WRITTEN ☐

ORAL ☐

REGISTRATION FORM

PUBLIC HEARING  
JULY 1, 1986

ADMINISTRATIVE HEARING  
for the

WEST VIRGINIA DEPARTMENT OF ENERGY  
DIVISION OF OIL AND GAS  
WV CODE CHAPTER 22 B  
SERIES 1-10

NAME NARESH R. SHAH  
(print)

REPRESENTING \_\_\_\_\_

ADDRESS 1201 Greenbrier St

Charleston, WV 25311

COMMENTS:

NONE



WRITTEN

ORAL

REGISTRATION FORM

PUBLIC HEARING  
JULY 1, 1986

ADMINISTRATIVE HEARING  
for the

WEST VIRGINIA DEPARTMENT OF ENERGY  
DIVISION OF OIL AND GAS  
WV CODE CHAPTER 22 B  
SERIES 1-10

NAME

TERRY L. IDEN

(print)

REPRESENTING

IOGA

ADDRESS

22 CAPITOL ST.

~~WHEELING~~ CHARLESTON, WV

COMMENTS:

NONE

☒ WRITTEN

ORAL

REGISTRATION FORM

PUBLIC HEARING  
JULY 1, 1986

ADMINISTRATIVE HEARING  
for the

WEST VIRGINIA DEPARTMENT OF ENERGY  
DIVISION OF OIL AND GAS  
WV CODE CHAPTER 22 B  
SERIES 1-10

NAME J. F. COLAIZZI  
(print)

REPRESENTING EQUITABLE GAS COMPANY

ADDRESS 1701 WHARTON ST.  
PGH. PA 15203

COMMENTS:

NONE



WRITTEN



ORAL



REGISTRATION FORM

PUBLIC HEARING  
JULY 1, 1986

ADMINISTRATIVE HEARING  
for the

WEST VIRGINIA DEPARTMENT OF ENERGY  
DIVISION OF OIL AND GAS  
WV CODE CHAPTER 22 B  
SERIES 1-10

NAME FREDERICK R. BROOKING  
(print)

REPRESENTING CONSOLIDATED GAS TRANSMISSION CORP.

ADDRESS 445 W. MAIN ST.  
CLARKSBURG WV 26302-3450

COMMENTS:

NONE



WRITTEN

\_\_\_

ORAL

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REGISTRATION FORM

PUBLIC HEARING  
JULY 1, 1986

ADMINISTRATIVE HEARING  
for the

WEST VIRGINIA DEPARTMENT OF ENERGY  
DIVISION OF OIL AND GAS  
WV CODE CHAPTER 22 B  
SERIES 1-10

NAME Ronald E. Griffin  
(print)

REPRESENTING Equitable Gas Co.

ADDRESS P.O. Box 1550

Clarkburg, W. Va. 26301

COMMENTS:

NONE

☒

WRITTEN

☐

ORAL

☐

REGISTRATION FORM

PUBLIC HEARING  
JULY 1, 1986

ADMINISTRATIVE HEARING  
for the

WEST VIRGINIA DEPARTMENT OF ENERGY  
DIVISION OF OIL AND GAS  
WV CODE CHAPTER 22 B  
SERIES 1-10

NAME Lee Whitehurst  
(print)

REPRESENTING WV DNR

ADDRESS 1201 Greenbrier Street

Charleston WV 25311

COMMENTS:

NONE

☒

WRITTEN

☐

ORAL

☐

TRANSCRIPT OF HEARING

BEFORE THE WEST VIRGINIA DEPARTMENT OF ENERGY  
OIL AND GAS DIVISION

Transcript of proceedings had at a hearing of the  
West Virginia Department of Energy, Oil and Gas Division,  
commencing at 10:00 a.m., on July 1, 1986, in the South  
Briefing Room, Cultural Center, State Capitol Complex,  
Charleston, West Virginia.

APPEARANCES: JOHN H. JOHNSTON, P.E., Director  
West Virginia Department of Energy  
Division of Oil and Gas  
1615 Washington Street, East  
Charleston, West Virginia 25311;

THEODORE STREIT, Deputy Director  
Inspection and Enforcement  
West Virginia Department of Energy  
Division of Oil and Gas  
1615 Washington Street, East  
Charleston, West Virginia 25311;

MRS. MARGARET HASSE, Deputy Director  
Permitting  
West Virginia Department of Energy  
Division of Oil and Gas  
1615 Washington Street, East  
Charleston, West Virginia 25311;

ROGER HALL, Administrator  
West Virginia Department of Energy  
Division of Oil and Gas  
1615 Washington Street, East  
Charleston, West Virginia 25311.

JANET T. SURFACE  
COURT REPORTER  
ALUM CREEK, WEST VIRGINIA 25003  
PHONES: (304) 756-3302 OR 756-3611

MR. JOHNSTON: This hearing is convened at 10:00 a.m., on July 1, 1986, in the South Briefing Room of the Cultural Center, State Capitol Complex, Charleston, West Virginia.

This hearing is to receive comments concerning proposed rules and regulations for the Oil and Gas Division of the West Virginia Department of Energy. The regulations are proposed under the authority of Chapter 22A and 22B of the West Virginia Energy Act.

I'm John Johnston, Director of the Oil and Gas Division and will be the hearing officer. Also representing the Oil and Gas Division are Margaret Hasse, Deputy Director of Permitting, and Theodore Streit, Deputy Director of Inspection and Enforcement. Roger Hall of the Department of Energy will process requests and receive comments.

The proposed rules and regulations were filed in the Secretary of State's Office on May 14, 1986.

The Department of Energy will accept and consider written comments on these proposals which are received in the Charleston office on or before 4:30 p.m. on July 8, 1986. Today oral and written comments will be received. Speakers will be limited to twenty minutes, and only

myself, Mrs. Hasse, and Mr. Streit will be allowed to ask questions. Priority to speak will be given to those people who filed a request to make an oral presentation. Comments should be as specific as possible and address the appropriate section for which they are directed. All comments on this proposal will be available for inspection and copying at the Department of Energy, 1615 Washington Street, East, Charleston. A fee will be charged for copying.

Mr. Shipley, you wanted to make a comment. Do you want to go first? If you would, state your name, address, and affiliation for the record.

MR. SHIPLEY: Thank you, Mr. Johnston. My name is Ron Shipley. I'm the Special Assistant to the Director of the West Virginia Department of Natural Resources. My address is 1800 Washington Street, East, Capitol Complex, Building 3, Room 842. --

One of the roles that I occupy with the Department is that I'm the head of the Director's office of regulatory affairs. And, consequently, he has asked me to come and give some comments today.

Our comments are brief, since we plan on submitting written comments by July 8th. I want to say, before I begin, that the Department has been a supporter of

one-stop shopping and the concepts envisioned by the West Virginia Energy Act.

For example, the Department, even before the Energy Act was passed, submitted applications to EPA for consolidation of the coal program so that there was one-stop shopping in the coal area.

Secondly, after the energy act passed, we went ahead and submitted an application to EPA to transfer the program to DOE. This was even before DOE was created. We went ahead and took it upon ourselves to try to promote the goals of the energy act and submitted that application. The application was pretty good. There was one minor glitch, which we don't need to go into. The oil and gas general permit effort that the Department undertook, about three or four years ago, I think, is another example of our interest in one-stop shopping, or, at least, lessening the burden of the regulatory programs on the industry.

However, at the same time, we also understand the EPA programs fairly well, since we have operated them now for many years. And there's probably a few pointers and a few comments we'd like to make to DOE to help keep the program on track and perhaps avoid some of the problems that we've noticed occurring in the past.



There are three general issue areas we want to discuss. One is the effect of the proposed rules on primacy of programs; two, some overbroad statements of jurisdiction which are expressed by DOE; and, three, some issues concerning consistency with existing state rules.

First is the effect of rules on primacy. As currently proposed, DOE's rule does not give proper recognition to the key role which EPA approval of program transfer plays upon their jurisdiction. Section 22-1-20 of the energy act makes it clear that DOE's jurisdiction over programs for which EPA approval is necessary does not exist until EPA approval is obtained. 22-1-20(b) states, and in trying to be specific, I'll read this out: The Legislature recognizes that certain of the powers, duties, functions, and responsibilities transferred under the provisions of this chapter, Chapters 22A and 22B of this Code, involve the implementation of federal regulatory programs by the state, and that the transfer of such powers, duties, functions, and responsibilities to the Department of Energy may require approval of certain federal agencies or officials in order to avoid disruption of the federal-state relationship under which such regulatory programs are implemented. Therefore the transfer to the Department of the powers, duties,

functions, and responsibilities referred to in this chapter, Chapters 22A and 22B of the Code, shall become effective upon a proclamation by the governor stating either that final approval of the transfer has been given by the appropriate federal agency or official or that final approval of the transfer is not necessary to avoid disruption of the federal-state relationship under which such regulatory programs are implemented.

Currently the state, I quote:

Currently the state is federally-authorized to implement three of the programs for which DOE has proposed rules, UIC, NPDES, and Hazardous Waste.

DOE's proposed rules do disrupt the federal-state relationship under which regulatory programs are implemented just by definition, since the current programs would be changed from a single agency jurisdiction to a dual agency jurisdiction. And, also, EPA's rules state that modifications to state program authority require their approval.

We don't believe that the rule, either in and of itself, or the preamble, currently recognize the need for EPA approval or the governor's proclamation of issue prior to the rules taking effect. We would, therefore, recommend

that the Department amend Section 1.4 in Series 3, 4 and 8 by stating: The regulations in this section become effective on blank day of whatever year, being the date on which the governor issued a proclamation stating that final approval of the transfer of the program contemplated by this section has been given by the administrator of the United States Environmental Protection Agency.

The Department has used that effective date language in several of its regulations, and it's found EPA to accept it and that it works pretty well.

The second issue is some of the overbroad statements of jurisdiction by DOE. There are two examples we would use to illustrate this problem. The first is DOE's assertion of lead agency status for the UIC program. The second is its drafting of solid waste rules which require all solid waste facilities to obtain DOE permits.

First, DNR recognizes, and I really need to underscore this, we do recognize the primary regulatory status DOE occupies for the exploration, development, production, storage, and recovery of oil and gas and related minerals and resources under the West Virginia Energy Act, subject to the limitation of previously-cited 22-1-20.

We do not believe, however, that the

statute confers upon DOE lead agency status for a program, i.e., UIC, but rather for specific activities. Section 22-1-16 states that DOE is the, quote, lead agency for all purposes of federal legislation, quote, relating to such activities, not necessarily just the program.

Interpreting this provision to give DOE lead agency status in all areas of federal legislation would, for example, conflict with West Virginia Code 20-5E-4, which designates DNR as the lead agency for the state's hazardous waste management program.

Secondly, we note that Series 7, Section 3 states that a permit shall be obtained from the Department of Energy, Division of Oil and Gas prior to the installation, establishment, construction, modification, operation, or abandonment of any solid waste facility. Because the regulations incorporate by reference the definition of the word solid waste facility in the DNR's regulations, and, in fact, in Chapter 20, Article 5(f), DOE is, by this sentence in this rule proposing that all solid waste facilities obtain permits from DOE regardless of whether they are oil and gas related. I'm sure this is a pretty good example. It probably just needs a little bit of wordsmithing.

The third area is some issues

concerning consistency of the state rules.

Finally, DNR recognizes that DOE's program will not be identical to the program implemented by DNR, and, thus, some inconsistencies may exist. The issue, however, is to what degree.

Two examples highlight this issue. First is DOE's proposal to issue waste load allocations for sewage facilities in Series 5. As you know, DNR also issues waste load allocations for sewage facilities. We are concerned that without proper recognition of our dual roles, one facility may use up the pollution increment in a particular stream, thereby preventing other facilities to locate close by.

Secondly, in this general issue area, we are also concerned that any pollution increments available for use under the state's anti-degradation policy may also be used up without proper coordination between the two agencies, especially since we do not see any recognition of the state's anti-degradation policy in DOE's regulations. Now, that may be buried in some kind of incorporation by reference, but, again, the incorporation by reference, we're not sure, may very well reference EPA's anti-degradation policy, which is slightly different than the state's. And, so, it would behoove us to work together to try to decide how the state programs would be

coordinated between the two agencies and to make sure that we are both adopting the same types of resource protection programs, even if they're not identical.

In conclusion, we feel that the proposed rule represents DOE's first attempt at broad-based rulemaking for programs about which it's still learning. And we've gone through that learning curve in the past, and it's not an easy task. We'd like to offer our assistance in any way we can to try to resolve some of the issues that we've talked about here and give any guidance in any way possible.

Thank you very much.

MR. JOHNSTON: Thank you. I have a couple questions.

To summarize your first point there, you feel that the three sections of the regulations shouldn't become effective until DOE is granted those by the EPA, right?

MR. SHIPLEY: At least those three. I mean, that's clearly based on the statute. I think DNR probably would have some feelings about some of the other aspects of the program, but certainly not as strong a feeling. I mean, we're just really concerned about the way it inter-relates with the expressed language of the statute. But, yeah, for sure UIC, NPDES, and Hazardous Waste; yes.

MR. JOHNSTON: Insofar as a UIC permit is concerned, since most of the wells in the state, injection wells in the state are UIC oil and gas related, don't you feel one agency should have lead status with that?

MR. SHIPLEY: Well, we do think one agency should have lead status.

MR. JOHNSTON: Since they're oil and gas related, shouldn't it be DOE?

MR. SHIPLEY: I think you do get some benefits from a DOE lead on UIC. I think there's also some benefits from a DNR lead just from an administrative viewpoint.

For example, it would lessen the administrative burden between the states and between coordinating between state and federal governments to do it the other way. And if you can work it out so that the industry does not feel any adverse affects from DNR having lead agency status, even though DOE handles the bulk of the regulations, then at that point the administrative coordination issues may outweigh the quantity issue on the DOE side. I think that's an issue we need to look at, though.

MR. JOHNSTON: How would you feel about DOE being the lead agency and, in a sense, farming out the wells that are related to DNR such as, for instance, hazardous, I mean non-oil

and gas hazardous waste wells?

MR. SHIPLEY: I think both systems can work. It just depends on how we structure it and what we feel is best.

MR. JOHNSTON: Okay. Mrs. Hasse, do you have any questions?

MRS. HASSE: No.

MR. JOHNSTON: Mr. Streit?

MR. STREIT: No.

MR. JOHNSTON: Thank you.

Linda Cagle wanted to make written comments. If you would, if you'd send those to Mr. Streit.

Our last speaker is Rex Burford.  
Mr. Burford.

State your name, address, and affiliation for the record.

MR. BURFORD: My name is Rex Burford. I am secretary-treasurer of the West Virginia Oil and Natural Gas Association. My address is P. O. Box 3231, Charleston, West Virginia, 25332. And my office is presently located at 240 Capitol Street in the City of Charleston. I'll provide a card with that information on it for the court reporter.

I am appearing here today only for the public record to let the Oil and Gas Division know of the



Association's continuing interest in the development of these regulations.

The Association has reviewed these regulations and may have some comments to file in writing by July 8, 1986. On behalf of the Association, it is noted the filing of these regulations is a significant milestone in the full implementation of House Bill 1850, the Energy Act of 1985. While voluminous, these regulations should expedite the goal of one-stop shopping for the oil and gas industry, yet do this in a way which is environmentally sound.

We encourage you to adopt these regulations as soon as possible and complete the necessary steps to achieve primacy from the federal government, i.e., the Environmental Protection Agency, in administering the appropriate programs.

I had previously requested time for Consolidated Gas Transmission and Pennzoil Company, and on their behalf, I am authorized to release these requests for an opportunity to make an oral presentation.

Thank you. Any questions?

MR. JOHNSTON: I have none.

MR. STREIT: No.

MR. JOHNSTON: No questions. Thank you.

Roger, is there anyone else?

MR. HALL: No.

MR. JOHNSTON: Could I ask you one question,  
Mr. Burford?

MR. BURFORD: Yes, sir.

MR. JOHNSTON: Did Consolidated want to make an  
oral presentation?

MR. BURFORD: No, sir. No, thank you.

MR. JOHNSTON: I'll declare this hearing closed  
at 10:15 today.

(WHEREUPON, the hearing  
was adjourned.)

STATE OF WEST VIRGINIA

COUNTY OF KANAWHA

I, the undersigned, Deborah A. Dickens, Stenomask Reporter, do hereby certify that the foregoing is, to the best of my skill and ability, a true and accurate transcript of the proceedings had at a public hearing for the Department of Energy, Oil and Gas Division, on the 1st day of July, 1986.

Given under my hand this 7th day of July, 1986.

Deborah A. Dickens  
Reporter



STATE OF WEST VIRGINIA  
DEPARTMENT OF ENERGY  
DIVISION OF OIL AND GAS  
1615 Washington Street, East  
Charleston, West Virginia 25311  
Telephone: 348-3500

ARCH A. MOORE, JR.  
Governor

TO: JOHN H. JOHNSTON, DIRECTOR,  
DIVISION OF OIL AND GAS

FROM: TED STREIT, DEPUTY DIRECTOR,  
INSPECTION AND ENFORCEMENT

SUBJECT: REGULATION REVIEW AND STAFF COMMENTS

DATE: JUNE 30, 1986

I have asked various staff from the Division of Oil and Gas to review the proposed regulations. Enclosed are suggestions for your review.

SERIES I

<u>REGULATION NUMBER</u>	<u>PAGE</u>	<u>COMMENT</u>
2.3	2	"Completion of the drilling process", needs to be expanded to include other well work instead of just new wells.
5.1.2.1	4	Wells should not be able to operate via purchaser until well is properly transferred.
5.1.24	5	Typo add "by" between "5.1.2.3" and "the".
5.2.1.5	5	Regulation should mention other fees.
5.2.1.6	5	The word "well work" should be substituted for "stimulate".
5.2.2	5,6	Should reference Series III.
5.2.9	7	What is a permit? Is it a right to operate or just construct?

<u>REGULATION NUMBER</u>	<u>PAGE</u>	<u>COMMENT</u>
5.3.2	7	IV-60 should be WW-60.
5.4.24	9	Require sending complete copy of application.
5.4.3	9	IV-70 should be WW-70.
5.4.4	9	IV-71 should be WW-71.
5.5.2	10	IV-38 should be WW-38.
6.2	11	Require sending complete copy of application.
7	12	Reference Series III.
7.1.1	12	IV-37 should be WW-37.
7.1.2	12	IV-37 should be WW-37.
7.3.1	12	IV-37 should be WW-37.
7.32	13	IV-37 should be WW-37.
7.3.2.6	13	IV-37 should be WW-37.
7.5	14	IV-40 should be WW-40.
8.1	14	IV-13 should be OB-13.
8.3.1	15	IV-14 should be OB-14.
8.4	15	IV-15 should be OB-15.
9.2.4	16	Present description of permanent landmarks is confusing and has led to problems.
9.2.9	17	There is no present need for 15' topo. Should just use 7.5'.
10.1	21	IV-7 should be OP-7.
10.2	21	IV-8 should be OP-8.
11.3	22	Whole regulations needs to be rewritten to prohibit using the fresh water casing as a production string and to keep fresh waters protected while drilling through other non fresh water zones.

<u>REGULATION NUMBER</u>	<u>PAGE</u>	<u>COMMENT</u>
12.1	23	Eliminate the word drilling from "drilling contractor".
12.2.1	23	Add to or when permit expires to ninety days.
13.2.2	26	IV-16 should be OB-16.
13.5.1	26	IV-16 should be OB-16.
13.6	27	IV-38 should be WR-38.
15.1.1, 15.1.2	28	Should be by API Number.
16.4	30	Should have same language as in general permit.
16.5	30	Tie in with other Series.
16.6	30	Need daily reporting to district offices when well work is in progress.
16.7	31	Include pipeline in permits.
18	33	Need to make it tough to get variance.

#### SERIES II

<u>REGULATION NUMBER</u>	<u>PAGE</u>	<u>COMMENT</u>
3.1.2	4	Eliminate the Series IV from regulations.
3.6.2.1	10	IV-57WC should be FC-57WC.
3.6.2.2	10	IV-48WC should be FC-48WC.
3.6.3.1	10	IV-58WC should be FC-58WC.
3.6.3.3	10	IV-48WC should be FC-48WC.
4.1	10	Not what takes place, needs to be rewritten.
4.2.3.5	11	Not known by State. Will receive notification from F.E.R.C.
4.3	11	Not what takes place, needs to be rewritten.

<u>REGULATION NUMBER</u>	<u>PAGE</u>	<u>COMMENT</u>
4.4	11	Not what takes place, needs to be rewritten.

#### SERIES III

<u>REGULATION NUMBER</u>	<u>PAGE</u>	<u>COMMENT</u>
13.2.3.2	6	Chief needs to be Director.

GENERAL - The incorporation of the Federal rules instead of promulgating State rules make it very difficult for field staff to cite violations and as such make enforcement of those regulations ~~more difficult~~ *more difficult*. It is also very confusing for operators to look in two places for regulations.

#### SERIES IV

Same general comment as Series III.

#### SERIES V

A good place to add State requirements for S.P.C.C. plans, also see comments in Series III.

SERIES VI, VII, VIII

See comments in Series III.

SERIES IX

<u>REGULATION NUMBER</u>	<u>PAGE</u>	<u>COMMENT</u>
2.12.1.2	4	These regulations have changed from Department of Mines and limit the directors powers to just granting or denying permits. These powers should be broadened such that the director may issue any lawful order. For example: Compliance, assessment, etc.

SERIES X

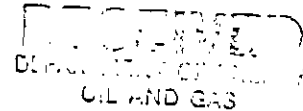
This needs to be reviewed in lieu of Commissioner's memorandum, dated June 9, 1986.



# CAPITOL SOIL CONSERVATION DISTRICT

Westmoreland Place  
400 Allen Drive  
Charleston, WV 25302

July 7, 1986



Mr. Ted Streit  
WV Department of Energy  
Division of Oil & Gas  
1615 E. Washington Street  
Charleston, WV 253;;

JUL 8 1986

Dear Mr. Streit:

In studying the proposed regulations relating to the Department of Energy, Division of Oil and Gas, the Capitol Soil Conservation District(SCD) wishes to comment on the following items.

## SECTION 16 - RECLAMATION

- 16.1.1 "Such proposed reclamation methods shall be approved by the Director or his designate, prior to the issuance of the permit, all reclamation shall be done under the supervision of the Director."

This statement implies reclamation will be done at the Director's will and pleasure. A definite text such as the Erosion and Sediment Control Handbook - West Virginia or the "Oil and Gas Reclamation Handbook" should be referenced. This would spell out the recommended reclamation standards such as timely revegetation stream crossings, and construction practices for keeping mud out of the streams.

Also, "The reclamation may be altered from that set out in said Form WW-9 if found necessary with the consent of the Director or his designate, due to topography or other conditions not apparent upon initial submission and approval of proposed reclamation methods."

and also referring to 16.6 Notifications Prior to Commencement of Work -

"Prior to construction of roads, locations and pits for any permitted well work, the operator or his contractor shall notify the appropriate oil and gas inspector and allow the opportunity of inspecting and approving the construction and method of reclamation for all proposed areas to be disturbed in siting, drilling, completing or producing the well."

In a telephone conversation with Mr. Jerry Johnston on June 30, 1986, Mr. Johnston indicated that the inspectors would try to field review all well locations.

First, if the site access road were thoroughly field reviewed there should be little reason to have to adjust the construction and reclamation plans!

When drilling activities pick up after this slump, how will inspectors be able to keep up with the increased workload? The inspectors should be required to review a certain percentage so that when the work load does pick up that the initial field reviews do not suffer.

Page 2  
Mr. Ted Streit  
July 7, 1986

The following comments are unreferenced as far as the proposed regulations are concerned.

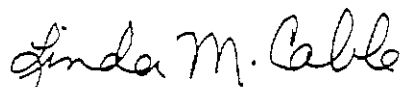
The WW-9 form does not cover the trails (paths or roads in some instances) where pipe is laid from one well to a production line or pumper unit to storage tank. Often these trails follow terrain not suitable for roads and where the chance for erosion is the greatest.

The responsibilities and duties of the gas and oil inspectors and the water resources inspectors need to be clarified as they relate to point and non-point pollution of streams and underground water systems.

It is sincerely hoped that the quality and timeliness of reclamation will be improved upon under the Department of Energy - Division of Oil and Gas.

If the Capitol Soil Conservation District can be of further assistance please call.

Sincerely,

A handwritten signature in cursive script that reads "Linda M. Cable".

Linda M. Cable  
District Manager

LMC/efn



STATE OF WEST VIRGINIA  
**OIL AND GAS CONSERVATION COMMISSION**  
CHARLESTON 25305

THOMAS E. HUZZEY  
Commissioner

May 30, 1986

TO: John H. Johnston  
Director

FROM: Thomas E. Huzzey  
~~Commissioner~~

RE: Revised Rules and Regulations - Division of Oil and Gas

In your review of your Well Record Form, I believe it would be beneficial to the industry to include as part of the well test data a shut-in pressure before flow testing, the volumes produced and the length of flow, as well as wellhead flowing pressure.

From this data an operator can calculate comparative values by extrapolating to a wellhead potential.

TEH/rf

**RECEIVED**  
DEPARTMENT OF ENERGY  
OIL AND GAS

36  
MAY 29 1986



# LEAGUE OF WOMEN VOTERS OF WEST VIRGINIA, INC.

2313 South Walnut Drive  
St. Albans, West Virginia 25177  
(304) 727-6547

STATEMENT TO THE WEST VIRGINIA DEPARTMENT OF ENERGY

RE: Series 1 Through 10 of the Proposed Oil and Gas Regulations

DATE: July 7, 1986

The League of Women Voters of West Virginia has a long history of concern for the environmental quality of our state. We support planning to allow for multiple use of our land and natural resources. While there is still some room for improvement, we believe West Virginia has come a long way in providing for multiple use of our land and extraction of our natural resources while at the same time trying to protect our state's natural beauty and environmental quality. Series 1 Through 10 of the Proposed Oil and Gas Regulations raise some concerns and questions as to the ability of the various methods and agencies to maintain our current standards.

One of the League's major concerns is the apparent lack of coordination between the Department of Natural Resources, the Department of Energy and the Federal Environmental Protection Agency. It appears these regulations will have major impacts on the substance and implementation of the National Pollutant Discharge Elimination System (NPDES), the Underground Injection Control Program (UIC), the Solid Waste Program (SW), and the Hazardous Waste Program (HW). We are concerned about being able to maintain state primacy from the EPA for the NPDES, HW, and UIC programs. Not only does the Department of Energy not meet all of the EPA's current requirements for their existing program, but also these regulations make substantive changes in the NPDES, HW and UIC programs which must be approved by EPA.

We specifically question the following:

1.) Series 5, Section 4 - Since waste load allocations will be determined by two different agencies, which agency will be required to keep a total accounting? We fear such a division may result in a weakening of the program by essentially making no one responsible or informed as to the total waste load allocation for the state's waters.

2.) Is it the intent of these regulations to take the entire Solid Waste Program out of DNR? We question on what authority such a proposal is based. Or is it the intent to take only those SW regulations pertaining to Oil and Gas?

3.) We do not understand how the DOE can become the lead agency for the UIC program when the Legislature did not give them lead agency status. The League does not understand the authority to consolidate Oil and Gas permitting activities as authority for lead regulatory agency.

4.) It is our understanding that the Water Resources Board has the Legislative authority to establish water quality standards for West Virginia. It appears that some language in

Series 4 Section 6 proposes changes that would at least directly impact on these standards. We wonder if toxicity testing and limits for Oil and Gas will be different than that for other industry still under Water Resources Board regulations. We hope efforts will be made to keep these types of procedures consistent between agencies.

5.) Series I, Section 16.6.2 - Why is the prohibition against discharge of salt water into fresh water being changed? Is this a change in the newly set up general permit for Oil and Gas pit waste?

6.) Series I - The proposal allows the Director to deviate from generally applicable requirements. We would be interested to know the limits which are placed on the Director for such exemptions and the need for them. (Our copy of the proposed regs does not include the details of Series I)

7.) Series 3, Section 17.4.3.3 - Is the 13 day limitation on notification of intent to inspect or review the well sufficient time for the DOE to make such notification?

8.) Series 3, Section 17.5.1 - While we can understand that work must be temporarily stopped occasionally and not be considered abandonment, we are wondering if some time limit shouldn't be set on this provision and wonder how it might inhibit reclamation of a site.

9.) Series 4, Section 8.11 - If permits are allowed to become effective in less than 30 days we are concerned there will not be sufficient time for public comment.

10.) Series 4, Section 8.21 - We would be interested in some more detailed definition of "the public interest." Temporary permits for experimental practices could possibly be very damaging and must be carefully monitored and controlled - this would not seem to be a good instance for "hurried-up" permitting and public notice.

11.) Series 5, Section 3.2 - The written verification to report a discharge should be "required" not necessary only if requested. All discharges should be part of the public record not just those selected by the Director.

We appreciate this opportunity to comment on the proposed Legislative Regulations.

*Becky Cain*  
Becky Cain, President

*Judy Bockstahler*  
Judy Bockstahler, EQ Chair



OIL AND GAS

STATE OF WEST VIRGINIA  
DEPARTMENT OF NATURAL RESOURCES  
CHARLESTON 25306

JUL 3 1986

ARCH A. MOORE, JR.  
Governor

July 2, 1986

RONALD R. POTESTA  
Director  
MICHAEL A. FOTOS  
Deputy Director

Mr. John Johnston, Director  
Division of Oil & Gas  
Department of Energy  
1516 Washington Street, East  
Charleston, West Virginia 25311

Dear John:

Once again thank you for the opportunity to speak at the public hearing concerning your proposed regulations. I received a request for my comments from a representative of the League of Women Voters who attended the hearing. Since they were a part of the public record I decided to give her a copy. I am also enclosing a copy for you.

If you wish to discuss any of our comments or desire a better understanding of the EPA approval process, or if we can assist you, please call.

Sincerely,

A handwritten signature in cursive script that reads "Ron Shipley".

Ron Shipley  
Special Assistant to the Director

RS/gb

Enclosure

OUTLINE OF COMMENTS TO  
PROPOSED DOE OIL AND GAS REGULATIONS  
JULY 1, 1986

I. INTRODUCTION

- A. Thank you for the opportunity to speak.
- B. I am here on behalf of the DNR Director.
- C. Our comments are brief since we plan on submitting written comments by July 8.
- D. Before beginning, I should note that DNR has been a supporter of one-stop shopping and the concepts which the Energy Act promote, e.g. coal, NPDES, oil and gas general permit.
- E. We will focus on three (3) general issue areas:
  - 1. Effect of rules on primacy.
  - 2. Overbroad statements of jurisdiction expressed by DOE.
  - 3. Consistency with existing State rules.

II. Effect of Rules on Primacy

- A. As currently proposed DOE's rule does not recognize the key role which EPA approval of program transfer plays on their jurisdiction.
- B. Section 22-1-20 makes it clear that DOE's jurisdiction over programs for which EPA approval is necessary does not exist until EPA approval is obtained.
- C. Section 22-1-20(b) states:
  - (b) The Legislature recognizes that certain of the powers, duties, functions and responsibilities transferred under the provisions of this chapter and chapters twenty-two-a and twenty-two-b of this code involve the implementation of federal regulatory programs by the state and that the transfer of such powers, duties, functions and responsibilities to the department of energy may require approval of certain federal agencies or officials in order to avoid disruption of the federal-state relationship under which such regulatory programs are implemented. Therefore, the transfer to the department of the powers,

duties, functions and responsibilities referred to in this chapter and chapters twenty-two-a and twenty-two-b of this code shall become effective upon a proclamation by the governor stating either that final approval of the transfer has been given by the appropriate federal agency or official or that final approval of the transfer is not necessary to avoid disruption of the federal-state relationship under which such regulatory programs are implemented.

- D. Currently the State is federally authorized to implement three (3) of the programs for which DOE is proposing rules: UIC, NPDES and hazardous wastes.
- E. DOE's proposed rules disrupt the federal-state relationship under which such regulatory programs are implemented by definition since the current program will be changed EPA rules state that modifications to State program authority require their approval.
- F. DOE's rules do not recognize the need for neither EPA approval nor the Governor's proclamation to be issued prior to taking effect. We would therefore recommend that the Department amend Section 1.4 in Series 3, 4 and 8 by stating:

"The regulations in this section become effective \_\_\_\_\_ day of \_\_\_\_\_ being the date on which the Governor issued a proclamation stating that final approval of the transfer of the \_\_\_\_\_ program contemplated by this section has been given by the Administrator of the United States Environmental Protection Agency."

### III. Overbroad Statements of Jurisdiction by DOE.

- A. There are two examples we will use to illustrate this problem. The first is DOE's assertion of lead agency status for the UIC program; the second is its drafting of solid waste rules which require all solid waste facilities to obtain DOE permits.
- B. First DNR recognizes the primary regulatory status DOE occupies for the exploration, development, production, storage and recovery of oil and gas and related mineral resources under the West Virginia Energy Act, subject to the limitation of previously cited 22-1-20.
- C. We do not believe, however, that the statute confers upon DOE lead agency status for a program but rather for specific activities.
- D. Section 22-1-16 states that DOE is the "lead



agency" for all purposes of federal legislation "relating to such activities" not an entire program. Interpreting this provision to give DOE "lead agency" status in all areas of federal legislation would, for example, conflict with W. Va. Code §20-5E-4, which designates DNR as the lead agency for the State's hazardous waste management program.

- E. Secondly, we note that Series 7, Section 3 states that "a permit shall be obtained from the Department of Energy, Division of Oil and Gas, prior to the installation, establishment, construction, modification, operation or abandonment of any solid waste facility." By incorporating by reference the definition of solid waste facilities in DNR's regulations and Chapter 20, Article 5F, DOE is by this rule proposing that all solid waste facilities obtain permits from DOE regardless of whether they are oil and gas related.

#### IV. Consistency With State Rules

- A. Finally, DNR recognizes that DOE's program will not be identical to the program implemented by the DNR and thus some inconsistencies may exist. The issue, however, is to what degree. Two examples highlight this issue.
- B. First is DOE's proposal to issue waste load allocations for sewage facilities in Series 5. As you know, DNR also issues waste load allocations for sewage facilities. We are concerned that without proper recognition of our dual roles, one facility may use up the pollution increment, thereby preventing other facilities to locate close by.
- B. Secondly, in this general issue area, we are also concerned that any pollution increments available for use under the State's antidegradation policy may also be used without proper coordination, especially since we do not see any recognition of the State's antidegradation policy in DOE's regulations.
- C. Indeed, it appears that DOE may be incorporating EPA's program for anti-degradation of State waters rather than the State's. This issue should be examined by DOE.

#### V. Conclusion

- A. The proposed rules represent DOE's first attempt at broad based rulemaking for programs which it is still learning. We offer our assistance to aid DOE in its effort.



STATE OF WEST VIRGINIA  
DEPARTMENT OF NATURAL RESOURCES  
CHARLESTON 25306

ARCH A. MOORE, JR.  
Governor

July 7, 1986

RONALD R. POTESA  
Director

MICHAEL A. FOTOS  
Deputy Director

Mr. Roger T. Hall  
Department of Energy  
1615 Washington Street, East  
Charleston, West Virginia 25311

Re: Comments on Proposed Rule

Dear Mr. Hall:

Enclosed please find the comments of the West Virginia Department of Natural Resources. If you have any questions concerning them, please contact Mr. Ron Shipley, Special Assistant to the Director, 1800 Washington Street, East, Charleston, West Virginia 25305, telephone 348-2761.

Sincerely,

A handwritten signature in dark ink, appearing to read "R. Potesa", written over a horizontal line.

Ronald R. Potesa  
Director

RRP/rsb

Enclosure

cc: Ron Shipley  
John Ailes  
Dave Robinson

COMMENTS OF THE  
WEST VIRGINIA DEPARTMENT OF NATURAL RESOURCES  
CONCERNING PROPOSED RULEMAKING  
BY THE WEST VIRGINIA  
DEPARTMENT OF ENERGY

The West Virginia Department of Energy, Division of Oil and Gas (hereinafter DOE), proposed comprehensive rulemaking on May 14, 1986. This rulemaking covers several programs including three (3) programs (Underground Injection Control (UIC); National Pollutant Discharge Elimination System (NPDES); and Resources, Conservation and Recovery Act (RCRA)) which are currently implemented by the West Virginia Department of Natural Resources (hereinafter DNR). DNR has also received a delegation of authority from the United States Environmental Protection Agency (EPA) for these three (3) programs.

On July 1, 1986 DNR testified at the public hearing on three primary areas: (1) effect of the proposed rules on the federal delegation of primacy for the above referenced programs; (2) overbroad interpretations of jurisdiction by DOE; and (3) the need for consistency with other State rules. We hereby incorporate those oral comments (outline attached) by reference.

In addition to these comments the Department is providing more detailed analysis and comments in DOE's rulemaking. These comments are divided into the following areas:

- (1) Effect of DOE's proposed rules on federal primacy of programs;
  - (2) Incorporation by reference;
  - (3) Series 3 - Underground Injection Control Program
  - (4) Series 4 - State National Pollutant Discharge Elimination System
  - (5) Series 5 - Miscellaneous Water Pollution Control
  - (6) Series 7 - Solid Waste Management
  - (7) Series 8 - Hazardous Waste Management
  - (8) Series 9 - Hearing and Appeal Procedures
  - (9) Need for Coordination
1. Effect of DOE's Proposed Rules on Federal Primacy of

## Programs

At the public hearing DNR addressed this issue from what we consider to be a seminal issue: DOE's lack of authority, based on W. Va. Code §22-1-20, over the UIC, NPDES or hazardous waste programs until EPA approves the transfer of delegated authority from DNR to DOE. Our principal recommendation was to include a statement in §1.4 of Series 3, 4, and 8 which would recognize that the proposed regulations would not be effective until EPA approved the transfer of delegated authority and the Governor has issued a proclamation attending to such approval in compliance with W. Va. Code §22-1-20. By including such an effective date DOE will avoid placing into effect rules which would make oil and gas operations answerable to two agencies--DNR and DOE. We note that DOE asserts that their regulations supercede DNR regulations. They may eventually do so, but certainly not until W. Va. Code §22-1-20 is complied with.

The DNR also desires to address this issue from an implementation standpoint. All federally delegated programs contain regulations and Memorandum of Agreement's (MOA's) which require the State (through the Governor and the delegated agency) to submit to EPA proposed modifications to its delegated program for EPA concurrence prior to implementation of program modification. For example, EPA regulation, 40 CFR 123.62 for the NPDES program requires the State to "keep EPA fully informed of any proposed modifications to its basic statutory or regulatory authority, its forms, procedures or priorities." (See 40 CFR §271.21(a) for the same RCRA requirement.) DNR has communicated with EPA concerning the passage of the West Virginia Energy Act. In addition, we have submitted DOE's proposed rules as well.

In addition to keeping EPA informed, a state must submit to EPA a request for program revision which, in the case of NPDES for example, must contain the following:

- a. A modified program description.
- b. Attorney General's statement.
- c. Memorandum of Agreement.
- d. Other documents as necessary.

After review and approval, the program revision becomes effective upon approval of the Administrator. EPA's procedures require that "substantial" program revisions be subject to public notice and opportunity for comment on the federal level.

Both the hazardous waste and UIC programs require similar processes with different variations. The hazardous waste program, for example, has additional requirements such as those at 40 CFR §271.21(c).

A realistic estimate of the time it will take to develop the necessary procedures and documents for submission to EPA is four to six months. EPA approval will take anywhere from six to nine months after the application is complete. EPA, however, may not deem the application complete until after the Legislature approves the regulations since the Attorney General's statement cannot be written until then (see e.g. 40 CFR §123.23(a); 40 CFR §271.7(a)). Consequently, the proposed rules could pass the Legislature in March, 1987 but EPA may not delegate the program until December 1987 at the earliest. Consequently, an effective date provision such as we recommended in our oral comments is essential to avoid duplicative requirements violating federal rules and breaching the MOA's which exist between the State and EPA. (The time frame for EPA approval may be even longer than we estimate due to the lack of a conflict of interest provision for the NPDES program. We note, for example, the intricate role which the Commissioner plays in the rule promulgation and approval. See W. Va. Code §§22-1-13, 22-1-15, 22B-1-2(b).)

To minimize delays in procuring EPA approval we suggest:

- a. The proposed rules be submitted to EPA with a request for their input (already requested).
- b. DOE respond to EPA requests for clarification and amendments expeditiously so that changes to the regulations can be made in time for the Legislature to approve the rules.
- c. DOE begin preparing the necessary documents so that EPA can review the regulations in the context of the program description. We applaud the active stance DOE is taking by proposing these rules. We would like to caution DOE that the EPA review process may require various amendments to DOE's regulations either to ensure "consistency and equivalency" with the federal requirements, clarify proposed rules or to ensure consistency between the DNR-DOE program. We, therefore, advise that the two agencies begin meeting regularly. We wish to avoid problems so severe that DOE may have to withdraw its regulations.
- d. DOE consult with DNR to address program coordination, lead agency issues, program consistency, and to take advantage of our assistance in gaining EPA approval.

2. Incorporation By Reference

Section 1.6 of Series 3 and 4 incorporates by reference federal rules in existence as of May 1, 1986. Since the Legislature will not approve these regulations until March of 1987, how will DOE ensure that its regulations incorporate the latest federal provisions while also complying with the public notice and comment provisions of the State Administrative Procedures Act? Will DOE propose an update of Section 1.6 immediately prior to the Legislative session? A related question concerns how DOE will ensure that its regulations incorporate the latest federal provisions so as to comply with applicable regulations? (See e.g. 40 CFR §123.62(i) and 271.21e.)

3. Underground Injection Control

Section 1.1 Scope: This section identifies five (5) classes of wells as set forth in Section 4 of this rule. Wells are classified in Section 5.

Section 14.2 - Requirements for Wells Injecting Hazardous Waste: This rule substantially changes current practice within West Virginia without any stated reason. Currently the State Water Resources Board prohibits Class IV hazardous waste injection wells. DOE's rule would allow the injection of hazardous waste into a formation which contains an underground source of drinking water within one-quarter mile of the well.

We do not know of the need for this practice and it should remain prohibited to protect such drinking water sources. Once an underground aquifer is contaminated, it is very difficult and expensive to cleanse.

Section 17.4.7. This provision also differs from current requirements without any stated justification. The proposed regulation allows a permittee to exceed the fracture pressure. Current rule would not allow it.

UIC wells are primarily pollution disposal techniques or wells in areas where underground strata is already fractured. Increasing fracture pressure beyond that of the formation creates additional avenues for pollution to get into the underground strata. Fracture pressure is also difficult to evaluate and fraught with uncertainty.

4. Series 4 - State National Pollutant Discharge Elimination System

Section 1.5 Former Rule Superseded: We are unaware of any WV/NPDES rule which was "effective July 11, 1985". There are, however, rules which were in existence on that

date.

Section 4.1 Permit Application Requirements: This section incorporates by reference all discharges, including manufacturing, commercial, mining and silviculture. Although Section 1.1--Scope provides limitations on the rule, we suggest that the DOE specifically and clearly denote by EPA point source category (40 CFR Chapter N) the dischargers to whom their rule applies.

Section 5.2--Additional Conditions Applicable to Permits: This section imposes reporting requirements on all facilities. Only oil and gas related activities should be referenced. (See comment to Section 4.1.)

Section 5.3--Inspection and Entry: We suggest that DOE include the ability to require and perform monitoring and analysis as a part of their inspection and entry authority.

Section 5.5 and 6.6.1--These provisions are unnecessary since analytical variability is considered in the promulgation of effluent limitation guidelines.

Section 6.2.1--Establishing limitations, standards and other conditions:

This section should clearly state that the use of real time water quality control is available only after imposition of technology based effluent limitations.

6.2.1.1-8. This section does not consider future uses of the stream. According to Section 6.2.1.2, toxicity requirements can be imposed "only" where impact on biota in the receiving water is significantly likely. Other uses and characteristics of receiving waters need protection as well as such as the use of a water as a drinking water supply. This section appears to contradict or limit Section 6.2.1.5 which requires the Director to consider the potential for human health impact, etc. We recommend that Section 6.2.1.1-8 be deleted and that specific requirements for effluent monitoring be included since toxic materials have already been identified in drilling wastes.

Section 6.3--Calculating NPDES Permit Conditions: Same comment as Section 4.1 above. 40 CFR §122.45 includes calculating NPDES permit conditions for POTW's, etc. for the automotive manufacturing industry. We suggest deleting reference to 122.45(b)(2).

Section 6.5.1--Schedules of Compliance: It should be

noted that schedules of compliance beyond statutory deadlines imposed under Section 301 of the Clean Water Act are not allowed.

Section 7--Modification, Revocation and Reissuance and Termination of Permits. Appendix A is not needed since DOE does not have authority over these industrial categories.

Section 8.20--Decision on Variances: Variances under §301(g) and 301(i) are beyond the scope of this rule and should be excepted from this rule.

Section 8.21--This section will not be acceptable to EPA. We tried similar proposals in the past and were unsuccessful.

Section 9--Criteria and Standards; Variances: Incorporating all of the referenced subparts of 40 CFR Part 125 is inappropriate in accordance with our comments on Section 8.20. For the sake of the regulated community we suggest that DOE include only those which are relevant to this industry. The rule will be more understandable.

Section 10--Federal Effluent Limitations Guidelines and Standards: 40 CFR Part 419--Petroleum Refining Effluent Limitation Guidelines should not be incorporated by reference since it is beyond the scope of this rule. Although DOE will have primary jurisdiction over oil and gas "exploration, development, production, storage and recovery", that phrase does not cover petroleum refining. We note that DOE's preamble discusses the origin of the jurisdictional phrase. This discussion focuses on DOE's jurisdiction over field operations such as exploring, drilling, fracturing, and completing. The discussion does not give a basis for jurisdiction over petroleum refining. Indeed, an EPA document which is quoted excludes wastes from oil refining. DOE's statement of its jurisdiction on page 9 (#1) of the preamble is thus too broad and this regulation exceeds its authority.

DOE should, however, incorporate provisions similar to 40 CFR Part 112, 113 and 114 since they deal with oil pollution prevention, spill prevention control and countermeasure plan, oil storage facility liability and civil penalties for oil pollution prevention regulations.

## 5. Series 5 - Miscellaneous Water Pollution Control

Section 3.1 - Discharge Notification and Response. This section should require immediate notification which, in no case, can occur later than 24 hours after becoming aware of the discharge. DNR has been responding to



spills for more than 10 years. There is a need to balance the permittee's ability to respond with the State's need to know about a threat to the public. We have found that immediate reporting is not burdensome and does not hinder the permittee's ability to respond to a spill but at the same time provides the State with information which, at times, is vital for protecting drinking water supplies and other health and environmental related concerns.

We recognize that the WRB regulations, by requiring immediate notification, may be ambiguous, i.e. how quickly is immediate? In promulgating the WV/NPDES coal regulations, we balanced the need for immediate reporting along with the standard EPA 24-hour notification provision (see §10E.13(d).) We urge the DOE to do the same.

In addition to this comment, we should note that only "reportable discharges" must be reported. Since one must look to other documents to determine what is reportable, we suggest that discharges which are reportable be more clearly spelled out and that DOE ensure that any spill into State waters be reported.

#### Section 4: Water Load Allocation

In addition to the comments previously filed on this issue, we would like to point out that DOE's proposal to issue waste load allocations for sewage facilities is administratively inefficient since the DNR's Division of Water Resources already performs this task. We recommend that DOE and DNR establish procedures whereby DNR provides the waste load allocation for sewage facilities. In this manner the problems of inconsistency between departments identified in our comments incorporated by reference and administrative inefficiency can both be avoided. DNR and DOE have already worked out a similar arrangement for coal facilities.

Section 5--Small Wastewater Treatment Plants. We are unclear whether Section 5.4 obviates the need for construction and installation of small wastewater treatment plant. If so, such exception would appear to be in violation of W. Va. Code §20-5A-5(b)(3).

#### 6. Series 6 - Dam Control

Two principal comments exist on this series. The first deals with the need for DOE's rule to create a bright line for devoting DOE's jurisdiction; the second deals with the need to update the regulations so they comply with recent federal requirements.

A. Need for Specifying DOE's Jurisdiction.

At first blush, the demarcation between DNR and DOE's jurisdiction over dam safety appears clear. DOE as stated in this rule, has jurisdiction over dams which pertain to "exploration, development, production, storage and recovery of oil and gas, and related mineral resources". In addition, DOE also has jurisdiction over dams pertaining to the explanation of coal and other mineral resources. See W. Va. Code §22-1-16. DNR has jurisdiction over all other dams under W. Va. Code §20-5D et seq.

This bright line demarcation, however, is somewhat blurred when we consider that DOE has not defined the phrase "related" or "other mineral resources". For example, a dam constructed as part of a sandstone quarry, flyash disposal operation or "other mineral" industry may cause future questions over jurisdiction. Since we are unsure of the phrase "related mineral resources" in this context, we are unsure of the scope of the proposed regulations (all Series).

DOE should work with DNR to clear up any issues relating to jurisdiction.

B. Updating of Regulations

It appears as though DOE used DNR's regulations as the basis of its proposed rule. Accordingly, please be aware of necessary changes which we have not yet made. The mine safety and Health Administration (MSHA) has made changes to their regulation that relate to proposed DOE rule §4.5.2.2. DOE should consider MSHA requirements to provide consistency.

7. Series 7--Solid Waste

Section 1.1--Scope. As with our suggestions regarding the scope of other series, we suggest that the coverage of the regulation be clarified. Does this rule cover any solid waste facility that receives oil and gas related wastes or does it cover only solid waste facilities that are owned or operated solely for oil and gas related wastes or some other scope?

Once we understand the scope of the regulation, we may wish to comment further if allowed. For example, is the open dump prohibition of Chapter 20, Article 5F included in this regulation?

Section 2--Definitions: This section seems cumbersome,

confusing and contradictory. First, the definitions of two other documents are incorporated by reference. That is cumbersome. Secondly, the definition of 20-5F-2(e) is incorporated. This definition includes all solid waste facilities although the rule supposedly pertains only to oil and gas and related mineral activities. (See §1.1.) That is confusing. Finally, such improper incorporation by reference may be contradictory.

Section 3--Permits: Please see oral comments which are incorporated by reference.

Section 4--Permits by Rule. We recognize the use of permits by rule as a convenient administrative tool. However, we do not see how this permit by rule provides the type of environmental protection envisioned by Chapter 20, Article 5F. We note that under this section a solid waste facility has a permit by rule if it complies with Series I. Series I does not contain any performance standards for solid waste facilities or even mention of such facilities.

#### 8. Series 8--Hazardous Waste Management.

Section 1.1 and 1.2--Scope and Authority: DOE's jurisdiction over hazardous waste is even more limited than its jurisdiction in the NPDES, UIC and solid waste programs. We note, for example, that DOE is not given the same broad authority in W. Va. §22-1-16 (paragraph 1) over Chapter 20, Article 5E that it was given over Articles 5, 5A, 5d and 5f. Indeed, DOE's jurisdiction is limited to only "all power and duties vested in the director of the Department of Natural Resources pursuant to subsection (g), section seven, article five-e, chapter twenty of this code and shallow gas-well review board pursuant to subsection (h), section seven, article five-e, chapter twenty of this code." Since W. Va. Code §20-5E-7g relates to coal mining and wastes and overburden, DOE's authority in this rulemaking is limited to activities with respect to oil and gas wells, liquid injection wells and waste disposal wells regulated by specific sections of the code.

Section 1.5--Former Rule Superceded. DOE's jurisdiction does not reach identification and listing rulemaking such as that contained in W. Va. Code §20-5E-6(a)(2) or parallel to the provisions of DNR regulations §3.1.3(b)(5) pertaining to identification and listing of hazardous wastes. The ability to perform such rulemaking rests with the DNR Director and has not been transferred.

Section 4--Permit by Rule. We support the last paragraph of subsection (2) and request that it be placed in Series

7 as well.

9. Need for Coordination

As it is easy to see, DNR has many questions and issues of jurisdiction as well as proper implementation of the programs which it believes need to be resolved before the rules are finalized. Although we recognize DOE's prime role in regulating mineral extraction industries, proper coordination between the departments will be necessary to properly manage the natural resources that programs such as NPDES, UIC, solid and hazardous waste management are designed to protect.

We encourage DOE to work with DNR to answer these key questions and to work toward an efficiently administered and well coordinated program.



STATE OF WEST VIRGINIA  
DEPARTMENT OF NATURAL RESOURCES

CHARLESTON 25306

July 8, 1986

ARCH A. MOORE, JR.  
Governor

RONALD R. POTESTA  
Director

MICHAEL A. FOTOS  
Deputy Director

RECEIVED  
JUL 11 1986  
GAS

JUL 11 1986

Mr. Roger T. Hall  
Department of Energy  
1615 Washington Street, East  
Charleston, West Virginia 25311

Re: Comments on Proposed Rule

Dear Mr. Hall:

Enclosed please find the outline of DNR oral comments presented at the July 1, 1986 public hearing. These oral comments are incorporated by reference in the written comments submitted to your agency on July 7, 1986.

Sincerely,

A handwritten signature in cursive script that reads "Ron Shipley".

Ron Shipley  
Special Assistant to the Director

RS/jhb

Enclosure

OUTLINE OF COMMENTS TO  
PROPOSED DOE OIL AND GAS REGULATIONS  
JULY 1, 1986

I. INTRODUCTION

- A. Thank you for the opportunity to speak.
- B. I am here on behalf of the DNR Director.
- C. Our comments are brief since we plan on submitting written comments by July 8.
- D. Before beginning, I should note that DNR has been a supporter of one-stop shopping and the concepts which the Energy Act promote, e.g. coal, NPDES, oil and gas general permit.
- E. We will focus on three (3) general issue areas:
  - 1. Effect of rules on primacy.
  - 2. Overbroad statements of jurisdiction expressed by DOE.
  - 3. Consistency with existing State rules.

II. Effect of Rules on Primacy

- A. As currently proposed DOE's rule does not recognize the key role which EPA approval of program transfer plays on their jurisdiction.
- B. Section 22-1-20 makes it clear that DOE's jurisdiction over programs for which EPA approval is necessary does not exist until EPA approval is obtained.
- C. Section 22-1-20(b) states:
  - (b) The Legislature recognizes that certain of the powers, duties, functions and responsibilities transferred under the provisions of this chapter and chapters twenty-two-a and twenty-two-b of this code involve the implementation of federal regulatory programs by the state and that the transfer of such powers, duties, functions and responsibilities to the department of energy may require approval of certain federal agencies or officials in order to avoid disruption of the federal-state relationship under which such regulatory programs are implemented. Therefore, the transfer to the department of the powers,

duties, functions and responsibilities referred to in this chapter and chapters twenty-two-a and twenty-two-b of this code shall become effective upon a proclamation by the governor stating either that final approval of the transfer has been given by the appropriate federal agency or official or that final approval of the transfer is not necessary to avoid disruption of the federal-state relationship under which such regulatory programs are implemented.

- D. Currently the State is federally authorized to implement three (3) of the programs for which DOE is proposing rules: UIC, NPDES and hazardous wastes.
- E. DOE's proposed rules disrupt the federal-state relationship under which such regulatory programs are implemented by definition since the current program will be changed EPA rules state that modifications to State program authority require their approval.
- F. DOE's rules do not recognize the need for neither EPA approval nor the Governor's proclamation to be issued prior to taking effect. We would therefore recommend that the Department amend Section 1.4 in Series 3, 4 and 8 by stating:

"The regulations in this section become effective \_\_\_\_\_ day of \_\_\_\_\_ being the date on which the Governor issued a proclamation stating that final approval of the transfer of the \_\_\_\_\_ program contemplated by this section has been given by the Administrator of the United States Environmental Protection Agency."

### III. Overbroad Statements of Jurisdiction by DOE.

- A. There are two examples we will use to illustrate this problem. The first is DOE's assertion of lead agency status for the UIC program; the second is its drafting of solid waste rules which require all solid waste facilities to obtain DOE permits.
- B. First DNR recognizes the primary regulatory status DOE occupies for the exploration, development, production, storage and recovery of oil and gas and related mineral resources under the West Virginia Energy Act, subject to the limitation of previously cited 22-1-20.
- C. We do not believe, however, that the statute confers upon DOE lead agency status for a program but rather for specific activities.
- D. Section 22-1-16 states that DOE is the "lead

agency" for all purposes of federal legislation "relating to such activities" not an entire program. Interpreting this provision to give DOE "lead agency" status in all areas of federal legislation would, for example, conflict with W. Va. Code §20-5E-4, which designates DNR as the lead agency for the State's hazardous waste management program.

- E. Secondly, we note that Series 7, Section 3 states that "a permit shall be obtained from the Department of Energy, Division of Oil and Gas, prior to the installation, establishment, construction, modification, operation or abandonment of any solid waste facility." By incorporating by reference the definition of solid waste facilities in DNR's regulations and Chapter 20, Article 5F, DOE is by this rule proposing that all solid waste facilities obtain permits from DOE regardless of whether they are oil and gas related.

#### IV. Consistency With State Rules

- A. Finally, DNR recognizes that DOE's program will not be identical to the program implemented by the DNR and thus some inconsistencies may exist. The issue, however, is to what degree. Two examples highlight this issue.
- B. First is DOE's proposal to issue waste load allocations for sewage facilities in Series 5. As you know, DNR also issues waste load allocations for sewage facilities. We are concerned that without proper recognition of our dual roles, one facility may use up the pollution increment, thereby preventing other facilities to locate close by.
- B. Secondly, in this general issue area, we are also concerned that any pollution increments available for use under the State's antidegradation policy may also be used without proper coordination, especially since we do not see any recognition of the State's antidegradation policy in DOE's regulations.
- C. Indeed, it appears that DOE may be incorporating EPA's program for anti-degradation of State waters rather than the State's. This issue should be examined by DOE.

#### V. Conclusion

- A. The proposed rules represent DOE's first attempt at broad based rulemaking for programs which it is still learning. We offer our assistance to aid DOE in its effort.





STATE OF WEST VIRGINIA  
DEPARTMENT OF ENERGY  
DIVISION OF MINES AND MINERALS  
1615 Washington Street, East  
Charleston, West Virginia 25311  
Telephone: 348-3500

ARCH A. MOORE, JR.  
Governor

M E M O R A N D U M

TO: All Department of Energy Personnel  
FROM: Kenneth R. Faerber, Commissioner *KRF*  
SUBJECT: Freedom of Information Requests  
DATE: June 9, 1986

Effective immediately, all requests for public information filed with the Department should be considered freedom of information requests as required under The Freedom of Information Act, 29B-1 et seq. (copy attached). In that regard, except where good judgment and discretion dictate otherwise, the following policies will be observed.

The appropriate response to requests filed with the Charleston office is to advise the requester of the appropriate regional office where the information is available and the times when the office is open for access to the information. This may be done verbally or in writing, whichever seems most appropriate, but must be done within five working days following the date of the request.

Requests received in the regional offices will be routinely processed by: (1) advising the requester of the location and times where the information is available; (2) providing the requested information; or (3) denying the request.

The appropriate action must be taken within five working days and in the event of denial, it must be done in writing with the reasons for denial clearly stated.

Department of Energy Personnel  
Page Two  
June 9, 1986

The appropriate fees to be charged for searching out and reproducing requested records are as follows:

8 1/2 x 11 sheets	\$0.50 per page
8 1/2 x 14 sheets	\$0.75 per page
Maps and plans or other large form documents	\$1.00 per page or actual cost for outside repro- duction service
Search fee	\$10.00 per hour or fraction thereof. No charge for the first one-half hour.

There will be no charge for searching out and reproducing records where the total cost calculated on the basis of the above-described charges is less than \$3.00.

An invoice for the total charges will be prepared and full payment made by the requester in advance of receipt of the requested information.

The purpose of this policy is to protect the integrity of the central office files and to give some relief of the burdensome work load currently being placed on our file room staff. Your cooperation in this regard is expected and appreciated.

KRF/rha

## CHAPTER 29B.

# FREEDOM OF INFORMATION.

### Article

#### 1. Public Records, §§ 29B-1-1 to 29B-1-6.

### ARTICLE 1.

#### PUBLIC RECORDS.

##### Sec.

- 29B-1-1. Declaration of policy.
- 29B-1-2. Definitions.
- 29B-1-3. Inspection and copying.

##### Sec.

- 29B-1-4. Exemptions.
- 29B-1-5. Enforcement.
- 29B-1-6. Violation of article; penalties.

#### § 29B-1-1. Declaration of policy.

Pursuant to the fundamental philosophy of the American constitutional form of representative government which holds to the principle that government is the servant of the people, and not the master of them, it is hereby declared to be the public policy of the State of West Virginia that all persons are, unless otherwise expressly provided by law, entitled to full and complete information regarding the affairs of government and the official acts of those who represent them as public officials and employees. The people, in delegating authority, do not give their public servants the right to decide what is good for the people to know and what is not good for them to know. The people insist on remaining informed so that they may retain control over the instruments of government they have created. To that end, the provisions of this article shall be liberally construed with the view of carrying out the above declaration of public policy. (1977, c. 147.)

#### § 29B-1-2. Definitions.

As used in this article:

- (1) "Custodian" means the elected or appointed official charged with administering a public body.
- (2) "Person" includes any natural person, corporation, partnership, firm or association.
- (3) "Public body" means every state officer, agency, department, including the executive, legislative and judicial departments, division, bureau, board and commission; every county and city governing body, school district, special district, municipal corporation, and any board, department, commission, council or agency thereof; and any other body which is created by state or local authority or which is primarily funded by the state or local authority.
- (4) "Public record" includes any writing containing information relating to the conduct of the public's business, prepared, owned and retained by a public body.
- (5) "Writing" includes any books, papers, maps, photographs, cards, tapes, recordings or other documentary materials regardless of physical form or characteristics. (1977, c. 147.)

**§ 29B-1-3. Inspection and copying.**

(1) Every person has a right to inspect or copy any public record of a public body in this State, except as otherwise expressly provided by section four [§ 29B-1-4] of this article.

(2) A request to inspect or copy any public record of a public body shall be made directly to the custodian of such public record.

(3) The custodian of any public records, unless otherwise expressly provided by statute, shall furnish proper and reasonable opportunities for inspection and examination of the records in his office and reasonable facilities for making memoranda or abstracts therefrom, during the usual business hours, to all persons having occasion to make examination of them. The custodian of the records may make reasonable rules and regulations necessary for the protection of the records and to prevent interference with the regular discharge of his duties.

(4) All requests for information must state with reasonable specificity the information sought. The custodian, upon demand for records made under this statute, shall as soon as is practicable but within a maximum of five days not including Saturdays, Sundays or legal holidays:

- (a) Furnish copies of the requested information;
- (b) Advise the person making the request of the time and place at which he may inspect and copy the materials; or
- (c) Deny the request stating in writing the reasons for such denial.

Such a denial shall indicate that the responsibility of the custodian of any public records or public body to produce the requested records or documents is at an end, and shall afford the person requesting them the opportunity to institute proceedings for injunctive or declaratory relief in the circuit court in the county where the public record is kept.

(5) The public body may establish fees reasonably calculated to reimburse it for its actual cost in making reproductions of such records. (1977, c. 147.)

**§ 29B-1-4. Exemptions.**

The following categories of information are specifically exempt from disclosure under the provisions of this article:

(1) Trade secrets, as used in this section, which may include, but are not limited to, any formula, plan pattern, process, tool, mechanism, compound, procedure, production data, or compilation of information which is not patented which is known only to certain individuals within a commercial concern who are using it to fabricate, produce or compound an article or trade or a service or to locate minerals or other substances, having commercial value, and which gives its users an opportunity to obtain business advantage over competitors;

(2) Information of a personal nature such as that kept in a personal, medical or similar file, if the public disclosure thereof would constitute an unreasonable invasion of privacy, unless the public interest by clear and convincing evidence requires disclosure in the particular instance: Provided, that nothing in this article shall be construed as precluding an individual from inspecting or copying his own personal, medical or similar file;

(3) Test questions, scoring keys and other examination data used to administer a licensing examination, examination for employment or academic examination;

(4) Records of law-enforcement agencies that deal with the detection and investigation of crime and the internal records and notations of such law-enforcement agencies which are maintained for internal use in matters relating to law enforcement;

(5) Information specifically exempted from disclosure by statute;

(6) Records, archives, documents or manuscripts describing the location of undeveloped historic, prehistoric, archaeological, paleontological and battlefield sites or constituting gifts to any public body upon which the donor has attached restrictions on usage or the handling of which could irreparably damage such record, archive, document or manuscript;

(7) Information contained in or related to examination, operating or condition reports prepared by, or on behalf of, or for the use of any agency responsible for the regulation or supervision of financial institutions, except those reports which are by law required to be published in newspapers; and

(8) Internal memoranda or letters received or prepared by any public body. (1977, c. 147.)

#### § 29B-1-5. Enforcement.

(1) Any person denied the right to inspect the public record of a public body may institute proceedings for injunctive or declaratory relief in the circuit court in the county where the public record is kept.

(2) In any suit filed under subsection one of this section, the court has jurisdiction to enjoin the custodian or public body from withholding records and to order the production of any records improperly withheld from the person seeking disclosure. The court shall determine the matter de novo and the burden is on the public body to sustain its action. The court, on its own motion, may view the documents in controversy in camera before reaching a decision. Any custodian of any public records of the public body found to be in noncompliance with the order of the court to produce the documents or disclose the information sought, may be punished as being in contempt of court.

(3) Except as to causes the court considers of greater importance, proceedings arising under subsection one of this section shall be assigned for hearing and trial at the earliest practicable date. (1977, c. 147.)

#### § 29B-1-6. Violation of article; penalties.

Any custodian of any public records who shall willfully violate the provisions of this article shall be guilty of a misdemeanor, and, upon conviction thereof, shall be fined not less than one hundred dollars nor more than five hundred dollars, or be imprisoned in the county jail for not more than ten days, or, in the discretion of the court, by both such fine and imprisonment. (1977, c. 147.)

# West Virginia Oil and Natural Gas Association

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## DIRECTORS

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GEORGE A. DAVIDSON, JR., Clarksburg

THOMAS B. DUNN, Buckhannon

JACK L. TRITTIPO, President

930 Commerce Square  
Charleston, West Virginia 25301

JAMES A. CREWS, Vice President

Post Office Box 1588  
Parkersburg, West Virginia 26101

REX BURFORD, Secretary-Treasurer

Post Office Box 3231  
Charleston, West Virginia 25332

## DIRECTORS

DONALD H. FOOSE, Parkersburg

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Hand-Delivered

June 24, 1986

Mr. Roger Hall  
Department of Energy  
1615 Washington Street, East  
Charleston, West Virginia 25311

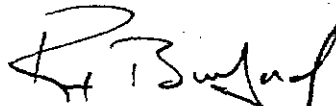
RE: Public Hearing - Proposed Oil and Gas Rules  
July 1, 1986

Dear Roger:

This letter is to file a timely request to make an oral presentation at the hearing on the above captioned rules and regulations.

I am also authorized to reserve time for Consolidated Gas Transmission Corporation and Pennzoil Company.

Sincerely yours,



Rex Burford  
Secretary-Treasurer

RB/jb

xc: Richard J. Cook - Consolidated Gas Transmission Corp.  
Paul King - Pennzoil Company  
Fredrick G. Kolb, Chairman - Environmental Affairs Committee, WVO&NGA  
H. L. "Jack" Snyder, Jr., Chairman - Taxation and Legislation Committee, WVO&NGA

Janet T. Surface  
COURT REPORTER  
Alum Creek, West Virginia 25003  
(304) 756-3302 (304) 756-3611

July 7, 1986

7/8/86  
OK - someone  
should confirm that  
six hours is a  
minimum charge.  
*[Signature]*

West Virginia Department of Energy  
Oil and Gas Division  
1615 Washington Street, East  
Charleston, WV 25311

Transcript and reporter's appearance fee in the matter of a  
public hearing held on July 1, 1986 in Charleston, WV

15 pages @ \$1.65 = \$ 24.75  
6 hours @ \$10.00 = \$ 60.00

\$ 84.75

Janet T. Surface/dd  
Janet T. Surface  
SS# 234-50-1878

RESPONSE TO COMMENTS



WEST VIRGINIA DEPARTMENT OF ENERGY  
DIVISION OF OIL AND GAS

Response to Comments on Administrative  
Regulations Proposed On May 14, 1986.

I. INTRODUCTION.

In response to The West Virginia Energy Act, the Division of Oil and Gas ["Division"] proposed on May 14, 1986, the adoption of legislative and procedural regulations. The public notice which accompanied the proposed rules scheduled a public hearing for July 1, 1986, and invited the public to file written comments through July 8, 1986.

At the public hearing, oral comments were received from representatives of the West Virginia Department of Natural Resources and the West Virginia Oil and Natural Gas Association.

Written comments were received from representatives of the West Virginia Oil and Gas Conservation Commission, West Virginia Department of Natural Resources, Capitol Soil Conservation District, and League of Women Voters of West Virginia, Inc. In addition, the staff of the Division of Oil and Gas conducted its own review of the proposed rules and has identified a number of areas that justified comment.

The Division's proposed rules and preamble have been provided to the United States Environmental Protection Agency with a request for comment. While the Division has not yet received comments from EPA, it will work cooperatively with EPA to address whatever concerns they may have about the Division's rules.

The Division is very appreciative of the significant efforts which have been made to review and comment on its proposed regulations. This document will respond to the comments which have been filed and will identify the extent to which the final rules have been amended to reflect the comments filed.

## II. INTERAGENCY COORDINATION.

At the outset, the Division recognizes that beyond the mere implementation of The West Virginia Energy Act, it must coordinate the development of its regulatory programs with those of other agencies. To the extent that its regulations and programs are associated with implementation of the federal National Pollutant Discharge Elimination System (NPDES), Underground Injection Control (UIC), or Hazardous Waste Management programs, the Division must obtain the approval of EPA in order to receive delegation of authority to administer those programs. It is also recognized that under The West Virginia Energy Act the State Water Resources Board continues to have the role of establishing standards of quality that are applicable to waters of the state. It is also recognized that many of the environmental regulatory programs being assumed by The Division will involve a transfer of authority from the West Virginia Department of Natural Resources ["DNR"]. In addition to effectuating a transfer of programs from DNR it also becomes significant to establish the bounds for determining the jurisdiction of DNR on the one hand, and the Division on the other. To accomplish the objectives of The West Virginia Energy Act, the Division

recognizes the need to work closely with these and other regulatory agencies to assure the smooth transition of programs to the Division and to accomplish the objective of "one stop shopping" for the oil and gas industry.

### III. DIVISION OF OIL AND GAS JURISDICTION.

Several commentators raised questions regarding the jurisdiction of the Division to regulate various activities. The Division recognizes the need to provide the clearest possible statement of its jurisdiction consistent with the mandate imposed on it by The West Virginia Energy Act. To this end, the Division accompanied its proposed rules with a preamble which discussed extensively the nature of its jurisdiction as mandated by law.

Series 1 and Series 2 rules are largely unchanged from regulations of the former Office of Oil and Gas of the Department of Mines and the Division does not, therefore, see any particular question raised about the applicability of those rules. The rules contained in Series 3 through 8 each contain a statement in Section 1.1 of those rules which expressly state that those rules relate "to the exploration, development, production, storage and recovery of oil and gas and related mineral resources." This language is taken directly from W. Va. Code §22-1-16 and is believed by the Division to form the substantive basis for much of its jurisdiction.

The requirements of these rules must be read in the context of Section 1.1 of each of Series 3 through 8. In doing so, we believe that the reader will clearly understand their

applicability only to oil and gas and related operations. Questions related to jurisdictional boundaries involving such facilities as sandstone quarries and flyash disposal are more appropriately raised in the context of regulations of the Department of Energy, Division of Mines and Minerals. It is clear, however, that the regulations of the Division of Oil and Gas being discussed here do not apply to such activities.

#### IV. INCORPORATION BY REFERENCE.

In Series 3 and 4, the Division proposed the extensive utilization of incorporation by reference of provisions contained in federal regulations. These regulations deal with the Underground Injection Control and the NPDES programs of the federal government which are currently delegated to the West Virginia Department of Natural Resources. While these programs allow states to adopt provisions which are more stringent than federal requirements, authorization to administer these programs is premised on the assumption that the state program meets at least the minimum requirements of the federal program. This mandate not only requires the development of regulations which satisfy these minimum federal requirements, but also that the regulations be updated from time to time to reflect changes in the federal requirements.

The Division recognizes that incorporation by reference is a somewhat different approach than has thus far been applied to the implementation of these regulatory programs. The Division believes, however, that this approach to the implementation of

these federal programs will serve to be the most efficient way to establish these regulations in the first instance and to update them as need be in the future.

Commentors raised questions about how the Division intended to update these regulations from time to time and whether the Division would be incorporating changes in federal regulations which occurred subsequent to May 1, 1986 (the date referenced in the proposed rule). It is the Division's intention to adopt these regulations based upon the requirements of the United States Environmental Protection Agency in effect as of May 1, 1986. To the extent that changes in those regulations occur subsequently, the Division will propose at the appropriate time amendments to its regulations to reflect those changes and invite the public to comment on those changes at that time. In short, the Division will employ the same procedure to amend its regulations based on incorporation by reference as it will use to amend its regulations containing full text. The Division believes that the State Administrative Procedures Act mandates the same procedural requirement in either case.

#### V. EFFECTIVE DATES.

Pursuant to the requirements of the Secretary of State for the filing of proposed rules, no effective dates were contained in the proposed rules of the Division. It is the intention of the Division to make the rules contained in Series 1, 2, 5, 6 and 7 effective as soon as possible following approval by the Legislature. The Division recognizes that where federal

programs are involved, The West Virginia Energy Act (W.Va. Code §22-1-20) does not empower the agency to implement regulations until such time as the Governor has issued a proclamation that the appropriate federal agency has authorized the Division of Oil and Gas to implement those programs.

The Division agrees with the comment filed by the Department of Natural Resources that it is appropriate to establish the effective date for the rules contained in Series 3 (UIC), Series 4 (NPDES), and Series 8 (Hazardous Waste) to coincide with the approval of the Division to administer these programs and appropriate revisions have been made in Section 1.4 of each of these rules to accomplish this objective.

#### VI. SERIES 1.

a. Transfer of Well Ownership - In its proposed regulation, the Division sought to clarify the obligations that would be placed on both the transferror and transferee of a well. Upon further review and in response to comments filed by the Division staff, additional language will be added to Section 5.1.2.2 placing an affirmative obligation on the transferee of a well to file information with the Division along with the applicable bond, cash or collateral security required by law. The addition of this language to Section 5.1.2.2 should conform that section with Section 5.1.2.3 which identifies the circumstances under which the Division will release the transferror owner of a well from obligations under the West Virginia Energy Act.

b. Fees - In response to comments filed by the Division's staff, Section 5.2.1.5 has been revised to clarify the obligation on an applicant to file the \$250 application fee and \$100 special reclamation fee that are required by statute and also to confirm the current practice of the agency to require the filing of a \$35 fee to defray the cost of field review of an applicant's soil and erosion control plan. The rules should now be clear that all three of these fees must be filed with the Division at the time of the filing of an initial application to drill a well.

c. Use of Single Application - In response to staff comments, the rule has been revised in Section 5.2.2 by making it expressly clear that a single application may be used for all well work contemplated by an operator. Previous language referred only to combining stimulation with drilling on a single application and, accordingly, did not represent the ongoing practice of the Division.

d. Notice to Surface Owners - In an effort to streamline the requirements for notifying a surface owner of record, the final rules have been amended in accordance with the recommendation of the staff to provide in Section 5.4.2 that the surface owner of record must be provided with true and complete copies of all documents required under Section 5.2 along with the Division's statement of instructions to surface owners. This approach simplifies the language previously contained in this section while assuring that the surface owner is provided with all information required by law.

e. Well Location Description - The staff has commented that a modification should be made to Section 9.2.4 to recognize that the Division should only be required to accept as a landmark for use in describing the location of a new well, the location of an existing well when the location of that existing well has been accurately platted and on file with the Division. The Division is aware of some situations in which plats that are on file with the Division contain erroneous information about the location of existing wells.

f. Topographic Maps - The Division staff in its comments also points out that almost all topographic maps that are used to identify the location of a well are shown on 7.5 minute topograph maps. Accordingly, Section 9.2.9 of this rule has been revised to delete reference to 15 minute topographic maps.

g. Fresh Water Casing - The staff has also commented that Section 11.3 should be clarified to make it clear that the fresh water casing must extend to at least 30 feet to make it clear that there is no prohibition against the fresh water casing extending beyond that depth. The final regulation has been amended to reflect that change.

h. Well Records - The Division staff has pointed out that Section 12.1 as proposed recognized only the obligation of a well operator or his drilling contractor to maintain a copy of the permit application. The staff points out that well work at a site may involve more than drilling and, accordingly, that an obligation to maintain records should be placed on the well operator or the appropriate contractor whether that be a drilling



contractor or not. The final version of this language has been amended to reflect this change. The Division has also received a comment that a shut-in pressure should be established prior to obtaining well test data. The Division, however, does not agree that such a shut-in period is necessary for it to discharge its obligations under The West Virginia Energy Act.

i. Reclamation Requirements - One commentor urged that the regulations contain a specific reference to the Erosion Sediment Control Handbook of the Division and that the Director not be empowered to adjust the construction and reclamation plans based upon site conditions. The Division recognizes that the requirements of its Erosion and Sediment Control Manual are mandated by statute to be included as part of the terms and conditions of a well work permit (See W.Va. Code §22B-1-6(d)) and, accordingly, does not believe it is necessary for that requirement to be repeated in these regulations. The Division disagrees with the commentor's suggestion that there is little reason for the Director to be empowered to adjust to construction and reclamation requirements based upon site-specific circumstances. It has been the Division's experience that even though a reclamation plan has been thoroughly field reviewed, that the passage of time from that review until the time construction and reclamation requirements are undertaken may well change circumstances sufficiently to justify a modification of construction and reclamation requirements. This practice is the practice which has been followed by the agency for many years and has been proven to be an effective regulatory device.

j. Pit Construction - In response to a comment filed by the Division staff, the provisions of Section 16.4 have been revised to conform with the pit construction requirements contained in the general permit which has been issued by the Department of Natural Resources for oil and gas well drilling operations.

k. Salt Water Discharges - One commentor inquired as to the reason why Section 16.5.2 did not contain a prohibition against the discharge of saltwater into fresh water. Such a prohibition was contained in the regulations of the former Office of Oil and Gas of the Department of Mines. The Division has elected not to include such a provision in its regulations for the reason that it has developed in conjunction with the West Virginia Department of Natural Resources a general permit which specifies a detailed set of requirements that must be followed by an operator in the treatment and discharge of such material. Because the agency now has at its disposal a specific treatment methodology to address this situation, the total prohibition against such a discharge is no longer appropriate.

l. Variances - One commentor addressed the Division's proposal to authorize the Director to grant a variance from requirements of these regulations. The commentor specifically inquired as to the limits that might be placed on the Director's authority to grant such variances. It is the Division's belief that its general regulations have been as carefully developed as can be to address the various operational circumstances which it must confront in the regulation of the oil and gas industry.

Even so, no set of regulations can anticipate all of the circumstances which confront the oil and gas industry in the field particularly given the fact that up to 3,000 wells can be drilled in West Virginia alone in a single year. The Division agrees with the commentor, however, that there should be carefully prescribed limits placed on the Director for the granting of such variances. The Division intends to utilize such variances only in exceptional cases where good cause is shown and where alternative practices to be employed by the operator reflect sound engineering practice. Accordingly, the Division has amended Section 18 to reflect this criteria and to provide that the Director will not grant such a variance until notice has been provided to the public, surface owners of record, and others and has provided those persons with an opportunity to comment on any such proposed variance.

#### VII. SERIES 2.

a. Certification Procedures - The staff has commented that the procedures reflected in the proposed rule do not conform to the current procedures being utilized by the Division in the handling of these certifications. Accordingly, changes have been made in Section 4 to recognize that the Division does not conduct hearings with respect to certifications but, rather, makes determinations with respect to those certifications. In addition, the final rule deletes the provision previously contained in Section 4.2.3.5 of the proposed rule for the reason that FERC notifies operators directly of this information and it is not,

therefore, necessary to provide that information through the Division's circular.

VIII. SERIES 3.

a. Lead Agency - The Division received two comments that questioned statements appearing in the preamble to the proposed rule indicating that the Division was of the opinion that it should be the lead agency for purposes of the federal Underground Injection Control (UIC) Program. In this regard, one commentor pointed out that W. Va. Code §22-1-16 empowered DOE to be the lead agency for purposes of federal programs related only to activities within its jurisdiction, not with respect to all federally delegated programs to West Virginia. The Division agrees that it would be inappropriate for it to be the lead agency for all federally delegated environmental programs and has never advocated that it be the lead agency for purposes of either hazardous waste management programs or the NPDES program. The UIC program, however, is quite different.

The Division currently issues a well work permit for every underground injection control well drilled in West Virginia. In addition, the Division, acting under a Memorandum of Understanding with the Department of Natural Resources, processes permit applications for all Class II wells which comprise an overwhelming majority of the wells regulated under the state's UIC program. The Division's involvement in the UIC process is much greater than that of the Department of Natural Resources. This combination of the Division's heavy involvement

in the regulatory program in combination with the expressed provisions of W. Va. Code §22-1-16 makes it abundantly clear that the Division should be the lead agency for purposes of the UIC program. It is certainly contemplated that the Department of Natural Resources must continue to be involved in processing those UIC applications that relate to facilities not involving the oil and gas industry. The Division would propose to utilize a Memorandum of Understanding to allow the Department of Natural Resources to accomplish this objective.

b. Class IV Wells - Section 14 of the proposed rule described standards applicable to Class IV wells. Class IV wells are those wells which inject hazardous waste or radioactive waste above or into a formation which is within one-quarter mile of an underground source of drinking water (USDW). One commentor noted that the proposed rule would allow injection of hazardous waste into these formations which is contrary to the current regulations of the State Water Resources Board. The Division's proposal did nothing more than incorporate by reference the federal regulations applicable to Class IV wells. Those federal regulations did recognize that Class IV wells that were in operation prior to July 18, 1980, would be allowed to operate for six months following the effective date of a UIC program approved or promulgated for the State. Because West Virginia received delegation of its UIC program on December 9, 1983 (48 Fed. Reg. 55127), effective January 9, 1984, the six month grace period for the operation of existing Class IV wells has passed. There clearly is no reason for preserving such a transition in the

Division's regulations and, accordingly, the final regulations contained in Section 14 have been revised to prohibit the construction and operation of all Class IV wells.

c. Notification of Intent to Inspect - One commentor questioned whether the 13-day notification requirement contained in Section 17.4.3.3 of the proposed rule allowed DOE sufficient time to inspect a well prior to commencement of injection. The Division believes that such a requirement is an appropriate amount of time to conduct such an inspection and notes that this provision is identical to the provision contained in the UIC regulations of the Water Resources Board making it consistent with the practices that will be applicable to the processing of UIC applications by the Department of Natural Resources.

d. Injection Pressure - One commentor expressed concerns that the language in the proposed Section 17.4.7 might be interpreted as allowing a permittee to exceed the fracture pressure of an underground formation in certain instances. The purposes of Section 17.4.7 was to reflect the current practice of generally allowing the permittee to inject at a pressure of 90% of the breakdown pressure of the injection formation and to allow the permittee to inject at a pressure in excess of 90% at the discretion of the Director. The Division did not contemplate in its proposal that the injection pressure would ever be allowed to exceed the fracture pressure of the formation. To eliminate any question over how this provision would be interpreted, the Division has amended its final regulation that in no case may the

injection pressure be allowed to exceed the fracture pressure of the formation.

e. Abandonment - One commentor suggested the appropriateness of establishing some time limitation that would trigger reclamation requirements for a well not in use. The Division agrees with the commentor that a definite time period should be established in its UIC regulations after which continued inactivity at a site will give rise to abandonment, thus triggering applicable plugging and abandonment requirements under the regulations. Accordingly, the Division has added a provision to Section 17.5.1 adapted from the requirements of W. Va. Code §22B-1-19 which provides that any well which is not in use for a period of 12 consecutive months shall be presumed to have been abandoned and shall promptly be plugged in accordance with applicable requirements of the regulations unless the operator furnishes the satisfactory proof to the Director that there is bona fide future use for such well.

#### IX. SERIES 4.

a. Scope of Rule - One commentor raised questions about whether the rule, as proposed, included provisions that were applicable to non-oil and gas industry facilities. As was discussed earlier, it is the Division's intention to rely on Section 1.1 of this rule as limiting its applicability to activities associated with the oil and gas industry and related mineral resources. Nevertheless, the Division has made changes in several places in Series 4 to eliminate references which

commentors have identified to be inappropriate. This occurred in Section 10 by deleting references to 40 C.F.R. Part 419 and in Section 6.3 by not adopting by reference two subsections in 40 C.F.R. Part 122.

b. Inspection and Entry - One commentor suggested that the Division should include a reference in its regulations to monitoring and analysis as part of its inspection authority. The Division agrees that the addition of these references to Section 5.3.2 is appropriate. This commentor also seemed to suggest that the inspection and entry provisions of these regulations should contain language which would require the permittee to conduct sampling, monitoring and analysis. However, the Division notes that Section 5.3 deals only with the Division's powers of inspection and entry. The obligations for sampling, monitoring, analysis and reporting by permittees are addressed in other sections of Series 4 and would be reflected in any permit terms and conditions issued by the Division. The statutory power of the Division to request and obtain information from dischargers is very broad.

c. Analytical Variability - One commentor stated that the analytical variability provisions contained in Section 5.5 and 6.6.1 of the proposed rules were unnecessary inasmuch as analytical variability is considered in the promulgation of effluent limitation guidelines. The Division is not aware of any consideration which has been given to analytical variability in the establishment of any effluent guideline applicable to any point source categories within its jurisdiction. Moreover, the



effluent guideline which is applicable to the on-shore oil and gas category either calls for zero discharge of waste water to surface streams or makes no determination at all on the issue. In addition, the Division has the independent authority under state law to establish permit conditions for discharges that do not go to surface streams. In all of those cases, the Division believes that it is appropriate for analytical variability to be taken into account.

d. Real Time Water Quality Control - One commentor pointed out that real time water quality control provided for in Section 6.2.1 should be available only after the imposition of technology-based effluent limitations. The Division agrees that this is the intended application of this management method and has added language to clarify that intent.

e. Water Quality-Based Effluent Limitations - One commentor objected to the provisions contained in Section 6.2.1.1 through 8 on the grounds that the section was not protective of future uses of the stream and, further, was not protective of human health. The sections involved establish parameters that will be applied to determine circumstances under which water quality-based effluent limitations will be applied in a permit. The provisions go on to provide an elaboration of the circumstances in which effluents will be monitored to determine toxicity. These provisions are based in very large part on the current policies of the United States Environmental Protection Agency with respect to the establishment of water quality-based effluent limitations. The Division believes that its regulations

should contain guidance on this important issue. The Division recognizes its obligation to protect not only present but also future uses of a stream. The Division will discharge its obligation through the use of all available mechanisms including wasteload allocations, technology-based controls and chemical analysis, and others, all of which are available independent of the provisions in Section 6.2.1. Similarly, the Division will use other devices to assure protection of human health. The biological monitoring requirements referred to in Section 6.2.1 obviously are intended to determine toxic impacts of discharges on aquatic life, not humans.

f. Schedules of Compliance - One commentor pointed out that the provision contained in the proposed regulation in Section 5.1 which calls for the establishment of schedules and compliance in accordance with W. Va. Code §20-5A-7 might be interpreted as allowing variances from statutory deadlines imposed under Section 301 of the federal Clean Water Act. It is not the Division's intention to authorize extensions of compliance dates beyond federal statutory limitations and, accordingly, the Division has added language to this section specifically providing that they do not violate Section 301 of the federal Clean Water Act.

g. Effective Date of Permit - One commentor voiced a concern over provisions contained in Section 8.11 as jeopardizing the sufficiency of time for public comment on the issuance of a permit. The provisions contained in Section 8.11 do not interfere with the provisions for public comment contained in

Section 8.8. The language which has been included within 8.11 provides that a final permit shall not become effective for at least 30 days after the date of issuance of a final permit unless an earlier date has been requested by the permittee. This provision will assure that the permittee has adequate notice of the imposition of permit conditions to facilitate the permittee's compliance with that condition. The language contained in 8.11 is the same as the provisions contained in the regulations of the United States Environmental Protection Agency for its NPDES program.

h. Emergency Permits - One commentor objected to the proposal contained in Section 8.21 of the proposed rule on the grounds that this provision would not be found acceptable to EPA. The Division has examined EPA comments on similar provisions of the state Water Resources Board, the public participation requirements of 40 C.F.R. §25, the EPA delegation requirements for the NPDES program, and the notice and comment provisions of 40 C.F.R. §124.10 and §124.12. While we agree that references to temporary (non-emergency) and experimental practices permits should be deleted, we do believe that provisions on short-term emergency permits and modifications are not prohibited by EPA rules. The procedures would only be invoked in serious circumstances and actually constitute the exercise of the State's police power to protect the public health. The use of a temporary permit or short-term permit modification in such cases provides a valuable enforcement tool to the Division which has advantages over simple administrative orders used in identical

circumstances. The object must be to assert immediate and appropriate control over the offending discharge.

Furthermore, in such cases the Director will be taking simultaneous steps to notify the public and seek comment which could result in further alterations or revocation of the authorization. This is not mere consultation with the public - it is full participation at the earliest possible time consistent with protection of health as the principal objective.

Accordingly, the Division has amended the proposed regulation to tightly limit the circumstances in which such permits and modifications can be granted and has eliminated provisions for experimental practices and other non-emergency temporary permits.

i. Filing Fee - The Division proposed in Section 4.6 of this rule to adopt the filing fee requirement contained in Series 5, Section 6 of the Division's proposed rules as applicable to NPDES permits. As was discussed previously with respect to Series 1, the Division has already defined permit application fee requirements associated with the filing of applications to drill including application fees, reclamation fees, and special fees associated with site review of soil and erosion control plans. The Division anticipates that NPDES permits for the most part will be issued by the Division pursuant to one or more general permits that will effectively eliminate the need for the Division to process the comprehensive applications that would otherwise be associated with NPDES permitting. Accordingly, the Division has determined that it would not be appropriate to

impose the permit application fee proposed in this rule and in Series V and provisions in both Series have been deleted in the final versions.

X. SERIES 5.

a. Spill Reporting - One commentor questioned the provision contained in proposed Section 3.1 that obligated an owner or operator to notify the Division of spills within 24 hours after becoming aware of the discharge. That commentor urged the Division to consider requiring spills to be immediately reported but in no case later than 24 hours after becoming aware of the discharge. The Division agrees with the commentor's suggestion and the appropriate revision has been made to Section 3.1. The same commentor also urged the Division to consider imposing a requirement to report all spills not just those in excess of reportable quantities. The Division's proposal with respect to spill reporting is identical to the spill reporting requirements of the United States Environmental Protection Agency. The Division believes that the utilization of reportable quantities is an effective mechanism to discharge its need for information on spills without imposing unnecessary spill obligations on the regulated community. The Division also finds it significant that its proposal will be consistent with that of the federal government making it easier for the regulated community to understand its reporting requirements.

b. Written Notification of Spills - One commentor questioned the advisability of the provision contained in 3.2 of

the proposed rule which obligated the person notifying the agency of a spill to provide written verification of such only upon request of the Division. The Division does not believe that is is not necessary to have written verification of every spill incident. With the mechanism which has been established in these regulations for reporting of spills, the Division can make a judgment at the time of verbal notification of the agency about whether the event is of sufficient significance to justify the filing of a written report. The practice of filing written verification only upon request of the agency was established originally in regulations of the state Water Resources Board and has apparently served DNR well under those regulations.

c. Wasteload Allocations - Two commentors voiced concern over the provisions contained in Section 4 related to wasteload allocations. Both commentors expressed concern about the need for a coordinated approach to determining wasteload allocations. One commentor pointed out that DNR and DOE have already addressed this need for coordination through the use of a Memorandum of Agreement involving coal facilities. The Division believes that a similar approach should be used for oil and gas operations and it will work with DNR to establish a mechanism whereby DNR would determine wasteload allocations for oil and gas facilities.

d. Small Wastewater Treatment Plants - One commentor questioned whether the provisions of Section 5.4 relieve a person of the obligation to obtain a permit for the construction or installation of a wastewater disposal system as is required by

the state Water Pollution Control Act. It was not the Division's intention to relieve a person of such a permitting requirement and, accordingly, the Division has modified this provision to extend its obligation to include construction, installation, modification or operation of a wastewater disposal system.

e. Permit Application Fee - As discussed previously in connection with Series 4, the Division has determined not to impose an application fee specific to the NPDES program.

#### XI. SERIES 6.

a. Scope - One commentor questioned the need to more clearly distinguish between the jurisdiction of the Division and DNR to issue permits for dam control. Section 1.1 of this rule is intended to make it clear that the Division has an interest in issuing dam control permits only to the extent that the activity involved relates to oil and gas and related mineral resources. These regulations do not and cannot address the jurisdictional boundaries between DOE and DNR as it relates to sandstone quarries or flyash disposal operations. Neither of those operations is even arguably associated with oil and gas and related mineral resources.

b. Updating Regulations - One commentor pointed out that the Mine, Safety and Health Administration ["MSHA"] has changed a regulation upon which DNR's dam control regulations were based. The Division closely followed the regulations of DNR in proposing its own dam control regulations. The Division desires to keep its dam control regulations as consistent as

possible with those of DNR. At such time as DNR proposes to revise its dam control regulations, the Division will consider a similar action.

### XII. SERIES 7.

a. Scope - Two commentators voiced concern over Section 3 of this regulation. The concern in both cases related to whether this provision was intended by the Division to require that all persons desiring to obtain a permit for solid waste facilities obtain a permit from the Division. The Division addressed this issue in its proposed regulation in language contained in Section 1.1 where this regulation was made expressly applicable to activities related to oil and gas and related mineral resources in this state. Even though the Division believes that Section 1.1 adequately limits the scope of this regulation, it will add a provision to Section 3 which makes expressed reference to the limitations contained in Section 1.1.

b. Open Dump Prohibition - One commentator also raised a question as to whether the open dump prohibition contained in W. Va. Code Chapter 20, Article 5F is included in this regulation. It is certainly not the Division's intention (even if it had the power to do so) to change any aspect of a currently effective statute. The Division interprets all of the provisions of W. Va. Code Chapter 20, Article 5F to be fully effective and to contain the substantive requirements applicable to the issuance of any permits by the Division for solid waste facilities.



c. Permit by Rule - One commentor addressed the permit by rule proposed in Section 4 and questioned whether the permit by rule satisfied the requirements of W. Va. Code Chapter 20, Article 5F in referring only to the substantive requirements of Series 1 of the Division's rules. Pursuant to Series 1 of the Division's rules, the Division regulates not only the manner in which wells are constructed and drilled but also the manner in which pits for waste water disposal are constructed, operated, maintained, and reclaimed. These requirements provide a comprehensive program for the regulation of waste disposal which the Division believes are more than satisfactory to satisfy the requirements of W. Va. Code §20-5F. Attention is called to the fact that under the provisions of that law operations which are subject to surface mine permits of the Department of Energy are exempt altogether from the regulatory requirements. The Division believes that the regulatory program contemplated under Series 1 of its rules provides an adequate basis for the establishment of a permit by rule in this application.

One commentor also pointed out with respect to Section 4 dealing with permit by rule that a provision should be added comparable to that which is contained in the hazardous waste rules proposed by the Division to remind those that would own or operate a solid waste facility that they must obtain appropriate authorization from other agencies of state government if the facility is receiving wastes from sources other than oil and gas operations. The Division has added language to this section which will make this point.

#### XIII. SERIES 8.

a. Jurisdiction - One commentor questioned the Division's authority to promulgate a regulation which determines the extent to which wastes generated by the oil and gas industry will be subject to regulation as a hazardous waste. The Division's authority to regulate hazardous waste was dealt with at length in the preamble to the proposed rule. The state's Hazardous Waste Management Act expressly empowers the Division with jurisdiction over all hazardous waste activities with respect to oil and gas wells, liquid injection wells and waste disposal wells. The provision which the Division has included within Section 3 of Series 8 does nothing more than confirm the fact that DNR cannot regulate the specifically identified types of waste generated by the oil and gas industry. If and when the United States Environmental Protection Agency and Congress determine that any of these wastes should be regulated as hazardous waste, it is apparent from any objective reading of The West Virginia Energy Act and the state's Hazardous Waste Management Act that all determinations with respect to the regulation of such wastes are vested solely within the Department of Energy.

#### XIV. SERIES 9 - (Procedural Rule).

a. Written Orders - Following review of comments by the Division staff, Section 2.12.1.2 has been revised to make it clear that the Director in the issuance of a written order is not limited simply to issuing an order which either grants or denies

a permit but, instead, may issue such ruling or order as is appropriate to the circumstances involved.

XV. SERIES 10 - (Procedural Rule).

The Division proposed this regulation to establish regulatory requirements associated with requests for information. For consistency within the Department of Energy, the Division has determined not to finally adopt this procedural rule and, instead, to be governed by the agency's policy memorandum of June 9, 1986, which outlines the procedures that will be followed in the handling of Freedom of Information requests.