

WEST VIRGINIA
SECRETARY OF STATE
KEN HECHLER
ADMINISTRATIVE LAW DIVISION

Form #6

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OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

**NOTICE OF FINAL FILING AND ADOPTION OF A LEGISLATIVE RULE AUTHORIZED
BY THE WEST VIRGINIA LEGISLATURE.**

AGENCY: DIVISION ENVIRONMENTAL PROTECTION
OFFICE OF OIL & GAS TITLE NUMBER: 35

AMENDMENT TO AN EXISTING RULE: YES X, NO

IF YES, SERIES NUMBER OF RULE BEING AMENDED: 3

TITLE OF RULE BEING AMENDED: Coalbed Methane Wells Rule

IF NO, SERIES NUMBER OF NEW RULE BEING PROPOSED:

TITLE OF RULE BEING PROPOSED:

THE ABOVE RULE HAS BEEN AUTHORIZED BY THE WEST VIRGINIA LEGISLATURE.

AUTHORIZATION IS CITED IN (house or senate bill number) SB 765

SECTION 64-11-1, PASSED ON March 21, 1998

THIS RULE IS FILED WITH THE SECRETARY OF STATE. THIS RULE BECOMES EFFECTIVE ON
THE FOLLOWING DATE: June 1, 1996



Authorized Signature

8.80



BUREAU OF ENVIRONMENT

10 McJunkin Road
Nitro, WV 25143-2506

CECIL H. UNDERWOOD
GOVERNOR

May 4, 1998

Ms. Judy Cooper
Director, Administrative Law Division
Office of the Secretary of State
Capitol Complex
Charleston, West Virginia 25305

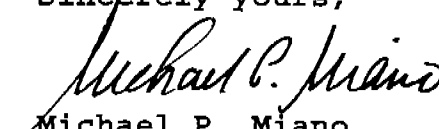
RE: 35CSR3 - "Coalbed Methane Wells Rule"

Dear Ms. Cooper:

This is to advise that I am giving approval to file the above-referenced rule with your office as a final rule authorized by SB 765, signed by Governor Underwood March 21, 1998.

Your cooperation in this regard is very much appreciated. If you have any questions or require additional information, please feel free to contact Carrie Chambers at 759-0515.

Sincerely yours,


Michael P. Miano
Assistant Director

JEC:cc

Attachment

cc: Ted Streit, O&G

RULE PROMULGATION HISTORY ABSTRACT

**TITLE 35 - SERIES 3
DIVISION OF ENVIRONMENTAL PROTECTION
OFFICE OF OIL AND GAS**

COALBED METHANE WELLS RULE

June 19, 1997	Notice of Public Hearing Filed with Secretary of State
July 22, 1997	Public Hearing Held
July 31, 1997	Agency Adopted Rule Filed with Secretary of State and Legislative Rulemaking Review Committee
December 9, 1997	Modified Rule Filed with Secretary of State and Legislative Rulemaking Review Committee
March 10, 1998	SB 765 Passed Legislature
March 21, 1998	SB 765 Signed by Governor
May 18, 1998	Final Filed with Secretary of State

TITLE 35
LEGISLATIVE RULE
BUREAU OF ENVIRONMENT
DIVISION OF ENVIRONMENTAL PROTECTION
OFFICE OF OIL AND GAS

SERIES 3
COALBED METHANE WELLS RULE

§35-3-1. General.

1.1. Scope. - This rule shall govern and apply to proceedings under W.Va. Code §22-21-1 et. seq., governing coalbed methane wells. Certain portions of this series shall apply to W.Va. Code §22-10-1 et. seq., related to abandoned wells, W.Va. Code §22-12-1 et. seq., related to groundwater protection, and W.Va. Code §22-6-1 et. seq., related to oil and gas wells and other wells.

1.2. Authority. - W.Va. Code §22-21-3 and 4.

1.3. Filing Date. - April 9, 1996

1.4. Effective Date. June 1, 1996

1.5. Forms. - An index of current forms and copies of any forms currently used under or required by this rule may be obtained from the chief. The Office of Oil and Gas may prospectively amend any form at any time without notice to accord more fully with the requirements of W.Va. Code §22-21 and this rule.

§35-3-2. Definitions.

Unless the context in which used clearly requires a different meaning, the definitions contained in W.Va. Code §22-21-2 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. "Day" shall mean a period of twenty-four (24) consecutive hours.

2.3. "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 §22-21 may be served.

2.4. "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.

2.5. "Surface owner of record", and the term "owner of record of the surface" as used in W.Va. Code §22-21-9, 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 mineral ownership.

2.6. "Operator" or "gas operator" for notice purposes shall mean any person having the right to operate or who does operate an oil or gas well and is interchangeable with the terms "operator" or "well operator" as defined in W.Va. Code §22-6-1. "Operator" or "gas operator" for the purpose of determining responsibility with the plugging of a coalbed methane well shall be any person having the right to operate the coalbed methane well, which may include all royalty interest owners, plus the owners of any business operating the well.

2.7. "Casing" shall have the meaning set forth in W.Va. Code §22-6-1.

2.8. "Cement" shall have the meaning set forth in W.Va. Code §22-6-1.

2.9. "CBM Well Operator" shall mean a coalbed methane well operator as defined in W.Va. Code §22-21-2(f).

2.10. "CBM Well" shall mean a coalbed methane well as defined in W.Va. Code §22-21-2(e).

2.11. "Expanding Cement" shall have the meaning set forth in W.Va. Code §22-6-1.

2.12. "Plat" shall have the meaning set forth in W.Va. Code §22-6-1.

§35-3-3. Inspectors, Inspection Forms, Violations, Abatement.

3.1. 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 subsection 3.2. Such finding and orders shall not be construed to limit the office's power to initiate any other lawful proceedings concerning violations of W.Va. Code §22-21 et seq., or this rule.

3.2. Inspectors' Report Forms. - The report forms to be used by inspectors pursuant to W.Va. Code §22-21 will be those forms set forth in 35 CSR, section 3.

§35-3-4. Permit Required for Coalbed Methane Well; Permit Fee; Soil Erosion Control Plan.

4.1. Application for Permit; Issuance, Conditions, and Modifications.

4.1.a. An application for any well work permit required for a CBM Well, except permits to plug a well, shall be made on Form WW-5B, "Application for Coalbed Methane Well Work Permit," and shall be accompanied by:

4.1.a.1. A "Notice of Application for a CBM Well Work Permit" in the form prescribed by W.Va. Code §22-21-9;

4.1.a.2. A plat in the form prescribed by §22-21-6 (5) and W.Va. Code §22-6, and further described in section 9 of this rule;

4.1.a.3. A Performance Bond, Corporate Security, or other security in one of the forms prescribed by W.Va. Code §22-6-26, or in lieu thereof cash or collateral security allowed by W.Va. Code §22-21-8;

4.1.a.4. Form WW-9, "Construction and Reclamation Plan," applicable to the plan required by W.Va. Code §22-21-6(d) and a plan for performing the reclamation required by section 14 of this rule;

4.1.a.5. With any initial application to drill a Coalbed Methane well the fees required by W.Va. Code §22-21-6(c)(2) (application fee of two hundred fifty dollars), W.Va. Code §22-6-29, (special reclamation fee of one hundred dollars) and any fees associated with any environmental permits required under Chapter 22;

4.1.a.6. If applicable, the consent required by W.Va. Code §22-6-21;

4.1.a.7. If stimulation of the well is proposed, the consent required by W.Va. Code §22-21-7 or in lieu thereof the request for hearing prescribed by W.Va. Code §22-21-7(b);

4.1.a.8. Copies of statements of no objection from persons entitled for notice pursuant to W.Va. Code §22-21-7;

4.1.a.9. A statement describing whether any users under subdivision 13.3.e were identified and the manner in which any such users were provided with notice as required under subdivision 13.3.f; and

4.1.a.10. If applicable, the consent required by W.Va. Code §22-21-20.

4.1.b. Where there is more than one type of well work, a single application may be used provided all such well work is noted on the Form WW-5b filed in connection therewith.

4.1.c. The applicant for any permit mentioned in this rule must file an original and two (2) copies of the Application and an original and four (4) copies of the Notice, plat and, except for application for a permit to plug a CBM Well, a Construction and Reclamation Plan.

4.2. Notice to Surface Owners of Record; Proof of Notice; Comments.

4.2.a. For purposes of notice of surface owners of record, pursuant to W.Va. Code §22-21-6, the applicant CBM well operator shall be entitled to assume, subject to performing the public record review described in subdivision 4.2.b. 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 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 or record) were in fact surface owners of record when the tax ticket was prepared.

4.2.b. To establish that a surface owner identified on a tax ticket has not transferred an interest in the surface, the CBM well operator must review, from the date the surface owner acquired the surface, or for ten (10) 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.

4.2.c. 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 records in the office of the clerk of the county Commission to determine whether the total number of such owners is more than three (3) and, if the total number of such owners is three (3) or less, the names(s) of the surface owner(s) of record on the date the review is made.

4.2.d. If the identification of the surface owners of record is made pursuant to the criteria of subdivisions 4.2.a., 4.2.b. or 4.2.c. within ninety (90) days of the date of filing of

the application for a permit, the CBM well operator need not review the records again prior to the filing.

4.2.e. Except where notice by publication is permissible under the provisions of W.Va. Code §22-21-9(c), the notice to surface owners of record required by W.Va. Code §22-21-9 shall consist of true, complete copies of all documents required under subdivision 4.1.a. of this rule and shall contain a statement of the methods and time limits for filing comment and objection, who may file comment and objection, the name and address of the chief with whom the comment and objection must be filed, the ability to obtain additional information from the chief, the fact that such persons may request notice of the permit decision, and a list of persons qualified to test water as provided in this section.

4.2.f. All comments filed pursuant to the provisions of W.Va. Code §22-21-10 shall be in writing, and should contain the name, address and telephone number of the person filing the comment, the CBM well operator's name and CBM well number, and the approximate location of the proposed CBM well site including district and county as indicated in the permit application. Comments may be accompanied by other pertinent documents. Other than as prescribed in this rule, no particular form for the comment is prescribed.

4.2.g. 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 WW-70 by any person, including but not limited to any employee or agent of the CBM 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.

4.2.h. Notice of publication under the provision of W.Va. Code §22-21-9(c) shall be substantially as provided in Form WW-71CBM. Proof shall be supplied by affidavit of publication from the newspaper.

4.2.i. No permit will be issued until all required proof of notice has been filed with the chief.

4.3. Notice to Coal Owners or Operators, Proof of Notice.

4.3.a. Notice to Coal Operators, Owners or Lessees - A copy of the completed notice and application of any CBM well permit as required by W.Va. Code §22-21-6, including the associated Construction and Reclamation Plan, Consent and Agreement (if applicable), Plat, and Certificate of Notice required by subdivision 4.3.c., shall be used as the form of the

notice to Coal Operators, Owners or Lessees required by W.Va. Code §§22-21-6, 22-21-7 and 22-21-9, and shall be mailed by registered or certified mail to coal operators, owners or lessees.

4.3.b. 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 WW-70 by any person, including but not limited to any employee or agent of the CBM 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.

4.3.c. Notice of publication under the provisions of W.Va. Code §22-21-9 shall be substantially as provided in Form WW-71CBM. Proof shall be supplied by affidavit of publication from the newspaper.

4.3.d. No permit will be issued until all required proof of notice has been filed with the chief.

4.4. Notice to Natural Gas Owners, Lessees, and Operators.

4.4.a. A copy of the completed notice and application of any CBM well permit including the plat shall be used as the form of Notice required to be provided to each owner and lessee of record and each operator of natural gas surrounding the well bore of a proposed CBM well and existing in formations above the top of the uppermost member of the "Onondaga Group" or at a depth less than six thousand feet, whichever is shallower, pursuant to W.Va. Code §22-21-9. Notices to gas operators shall be sufficient if served upon the agent of record with the office of oil and gas.

4.4.b. 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 WW-70 by any person, including but not limited to any employee or agent of the CBM 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.

4.4.c. Notice of publication under the provisions of W.Va. Code §22-21-9 shall be substantially as provided in Form WW-71CBM. Proof shall be supplied by affidavit of publication from the newspaper.

4.4.d. No permit will be issued until all required proof of notice has been filed with the chief.

4.5. Review of Application; Issuance of Permit for CBM well in the absence of objections.

4.5.a. The chief shall review each application for a CBM well work permit and shall determine whether or not a permit shall be issued.

4.5.b. No Permit shall be issued less than fifteen days after the filing date of the application for any CBM well work except plugging or replugging; Provided, that if the applicant certifies that all persons entitled to notice of the application under the provisions of W.Va. Code §22-21-9 have been served in person or by certified mail, return receipt requested, with a copy of the CBM well work application, including the erosion and sediment control plan, and the plat and further files written statements of no objection by all such persons, the chief may issue the CBM well work permit at any time.

4.5.c. Subject to the requirements of W.Va. Code §22-21-22, no permit for plugging or replugging shall be issued less than five days after the filing date of the application except a permit for plugging or replugging a dry hole: Provided, that if the applicant certifies that all persons entitled to notice of the application under the provisions of W.Va. Code §22-21-9 have been served in person or by certified mail, return receipt requested, with a copy of the CBM well work application, including the erosion and sediment control plan, and the plat and further files chief written statements of no objection by all such persons, the may issue the CBM well work permit at any time.

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

4.5.d.1. The proposed CBM well work will constitute a hazard to the safety of persons; or

4.5.d.2. The plan for soil erosion and sediment control is not adequate or effective; or

4.5.d.3. Damage would occur to publicly owned lands or resources; or

4.5.d.4. The proposed CBM well work fails to protect fresh water sources or supplies.

4.5.e. The chief shall promptly review all comments filed. If after review of the application and all comments

received, the application for a CBM well work permit is approved, and no timely objection or comment has been filed with the chief under the provisions of W.Va. Code §§22-21-10, 22-21-11 and 22-21-22, the permit shall be issued, with conditions, if any.

4.6. Consent and Agreement of Coal Owner or Operator.

4.6.a. Evidence of the Coal Owner, lessee, or operator consent and agreement as required by W.Va. Code §22-21-6 shall be submitted to the chief on Form WW-5A and shall become a part of the permanent well record.

4.6.b. In the absence of the applicant submitting evidence of a consent and agreement on Form WW-5A, a request for hearing before the board may be submitted accompanied by an affidavit which shall include all the information required by W.Va. Code §22-21-7.

4.7. Issuance of Permits.

4.7.a. The determination to deny a permit under the provisions of W.Va. Code §22-21-6(g), or to deny or condition a permit under the provisions of W.Va. Code §22-21-12 shall be in writing and issued within thirty (30) days from the date the Notice and Application in complete form with the required documents are filed, except in those cases where comments or objections have been filed pursuant to W.Va. Code §22-21-10 and §22-21-11 or where an applicant has submitted a request for hearing before the Board as provided by W.Va. Code §22-21-7(b).

4.7.b. The determination to deny, issue or condition a permit under the provisions of W.Va. Code §22-21-13, shall be in writing and issued within thirty (30) days from the date of receipt of the Coalbed Methane Well Review Board order by the chief in complete form with all documents as required.

4.7.c. In the absence of a pooling order or an order establishing special field rules issued by the Board, no permit to drill a CBM well within 100 feet of the outside boundary of a coal tract from which coalbed methane will be produced or within 1,600 feet of an existing CBM well for which a permit application is on file, shall be issued by the chief unless the CBM well operator has provided consent as required by W.Va. Code §22-21-20.

4.7.d. 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-5B.

4.7.e. Any permit issued shall expire automatically unless the permit well work is commenced within twenty-four (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 twenty-four (24) months.

4.7.f. Upon the issuance of any permit pursuant to the provisions of this article, the chief shall transmit a copy of such permit to the Office of the Assessor for the county in which the well is located.

4.7.g. Upon the issuance or denial of any permit pursuant to the provisions of this article, the chief shall transmit a copy of such permit or denial to all persons noticed in the permit application pursuant to W.Va. Code §22-21-9.

4.8. Prior to the construction of roads, locations and pits for any permitted well work, the CBM well 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 CBM well operator or his contractor shall notify the appropriate district oil and gas inspector twenty-four (24) hours before actual permitted well work is commenced.

4.9. Drilling prohibition 200 feet - No coalbed methane well shall be drilled nearer than two hundred feet from an existing water well or dwelling without first obtaining the written consent of the owner of such water well or dwelling.

§35-3-5. Casing Requirements - Coalbed Methane Wells.

5.1. Fresh Water Casing - For each coalbed methane well, the operator shall run and permanently cement a string of casing through the fresh water bearing strata. The fresh water protective casing shall extend at least thirty (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 the 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, the district Inspector shall be notified. If the top of cement cannot be located using sound engineering practices approved by the chief or his authorized representative, then an electric log or similar technology approved by the chief shall be used. Sound engineering practice approved by the chief or his authorized representative shall be used to fill the annular space back to

the surface. Requests to approve methods, other than pre-approved practices, shall be acted upon by the chief or his authorized representative within twelve (12) hours of actual notice to the chief or his authorized representative, otherwise the request will be deemed approved. In no case shall the fresh water casing penetrate salt water or extend below sea level. There shall be no oil and gas production through the fresh water casing for new wells or the redrilling of existing wells permitted on or after August 1, 1993. Variances from the requirements of this section shall be granted on a site specific or area basis in accordance with section 16 of this rule.

5.2. Casing When Drilling Encounters Coal Seams.

5.2.a. Coal Protection String - Except for those coalbeds which the coalbed methane operator proposes to complete for production or produce from, or where a ventilation hole is being converted to a well, when a well penetrates one or more workable coalbeds, the well operator shall run and cement a string of casing in the hole through the workable coalbed or beds in such a manner as will exclude all oil, gas or gas pressure from such coalbed or beds, except such oil, gas or gas pressure as may be naturally present in each coal seam. Such string of casing shall have cement circulated in the annular space outside the casing. The casing shall either be cemented to the surface or at least into the fresh water casing to at least 100 feet above the uppermost workable coal seam. If the casing is not cemented to the surface, the operator will demonstrate that the casing has been cemented to 100 feet above the uppermost workable coal seam. The volume of cement needed shall be calculated using approved methods to assure cementing to the required level. In the event cement does not return to the required level, every reasonable attempt will be made to fill the annular space by introducing cement from the surface.

The fresh water casing may be extended through the workable coal seams and also serve as the coal protection string provided the casing is cemented as required in subsection 5.1 through the fresh water horizons, and subsection 5.2 through the workable coal seams, and subdivision 5.2.b regarding when a worked-out coal seam is encountered.

5.2.b. When Drilling Encounters a Mined Zone - Except where the horizon of a previously mined coalbed and its associated gob are expected to be the producing zone, when a coalbed methane well is drilled through the horizon of a coalbed from which the coal has been removed, the hole shall be drilled at least thirty feet below the coalbed, of a size sufficient to permit the placing of a liner which shall start not less than 20 feet below the coal seam and extend not less than 20 feet above the void created by the mined area. This liner, which may be

welded to the casing being used, shall be centered in the borehole, and the space between the liner and casing shall be filled with cement as they are lowered into the hole. Cement shall be placed in the bottom of the hole to a depth of at least 20 feet to form a sealed seat for both liner and casing.

Following the setting of the liner, drilling shall proceed in the manner provided in subdivision 5.2.a. Should it be necessary to drill through the horizon of two or more workable coalbeds from which the coal has been removed, such liner shall be started not less than 20 feet below the lowest such horizon penetrated and shall extend to a point not less than 20 feet above the highest such horizon, provided that, where two or more horizons from which the coal has been removed are sufficiently far apart, separate liners for each horizon or combination of horizons from which coal has been removed may be used. In any event, each segment of liner shall start not less than 20 feet below the lowest such horizon penetrated and extend to a point not less than 20 feet above the highest such horizon.

5.3. For gob wells, drilled after the effective date of this rule and vent holes converted to gob wells, a single string of casing may be used as the fresh water, coal protection and the production casings. In any event, a string of casing 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). Such casing shall have cement circulated in the annular space outside the casing. The volume of cement needed shall be calculated using approved methods to assure the return of 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.

5.4. Production Casing - For all coalbed methane wells, production casing shall, through cementing or other mechanical means such as a packer, be set in such a manner as to prevent the migration of stimulation pressure or fluid, or any produced gas or water into the space between the well bore or any other casing set and the production casing.

The coal protection string may also serve as the production casing. However, if the fresh water casing and the coal protection string are the same as provided for in subdivision 5.2.a, then a separate string of casing shall be used as the production string, except for those wells as provided for in subsection 5.3.

5.5. Cement Type and Strength - When cement is used to fill the annular space around the casing required in this section, it

shall be American Petroleum Institute Class A Ordinary Portland Cement with no greater than three percent (3%) calcium chloride; provided that, if the coalbed methane operator furnishes satisfactory proof that different cement types are adequate, the chief may approve use of such different cement types.

The cement placed in the annular space around the casing shall be allowed to set to a minimum compressive strength of five hundred (500) pounds per square inch using approved engineering data for the type of cement used, or the waiting time for all cement used shall not be less than eight (8) hours.

5.6. Variances from Cementing Requirements - The chief may also allow, upon sufficient proof by the coalbed methane operator that it will not affect mine safety or fresh water aquifers and upon consent of all coal owners or operators effected, variances from the requirement of subdivision 5.2.1, and subsections 5.4 and 5.5 regarding the cementing of the coal protection and/or the production casing along its full length.

5.7. Drilling Practices Prior to Freshwater Casing - Prior to the cementing of the freshwater casing as required by subsection 5.1, drilling practices and procedures, such as air or water pressure and soaping, shall be conducted using operating practices so as to minimize damage or disturbance or the possibility of unnecessary damages or disturbance to the uncased strata/formations and groundwater contained in any of those formations. The requirements of this section shall not prevent the use of drilling practices and procedures reasonably necessary to the successful drilling of the well in a safe manner. The requirements of this section shall not be construed to prohibit practices specifically allowed by statute or other regulation.

5.8. Blowout Prevention Training - The well operator shall assure that at all times during the operation of the drilling rig a person shall be present that has successfully completed a training course on blowout prevention approved by the chief.

5.9. Well Identification - Every well shall have attached or stamped, in a permanent manner, the API identification number which consists of the state (047), county (001 through 109), and permit number. Such number shall be no less than one half (1/2) inch in height and detectable by any interested person approaching the well. Any additional information the well operator desires to display may be incorporated in such a manner that it will not confuse or distort the permanent API identification number.

§35-3-6. Notice of Plugging and Reclamation of a CBM Well; Right to Take Well; Objection; Plugging Order; Plugging for Mine Through.

6.1. Notice of Intention to Plug and Abandon a CBM Well.

6.1.a. Prior to filing an application for a permit to plug a coalbed methane well under W.Va. Code §22-21-22, the applicant shall deliver by personal service or by certified mail, return receipt requested, copies of the application, well plat and erosion and sediment control plan to the following:

6.1.a.1. The "chief" as defined in W.Va. Code §22-21-2(i);

6.1.a.2. The owners of record of the surface of the tract on which the CBM well is located; and

6.1.a.3. The name and address of each coal operator and each coal owner and coal lessee of record, or providing a record declaration of notice pursuant to section thirty-six, article six of this chapter, of any coal seam which is (i) penetrated by the well; (ii) within seven hundred fifty horizontal feet of any portion of the well bore; or (iii) within one hundred vertical feet of the completed coal seams of the well, except that in the case of an application to plug a well which was converted from a ventilation hole, the name and address only of such owner or operator of the seams penetrated by the well shall be necessary.

6.2. An application for a permit to plug a CBM well shall be made on form, "Application to Plug and Abandon a CBM Well" and shall be accompanied by:

6.2.a. A plat in the form prescribed by W.Va. Code §22-21-6(C)(5);

6.2.b. The CBM well name, well number, and permit number or such other identification as the chief may require;

6.2.c. The anticipated date plugging operations will commence;

6.2.d. The total depth to which the well was drilled, deepened or converted, the coal seams (stating the depth and thickness of each seam) in which the well was completed for production, and any other coal seams (including the depth and thickness of each seam) which penetrated by the well; and

6.2.e. A certification to the chief the notice requirements of this article have been completed by the applicant. Such certification shall be by affidavit(s) of personal service or return receipt card(s), or other postal receipt(s) for certified mailing.

§35-3-7. Work Order: Manner and Method of Plugging a CBM Well.

7.1. 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:

7.1.a Location (by depth);

7.1.b. 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;

7.1.c. Plans for mudding, cementing, and filling;

7.1.d. Plans for altering or removing casing if required; and

7.1.e. All other pertinent information regarding said plugging and filling, all of which shall be in compliance with W.Va. Code §22-21-23. The information shall be submitted on Form WW-6B "Application to Plug and Abandon a CBM Well".

7.2. Rights of Coal Owner or Operator Pursuant to W.Va. Code §22-21-22 (b).

7.2.a. Any coal owner or operator noticed within the "Application to Plug and Abandon" and whose coal seam is affected by such well shall have the following rights pursuant to W.Va. Code §22-21-22:

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

7.2.a.2. To file comment or objection with the chief, within fifteen (15) days after receipt of intent to plug, with respect to the proposed manner or method of plugging. The chief shall consider any such comment or objection and issue an order specifying the manner and method of plugging and reclamation.

7.3. Issuance of a Permit to Plug and Abandon a CBM Well.

7.3.a. The chief shall issue an order within fifteen (15) days after the expiration of the comment and objection period, either permitting or rejecting such application and endorsed on Form WW-6B. The issuance or rejection shall be

mailed to all parties noticed on the application to plug and abandon a CBM well. In entering any such order, the chief shall give special consideration to the ability to mine any affected coal seam safely and the protection of any affected coal seam for future mining.

7.3.b. Verbal permission may be given pursuant to WV Code §22-6-23 (c) in the event the well to be plugged and abandoned is one on which drilling or working operations have been continuously progressing pursuant to authorization granted by the office. Any verbal permission shall be given by the chief, or the supervising inspector, or any inspector who is available to supervise the plugging work. Unless such verbal approval is given by the chief, the well operator shall notify the chief's office by telephone of such verbal approval no later than the next regular working day.

7.4. When any coalbed methane well is located in that portion of a coal seam which will be mined within six (6) months, the well operator shall, within sixty (60) days after notice from the coal owner or coal operator that the well is to be mined through, plug the well. The well shall be plugged in accordance with the requirements of section 8 of this rule.

§35-3-8. Plugging of Coalbed Methane Wells When a Workable Coal Seam is Encountered.

8.1. All coalbed methane and gob wells shall be plugged upon abandonment and shall be plugged in accordance with a plan filed and approved by the chief. The approved method of plugging shall require the plugging of the well will be sufficient to allow the well to be mined through safely.

8.2. Method of Plugging.

8.2.a. Materials Used in Plugging. Any non-porous materials including gels and cements to be used in plugging must be specified in the work order portion of Form WW-6B. All cement, except where expanding cement is used in conjunction with plugging, shall be American Petroleum Institute Class A Ordinary Portland Cement with no greater than 3% calcium chloride and no other additives. All non-porous materials used in conjunction with plugging shall be at least six percent (6%) bentonite gel.

If the operator furnishes satisfactory proof that different cement or non-porous material types are adequate, the chief may approve use of such different cement or non-porous materials. Materials and cements must be of a kind and quality accepted by the oil and gas industry and approved by the chief as suitable for the intended purpose and which otherwise comply with all

provisions of law and accepted standards. The chief may approve the use of non-standard material or cement.

8.3. Length of Plug - All cement plugs, other than those across coal seams, shall be at least one hundred (100) feet in length unless a variance from such a requirement is granted pursuant to section 16 of this rule.

8.4. Retrieving Casing and Completing a Seal - The operator shall make reasonable efforts to cut and pull all recoverable casing (as determined by methods approved by the chief or his authorized representative). Equipment used to pull recoverable casing shall be rated and rigged at or above one hundred and fifty percent (150%) of the estimated weight of the heaviest string of recoverable casing, unless otherwise approved by the chief or his authorized representative. Sufficient instrumentation shall be used to accurately indicate the pulling force applied. When the fresh water casing has not been cemented to surface and the casing cannot be pulled, the operator shall make reasonable attempts to perforate the casing and squeeze cement behind the casing in the vicinity of the fresh water zones to prevent the contamination of the fresh water zone.

8.5. Cleaning Out and Preparing Wells.

8.5.a. The well shall be cleaned out along its entire length or, in the case of gob wells, if it is not feasible to clean out along the entire length, the well shall be cleaned to the lowest practical depth or at least below the lowest workable coal seam.

8.5.b. Either at the time of drilling the well or at least prior to the application to plug, a suite of logs shall be made consisting of a caliper survey if an open hole section is to be plugged, directional deviation surveys (at a minimum), logs or drillers' records suitable for determining the top and bottom of all coalbeds, logs or other mechanical means to determine the lengths along the casing where cement is present, and the location of the bridge plugs. If the required logs are done at the time of drilling, then they shall be filed with the chief and be available to the coal owner and operator.

8.5.c. When cleaning out a well, and based on the information determined in subdivision 8.5.a of this rule, a diligent effort will be made to remove all uncemented casing from at least 200 feet below to 100 feet above each workable coal seam in the well bore. Any remaining uncemented casing, as determined by cement bond log, shall be perforated or ripped at a minimum of 200 feet below and 100 feet above each workable coalbed at intervals spaced close enough to permit expanding cement slurry to infiltrate the annulus between the casing and the well bore.

8.5.d. The wellbore shall be completely filled and circulated with a gel that inhibits any flow of gas, supports the walls of the borehole, and densifies the expanding cement. This gel shall be pumped through open-end tubing run into the well.

8.6. Plugging Coalbed Methane Wells to the Surface. The following procedures shall be used when plugging coalbed methane wells to the surface:

8.6.a. A cement plug shall be set in the wellbore by pumping an expanding cement slurry down the tubing to displace the gel and fill the borehole to the surface. As an alternative, after the expanding cement slurry is pumped down the tubing so that the wellbore is filled to a point approximately 100 feet above the top of the topmost workable coalbed, materials permitted under subsection 8.2 of this rule may be used to fill the wellbore from that point to the surface.

8.6.b. A small quantity of steel turnings, or other detectable material, shall be embedded in the top of the cement near the surface to serve as a permanent magnetic monument of the borehole.

8.7. Plugging Coalbed Methane Wells Using the Vent Pipe Method. The following procedures shall be used when using the vent pipe method for plugging coalbed methane wells:

8.7.a. A vent pipe sized appropriately based on the existing casing in the well shall be run into the wellbore to a depth of the lesser of the bottom of the well or 100 feet below the workable coalbed and cemented to 100 feet above the uppermost workable coalbed.

8.7.b. A cement plug shall be set in the wellbore by pumping an expanding cement slurry, Portland cement, or a Portland cement-fly ash mixture down the tubing to displace the gel so that the borehole is filled with cement. The borehole shall be filled with expanding cement from the bottom of the well to 100 feet above the target seam or producing horizon.

8.7.c. All fluid shall be evacuated from the vent pipe to facilitate testing for gases.

8.7.d. The top of the vent pipe shall be protected to prevent liquids or solids from entering the wellbore, but permit ready access to the full internal diameter of the vent pipe when necessary.

8.7.e. The vent shall extend at least 30 inches above the ground and have a tag affixed with the well identification or in some manner identify the well.

8.8. The chief may allow alternate plugging methods or waive certain of the requirements of subsections 8.5 and 8.6 provided the coal owner and operator consents in writing to such alternate methods. The chief may also require additional steps to be taken during plugging to insure conformance with any requirements a state or federal agency which has jurisdiction over mine safety may impose or require for a safe mine through of the well.

8.9. An affidavit of plugging shall be filed with the chief, stating the plugging method used and any deviations from the proposed plugging plan.

8.10. Plugging when a coalbed methane well does not encounter a workable coalbed, including the target horizon, or a gob well does not encounter a workable coal seam.

8.10.a. When a coalbed methane well or gob well does not encounter a workable coalbed, upon abandonment shall be plugged in accordance with the provision of this section.

8.10.b. All materials used in plugging shall be in accordance with subsection 8.2 of this rule.

8.10.c. The wellbore shall be filled from the bottom of the well with non-porous material and cement to the surface. At a minimum, a cement plug extending from the surface to a depth of 100 feet shall be placed in the well.

8.10.d. An affidavit of plugging shall be filed with the chief by the operator stating the method of plugging used and any deviation from the plugging plan.

8.11. Permanent Marker. - Except as provided below, upon the completion of the plugging and filling of any abandoned CBM well which was not subsequently converted to a vent hole by the coal operator, a permanent monument or marker consisting of a length of pipe (minimum diameter size six (6) inches) filled with concrete (or the equivalent thereof approved by the chief) shall be erected over the well. The marker shall extend no less than thirty (30) inches above the surface and no less than ten (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 (047), county (001 through 109), and permit number shall be attached or stamped in a permanent manner to said monument. Such number shall be no less than one half (1/2) inch in height and detectable by any interested person approaching the monument. The erection of a monument 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 §22-6-24.

Such monument shall be accurately described on Form WR-38, "Affidavit of Plugging and Filling Well" as well as the time and manner of plugging and filling and shall be approved by the chief as a satisfactory landmark which may be used as such in the location of adjacent wells. Two (2) permanent reference points with courses and distances from the abandoned well shall be designated and prescribed on the plat required by 35 CSR 4, subdivision 5.2.d, in the form prescribed by 35 CSR 4, section 9, accompanying the Form WW-6A, "Notice of Intention to Plug and Abandon a Well", or if any change in the plat is necessary, accompanying Form WR-38, "Affidavit of Plugging and Filling Well".

§35-3-9. Form and Contents of Plats.

9.1. Statutory Requirements for Plats - Any plats required to be furnished under W.Va. Code §§22-21-6 or 22-21-15 shall contain all information specified in those statutory sections.

9.2. Additional Requirements for Plats - Any plat required to be furnished under W.Va. Code §§22-21-6 or 22-21-15 for coalbed methane wells shall conform to the standards of accuracy and depiction for plats for wells:

9.2.a. The plat shall conform to the standards and depictions set forth in 35 CSR 4, subdivisions 9.2.a. through 9.2.h.

9.2.b. Topographic Map Location of Coalbed Methane Well - The topographic map location of the coalbed methane well for which any permit application is made pursuant to W.Va. Code § 22-21-6 shall be shown on the plat by a "cross" with the measured distance in feet from the nearest two point five (2.5) minute latitude and longitude intersection using the North East (upper right) border of the plat on a seven point five (7.5) minute (1:24,000) topographic map. Each plat shall indicate the quadrangle name of the topographic map used.

9.2.c. Wells - All wells, including coalbed methane 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 two thousand five hundred (2,500) 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, coalbed methane, liquid injection, under W.Va. Code §22-6-14 underground storage, or storage observation) and status (active, abandoned, or drilling) of each such well to be determined by use of the API permit number (excluding state and county) for each well having such a permit number, and in parenthesis, and following the API number if such is listed, the kind and status numbers and symbols

provided for in 35 CSR 4, paragraphs 9.2.k.1 through 9.2.k.6, and 35 CSR 4, subdivision 9.2.1.

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

9.2.d.1. Dwellings within two hundred (200) feet of the well for which any such permit is being sought;

9.2.d.2. Stream; and

9.2.d.3. Roads and highways.

9.2.e. Names - The plat shall show:

9.2.e.1. The information specified in W.Va. Code §22-21-6(c) (5);

9.2.e.2. If the application is for a drilling unit, the information specified in §22-21-15(c) (1); Provided, however, that upon establishment of any drilling unit by the Board that differs from the applicant's original unit as shown in said plat, the applicant shall revise the plat so that the information is consistent with the unit established by the Board; and

9.2.e.3. Any other information the chief may require.

9.3. Plat Certification - The plat shall be certified pursuant to the requirements of 35 CSR 4, subsection 9.3.

9.4. Re-use of Plats - Following issuance of an initial permit for a CBM well, any subsequent application for a new permit involving the same CBM Well may be accompanied by an accurate copy of the plat accepted by the Office for use with the permit issued for the most recent previous application, updated as necessary to reflect new data or additional data not required by statute or this rule; provided, that a new certification as required by subsection 9.3 of this rule shall be necessary.

9.5. Permanent Character of Plats - The plat submitted under section 9 of this rule shall be of permanent character as specified in 35 CSR 4, subsection 9.5.

§35-3-10. Rules Applicable to Separate Bonds; Blanket Bonds; Financial Responsibility; Financial Security for Stimulation in the Absence of Consent of Affected Coal Operators or Owners;

Regulation; Designation of Agent; Transfer of Title and Operator Status; Transfer Procedures; Periodical Circular; Ineffective Bonds; and Financial Responsibility.

10.1. Separate Bonds - Each permit application filed after the effective date of this rule for a coalbed methane well shall be accompanied by a separate bond with corporate surety or cash or other collateral security in compliance with W.Va. Code §22-21-8 and shall be submitted with Form OP-7, "Bond for Single Well", except where (a) a blanket bond is being furnished pursuant to W.Va. Code §22-21-8(c); or (b) the permit application is for a permit to convert an existing oil or gas well to a coalbed methane well or to plug a coalbed methane 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 prior to the effective date of this rule shall remain in effect for the office until such time as the well operator is issued any new determination of financial responsibility as may be required by this rule.

10.2. Blanket Bonds - Any blanket bond for coalbed methane wells furnished after the effective date of this rule, shall have corporate surety or cash or other collateral security and shall be submitted with Form OP-8 "Blanket Bond for Wells." Any blanket bond with corporate surety, cash or collateral security furnished in connection with any coalbed methane permit or permits issued prior to the effective date of this rule, shall remain in effect for the benefit of the office 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 W.Va. Code §22-21-8; provided, that if a blanket bond furnished prior to the effective date of this rule complies with the requirements of W.Va. Code §22-21-8, 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 a corporate surety, cash or collateral security which satisfied applicable requirements at the time such corporate security, cash or collateral security was furnished, no additional corporate security, cash or collateral security shall be required. Any corporate surety bond, cash or collateral security furnished prior to the effective date of this rule shall remain in effect for the office until such time as the well operator is issued any new determination of financial responsibility as may be required by this rule.

10.3. Financial Security for Individual Coalbed Methane Wells that will be Stimulated in the Absence of consent of Affected Coal Owners or Operators.

10.3.a. In addition to the bond required by W.Va. Code §22-21-8, where a board order directs the chief to issue a permit authorizing stimulation in the absence of consent of the affected coal operators or owners of workable coal seams, prior to the chief issuing the permit the applicant must file Form OP-10, "Bond to Stimulate Coalbed Methane Well in the Absence of Coal Owner/Operator's Consent" which form shall be accompanied by a separate bond with corporate surety or cash or other collateral security in the amount set by order of the board pursuant to W.Va. Code §22-21-13(d) (5).

10.4. Registration; Designated Agent; Transfer of Title for Coalbed Methane Well.

10.4.a. All persons owning or operating or proposing to own or operate any coalbed methane well in West Virginia shall register with the chief. In all cases an agent or attorney in fact shall be designated on Form OP-1, "Operator Registration and Designation of Agent" by and for each CBM well or operator, upon whom process, notices, orders and other communications issued pursuant to W.Va. Code §22 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 office. Every well owner or operator who has designated such agent or attorney in fact shall within five (5) days after termination of such designation, notify the office 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 §22-21-6, subsection (e), 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 papers.

10.4.b. When title to a CBM well or the right to operate a CBM well is transferred from one (1) well owner to another, the chief shall be notified in writing within five (5) 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 chief of such transfer shall be a violation of this rule by said transferor and shall be punishable under W.Va. Code §22-21-28; and in addition all bonds of such transferor under W.Va. Code §22-21-8 shall be forfeited.

10.4.c. The transferee well owner shall forthwith register with the office if he has not previously registered such ownership. In any event, said transferee shall forthwith notify the office of his designated agent or attorney in fact pursuant to subdivision 10.4.a of this rule, unless a designation has already been made and approved. The transferee well owner shall file with the office 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 chief, and the applicable bond, cash, or collateral security, described in W.Va. Code §22-21-8.

10.4.d. No assignment or transferor owner shall relieve the transferor well owner of any obligation and liabilities pursuant to this rule, or W. Va. Code §22-6 or §22-21, unless and until the transferee well owner files with the office the well name and the permit number of the subject well, the county and addresses of the transferor well owners and the transferee well owners, a copy of the instrument of assignment or transfer acceptable to the chief, the bond, cash or collateral security, which satisfies the requirements of W.Va. Code §22-21-8, 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 §22-21-6.

10.4.e. Upon compliance with the requirements of subdivisions 10.4.b and 10.4.c. of this rule by the transferor well owner and transferee well owner, the chief shall release the transferor well owner from all duties and requirements of this rule, and the chief 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 §§22-21-6, 22-21-9 or 22-21-8.

10.5. Filing requirements and procedure for the transfer of operator and declaration of operator status.

10.5.a. General requirements - The procedures of 35 CSR 4, subsections 10.4. and 10.5, shall apply to coalbed methane wells.

10.6. Transfer Procedures.

10.6.a. If for any reason the bond or other proof of financial responsibility on a well is rendered invalid or ineffective, the operator shall have sixty (60) days in which to replace such bond or other proof of financial responsibility. In the event such bond or other proof of financial responsibility is not replaced, then the chief shall order the well to be shut in and may order the well to be plugged.

10.7. Nothing in this section shall prohibit the chief from accepting and holding bonds or other form of financial responsibility from more than one competing interests.

§35-3-11. Waste.

11.1. All CBM well Operators, owners, drillers or contractors shall use reasonable efforts to prevent waste of coalbed methane as defined in W.Va. Code §22-21-2(q).

§35-3-12. Records and Reports.

12.1. Well Records. - Each CBM Well Operator or his contractor shall comply with all the applicable requirements of 35CSR4, subsections 12.1 and 12.2, related to records required to be kept or submitted to the chief.

12.2. Annual Reports of Production. - Each CBM Well Operator shall submit to the chief the annual report of production as required by 35CSR4, section 15.

12.3. Within 30 days after the completion of stimulation of a CBM Well, the CBM Well Operator shall certify on Form WW-30, "Affidavit of Stimulation of CBM Well," the details of the actual stimulation performed, copies of which shall be submitted to the chief and to the coal owners or operators entitled to notice pursuant to W.Va. Code §22-21-14(c).

12.4. Accident Reports. - If any explosion or other accident causing loss of life or serious personal injury occurs in or about a well or during the drilling, completing or plugging of a well, the CBM Well Operator or his contractor shall give notice, by the most expedient means practical, of the particulars of the explosion or accident to the district oil and gas inspector or the chief.

12.5. Annual Inspection. - The operator shall conduct an inspection at the surface of each unplugged well at which drilling has been completed more than five (5) years. Such an inspection shall be conducted no less frequently than once each calendar year in a method approved by the chief. Certification of the performance of such inspection, in a form approved by the chief, shall be filed with the Office of Oil and Gas in conjunction with the operator's annual report as required under subsection 12.2 of this rule. Should the operator detect evidence of any significant leakage or other indications of casing integrity failure, the operator shall give notice to the Office of Oil and Gas and take such measures as may be appropriate to eliminate or mitigate the leakage.

§35-3-13. Water Protection, Testing and Redemption.

13.1. Before commencing to drill any CBM well, the CBM Well owner or operator shall make proper and adequate provision to prevent surface and underground water pollution as required by W.Va. Code §22-6-7 and 35CSR1.

13.2. When drilling of a CBM well 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 methods 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 the cuttings, will be discharged above the surface of the ground which will be contained in sump pits no larger than necessary for this purpose.

13.3. Water Testing Rights and Obligations.

13.3.a. Prior to drilling a CBM well at the request of the owners of record of the surface tract as defined in W.Va. Code §22-6-9, or an occupant of land within one thousand (1,000) feet of the proposed well, the CBM well operator shall sample and analyze, in accordance with this section, water from any wells or springs located within one thousand (1,000) feet of the proposed CBM well that is actually used by such owner or occupant for human consumption, domestic animals, or other general use.

13.3.b. If, prior to drilling, no request is made of the CBM well operator pursuant to the previous subsection, the CBM well operator shall sample and analyze, in accordance with this section, water from any one known and existing well or spring within one thousand (1,000) feet of the proposed well. If more than one such well or spring exists, the CBM well operator shall select for sampling and analysis the one well or spring that, in the CBM well operator's judgment, has the highest potential for being influenced by the CBM well operator's well work.

13.3.c. If for any reason the CBM well operator is unable to sample and to analyze water from any such water wells or springs within one thousand (1,000) feet of the CBM well operator's proposed well, the chief may require the operator to sample and to analyze in accordance with this section water from one existing well or spring located between one thousand (1,000) feet and two thousand (2,000) feet from the CBM well operator's proposed well.

13.3.d. At a CBM well operator's discretion, any or all water wells or springs within one thousand (1,000) feet of CBM well operator's proposed well may be sampled and analyzed in accordance with this section.

13.3.e. Surface Owner Notice - The CBM well operator shall give notice to the owner of record of the surface tract as defined in W.Va. Code §22-6-9 of the right of the user who is either an owner or occupant to request the CBM well operator to

sample and analyze a well or spring in accordance with subdivision 13.3.a of this section. The CBM well operator shall be deemed to have satisfied this requirement if notice is provided by the same methods used in conjunction with the permit application.

13.3.f. Additional Notice - The CBM well operator shall make a reasonable attempt to give additional notice of the right to request the operator to sample and analyze a well or spring in accordance with subdivision 13.3.a. of this section. The CBM well operator will be deemed to have satisfied this requirement if notice is provided by any of the following methods:

13.3.f.1. By personal service or by posting of notice at the entrance to any dwellings located within one thousand (1,000) feet and at any other locations within one thousand (1,000) feet of the CBM well operator's proposed well where the use of such water wells and springs is conspicuous;

13.3.f.2. Mailing of notice to dwellings located within one thousand (1,000) feet of the CBM well operator's proposed well and posting at any other locations within one thousand (1,000) feet of the operator's proposed well where the use of such water wells and springs is apparent; or

13.3.f.3. By any other means reasonably calculated by the chief to provide adequate notice to the occupant/user.

13.3.g. Form of Notice - The notice provided by the CBM well operator in accordance with this section shall be in a form approved by the chief, which, at a minimum, shall contain a statement of such user's right to request such sampling and analysis, advise such users of the independent right to sample and analyze any water supply at the expense of the user, advise such users as to whether the operator will use an independent laboratory, or not, to analyze any sample, and to advise such users of the availability through the chief of a list of laboratories.

13.3.h. Timing - The CBM well operator shall provide such notice prior to the time of the filing of any permit application with the chief.

13.3.i. Methods of Sampling - The CBM well operator shall collect and analyze samples in accordance with methods approved by the chief or set forth at 40 CFR Part 136.

13.3.j. Parameters - The CBM well operator shall analyze samples for the following parameters:

13.3.j.1. pH;
13.3.j.2. iron;
13.3.j.3. total dissolved solids;
13.3.j.4. chloride;
13.3.j.5. detergents (MBAS); and
13.3.j.6. any other parameters as determined by the CBM Well Operator.

13.3.k. Laboratories - The laboratory used by the operator shall be approved by the chief as being capable of performing sample analyses in accordance with this section.

13.3.l. Distribution of Results - The CBM well operator shall, no later than thirty (30) days after receipt of such sample analysis provide the results of such sample analysis in writing to the chief, and any of the users who may have requested such analysis in accordance with this section.

13.3.m. After notice as required by this section, the CBM well operator (or any other contractor or laboratory directed by the CBM well operator to collect samples of water for analysis by this section) may enter onto land upon which a water well or spring is located to conduct sampling as authorized.

13.3.n. If any owner of the land or use of the water well or spring protests or acts to block the right of entry, then the right of entry may be enforced by a court with jurisdiction to enter an injunction regarding the land upon which the source or supply is located. However, if any person acts to block the right of entry provided herein, the CBM well operator is not required to enforce this right of entry and shall not be liable for any penalty or loss of rights, privileges or permits based on the failure to exercise the right of entry and obtain the water sample otherwise required by this section. To the extent that a landowners refusal to allow a CBM operator to enter land restricts the CBM operator from compliance with other sections of this rule, the CBM operator is relieved of liability for such non-compliance.

13.4. The CBM well operator is liable for any reasonable actual damages done while gathering the sample required by this section. This provision does not limit other provisions of the law.

13.5. Groundwater Remediation - Where the facilities or activities of an CBM well operator cause or contribute to the

concentration of a certain constituent in groundwater which exceeds standards of purity and quality for ground water promulgated by the state Water Resources Board pursuant to W.Va. Code §20-5M-5, every reasonable effort shall be made by the CBM well operator to identify, remove or mitigate the source of such contamination. Within thirty (30) days following written request by the chief, the CBM well operator shall submit to the chief a groundwater remediation plan to strive where practical to reduce the level of contamination over time to support drinking water use. Such a plan shall include such groundwater monitoring as may be necessary to demonstrate the effectiveness of the plan.

§35-3-14. Operation and Reclamation.

14.1. All proposed reclamation methods 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 under this series, except a permit to plug a well. Such proposed reclamation methods shall be approved by the chief or his designate, prior to the issuance of the permit, all reclamation shall be done under the supervision of the chief. The reclamation may be altered from that set out in said Form WW-9, if found necessary, with the consent of the chief or his designate, due to topography or other conditions not apparent upon initial submission and approval of the proposed reclamation methods.

14.2. Access Roads - All access road 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.

14.3. 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 not 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 stored and disposed of accordance with the permits issued for the site.

14.4. Pits - All field constructed pits which are used to contain waste water shall meet the following minimum requirements:

14.4.a. Any pit shall be constructed and maintained so as to prevent seepage, leakage or overflows and to maintain its integrity.

14.4.b. Provisions shall be made for diverting surface water from the pits.

14.4.c. When an operator is unable to maintain adequate freeboard to prevent overflow from any pit, the district inspector shall be notified by the well operator and an additional pit (or alternative overflow facility) shall be constructed under the supervision of the chief which shall also meet the requirements specified in subsection 14.4 of this section.

14.4.d. If existing soil is not suitable to prevent seepage or leakage, other materials which are impervious shall be used as a liner for a pit. Any such liner shall be installed in such a manner as to protect the structural integrity of both pit and liner.

14.4.e. Dikes associated with pits shall be constructed of compacted material and maintained with a slope that will preserve the structural integrity of such dike.

14.4.f. Any unlined dike constructed of existing soil shall be free of trees and other organic matter, large rocks, or any other material which could be reasonably expected to adversely affect the structural integrity of such dike.

14.4.g. Reclamation of the pits shall not cause an overflow or unpermitted discharge of materials to waters of the state.

14.4.h. All drilling pits and alternative overflow prevention facilities shall be constructed, maintained and reclaimed as required by those conditions of any permit issued by the chief pursuant W.Va. Code §22-6-7 and subsection 14.5 of this rule, and so as not to be left in such condition as to constitute a hazard or to prevent use of the surface for agricultural purposes after the expiration of the six (6) month or extended period for reclamation prescribed by W.Va. Code §22-6-30.

14.5. Water Pollution Control Permit. - Collection, storage and discharge of water, fluids, or other wastes in connection with the drilling or operation of CBM wells shall be pursuant to a permit issued by the chief in accordance with W.Va. Code §22-6-7.

§35-3-15. Requirements for Production and Gathering Pipelines.

15.1. 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 the United States Department of Transportation minimum safety standards applicable to pipelines.

15.2. The chief 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 the office's rules.

15.3. Subject to the reservation in subsection 15.2 of this section, of production and gathering lines subject to this rule shall conform with the following:

15.3.a. 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:

15.3.a.1. Where the line crosses agricultural land as defined in W.Va. Code §19-19-2;

15.3.a.2. Where an unburied line would prohibit use of a pre-existing private roadway or other means of access to a part of or all of surface land;

15.3.a.3. Where the line cannot more practically and reasonably be securely suspended to cross stream beds;

15.3.a.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

15.3.a.5. Where the chief decides prior to installation that burial would be practical and reasonable.

15.3.b. All buried lines shall be installed with a minimum of eighteen (18) inches of cover, except where solid rock is encountered in which case the minimum cover shall be six (6) inches;

15.3.c. 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

15.3.d. 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.

15.4. Notwithstanding subsection 15.3 of this rule, the surface owner(s) of record of any tract subject to the provisions

of W.Va. Code §22-6-30(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 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 proposed to install and operate the line, the prescription may not be revoked by any subsequent surface owner(s) of record.

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

§35-3-16. Variances.

16.1. Upon request, or upon his own initiative, the chief may grant a variance from any other requirements of this series upon a showing by an operator that alternate practices will satisfy the requirements of the W. Va. Code, would not significantly increase the risk to coal mines, mine workers, fresh water aquifers, surface owners and exhibit sound engineering practice. Prior to taking final action to grant or deny such a variance, the chief shall provide notice of his proposed action to the public and to the surface owners of record and any coal owner, operator or lessee and provide all such persons with an opportunity to comment on such a proposal.

5516
35-3

1 Bill-DEP, Coa

H. B. 4155

2

(By Delegates Hunt, Linch, Compton, Jenkins,

3

Faircloth and Riggs)

4

[Introduced January 30, 1998; referred to the
Committee on Government Organization then the

5

Judiciary.]

6

7

8

9

10 A BILL to amend and reenact section one, article three,

11 chapter sixty-four of the code of West Virginia, one

12 thousand nine hundred thirty-one, as amended, relating

13 to authorizing the division of environmental

14 protection to promulgate a legislative rule relating

15 to coalbed methane wells.

16 *Be it enacted by the Legislature of West Virginia:*

17 That section one, article three, chapter sixty-four of

18 the code of West Virginia, one thousand nine hundred

19 thirty-one, as amended, be amended and reenacted, to read

20 as follows:

4155

1 ARTICLE 3. AUTHORIZATION FOR BUREAU OF ENVIRONMENT TO
2 PROMULGATE LEGISLATIVE RULES.

3 §64-3-1. Division of environmental protection.

4 (a) The legislative rule filed in the state register
5 on the thirtieth day of August, one thousand nine hundred
6 ninety-six, authorized under the authority of section six,
7 article eighteen, chapter twenty-two of this code, relating
8 to the division of environmental protection (hazardous
9 waste management, 33 CSR 20), is authorized.

10 (b) The legislative rule filed in the state register
11 on the twenty-ninth day of August, one thousand nine
12 hundred ninety-six, authorized under the authority of
13 section four, article five, chapter twenty-two of this
14 code, relating to the division of environmental protection
15 (standards of performance for new stationary sources
16 pursuant to 40 CFR Part 60, 45 CSR 16), is authorized.

17 (c) The legislative rule filed in the state register
18 on the twenty-ninth day of August, one thousand nine
19 hundred ninety-six, authorized under the authority of
20 section four, article five, chapter twenty-two of this

1 code, relating to the division of environmental protection
2 (emission standards for hazardous air pollutants pursuant
3 to 40 CFR Part 63, 45 CSR 34), is authorized.

4 (d) The legislative rule filed in the state register
5 on the twenty-eighth day of August, one thousand nine
6 hundred ninety-six, authorized under the authority of
7 section six, article seventeen, chapter twenty-two of this
8 code, modified by the division of environmental protection
9 to meet the objections of the legislative rule-making
10 review committee and refiled in the state register on the
11 twenty-second day of October, one thousand nine hundred
12 ninety-six, relating to the division of environmental
13 protection (underground storage tank insurance trust fund,
14 33 CSR 32), is authorized.

15 (e) The legislative rule filed in the state register
16 on the twenty-ninth day of August, one thousand nine
17 hundred ninety-six, authorized under the authority of
18 section three, article one, chapter twenty-two of this
19 code, modified by the division of environmental protection
20 to meet the objections of the legislative rule-making

1 review committee and refiled in the state register on the
2 twentieth day of December, one thousand nine hundred
3 ninety-six, relating to the division of environmental
4 protection (WV/NPDES regulations for coal mining
5 facilities, 47 CSR 30), is authorized.

6 (f) The legislative rule filed in the state register
7 on the thirtieth day of August, one thousand nine hundred
8 ninety-six, authorized under the authority of section four,
9 article three, chapter twenty-two of this code, modified by
10 the division of environmental protection to meet the
11 objections of the legislative rule-making review committee
12 and refiled in the state register on the twenty-first day
13 of February, one thousand nine hundred ninety-seven,
14 relating to the division of environmental protection
15 (surface mining and reclamation regulations, 38 CSR 2), is
16 authorized, with the following amendments:

17 "On page three, subsection 2.4, by striking out the
18 words "Coal seams commonly associated with such minerals
19 may include, but are not limited to Waynesburg, Washington,
20 Freeport, Sewickley, Redstone, Pittsburgh, Kittanning, Elk

1 Lick, Peerless, No. 2 Gas, Upper Eagle, No. 5 Block and
2 Stockton Lewiston";

3 On page three, subsection 2.4, line eight, by striking
4 out the words "these seams are", and inserting in lieu
5 thereof the words "the seam is";

6 On page nine, subsection 2.43, line two, after the
7 word "highwall", by inserting the words "except in
8 operations where the entire upper horizon above the lowest
9 coal seam is proposed to be partly or entirely removed";

10 On page sixteen, subsection 2.95, line seven after
11 the "any", by inserting the word "substantial";

12 On page eighteen, subsection 2.108, line two, after
13 the word "stream." by adding the following: Examples
14 include wildlife ponds, settling basins and all ponds and
15 facilities or structures used for water treatment.;

16 On page nineteen, subsection 2.120, line three, by
17 striking the word "or" and inserting in lieu thereof the
18 word "and";

19 On page twenty-nine, subsection 3.2.e., after the word
20 "period" by striking the remainder of the subdivision

1 3.2.e.;

2 On page forty-nine, subsection 3.14.b.7., by striking
3 the entire paragraph;

4 On page forty-nine, subsection 3.14.b.8., by striking
5 the entire paragraph;

6 On page forty-nine, by renumbering the remaining
7 paragraphs;

8 On page fifty-one, subparagraph 3.14.b.14E, line one,
9 before the word "A", by inserting the words "if requested
10 by the Director";

11 On page fifty-one, subsection 3.14.b.15.B., by
12 striking the entire subparagraph, and inserting in lieu
13 thereof the following: 3.14.b.15.B. Surface water must be
14 diverted around or over the material by properly designed
15 and stabilized diversion channels which have been designed
16 using the best current technology to provide protection to
17 the environment or the health, welfare and safety of the
18 public. The channel shall be designed and constructed to
19 ensure stability of the remaining material, control
20 erosion, and minimize water infiltration into the remaining

1 material.;

2 On page seventy-two, subdivision 3.29.a, line five
3 after the word "IBR", by inserting the words "or where it
4 has been demonstrated to the satisfaction of the Director
5 that limited coal removal on areas immediately adjacent to
6 the existing permit is the only practical alternative to
7 recovery of unanticipated reserves or necessary to enhance
8 reclamation efforts or environmental protection";

9 On page eighty-six, by inserting a new subsection 3.35
10 to read as follows: 3.35. All grade measurements and
11 linear measurements in this rule shall be subject to a
12 tolerance of two percent (2%). All angles in this rule
13 shall be measured from the horizontal and shall be subject
14 to a tolerance of five percent (5%): *Provided, however,*
15 this allowable deviation from the approved plan does not
16 affect storage capacity and/or performance standards.

17 On page one hundred eight, subdivision 5.5.c., line
18 two, after the word "landowner", by striking the remainder
19 of the paragraph and inserting in lieu thereof the words
20 "requesting the permanent structures be left for

1 recreational or wildlife propagation purposes or for any
2 beneficial uses to the landowner";

3 On page one hundred twelve, subdivision 6.5.a., line
4 five, after the word "Sunday." by adding the following:
5 *Provided, however, the Director may grant approval of a*
6 *request for Sunday blasting if the operator demonstrates to*
7 *the satisfaction of the Director that the blasting is*
8 *necessary and there has been an opportunity for a public*
9 *hearing.;*

10 On page one hundred twenty-six, paragraph 9.2.i.2,
11 after the word "achieved" by inserting: *An alternate*
12 *maximum or minimum soil pH may be approved based on the*
13 *optimum pH for the revegetation species.;*

14 On page one hundred thirty, line one, paragraph
15 9.3.h.1., by striking out the paragraph in its entirety,
16 and inserting in lieu thereof: 9.3.h.1. *The minimum*
17 *stocking rate of commercial tree species shall be in*
18 *accordance with the approved forest management plan*
19 *prepared by a registered professional forester. In no case*
20 *may the rate be less than four hundred fifty (450) stems*

1 per acre of commercial tree species;

2 On page one hundred thirty, paragraph 9.3.h.2., by
3 striking out the paragraph in its entirety, and by
4 renumbering the subsequent paragraphs;

5 On page one hundred thirty, in renumbered paragraph
6 9.3.h.2., after the word "than", by striking out the words
7 "four hundred fifty (450)", and inserting in lieu thereof
8 "three hundred (300);" On page one hundred thirty, in
9 renumbered paragraph 9.3.h.2., after the word "acre", by
10 inserting the words "or the rate specified in the forest
11 management plan, whichever is greater,";

12 On page two hundred twenty-two, subdivision 14.11.e,
13 line 6, by striking out the word "operable" and by
14 inserting in lieu thereof "such condition that operations
15 could be resumed within sixty (60) days";

16 On page two hundred twenty-three, subdivision
17 14.11.f., line four, by striking out the word "operative",
18 and by inserting in lieu thereof the words "such condition
19 that the operations could be resumed within sixty (60)
20 days";

1 On page two hundred twenty-three, subdivision
2 14.11.f., line four, after the word "is", by inserting the
3 words "protected from unauthorized entry";

4 On page two hundred thirty-eight, subparagraph
5 14.15.b.6.A., line five, after the word "exceed", by
6 striking out the words "fifty (50) percent of the total
7 permit acreage, or four hundred (400) acres, whichever is
8 less, on operations which consist of at least three spreads
9 of equipment", and inserting in lieu thereof the words
10 "five hundred (500) acres on operations which consist of
11 multiple spreads of equipment";

12 On page two hundred thirty-nine, subsection 14.15.c.,
13 line three, after the word "regraded", by inserting the
14 words "and stabilized";

15 On page two hundred thirty-nine, subsection 14.15.c.,
16 line four, after the word "plan", by striking out the
17 "comma" and the remainder of the subparagraph, and
18 inserting in lieu thereof the words: The following shall
19 not be included in the calculation of disturbed area.;

20 On page two hundred forty, paragraph 14.15.c.2., line

1 seven, after the word "benches", by inserting the words
2 "without regard to like thickness";

3 On page two hundred forty, paragraph 14.15.c.5, line
4 two, after the word "graded", by inserting the words "with
5 material placed in a stable, controlled manner which will
6 not subsequently be moved".

7 (g) The legislative rule filed in the state register
8 on the twenty-ninth day of August, one thousand nine
9 hundred ninety-six, authorized under the authority of
10 section ten, article five, chapter twenty-two of this code,
11 modified by the division of environmental protection to
12 meet the objections of the legislative rule-making review
13 committee and refiled in the state register on the twenty-
14 sixth day of November, one thousand nine hundred
15 ninety-six, relating to the division of environmental
16 protection (confidential information, 45 CSR 31), is
17 authorized.

18 (h) The legislative rule filed in the state register
19 on the twenty-ninth day of August, one thousand nine
20 hundred ninety-six, authorized under the authority of

1 section four, article five, chapter twenty-two of this
2 code, modified by the division of environmental protection
3 to meet the objections of the legislative rule-making
4 review committee and refiled in the state register on the
5 sixteenth day of January, one thousand nine hundred
6 ninety-seven, relating to the division of environmental
7 protection (to prevent and control air pollution from
8 hazardous waste treatment, storage or disposal facilities,
9 45 CSR 25), is authorized.

10 (i) The legislative rule filed in the state register
11 on the fifth day of February, one thousand nine hundred
12 ninety-seven, authorized under the authority of section
13 three, article twenty-two, chapter twenty-two of this code,
14 modified by the division of environmental protection to
15 meet the objections of the legislative rule-making review
16 committee and refiled in the state register on the twenty-
17 fifth day of February, one thousand nine hundred
18 ninety-seven, relating to the division of environmental
19 protection (voluntary remediation and redevelopment, 60 CSR
20 3), is authorized.

1 (j) That title sixty, series one of the code of state
2 rules be amended by deleting the current interpretative
3 rule for the office of environmental advocate and inserting
4 in lieu thereof the following legislative rule, to read as
5 follows:

6 **"§61-10-1. General.**

7 1.1. **Scope.** - This legislative rule governs and
8 controls the appointment and qualifications of the position
9 of Environmental Advocate within the Division of
10 Environmental Protection.

11 1.2. **Authority** - West Virginia Code §22-1-3, 22-1-3a,
12 22-20.

13 1.3. **Filing Date** -

14 1.4. **Effective Date** - July 1, 1997.

15 **§61-10-2. Appointment, Salary and Qualifications.**

16 2.1. **Appointment.** - The position of Environmental
17 Advocate will be a full-time position, will be appointed by
18 the Director, and will serve at the will and pleasure of
19 the Director of the Division of Environmental Protection in
20 accordance with the West Virginia Code §22-20-1.

1 2.2. Salary. - The salary of the position of
2 Environmental Advocate will be set by the Director and is
3 subject to future adjustments at the discretion of the
4 Director.

5 2.3. Qualifications. - The Director will receive or
6 solicit applications for the position of Environmental
7 Advocate from persons having the following minimum
8 qualifications:

9 2.3.a. A citizen and resident of the State of West
10 Virginia.

11 2.3.b. A graduate from an accredited college or
12 university with a four-year degree in a field of study
13 directly related to the qualifications, powers, and duties
14 of the position as set forth by the director.

15 2.3.c. A minimum of two years full-time or cumulative
16 experience in work directly related to environmental
17 protection, or other public service work or experience
18 which demonstrates the ability to carry out the powers and
19 duties of the position as set forth by the director.

20 2.3.d. A working familiarity with some of the legal

1 requirements and programmatic functions of the Division of
2 Environmental Protection.

3 2.3.e. A demonstrated ability to skillfully verbally
4 and by writing communicate in a public forum.

5 2.3.f. A demonstrated ability to use word processing
6 software for a computer and other necessary computer
7 skills as determined by the director.

8 2.3.g. A valid West Virginia driver's license.

9 §61-10-3. Powers and Limitations -

10 The Environmental Advocate will carry out the duties
11 of the position as set forth in this rule, and as
12 prescribed by the Director in accordance with the
13 following:

14 3.1. The Environmental Advocate will be guided in all
15 actions by the policy statement and the nine purposes set
16 forth in West Virginia Code §22-1-1 (b).

17 3.2. The Environmental Advocate may not in any
18 official capacity represent any person in, or file on
19 behalf of any person, legal or quasi-legal actions, either
20 in support of or opposed to the Division of Environmental

1 Protection without the expressed approval of the Director,
2 and under supervision of the Division of Environmental
3 Protection's General Counsel.

4 3.3. The Environmental Advocate may not in any
5 official capacity organize public campaigns in support of,
6 or in opposition to official positions taken by the
7 Division of Environmental Protection on environmental
8 matters, and will not in any official capacity actively
9 participate in any such organized campaign."

10 (k) The director of the division of environmental
11 protection is hereby authorized to propose for promulgation
12 an emergency rule to amend a current legislative rule
13 relating to monitoring of air quality (to prevent and
14 control particulate air pollution from manufacturing
15 process operation, 45 CSR 7).

16 (l) The legislative rule filed in the state register
17 on the eighteenth day of March, one thousand nine hundred
18 ninety-seven, relating to the division of environmental
19 protection (yard waste composting, 47 CSR 38E) is
20 authorized.

1 (m) The legislative rule filed in the state register
2 on the thirty-first day of July, one thousand nine hundred
3 ninety-seven, authorized under the authority of section
4 two, article six, chapter twenty-two, of this code,
5 modified by the division of environmental protection to
6 meet the objections of the legislative rule-making review
7 committee and refiled in the state register on the ninth
8 day of December, one thousand nine hundred ninety-seven,
9 relating to the division of environmental protection
10 (coalbed methane wells, 35 CSR 3), is authorized.

11

12 NOTE: The purpose of this bill is to authorize the
13 Division of Environmental Protection to promulgate a
14 legislative rule relating to Coalbed Methane Wells.

15

16 Strike-throughs indicate language that would be
17 stricken from the present law, and underscoring indicates
18 new language that would be added.

Senate Bill No. 283

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(By Senator(s) Ross, Anderson, Bowman,
Macnaughtan, Boley and Buckalew)

[Introduced January 30, 1998; referred to the
Committee on Energy, Industry and Mining; and
then to the Committee on the Judiciary.]

10 A BILL to amend and reenact section one, article three,
11 chapter sixty-four of the code of West Virginia, one
12 thousand nine hundred thirty-one, as amended, relating
13 to authorizing the division of environmental
14 protection to promulgate a legislative rule relating
15 to coalbed methane wells.

16 *Be it enacted by the Legislature of West Virginia:*

17 That section one, article three, chapter sixty-four of
18 the code of West Virginia, one thousand nine hundred
19 thirty-one, as amended, be amended and reenacted, to read
20 as follows:

1 ARTICLE 3. AUTHORIZATION FOR BUREAU OF ENVIRONMENT TO
2 PROMULGATE LEGISLATIVE RULES.

3 §64-3-1. Division of environmental protection.

4 (a) The legislative rule filed in the state register
5 on the thirtieth day of August, one thousand nine hundred
6 ninety-six, authorized under the authority of section six,
7 article eighteen, chapter twenty-two of this code, relating
8 to the division of environmental protection (hazardous
9 waste management, 33 CSR 20), is authorized.

10 (b) The legislative rule filed in the state register
11 on the twenty-ninth day of August, one thousand nine
12 hundred ninety-six, authorized under the authority of
13 section four, article five, chapter twenty-two of this
14 code, relating to the division of environmental protection
15 (standards of performance for new stationary sources
16 pursuant to 40 CFR Part 60, 45 CSR 16), is authorized.

17 (c) The legislative rule filed in the state register
18 on the twenty-ninth day of August, one thousand nine
19 hundred ninety-six, authorized under the authority of
20 section four, article five, chapter twenty-two of this

1 code, relating to the division of environmental protection
2 (emission standards for hazardous air pollutants pursuant
3 to 40 CFR Part 63, 45 CSR 34), is authorized.

4 (d) The legislative rule filed in the state register
5 on the twenty-eighth day of August, one thousand nine
6 hundred ninety-six, authorized under the authority of
7 section six, article seventeen, chapter twenty-two of this
8 code, modified by the division of environmental protection
9 to meet the objections of the legislative rule-making
10 review committee and refiled in the state register on the
11 twenty-second day of October, one thousand nine hundred
12 ninety-six, relating to the division of environmental
13 protection (underground storage tank insurance trust fund,
14 33 CSR 32), is authorized.

15 (e) The legislative rule filed in the state register
16 on the twenty-ninth day of August, one thousand nine
17 hundred ninety-six, authorized under the authority of
18 section three, article one, chapter twenty-two of this
19 code, modified by the division of environmental protection
20 to meet the objections of the legislative rule-making

1 review committee and refiled in the state register on the
2 twentieth day of December, one thousand nine hundred
3 ninety-six, relating to the division of environmental
4 protection (WV/NPDES regulations for coal mining
5 facilities, 47 CSR 30), is authorized.

6 (f) The legislative rule filed in the state register
7 on the thirtieth day of August, one thousand nine hundred
8 ninety-six, authorized under the authority of section four,
9 article three, chapter twenty-two of this code, modified by
10 the division of environmental protection to meet the
11 objections of the legislative rule-making review committee
12 and refiled in the state register on the twenty-first day
13 of February, one thousand nine hundred ninety-seven,
14 relating to the division of environmental protection
15 (surface mining and reclamation regulations, 38 CSR 2), is
16 authorized, with the following amendments:

17 "On page three, subsection 2.4, by striking out the
18 words "Coal seams commonly associated with such minerals
19 may include, but are not limited to Waynesburg, Washington,
20 Freeport, Sewickley, Redstone, Pittsburgh, Kittanning, Elk

1 Lick, Peerless, No. 2 Gas, Upper Eagle, No. 5 Block and
2 Stockton Lewiston";

3 On page three, subsection 2.4, line eight, by striking
4 out the words "these seams are", and inserting in lieu
5 thereof the words "the seam is";

6 On page nine, subsection 2.43, line two, after the
7 word "highwall", by inserting the words "except in
8 operations where the entire upper horizon above the lowest
9 coal seam is proposed to be partly or entirely removed";

10 On page sixteen, subsection 2.95, line seven after
11 the "any", by inserting the word "substantial";

12 On page eighteen, subsection 2.108, line two, after
13 the word "stream." by adding the following: Examples
14 include wildlife ponds, settling basins and all ponds and
15 facilities or structures used for water treatment.;

16 On page nineteen, subsection 2.120, line three, by
17 striking the word "or" and inserting in lieu thereof the
18 word "and";

19 On page twenty-nine, subsection 3.2.e., after the word
20 "period" by striking the remainder of the subdivision

1 3.2.e.;

2 On page forty-nine, subsection 3.14.b.7., by striking
3 the entire paragraph;

4 On page forty-nine, subsection 3.14.b.8., by striking
5 the entire paragraph;

6 On page forty-nine, by renumbering the remaining
7 paragraphs;

8 On page fifty-one, subparagraph 3.14.b.14E, line one,
9 before the word "A", by inserting the words "If requested
10 by the Director";

11 On page fifty-one, subsection 3.14.b.15.B., by
12 striking the entire subparagraph, and inserting in lieu
13 thereof the following: 3.14.b.15.B. Surface water must be
14 diverted around or over the material by properly designed
15 and stabilized diversion channels which have been designed
16 using the best current technology to provide protection to
17 the environment or the health, welfare and safety of the
18 public. The channel shall be designed and constructed to
19 ensure stability of the remaining material, control
20 erosion, and minimize water infiltration into the remaining

1 material.;

2 On page seventy-two, subdivision 3.29.a, line five
3 after the word "IBR", by inserting the words "or where it
4 has been demonstrated to the satisfaction of the Director
5 that limited coal removal on areas immediately adjacent to
6 the existing permit is the only practical alternative to
7 recovery of unanticipated reserves or necessary to enhance
8 reclamation efforts or environmental protection";

9 On page eighty-six, by inserting a new subsection 3.35
10 to read as follows: 3.35. All grade measurements and
11 linear measurements in this rule shall be subject to a
12 tolerance of two percent (2%). All angles in this rule
13 shall be measured from the horizontal and shall be subject
14 to a tolerance of five percent (5%): *Provided, however,*
15 *this allowable deviation from the approved plan does not*
16 *affect storage capacity and/or performance standards.*

17 On page one hundred eight, subdivision 5.5.c., line
18 two, after the word "landowner", by striking the remainder
19 of the paragraph and inserting in lieu thereof the words
20 "requesting the permanent structures be left for

1 recreational or wildlife propagation purposes or for any
2 beneficial uses to the landowner";

3 On page one hundred twelve, subdivision 6.5.a., line
4 five, after the word "Sunday." by adding the following:
5 *Provided, however,* the Director may grant approval of a
6 request for Sunday blasting if the operator demonstrates to
7 the satisfaction of the Director that the blasting is
8 necessary and there has been an opportunity for a public
9 hearing.;

10 On page one hundred twenty-six, paragraph 9.2.i.2,
11 after the word "achieved" by inserting: An alternate
12 maximum or minimum soil pH may be approved based on the
13 optimum pH for the revegetation species.;

14 On page one hundred thirty, line one, paragraph
15 9.3.h.1., by striking out the paragraph in its entirety,
16 and inserting in lieu thereof: 9.3.h.1. The minimum
17 stocking rate of commercial tree species shall be in
18 accordance with the approved forest management plan
19 prepared by a registered professional forester. In no case
20 may the rate be less than four hundred fifty (450) stems

1 per acre of commercial tree species;

2 On page one hundred thirty, paragraph 9.3.h.2., by
3 striking out the paragraph in its entirety, and by
4 renumbering the subsequent paragraphs;

5 On page one hundred thirty, in renumbered paragraph
6 9.3.h.2., after the word "than", by striking out the words
7 "four hundred fifty (450)", and inserting in lieu thereof
8 "three hundred (300);" On page one hundred thirty, in
9 renumbered paragraph 9.3.h.2., after the word "acre", by
10 inserting the words "or the rate specified in the forest
11 management plan, whichever is greater,";

12 On page two hundred twenty-two, subdivision 14.11.e,
13 line 6, by striking out the word "operable" and by
14 inserting in lieu thereof "such condition that operations
15 could be resumed within sixty (60) days";

16 On page two hundred twenty-three, subdivision
17 14.11.f., line four, by striking out the word "operative",
18 and by inserting in lieu thereof the words "such condition
19 that the operations could be resumed within sixty (60)
20 days";

1 On page two hundred twenty-three, subdivision
2 14.11.f., line four, after the word "is", by inserting the
3 words "protected from unauthorized entry";

4 On page two hundred thirty-eight, subparagraph
5 14.15.b.6.A., line five, after the word "exceed", by
6 striking out the words "fifty (50) percent of the total
7 permit acreage, or four hundred (400) acres, whichever is
8 less, on operations which consist of at least three spreads
9 of equipment", and inserting in lieu thereof the words
10 "five hundred (500) acres on operations which consist of
11 multiple spreads of equipment";

12 On page two hundred thirty-nine, subsection 14.15.c.,
13 line three, after the word "regraded", by inserting the
14 words "and stabilized";

15 On page two hundred thirty-nine, subsection 14.15.c.,
16 line four, after the word "plan", by striking out the
17 "comma" and the remainder of the subparagraph, and
18 inserting in lieu thereof the words: The following shall
19 not be included in the calculation of disturbed area.;

20 On page two hundred forty, paragraph 14.15.c.2., line

1 seven, after the word "benches", by inserting the words
2 "without regard to like thickness";

3 On page two hundred forty, paragraph 14.15.c.5, line
4 two, after the word "graded", by inserting the words "with
5 material placed in a stable, controlled manner which will
6 not subsequently be moved".

7 (g) The legislative rule filed in the state register
8 on the twenty-ninth day of August, one thousand nine
9 hundred ninety-six, authorized under the authority of
10 section ten, article five, chapter twenty-two of this code,
11 modified by the division of environmental protection to
12 meet the objections of the legislative rule-making review
13 committee and refiled in the state register on the twenty-
14 sixth day of November, one thousand nine hundred
15 ninety-six, relating to the division of environmental
16 protection (confidential information, 45 CSR 31), is
17 authorized.

18 (h) The legislative rule filed in the state register
19 on the twenty-ninth day of August, one thousand nine
20 hundred ninety-six, authorized under the authority of

1 section four, article five, chapter twenty-two of this
2 code, modified by the division of environmental protection
3 to meet the objections of the legislative rule-making
4 review committee and refiled in the state register on the
5 sixteenth day of January, one thousand nine hundred
6 ninety-seven, relating to the division of environmental
7 protection (to prevent and control air pollution from
8 hazardous waste treatment, storage or disposal facilities,
9 45 CSR 25), is authorized.

10 (i) The legislative rule filed in the state register
11 on the fifth day of February, one thousand nine hundred
12 ninety-seven, authorized under the authority of section
13 three, article twenty-two, chapter twenty-two of this code,
14 modified by the division of environmental protection to
15 meet the objections of the legislative rule-making review
16 committee and refiled in the state register on the twenty-
17 fifth day of February, one thousand nine hundred
18 ninety-seven, relating to the division of environmental
19 protection (voluntary remediation and redevelopment, 60 CSR
20 3), is authorized.

1 seven, after the word "benches", by inserting the words
2 "without regard to like thickness";

3 On page two hundred forty, paragraph 14.15.c.5, line
4 two, after the word "graded", by inserting the words "with
5 material placed in a stable, controlled manner which will
6 not subsequently be moved".

7 (g) The legislative rule filed in the state register
8 on the twenty-ninth day of August, one thousand nine
9 hundred ninety-six, authorized under the authority of
10 section ten, article five, chapter twenty-two of this code,
11 modified by the division of environmental protection to
12 meet the objections of the legislative rule-making review
13 committee and refiled in the state register on the twenty-
14 sixth day of November, one thousand nine hundred
15 ninety-six, relating to the division of environmental
16 protection (confidential information, 45 CSR 31), is
17 authorized.

18 (h) The legislative rule filed in the state register
19 on the twenty-ninth day of August, one thousand nine
20 hundred ninety-six, authorized under the authority of

1 section four, article five, chapter twenty-two of this
2 code, modified by the division of environmental protection
3 to meet the objections of the legislative rule-making
4 review committee and refiled in the state register on the
5 sixteenth day of January, one thousand nine hundred
6 ninety-seven, relating to the division of environmental
7 protection (to prevent and control air pollution from
8 hazardous waste treatment, storage or disposal facilities,
9 45 CSR 25), is authorized.

10 (i) The legislative rule filed in the state register
11 on the fifth day of February, one thousand nine hundred
12 ninety-seven, authorized under the authority of section
13 three, article twenty-two, chapter twenty-two of this code,
14 modified by the division of environmental protection to
15 meet the objections of the legislative rule-making review
16 committee and refiled in the state register on the twenty-
17 fifth day of February, one thousand nine hundred
18 ninety-seven, relating to the division of environmental
19 protection (voluntary remediation and redevelopment, 60 CSR
20 3), is authorized.

1 (j) That title sixty, series one of the code of state
2 rules be amended by deleting the current interpretative
3 rule for the office of environmental advocate and inserting
4 in lieu thereof the following legislative rule, to read as
5 follows:

6 **"§61-10-1. General.**

7 1.1. **Scope.** - This legislative rule governs and
8 controls the appointment and qualifications of the position
9 of Environmental Advocate within the Division of
10 Environmental Protection.

11 1.2. **Authority** - West Virginia Code §22-1-3, 22-1-3a,
12 22-20.

13 1.3. **Filing Date** -

14 1.4. **Effective Date** - July 1, 1997.

15 **§61-10-2. Appointment, Salary and Qualifications.**

16 2.1. **Appointment.** - The position of Environmental
17 Advocate will be a full-time position, will be appointed by
18 the Director, and will serve at the will and pleasure of
19 the Director of the Division of Environmental Protection in
20 accordance with the West Virginia Code §22-20-1.

1 **2.2. Salary.** - The salary of the position of
2 Environmental Advocate will be set by the Director and is
3 subject to future adjustments at the discretion of the
4 Director.

5 **2.3. Qualifications.** - The Director will receive or
6 solicit applications for the position of Environmental
7 Advocate from persons having the following minimum
8 qualifications:

9 **2.3.a.** A citizen and resident of the State of West
10 Virginia.

11 **2.3.b.** A graduate from an accredited college or
12 university with a four-year degree in a field of study
13 directly related to the qualifications, powers, and duties
14 of the position as set forth by the director.

15 **2.3.c.** A minimum of two years full-time or cumulative
16 experience in work directly related to environmental
17 protection, or other public service work or experience
18 which demonstrates the ability to carry out the powers and
19 duties of the position as set forth by the director.

20 **2.3.d.** A working familiarity with some of the legal

1 requirements and programmatic functions of the Division of
2 Environmental Protection.

3 2.3.e. A demonstrated ability to skillfully verbally
4 and by writing communicate in a public forum.

5 2.3.f. A demonstrated ability to use word processing
6 software for a computer and other necessary computer
7 skills as determined by the director.

8 2.3.g. A valid West Virginia driver's license.

9 **§61-10-3. Powers and Limitations -**

10 The Environmental Advocate will carry out the duties
11 of the position as set forth in this rule, and as
12 prescribed by the Director in accordance with the
13 following:

14 3.1. The Environmental Advocate will be guided in all
15 actions by the policy statement and the nine purposes set
16 forth in West Virginia Code §22-1-1 (b).

17 3.2. The Environmental Advocate may not in any
18 official capacity represent any person in, or file on
19 behalf of any person, legal or quasi-legal actions, either
20 in support of or opposed to the Division of Environmental

1 Protection without the expressed approval of the Director,
2 and under supervision of the Division of Environmental
3 Protection's General Counsel.

4 3.3. The Environmental Advocate may not in any
5 official capacity organize public campaigns in support of,
6 or in opposition to official positions taken by the
7 Division of Environmental Protection on environmental
8 matters, and will not in any official capacity actively
9 participate in any such organized campaign."

10 (k) The director of the division of environmental
11 protection is hereby authorized to propose for promulgation
12 an emergency rule to amend a current legislative rule
13 relating to monitoring of air quality (to prevent and
14 control particulate air pollution from manufacturing
15 process operation, 45 CSR 7).

16 (l) The legislative rule filed in the state register
17 on the eighteenth day of March, one thousand nine hundred
18 ninety-seven, relating to the division of environmental
19 protection (yard waste composting, 47 CSR 38E) is
20 authorized.

1 (m) The legislative rule filed in the state register
2 on the thirty-first day of July, one thousand nine hundred
3 ninety-seven, authorized under the authority of section
4 two, article six, chapter twenty-two, of this code,
5 modified by the division of environmental protection to
6 meet the objections of the legislative rule-making review
7 committee and refiled in the state register on the ninth
8 day of December, one thousand nine hundred ninety-seven,
9 relating to the division of environmental protection
10 (coalbed methane wells, 35 CSR 3), is authorized.

11

12 NOTE: The purpose of this bill is to authorize the
13 Division of Environmental Protection to promulgate a
14 legislative rule relating to Coalbed Methane Wells.

15

16 Strike-throughs indicate language that would be
17 stricken from the present law, and underscoring indicates
18 new language that would be added.