

**WEST VIRGINIA  
SECRETARY OF STATE  
NATALIE E. TENNANT  
ADMINISTRATIVE LAW DIVISION**

Form #1

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2009 JUN 11 AM 11:44

OFFICE WEST VIRGINIA  
SECRETARY OF STATE

**NOTICE OF A PUBLIC HEARING ON A PROPOSED RULE**

AGENCY: WV Department of Environmental Protection - Office of Oil and Gas TITLE NUMBER: 35

RULE TYPE: Legislative CITE AUTHORITY: W.Va. Code §22-6-2

AMENDMENT TO AN EXISTING RULE: YES  NO

IF YES, SERIES NUMBER OF RULE BEING AMENDED: 4

TITLE OF RULE BEING AMENDED: Oil and Gas Wells and Other Wells

IF NO, SERIES NUMBER OF RULE BEING PROPOSED: \_\_\_\_\_

TITLE OF RULE BEING PROPOSED: \_\_\_\_\_

DATE OF PUBLIC HEARING: July 14, 2009 TIME: 6:30pm

LOCATION OF PUBLIC HEARING: WV Department of Environmental Protection - Coopers Rock Training Room (1204)

601 57th Street, SE Charleston, WV

COMMENTS LIMITED TO: ORAL  WRITTEN  BOTH

DATE WRITTEN COMMENT PERIOD ENDS: July 14, 2009 TIME: 6:30pm

WRITTEN COMMENTS MAY BE MAILED TO:

The Department requests that persons wishing to make comments at the hearing make an effort to submit written comments in order to facilitate the review of these comments.

WV DEP - Office of Oil and Gas  
601 57th Street SE

Charleston, WV 25304

Att: James Martin

The issues to be heard shall be limited to the proposed rule.

ATTACH A **BRIEF** SUMMARY OF YOUR PROPOSAL

  
\_\_\_\_\_  
Authorized Signature

**DEPARTMENT OF ENVIRONMENTAL PROTECTION**  
**BRIEFING DOCUMENT**

**Rule Title:** Oil and Gas Wells and Other Wells, 35CSR4

**A. AUTHORITY:** W. Va. Code §22-6-2

**B. SUMMARY OF RULE:**

The WVDEP, Office of Oil and Gas is proposing to revise existing rule 35CSR4. Series 4 is a legislative rule which applies to and governs the proceedings under W. Va. Code §22-6-1 et seq., relating to oil and gas wells. The proposed revisions to this rule address the following areas:

- 1) Add requirements for the construction of drilling pits and impoundments under section 16 and add a new section 21 establishing specific construction requirements for pits and impoundments greater than a certain size;
- 2) Change fees in section 5;
- 3) Require certain location information to be submitted as part of the plat in section 9;
- 4) Technical revisions and corrections were made throughout rule.

**C. STATEMENT OF CIRCUMSTANCES WHICH REQUIRE RULE:**

Much of the focus of the revisions is directed in the area of pit and impoundment construction. Recent developments in oil and gas well drilling activities are resulting in substantially larger fluid holding structures. For purposes of public safety and environmental protection, these structures should be designed and constructed in a properly engineered manner. Revisions to section 16 and the addition of section 21 are being proposed to better ensure that these fluid structures meet that objective of safety and environmental protection.

**D. FEDERAL COUNTERPART REGULATIONS – INCORPORATION BY REFERENCE / DETERMINATION OF STRINGENCY:**

There is no federal counterpart regulation; thus, no determination of stringency is required.

**E. CONSTITUTIONAL TAKINGS DETERMINATION**

In accordance with W. Va. Code §§ 22-1A-1 and 3(c), the Secretary has determined that this rule will not result in taking of private property within the meaning of the Constitutions of West Virginia and the United States of America.

**F. CONSULTATION WITH THE ENVIRONMENTAL PROTECTION ADVISORY COUNCIL:**

At its meeting on June 3, 2009, the Environmental Protection Advisory Council discussed the proposed rule. See attached minutes for Council's discussion.

## APPENDIX B

**FISCAL NOTE FOR PROPOSED RULES**

Rule Title: OIL AND GAS WELLS AND OTHER WELLS

Type of Rule:  Legislative  Interpretive  Procedural

Agency: WV DEPARTMENT OF ENVIRONMENTAL PROTECTION

Address: OFFICE OF OIL AND GAS

601 57TH STREET, SE  
CHARLESTON, WV 25304

Phone Number: 304-926-0499 EXT. 1654 Email: JAMES.A.MARTIN@WV.GOV

**Fiscal Note Summary**

Summarize in a clear and concise manner what impact this measure will have on costs and revenues of state government.

This measure is not expected to impact costs and revenues of state government.

**Fiscal Note Detail**

Show over-all effect in Item 1 and 2 and, in Item 3, give an explanation of Breakdown by fiscal year, including long-range effect.

FISCAL YEAR			
Effect of Proposal	Current Increase/Decrease (use "-")	Next Increase/Decrease (use "-")	Fiscal Year (Upon Full Implementation)
1. Estimated Total Cost	0.00	0.00	0.00
Personal Services	0.00	0.00	0.00
Current Expenses	0.00	0.00	0.00
Repairs & Alterations	0.00	0.00	0.00
Assets	0.00	0.00	0.00
Other	0.00	0.00	0.00
2. Estimated Total Revenues	0.00	0.00	0.00

Rule Title: \_\_\_\_\_

Rule Title: OIL AND GAS WELLS AND OTHER WELLS

3. **Explanation of above estimates (including long-range effect):**  
Please include any increase or decrease in fees in your estimated total revenues.

No impact is expected to costs and revenues.

### MEMORANDUM

Please identify any areas of vagueness, technical defects, reasons the proposed rule **would not** have a fiscal impact, and/or any special issues **not** captured elsewhere on this form.

Date: 6/10/07

Signature of Agency Head or Authorized Representative

  
\_\_\_\_\_

FILED

TITLE 35  
LEGISLATIVE RULE  
~~DIVISION~~ DEPARTMENT OF ENVIRONMENTAL PROTECTION  
OFFICE OF OIL AND GAS

2009 JUN 11 AM 11:44  
OFFICE WEST VIRGINIA  
SECRETARY OF STATE

SERIES 4  
OIL AND GAS WELLS AND OTHER WELLS

**§35-4-1. General.**

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

1.2. Authority. -- W. Va. Code §§22-12-5, 22-1-3, and 22-6-2.

1.3. Filing Date. -- ~~May 10, 2001.~~

1.4. Effective Date. -- ~~May 10, 2001.~~

1.5. Former Rule Superseded -- This legislative rule supersedes West Virginia Legislative Rule, Department of Energy, Division of Oil and Gas, Series 18, "Oil and Gas Wells and Other Wells" in effect on June 12, 1987.

1.6. Forms. -- An index of all current forms and copies of any forms currently used under or required by this rule may be obtained from the Chief. The Office of Oil and Gas reserves the right to amend any forms prospectively to accord more fully with W. Va. Code §22 and this rule.

**§35-4-2. Definitions.**

Unless the context in which used clearly requires a different meaning, the definitions contained in W. Va. Code §§22-1-2 and 22-6-1 shall apply to this rule in addition to those definitions set forth below:

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

2.2. "Barrel" shall mean forty-two (42) U.S. gallons of two hundred thirty-one (231) cubic inches each of liquid, including slurries, at a temperature of sixty (60) degrees Fahrenheit.

2.3. "Chief" shall mean Chief of the Office of Oil and Gas as designated by the ~~Director~~ Secretary of the ~~Division~~ Department of Environmental Protection.

2.4. "Completion of the drilling process," as used in W. Va. Code §22-6-30, shall mean the date on which a drilling rig ceases operation on the drilling site for more than thirty (30) consecutive days.

2.5. "Cubic foot of gas" shall mean the volume of gas contained in one (1) cubic foot of space at a standard pressure base and a standard temperature base. ~~at a standard pressure base of The standard pressure base shall be fourteen point seven three (14.73) and seventy-three hundredths~~ pounds per square inch absolute

~~(14.73 psia), and a the standard temperature of base shall be sixty (60) degrees Fahrenheit.~~

2.6. "Day" shall mean a period of twenty-four (24) consecutive hours.

2.7. "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 §22-6 may be served. *See subsection 10.3 below.*

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

2.9. "Gas well" shall mean any well which produces or appears capable of producing a ratio of six thousand (6,000) cubic feet of gas or more to each one (1) barrel of oil on the basis of the initial gas-oil ratio test.

2.10. "Impoundment" shall mean a man-made excavation or diked area for the retention of fresh water and into which no wastes of any kind are placed.

~~2.10.~~ 2.11. "Initial gas-oil ratio test" shall mean the gas-oil ratio test performed for the purpose of completing Form IV-36, "Well Operator's Report of Initial Gas-Oil Ratio Test," to designate the type of well.

~~2.11.~~ 2.12. "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.

~~2.12.~~ 2.13. "Oil well" shall mean any well which produces or appears capable of producing a ratio of less than six thousand (6,000) cubic feet of gas to each one (1) barrel of oil on the basis of the initial gas-oil ratio test.

2.14. "Pit" shall mean a man-made excavation or diked area that contains or is intended to contain an accumulation of process waste fluids, drill cuttings, and/or any other liquid substance that could impact surface water or groundwater.

~~2.13~~ 2.15. "Surface owner of record, and ~~the term~~ "owner of record of the surface" as used in W. Va. Code §22-6-9 shall mean any person who is an owner of record of surface land or an undivided interest therein, whether or not the surface ownership is severed from the oil and gas or other mineral ownership.

~~2.14~~ 2.16. "Underground storage well" shall mean a gas well subject to the provisions of W. Va. Code §22-9-1, *et seq.*

~~2.15~~ 2.17. "Use" for the purpose of W. Va. Code §22-6-19 ~~is defined the same~~ shall have the same meaning as "Active Status" is defined in 35 CSR 5, which is "any well producing oil or gas in commercial quantities, or being operated pursuant to underground injection control permits, or being operated in conjunction with the underground storage of hydrocarbons."

### **§35-4-3. Inspectors Forms, Forms, Departmental Records.**

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

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

3.2.a. Form VI-26, “Inspector's Well Report” for permitted well work (obverse) except plugging and abandonment (reverse);

3.2.b. Form VI-27, “Notice of Violation;”

3.2.c. Form VI-28, “Imminent Danger Order;”

3.2.d. Form VI-29, “Notice Extending Abatement Time;”

3.2.e. Form VI-30, “Order for Failure to Abate Violation;” and

3.2.f. Form VI-31, “Notice of Abatement.”

**§35-4-4. Inspectors Findings of Violation, Abatement.**

4.1. Violations, Findings and Orders - Findings and orders of oil and gas inspectors concerning violations discovered during an inspection shall be recorded on the appropriate form listed in 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 §22-6-1 et seq. or this rule.

**§35-4-5. Permits, Notice, Review.**

5.1. Reserved.

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

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

5.2.a.1. A “Notice of Application for a Well Work Permit” in the form prescribed by subsection 5.4 below;

5.2.a.2. A plat in the form prescribed by section 9 below;

5.2.a.3. A bond in one of the forms prescribed by section 10 below, or in lieu thereof cash or collateral security allowed by W. Va. Code §22-6-26;

5.2.a.4. Form WW-9, “Construction and Reclamation Plan,” applicable to the plan required by W. Va. Code §22-6-6(d) and a plan for performing the reclamation required by W. Va. Code §22-6-30 and section 16 below;

5.2.a.5. ~~With any initial application to drill a well the fees required by W. Va. Code '22-6-2 (two hundred fifty dollars (\$250) application fee), W. Va. Code '22-6-29 (one hundred dollars (\$100) special reclamation fee), and a fee of one hundred dollars (\$100) general permit registration fee; and The applicable~~

fee(s), which include:

5.2.a.5.1. Four Hundred Dollars and Zero Cents (\$400.00) for the application to conduct well work, pursuant to W. Va. Code §22-6-2(c)(10);

5.2.a.5.2. One Hundred Fifty Dollars and Zero Cents (\$150.00) for the special reclamation fee, pursuant to W. Va. Code §22-6-29(b); and/or

5.2.a.5.3. One Hundred Dollars and Zero Cents (\$100.00) for a general permit registration fee.

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

5.2.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-2(B) filed in connection therewith.

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

5.2.c.1. A "Notice of Liquid Injection or Waste Disposal Application" in the form prescribed by subsection 5.4;

5.2.c.2. A plat in the form prescribed by section 9 below;

5.2.c.3. A bond in one of the forms prescribed by section 10 below, or in lieu thereof the cash or collateral security allowed by W. Va. Code §22-6-14;

5.2.c.4. Form WW-9, "Construction and Reclamation Plan," applicable to the reclamation required by W. Va. Code §22-6-30 and section 16 below; and

5.2.c.5. With the initial application to drill a well, the fees required by W. Va. Code §§22-6-2 and 22-6-29. A separate application for permit shall not be required for stimulating a well where stimulating is to be a part of the well work for which a permit is sought and such fact is noted on the Form WW-3(B) filed in connection therewith.

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

5.2.d.1. A "Notice of Application to Plug and Abandon a Well," in the form prescribed by subsection 5.4 below;

5.2.d.2. A plat in the form prescribed by section 9 below; and

5.2.d.3. A bond in one of the forms prescribed by section 10 below, or in lieu thereof cash or collateral security required by W. Va. Code §22-6-23.

5.2.e. 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 well, a construction and reclamation plan.

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

5.2.g. Any permit issued ~~under section 5~~ pursuant to this section 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.

5.2.h. No permit issued under this section 5 shall be transferable.

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

5.2.j. Irrespective of the scope of the well work for which a permit was originally issued, a new application shall be filed for any well work subsequent to the expiration of the six-month or extended period for reclamation prescribed by W. Va. Code §22-6-30.

### 5.3. Flat Well Royalty Leases.

5.3.a. Any application for a well work permit subject to the provisions of W. Va. Code §22-6-8 shall include the data required by subsection (c) thereof. Such information may be recorded on the applicable form of the Notice of Application in lieu of filing copies of the well operator's lease or leases or other continuing contract or contracts.

5.3.b. If the applicant's right to extract, produce, or market the oil or gas is based upon a lease or leases or other continuing contract or contracts providing for a flat well royalty or any similar provision for compensation to the owner of the oil or gas in place that is not inherently related to the volume of oil and gas so extracted, produced, and marketed, then the affidavit to be furnished pursuant to W. Va. Code §22-6-8(e) shall be submitted on Form WW-60.

### 5.4. Notice to Surface Owners of Record; Proof of Notice; Comments.

5.4.a. For purposes of notice of surface owners of record pursuant to W. Va. Code §22-6-9, the applicant well operator shall be entitled to assume, subject to performing the public record review described in subdivision 5.4.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.

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

5.4.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 name(s) of the surface owner(s) of record on the date the review is made.

5.4.d. If the identification of the surface owners of record is made pursuant to the criteria of ~~subdivisions~~ subsections 5.4.a. and 5.4.b. or 5.4.c. within ninety (90) days of the date of filing of the application for a permit, the well operator need not review the records again prior to the filing.

5.4.e. Except where notice by publication is permissible under the provisions of W. Va. Code §22-6-9(b), the notice to surface owners of record required by W. Va. Code §22-6-9 shall consist of true, complete copies of all documents required under subsection 5.2. of this rule, and a copy of the "Instructions to the Surface Owner" provided as part of the Office's application form.

5.4.f. 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 well operator. If service is effected by certified mail, service is effective upon mailing and the return receipt card or other postal receipt for certified mailing with postal stamp affixed or photocopy will be accepted as proof of service.

5.4.g. Notice of publication under the provisions of W. Va. Code §22-6-9(b) shall be substantially as provided in Form WW-71. Proof shall be supplied by affidavit of publication from the newspaper.

5.4.h. No permit will be issued until all required proofs of notice have been filed with the Chief.

5.4.i. All comments filed pursuant to the provisions of W. Va. Code §22-6-10 shall be in writing, and should contain the name, address and telephone number of the person filing the comment, the well operator's name and well number, and the approximate location of the proposed well site including district and county as indicated in the permit application. Comments may be accompanied by other pertinent documents in support of the comment. Other than as prescribed in this rule, no particular form for the comment is prescribed.

## 5.5. Identification Markings.

5.5.a. Every well shall have attached or stamped, in a permanent manner, the API identification number which consists of the state (47), county (001 through 109), and permit number. Such number shall be no less than one-half (1/2) inch in height and detectable ~~information~~ by any interested person approaching the well. Any additional information the well operator may desire to display may be incorporated in the permanent identification plat or stamp in such a manner that it will not confuse or distort the permanent API identification number.

5.5.b. Except as provided below, upon the completion of the plugging and filling of any abandoned well, a permanent monument or marker consisting of a length of pipe (minimum diameter size six (6) inches) filled with concrete (or the equivalent thereof if approved by the Chief) shall be erected over the well; the marker shall extend no less than thirty (30) inches above the surface and not 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 (47), county (001 through 109), and permit

number shall be attached or stamped in a permanent manner to said monument; and such numbering shall be no less than one half (1/2) inch in height and detectable by any interested person approaching the marker. The erection of the marker shall in no way interfere with the bleeder pipe from the well where such pipe is required, or the vent or other device installed pursuant to W. Va. Code §22-6-24. Such manner shall be accurately described on Form WR-38, "Affidavit of Plugging and Filling Well" (*see subsection 13.10 below*) as to time and manner of plugging and filling the well, and shall be approved by the Chief as a satisfactory landmark that 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 subdivision 5.2.d above in the form prescribed by section 9 below, accompanying Form WW-4, "Notice of Intention to Plug and Abandon a Well," if any change in the plat is necessary, accompanying Form IV-38, "Affidavit of Plugging and Filling Well" (*see subsection 13.10 below*).

5.6. Parties Responsible. All contractors and drillers, including all service companies carrying on business or doing work in oil and gas fields in West Virginia, as well as lease holders and operators generally, shall take notice of and are hereby directed to observe and apply the provisions of W. Va. Code §22-6 and this rule; and all contractors, drillers, service companies and operators shall be held responsible for violations thereof.

5.7. Evidence of Performance.

5.7.a. After the completion of the work authorized to be done by any permit required by W. Va. Code §22-6-6, the permittee shall comply with filing requirements of the W. Va. Code §22-6-22 and section 12 of this rule.

5.7.b. In addition to the requirements of subdivision 5.7.a, following completion of plugging a well, the permittee shall also comply with the affidavit requirements of W. Va. Code §22-6-23 and subsection 13.10 below.

**§35-4-6. Plats, Notice to Coal Owner, Operator or Lessee.**

6.1. Plats.

6.1.a. The plat submitted pursuant to W. Va. Code §22-6-12 "before drilling for oil or gas, or before fracturing or stimulating a well" shall contain the information required by W. Va. Code §22-6-12 and otherwise by this rule in the form and manner provided in section 9 below. A separate plat shall not be required for stimulating a well where stimulating is to be a part of the work for which a permit is sought and such fact is noted on Form WW-2(B), "Application for a Well Work Permit."

6.1.b. A plat is hereby required to accompany all applications for "fracturing any well" under W. Va. Code §22-6-13 by means subsequent to and not an incident of previously permitted drilling, redrilling, deepening, pressuring or converting such well. If the well to be fractured is an oil or gas well, the plat shall contain the same information required for plats by W. Va. Code §22-6-12 and otherwise by this rule, and shall be in the form and manner provided in section 9 below; and if the well is a liquid injection or waste disposal well, the plat shall contain the same information required for plats by W. Va. Code §22-6-14 and otherwise by this rule, and shall be in the form and manner provided in section 9.

6.1.c. The plat required by W. Va. Code §22-6-14 "before drilling a well for the introduction of liquids for the purposes provided in W. Va. Code §22-6-25 or for the introduction of liquids for the disposal of ~~sewage, industrial waste or other waste~~ pollutants or the effluent therefrom on any tract of land, or before converting an existing well for such purposes" shall contain the information required by W. Va. Code §22-6-25

and otherwise by this rule and shall be in the form and manner provided in section 9 below. Submission of a separate plat shall not be required before stimulating such a well, where stimulating is to be part of the well work for which a permit is sought and such fact is noted on Form WW-3(B), "Liquid Injection or Waste Disposal Well Work Permit Application."

6.2. Notice to Coal Operators, Owners or Lessees - A copy of the completed notice and application for any permit required by W. Va. Code §22-6-6, including the associated plat and Construction and Reclamation Plan required by section 5 above, shall be used as the form of the Notice to Coal Operators, Owners or Lessees required by W. Va. Code §§22-6-12, 22-6-13 and 22-6-14 and shall be mailed by registered or certified mail to coal operators, owners or lessees.

### **§35-4-7. Operational Regulations on Liquid Injection and Waste Disposal Wells.**

#### **7.1. Tubing and Packer Arrangements; Variance; Regulation of Pressure.**

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

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

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

#### **7.3. Pre-Operation Certificate.**

7.3.a. The Chief or his appointed representative shall be notified no less than twenty-four (24) hours prior to mechanical integrity testing to allow the Chief or his representative the opportunity to witness the tests. Copies of the results of all tests shall be submitted with Form WR-37 as provided in subdivision subsection 7.3.b below.

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

7.3.b.1. Identification of the injection zone by name of geological target formation and depth (top

and bottom of zone), the number of perforations, if applicable, or the interval of open hole;

7.3.b.2. The maximum bottom hole pressure in pounds per square inch and maximum rate of injection in barrels of liquids per hour or cubic feet of gases per hour;

7.3.b.3. A detailed identification of the materials being injected, including additives;

7.3.b.4. Specifications of cathodic protection and other corrosion control measures;

7.3.b.5. Filters, if any;

7.3.b.6. The entire casing and cementing record, any packers and other special downhole equipment, and cement bond logs; Provided, that this data need not be included on Form WR-37 where the casing and cementing record is furnished on Form WR-35, "Well Operator's Report of Drilling, Fracturing and/or Stimulating," associated with the project;

7.3.b.7. Certification that the mechanical integrity of the well has been tested and statement of the test method;

7.3.b.8. Facilities or systems to protect the integrity of the geological target formation or to prevent fracturing the confining strata; and

7.3.b.9. Application for variance, if any, ~~from~~ as described in subsection 7.1 above.

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

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

7.6. Limitation - W. Va. Code §22-6-14 and subsections 7.1 through 7.5 of this rule do not apply to injection of water or other liquids into a well for the purpose of fracturing or stimulating a well or underground gas storage well operations, including injection periods.

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

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

7.7.b. The mechanical integrity of a liquid injection or waste disposal well must be demonstrated to the approval of the Chief again within five (5) years from the last test date in order for injection to continue.

**§35-4-8. Objections to Applications; Notice.**

8.1. Objection Filed by Coal Operators, Owners or Lessees - Objections by coal operators, owners, or lessees filed pursuant to W. Va. Code §§22-6-15, 22-6-16 or 22-6-17, shall be made on Form OB-13, "Objection Under W. Va. Code §§22-6-15, 22-6-16, or 22-6-17 to A Proposed Permitted Work."

8.2. Objection by the Office - Objections by the Office to any proposed well work under W. Va. Code §§22-6-15, 22-6-16, 22-6-17, shall be made in writing and in the same detail required of objections by coal operators, owners or lessees.

**8.3. Notice to Applicant of Objection.**

8.3.a. If a coal operator, owner, or lessee files or the Office makes objection to proposed work under W. Va. Code §22-6-16, the Office shall notify the applicant well operator by Form OB-14, "Notice to Well Operator of Objection under W. Va. Code §§22-6-15 or 22-6-16," attaching copies of all such objections.

8.3.b. If a coal operator, owner, or lessee files or the Office makes objection under W. Va. Code §22-6-17, the Office shall notify the applicant well operator as provided by subsection 8.4 below.

8.4. Notice to Shallow Gas Well Review Board of Objections; Copies to Applicant - If a coal operator, owner or lessee files or the Office makes objections under W. Va. Code §22-6-17, the Office shall notify the Chairman of the Shallow Gas Well Review Board by Form OB-15, "Notice to Shallow Gas Well Review Board of Objection under W. Va. Code §22-6-17 to a Proposed Drilling Site," attaching copies of all objections made pursuant to subsections 8.1 and 8.2 above and all other information required by W. Va. Code §22-6-17. Copies of all such documents shall be sent to the applicant well operator as its notice of objection.

**§35-4-9. Form and Contents of Plats.**

9.1. Statutory Requirements for Plats - Any plats required to be furnished under W. Va. Code §§22-6-12 or 22-6-14 (*see* subsection 5.2 above), shall contain all information specified in the statutory section requiring the plat.

9.2. Additional Requirements for Plats - Any plat required to be furnished under W. Va. Code §§22-6-12 or 22-6-14 or under ~~subdivision~~ subsection 6.1.b. or subsection 13.1 of this rule shall conform to the following standards of accuracy and depiction:

9.2.a. Accuracy - An accuracy of one (1) part in two thousand five hundred (2,500) is required for location of wells on land containing workable coal beds which are tributary to operator coal mines. All other plats require a minimum accuracy of one (1) part in two hundred (200). The attained accuracy standard shall be stated on every plat.

9.2.b. Permanent Landmarks - At least two (2) permanent monuments or landmarks with courses and distances to the subject well shall be shown on the basis of an on-the-ground survey and, if any such monument or landmark is not a permanently established property corner, it shall be referenced to a permanently established property corner by courses and distances on the basis of an on-the-ground survey.

9.2.c. Physical Location of Well - Every well shall be drilled within ten (10) feet of the exact well location designated on the plat. To facilitate compliance and verification, the plat for a new well shall designate at least two (2) reference points from which, after the drilling site has been cleared and graded, the

proposed well location can be accurately reestablished by the well operator and, if desired, subsequently verified by the oil and gas inspector or any interested person. When the survey party stakes the proposed well location, it shall flag or otherwise mark the reference points, which may be permanent (such as standing trees) or temporary (such as set stakes), and such reference points shall be beyond the limits of the drilling site but within three hundred (300) feet of the well location. A description of the reference points and their location with reference to the well location shall be indicated on a detail drawing or a narrative statement on the face of the plat.

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

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

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

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

9.2.h. Scale and Size of Plat - If practicable, all plats shall be drawn to a scale of one (1) inch equals two thousand (2,000) feet (1:24,000) or to even multiples thereof for each reduction of the plat photographically to a scale of one (1) inch equals two thousand (2,000) feet. The plat shall be eight and one-half (8 1/2) inches by fourteen (14) inches in size. Plats may be submitted electronically, using a format approved by the Chief.

9.2.i. Topographic Map Location of Well - The topographic map location of the well for which any permit application is made pursuant to W. Va. Code §22-6-6 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. The plat shall also contain Universal Transverse Mercator (UTM) Zone 17 Northing and Easting coordinates in North American Datum (NAD) 83(CORS96). Each plat shall indicate the quadrangle name of the topographic map used.

9.2.j. Wells - All wells within the scope of the plat, whether active, drilling, or abandoned, shall be shown. The scope of every plat shall be sufficient to show all wells within one thousand two hundred (1,200) feet of the well that is the subject of the new application and, in the case of an application for a shallow gas well with a depth of three thousand (3,000) feet or more and that penetrates a coal seam, the scope of the plat shall be sufficient to show all wells within two thousand four hundred (2,400) feet of the well that is the subject of the application. Each well so shown, including the subject well, shall bear a designation that permits the type (oil, gas, liquid injection under W. Va. Code §22-6-14, underground storage or storage observation) and status (active, abandoned or drilling) of each such well to be determined by use of:

9.2.j.1. API permit number (excluding state and county) for each well having such a permit number;

9.2.j.2. In parentheses, and following the API number if such is listed, the type and status numbers provided below; and

9.2.j.3. The symbols provided below in Appendix A of this rule.

9.2.k. The kind and status numbers to be used shall be as follows:

9.2.k.1. Oil Wells:

01 - Shallow, active

02 - Shallow, abandoned

03 - Shallow, Drilling

04 - Deep, active

05 - Deep, abandoned

06 - Deep, drilling

9.2.k.2. Deep gas wells:

07 - Production, active

08 - Production, abandoned

09 - Production, drilling

10 - Underground storage, active

11 - Underground storage, abandoned

12 - Underground storage, drilling

13 - Storage observation, active

14 - Storage observation, abandoned

15 - Storage observation, drilling

9.2.k.3. Shallow gas wells:

16 - Less than three thousand (3,000) feet, production, active

17 - Less than three thousand (3,000) feet, production, abandoned

- 18 - Less than three thousand (3,000) feet, production, drilling
- 19 - Less than three thousand (3,000) feet, underground storage, active
- 20 - Less than three thousand (3,000) feet, underground storage, abandoned
- 21 - Less than three thousand (3,000) feet, underground storage, drilling
- 22 - Less than three thousand (3,000) feet, storage observation, active
- 23 - Less than three thousand (3,000) feet, storage observation, abandoned
- 24 - Less than three thousand (3,000) feet, storage observation, drilling
- 25 - Three thousand (3,000) feet or more, production, active
- 26 - Three thousand (3,000) feet or more, production, abandoned
- 27 - Three thousand (3,000) feet or more, production, drilling
- 28 - Three thousand (3,000) feet or more, underground storage, active
- 29 - Three thousand (3,000) feet or more, underground storage, abandoned
- 30 - Three thousand (3,000) feet or more, underground storage, drilling
- 31 - Three thousand (3,000) feet or more, storage observation, active
- 32 - Three thousand (3,000) feet or more, storage observation, abandoned
- 33 - Three thousand (3,000) feet or more, storage observation, drilling

9.2.k.4. Liquid injection wells:

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

9.2.k.5. Waste disposal wells:

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

## 9.2.k.6. Gas injection wells:

40 - Active

41 - Abandoned

42 - Drilling or being converted

~~9.2.l. The symbols to be used shall be as found in Appendix A.~~

~~9.2.m~~ 9.2.l. 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.m.1~~ 9.2.l.1. Water wells within two hundred (200) feet of the well for which any permit under W. Va. Code '22-6-6 is being sought, except for liquid or waste disposal wells, in which case water wells within one thousand (1,000) feet of the well shall be shown;

~~9.2.m.2~~ 9.2.l.2. Dwellings within two hundred (200) feet of the well for which any such permit is being sought;

~~9.2.m.3~~ 9.2.l.3. Streams;

~~9.2.m.4~~ 9.2.l.4. Roads and highways; and

~~9.2.m.5~~ 9.2.l.5. Railroads with indication of the owners' names.

~~9.2.n~~ 9.2.m. Names - The plat shall state the names of the surface owners and the royalty owners of the land at the well location.

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

“I, the undersigned, hereby certify that this plat is correct to the best of my knowledge and belief and shows all the information required by law and the rules issued and prescribed by the ~~Division~~ Department of Environmental Protection.”

9.4. Re-use of Plats - Following issuance of the initial permit for drilling a well, any subsequent application for a new permit involving the same well may be accompanied by an accurate copy of the plat accepted by the 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 shall be necessary in the form required by subsection 9.3 above. However, a new certification is not required for a plugging permit.

9.5. Permanent Character of Plats - Every plat submitted under section 9 of this rule shall be of permanent character, that is, on linen or plastic or other material of comparable quality and with indicia or other ink resulting in a depiction not subject to substantial degradation through time from exposure to ordinary

conditions of temperature, humidity, and light. Plats may be submitted electronically, using a format approved by the Chief.

**§35-4-10. Separate Bonds; Blanket Bonds; Financial Responsibility; Registration; Designation of Agent; Transfer of Title and Operator Status; Transfer Procedures; Periodical Circular; Hearings; Ineffective Bonds; and Financial Responsibility from Competing Interests.**

10.1. Separate Bonds.

10.1.a. Each permit application filed after the effective date of this rule shall be accompanied by a separate bond with corporate surety or cash or other collateral security in compliance with W. Va. Code §22-6-26 and shall be submitted with form OP-7, "Bond for Single Oil or Gas Well, Single Liquid Injection Well or Single Waste Disposal Well," except where: (a) a blanket bond is being furnished pursuant to W. Va. Code §22-6-26(c); or (b) the permit application is for a permit to plug a well that is already subject to corporate surety, cash or collateral security that satisfied applicable requirements at the time such corporate surety, cash or collateral security was furnished.

10.1.b. The demonstration of financial responsibility for individual wells after the effective date of this rule shall be accompanied by a separate bond with corporate surety or cash or other collateral security in the amount of five thousand dollars (\$5000) in compliance with W. Va. Code §§22-6-26, 22-10-4 and 22-10-5, except where a blanket bond is being furnished pursuant to W. Va. Code §22-6-26(c), and shall be submitted with Form OP-7, "Bond for Single Oil and Gas Wells, Single Liquid Injection Wells, or Single Waste Disposal Wells." 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.

10.1.c. A well currently under subject to a bond of less than a five thousand dollars (\$5,000) ~~bond~~ or for which no bond exists for the determination of financial responsibility shall be transferred to an existing or new five thousand dollar (\$5,000) bond in compliance with W. Va. Code §22-6-26 by filing form OP-77.

10.2. Blanket Bonds.

10.2.a. Any blanket bond 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 Oil and Gas Wells, Liquid Injection Wells, and Waste Disposal Wells." Any blanket bond with corporate surety, cash or collateral security furnished in connection with any permit or permits issued prior to July 11, 1985 shall remain in effect for the benefit of the 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 the Aet statute; Provided, that if a blanket bond furnished prior to July 11, 1985 complies with the requirements of the Aet statute, 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 that is already subject to corporate surety, cash or collateral security that satisfied applicable requirements at the time such corporate surety, cash or collateral security was furnished, no additional corporate security, cash or collateral security shall be required.

10.2.b. The demonstration of financial responsibility for multiple wells after the effective date of this rule shall be accompanied by corporate surety or cash or other collateral security in compliance with W. Va. Code §§22-6-26, 22-10-4 and 22-10-5 and shall be submitted with Form OP-8, "Blanket Bond for Oil and Gas Wells, Liquid Injection Wells, and Waste Disposal Wells." 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.c. Wells currently ~~under~~ subject to a blanket bond of less than a fifty thousand dollars (\$50,000), ~~blanket bond~~ or for which no bond exists, or for which a new blanket bond is desired a new ~~blanket bond~~ for the determination of financial responsibility shall be transferred to an existing or new fifty thousand dollar (\$50,000) blanket bond in compliance with W. Va. Code §22-6-26 by filing form OP-77.

### 10.3. Registration; Designated Agent; Transfer of Title and Operator Status.

10.3.a. All persons owning or operating or proposing to own or operate any 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, "Designation of Agent by Well Owner or Operator" by and for each 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 §22-6-6 specifically requires to designate an agent; Provided, that a well operator who is a natural person and a resident of the State of West Virginia may list himself instead of an agent for service of all papers.

10.3.a.1. When title to a well or the right to operate a well is transferred from one (1) well operator to another, the Chief shall be notified in writing within five (5) days by the transferor well operator or, if he no longer exists, by one or more of the owners of the well, the name and address of the transferee well operator. A copy of such notification shall be delivered to the transferee well operator. 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 §22-6-34, and in addition, all bonds of such transferor under W. Va. Code §22-6 shall be forfeited.

10.3.a.2. The transferee well operator shall forthwith register with the Office if he has not previously registered. In any event, said transferee shall forthwith notify the Office of his designated agent or attorney in fact pursuant to ~~subsection 10.3~~ this section, unless a designation has already been made and approved. The transferee well operator shall file with the Office on form OP-77 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 or operators and the transferee well operators, 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 §22-6-26.

10.3.a.3. No assignment or transfer by the transferor owner shall relieve the transferor well owner of any obligation and liabilities pursuant to this rule or W. Va. Code §22, unless and until the Office of Oil and Gas accepts and then notifies the transferee and transferor as outlined in subsection 10.4 below that they have complied with the provision of section 10.

### 10.4. Filing Requirements and Procedure for the Transfer of Operator and Declaration of Operator Status.

#### 10.4.a. General requirements.

10.4.a.1. No transfer of operator or declaration of operator status under this rule will be approved until such time as a copy of Form OP-1, "Operator Registration Form and Designation Form," has been filed.

10.4.a.2. All forms promulgated by the Office of Oil and Gas and required by this rule may be

replaced by copies of any applicable successor forms promulgated by the Office of Oil and Gas.

10.4.a.3. A separate application must be submitted for each well for which a transfer is desired.

10.4.a.4. Each application must be accompanied by a filing fee of fifty dollars (\$50). Where an operator is submitting several applications at one time, a single check may be submitted for a sum equal to the number of applications multiplied by fifty dollars (\$50). Such fee should be paid by the transferor, but in no case will any well be transferred without the fee.

10.4.a.5. Each application shall be on Form OP-77.

#### 10.5 Transfer Procedures.

10.5.a. Initial Action by the Office of Oil and Gas - Upon receipt of an application to transfer a well from one operator to another or to transfer a well by a single operator to another bond, the Office of Oil and Gas will conduct a review of the submitted data along with other information available to it within sixty (60) days.

#### 10.5.b. Periodical circular.

10.5.b.1. The Office of Oil and Gas will publish from time to time, but not less often than monthly, a circular indicating the status of various applications filed under this rule.

10.5.b.2. The circular will identify each well by applicant and by a file number which will indicate:

10.5.b.2.A. The date received by the Office of Oil and Gas;

10.5.b.2.B. The API county and permit number;

10.5.b.2.C. The name of the transferee and transferor; and

10.5.b.3.2.D. The date on which the determination order was final.

10.5.c. Notice of Hearing - Notice of all filings for applications for transfer and designation of operator status under this rule and 35 CSR 5 §3.1 (Procedure for Designation of Bona Fide Future Use) will be published by the Office of Oil and Gas, indicating that interested persons may intervene in the application by filing written comments with the Office of Oil and Gas within fifteen (15) days from the date that the circular is published. If objections are made by any interested person or by the Office of Oil and Gas or if the Chief determines that other information may be necessary in order to make a determination, a public hearing ~~will~~ may be held ~~in accordance with 35 CSR 20~~. On the hearing date, the applicant and all persons who have timely filed objections on or before the date of the hearing will be given an opportunity to present additional evidence.

10.5.d. Determination - After a hearing has been held, a determination as to whether the well qualifies to be transferred to the transferee will be made by the Chief. If no objection is made within the time prescribed by ~~subdivision subsection~~ subsection 10.5.c above, the Chief will make a determination as to whether the well qualifies to be transferred. Notice will be given of the Chief's approval of the transfer by publication in the circular, 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 §§22-6-12, 22-6-14

or 22-6-26.

10.6. 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 forms of financial responsibility from more than one competing interest.

#### **§35-4-11. Operational Criteria.**

11.1. Casing Not Exclusive - In addition to the casing required by W. Va. Code §§22-6-18, 22-6-19, 22-6-20, and 22-6-21, there shall be used in each well such material and equipment and there shall be employed such additional procedures as are necessary for the purpose of separating high pressure zones from low pressure zones, the producing horizons, the water bearing strata, and mineable coal zones for the life of the well.

##### **11.2. Multiple Casing Through Coal Seams.**

11.2.a. The coal protection casing required by W. Va. Code §§22-6-18 through 22-6-20 to be installed through the workable coal seam or seams shall be in addition to the production casing.

11.2.b. The coal protection casing required by W. Va. Code §22-6-18 shall have cement circulated in the annular space outside said casing. The volume of the cement needed shall be calculated by using approved methods to assure the return of the cement to the surface. In the event cement does not return to the surface, every reasonable attempt will be made to fill the annular space by introducing cement from the surface.

11.3. Fresh Water Casing - The fresh water protective casing required by W. Va. Code §22-6-21 shall extend at least thirty (30) feet below the deepest fresh water horizon (that being the deepest horizon that 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. If the coal protection casing is cemented to the surface in accordance with the prescribed procedure, this may also be considered a fresh water protective casing. In no case shall the fresh water casing penetrate salt water or gas bearing strata 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 18 of this rule.

11.4. Cement Strength - 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. The waiting time for cement used in compliance with subsection 11.5 of this rule shall be eight (8) hours. The waiting time on any other cement shall be in no case less than eight (8) hours.

11.5. Cement Type - Cement used to fill the annular space around the casing required in subsections 11.2 and 11.3 of this rule shall be American Petroleum Institute Class A Ordinary Portland cement with no greater than three percent (3%) calcium chloride and no other additives; Provided, that if the well operator furnishes satisfactory proof that different cement types are adequate, the Chief may approve use of such different cement types.

11.6. Annual Inspection - The operator shall conduct an inspection at the surface of each unplugged well at which drilling has been completed for 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 by subsection 15.1 below. 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.

11.7. Drilling Practices Prior to Freshwater Casing - Prior to the cementing of the freshwater casing as required by subsection 11.3 above, 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 regulations.

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

#### **§35-4-12. Well Records.**

12.1. Well Records Made During Permitted Work - The well operator or his contractor (drilling contractor or other contractor, as appropriate) shall keep at the well location a copy of the application as permitted, including the associated plat and Construction and Reclamation Plan required by subsection 5.2 of this rule. The well operator or his contractor (drilling contractor or other contractor, as appropriate) shall also make and preserve at the well location accurate records of all well work performed pursuant to the permit, including documentation by the contractor or person performing the cementing services of the time of completion of cementing and the volume of cement used for the cementing of the fresh water casing. The records shall be complete enough to support, as applicable, the entries of well work done and related data on Form WR-35, "Well Operator's Report of Drilling, Stimulating or Physical Change," Form WR-36, "Well Operator's Report of Initial Gas-Oil Ratio Test," Form WR-37, "Pre-Operation Certificate for Liquid Injection or Waste Disposal Well," and Form WR-38, "Affidavit of Plugging and Filling Well," but forms WR-35 through WR-38 shall reflect data discovered or changes made after the permitted well work has been finished and before the forms are filed. The records made and preserved at the well location and the recordings made on Form WR-35 shall include, but not be limited to, indications of caverns, open mines, or other voids, whether the fresh water casing cement did circulate to the surface, and the efforts made to fill the annular space and the results. Unless such records of well work performed are prepared by the well operator or owner, a copy of all such records shall be delivered to the well owner or operator.

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

12.2.a. Within ninety (90) days after the completion of permitted well work, two (2) copies of Form WR-35, "Well Operator's Report of Drilling, Fracturing and/or Stimulating or Physical Change," containing in proper form the geological information required by W. Va. Code §22-6-22, Form WR-36, "Well Operator's Report of Initial Gas-Oil Ratio Test," (except that, where the well has not been connected within such ninety (90) day period to pipelines or production tanks, Form WR-36 shall be filed no more than fifteen (15) days after such connection), Form WR-37, "Pre-Operation Certificate for Liquid Injection or Waste Disposal Well," and Form WR-38, "Affidavit of Plugging and Filling Well," shall be filed by the well owner or operator with the Chief. Such forms need not repeat well record information for any work (whether permitted or not) performed prior to and not part of the permitted work which said forms apply. Such forms shall correct or add to the well log and other records made and preserved at the well location by specifying the casing, treatment, or physical changes performed after completion of the permitted work, and the additional information or corrected information discovered, by electric logs or other means, after completion of the permitted work.

### 12.2.b. Deep Well Confidential Information; Filing of Well Logs:

12.2.b.1. Within ninety (90) days after the completion of drilling or recompletion of a deep well, the well operator shall file a copy of the well log and the electrical, radioactive or other similar conventional log if such logs have been performed. In addition, as soon as practicable, the well operator shall file a copy of drill stem test charts, formation water analyses, porosity, permeability or fluid saturation measurements, core analyses, and lithologic logs or sample descriptions as compiled; Provided, that no such additional information shall be required unless the well operator has compiled such information in the ordinary course of business. No interpretation of the data is required to be filed.

12.2.b.2. All information furnished with respect to a deep well marked "CONFIDENTIAL" shall be kept confidential for one (1) year following the date the information is required to be filed hereunder, unless the well operator gives the Chief written permission to release such information at an earlier date.

12.2.b.3. For good cause shown by the operator, the West Virginia Oil and Gas Conservation Commission may extend the period of confidentiality for one (1) year. The total period of confidentiality shall not exceed three (3) years.

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

## §35-4-13. Plugging, Abandonment and Reclamation.

### 13.1. Notice and Application to Plug and Abandon; Time of Filing.

13.1.a. The Notice of Intention to Plug and Abandon a Well required by W. Va. Code §22-6-23 shall conform to ~~subdivision~~ subsection 5.2.d above.

13.1.b. The well operator shall also submit copies of all logs in its possession upon specific request by the Chief, pursuant to W. Va. Code §22-6-6(c)(10)(i).

13.2. In all cases, completed Forms WW-4(A) and WW-4(B) shall ~~in all cases~~ be filed with the Office and

delivered to the coal operator, owner or lessee in the manner and within the time limits set out in subsections (a), (b), and (c) of W. Va. Code §22-6-23(a), (b), and (c) for the "notices" referred to therein.

13.3. The owner or operator of every well presumed to have been abandoned under the provisions of W. Va. Code §22-6-19 shall file Form WW-4 within sixty (60) days after such abandonment, unless the Office waives this requirement for good cause shown.

13.4. Work Order; Manner and Method of Plugging.

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

13.4.a.1. Location (by depth);

13.4.a.2. Kind and length of plugs to be used and the method chosen to insure that no gap exists between the bottom of the coal protection string of casing and the expanding cement plug thereunder;

13.4.a.3. Plans for mudding, cementing, and filling;

13.4.a.4. Plans for testing, and for shooting and removing casing; and

13.4.a.5. All other pertinent information regarding said plugging and filling, all of which shall be in compliance with W. Va. Code §22-6-24. The information shall be submitted on Form WW-4(B), "Application to Plug and Abandon a Well."

13.4.b. Any well operator proposing to plug or to clean out and replug a well in the manner specified by W. Va. Code §22-6-24(c) shall furnish the alternate cost estimates for performing such well work in the manner specified by W. Va. Code §22-6-24(d)(3) only in the event a coal operator, owner, or lessee has filed a Form OB-16, "Request by Coal Operator, Owner, or Lessee for Plugging Under W. Va. Code §22-6-24(d)."

13.5. 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 18 below.

13.6. 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 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 utilized to accurately indicate the pulling force applied. When casing cannot be pulled, the operator shall make reasonable attempts to perforate the pipe and squeeze cement behind the pipe in the vicinity of the freshwater zones to prevent the contamination of the fresh water zone.

13.7. "Verbal Permission" to Plug.

13.7.a. Verbal permission may be given pursuant to W. Va. Code §22-6-6-(c)(10) 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, 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.

13.7.b. Unless the well operator proposes to plug the well in a manner allowed by W. Va. Code §22-6-24(d)(3), the well operator shall contact the coal operator or the coal owner or lessee who has filed a declaration under W. Va. Code §22-6-36, so as to provide the coal owner, operator or lessee the best feasible opportunity to make a plugging request under ~~subdivision~~ subsection 13.4.b of this rule.

13.8. Objections to Proposed Plugging - Objections to the proposed plugging of a well, whether by the Office or by any affected person, shall not be made except for violation or impending violation of the provisions of W. Va. Code §§22-6-23, 22-6-24 or any provision of this rule, ~~or of W. Va. Code "22-6-24, or section 13.~~ The Chief shall promptly rule on such objections at a hearing to be held after providing no less than five (5) days notice to the applicant and objectors.

13.9. Plugging Method Request by Coal Operator or Coal Seam Owner:

13.9.a. The request by a coal operator or coal seam owner made pursuant to W. Va. Code §22-6-24(d) for a well to be plugged in any manner allowed by W. Va. Code §22-6-24(d)(3), rather than by the method provided in W. Va. Code §22-6-24(c), shall be made on Form OB-16, "Request by Coal Operator, Owner, or Lessee for Plugging Under W. Va. Code §22-6-24(d)."

13.9.b. The well operator or owner in his sole discretion may waive the provision in W. Va. Code §22-6-24(d) that such request "must be filed in writing with the Office prior to the scheduled plugging of the well." In the event of such waiver, the cost of undoing any part of the plugging work in order to comply with the coal operator's or coal seam owner's request shall be treated as a part of the cost of complying.

13.9.c. The Office shall make findings and issue an order in accordance with W. Va. Code §22-6-24(d)(2) by endorsement on or attachment to Form WW-4.

13.10. Statutory Affidavit - The affidavit authorized by W. Va. Code §22-6-23 and subsection 12.2 of this rule shall be made on Form WR-38, "Affidavit and Filling Well." The affidavit shall be executed by at least two (2) parties doing the actual work, whether they are employees of a service company, a plugging contractor, or the well owner operator.

**§35-4-14. Plugging Methods.**

14.1. Materials Used in Plugging - The non-porous materials and cements mentioned in W. Va. Code §22-6-24 must be specified in the work order portion of Form WW-4(B), "Application to Plug and Abandon a Well." All cement, except where expanding cement is required, used in conjunction with plugging shall be American Petroleum Institute Class A Ordinary Portland cement with no greater than three percent (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 or his authorized representative 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, approved by the Office as suitable for the intended purpose, and which otherwise comply with all provisions of law and accepted standards. The Chief may approve use of non-standard material or cement.

14.2. Cleaning Out and Replugging Application; Objections; Order.

14.2.a. Application pursuant to W. Va. Code §22-6-24(e) to clean out and replug a previously plugged well shall be made by completed Form WW-4, "Notice of Intention and Application to Plug and Abandon a Well," and by the associated comments required to accompany Form WW-4 by subsection 13.1 ~~to accompany Form WW-4~~ above.

14.2.b. Objections to a Form WW-4 application to clean out and replug a well, whether by the Office or by any affected person, shall not be made except for violation or impending violation of the provisions of W. Va. Code §§22-6-23, 22-6-24 or section 13 of this rule. If such an objection is filed or made, a hearing date shall be set and notice given by the Office by endorsement on the objection and mailed in accordance with W. Va. Code §22-6-24(e). The endorsement shall indicate the date, time and location of the hearing, identifying the well by reference to the API number.

14.2.c. The Office's order permitting or rejecting such application shall be endorsed on the Form WW-4 application and shall be mailed to the parties indicated in the method provided by W. Va. Code §22-6-24(e).

### **§35-4-15. Reports.**

#### 15.1. Annual Reports of Oil and Gas Production.

15.1.a. An annual report of oil and gas production for each well shall be filed with the Chief on or before the succeeding March 31. This report shall be on Form WR-39, "Report of Annual Production," or in such form as the Chief may approve. The report must identify and state the production from every oil and gas well not yet plugged and abandoned, regardless of the status of the well. The data shall be submitted by the well operator. Oil shall be reported in barrels, and gas shall be reported in thousand cubic feet.

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

#### 15.1.c. Measurement of Gas.

15.1.c.1. If a meter has been set for each well, the gas production for each well shall be reported, with each well identified by API number or, if no API number exists, by the operator's well number.

15.1.c.2. If common or master meter measurement is in use, the wells subject to common measurement shall be identified by API number, and production estimated for each such well shall be reported.

15.1.c.3. If calculated value is in use and no measurement of gas is available for an individual well or group of wells, the calculated volume of gas production using accepted engineering methods shall be reported, the wells so measured shall be identified by API number, and the production estimate for each such well shall be reported if such estimates are made.

15.1.d. Failure to submit an annual report of oil or gas as required by this rule or to provide proof of an existing use or a bona-fide future use under 35 CSR 5 shall constitute a rebuttable presumption that the well is abandoned by the operator.

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

particulars of the explosion or accident, to the district oil and gas inspector or the Chief.

**§35-4-16. Reclamation.**

16.1. Reclamation Under the Construction and Reclamation Plan.

16.1.a. All proposed reclamation methods for construction of roads, drilling locations, ~~and pits, and~~ impoundments, if any, or alternative overflow prevention facilities, shall be submitted on Form WW-9 with the application for any permit required by W. Va. Code §22-6-6, 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, and all reclamation shall be done under the supervision of the Chief. With the consent of this Chief or his designee, the reclamation may be altered from that set out in said Form WW-9, if found necessary due to topography or other conditions not apparent upon initial submission and approval of the proposed reclamation methods.

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

16.3. Drilling Sites - Drilling sites shall be constructed and maintained to prevent surface run-off carrying excessive sedimentation from the site, to confine all materials leaked or spilled as a result of drilling operations to the drilling site, and to prevent excess sedimentation by 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 retained on the drilling site.

16.4. Wastewater Pits and Freshwater Impoundments - All field constructed wastewater pits and freshwater impoundments ~~which are used to contain wastewater~~ shall meet the following minimum requirements:

16.4.a. ~~Any~~ All pits and impoundments shall be constructed and maintained so as to prevent seepage, leakage or overflows and to maintain ~~its~~ their integrity.

16.4.b. Provisions shall be made for diverting surface water from the pits and impoundments.

16.4.c. All pits and impoundments shall have adequate freeboard to prevent overflow, and in no case shall the freeboard be less than two (2) feet. When an operator is unable to maintain adequate freeboard to prevent overflow ~~from any pit, the operator shall notify 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. ~~The additional pit or alternative overflow facility which~~ shall also meet the requirements specified in this subsection (16.4).

16.4.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.~~ All pits and impoundments shall have a synthetic liner to prevent seepage or leakage. ~~Any~~ All such liners shall be installed in such a manner as to protect the structural integrity of both pit or impoundment and liner.

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

16.4.f. ~~Any unlined~~ All dikes and embankments 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 the dike or embankment.

16.4.g. Reclamation of the pits and impoundments shall not cause an overflow and/or discharge of materials to waters of the state.

16.4.h. All ~~drilling pits, impoundments,~~ and alternative overflow prevention facilities shall be constructed, maintained, and reclaimed so as not to be left in such condition as to constitute a hazard or to prevent use of the surface for agricultural purposes after the expiration of the six (6) month or extended period for reclamation prescribed by W. Va. Code §22-6-30. The reclamation period for pits permitted with multiple wells shall be calculated from the date the last well was drilled.

#### 16.5. Surface and Underground Water Pollution.

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

16.5.b. When rotary drilling penetrates a formation known to contain substantial amounts of salt water, drilling will continue to the next casing point by drilling with mud, foaming, or other satisfactory 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~~ to 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.

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

#### 16.7. Requirements for Production and Gathering Pipelines.

16.7.a. 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.

16.7.b. The Chief reserves the right to direct the burial of any line installed under this rule to protect the public safety, by order issued after notice and hearing under the Office's rules.

16.7.c. Subject to the reservation in ~~subdivision~~ subsection 16.7.b. ~~above,~~ of production and gathering lines subject to this rule shall conform with the following:

16.7.c.1. Lines shall be buried where practical and reasonable, and practical and reasonable shall be construed to mean lines should be buried in the following situations:

16.7.c.1.A. Where the line crosses agricultural land as defined in W. Va. Code §19-19-2;

16.7.c.1.B. 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;

16.7.c.1.C. Where the line cannot more practically and reasonably be securely suspended to cross stream beds;

16.7.c.1.D. Where the line crosses a public road, in which event it shall be buried and otherwise installed in accordance with the rules of the public agency having jurisdiction over the road; and

16.7.c.1.E. Where the Chief decides prior to installation that burial would be practical and reasonable.

16.7.c.2. 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;

16.7.c.3. Whenever a buried line crosses a pre-existing public or private roadway, the location of the line shall be clearly marked at the point of crossing by an appropriate marker; and

16.7.c.4. A suitable conductive wire shall be installed with plastic pipe to facilitate locating it with an electronic pipe locator; Provided, that any other suitable material or means for accomplishing this purpose may be employed.

16.7.d. Notwithstanding ~~subdivision~~ subsection 16.7.c 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.

16.7.e. 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.

#### **§35-4-17. Preventing Waste.**

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

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

17.3. Protection of High Pressure Wells - On all wells where high pressure and large volume can be reasonably expected, properly working pressure blowout preventer equipment shall be used on the inner string

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

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

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

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

#### **§35-4-18. Variances.**

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 alternative practices will satisfy the requirements of the West Virginia Code and exhibit sound engineering practices. 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.

#### **§35-4-19. Water Supply Testing.**

##### 19.1. Testing Obligations and Rights.

19.1.a. 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 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 well that is actually utilized by such owner or occupant for human consumption, domestic animals, or other general use.

19.1.b. If no request is made of the operator pursuant to the previous subsection, the 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 operator shall select for sampling and analysis the one well or spring that, in the operator's judgment, has the highest potential for being influenced by the operator's well work.

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

19.1.d. At an operator's discretion, any or all water wells or springs within one thousand (1,000) feet

of the operator's proposed well may be sampled and analyzed in accordance with this section.

#### 19.2 Notice.

19.2.a. Surface Owner - The 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 operator to sample and analyze a well or spring in accordance with ~~subdivision~~ subsection 19.1.a of this ~~section~~ rule. The operator shall be deemed to have satisfied this requirement if notice is provided by the same methods utilized in conjunction with the permit application.

19.2.b. Generally - The 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~~ subsection 19.1.a of this ~~section~~ above. The operator will be deemed to have satisfied this requirement if notice is provided by any of the following methods:

19.2.b.1. By personal service or by posting 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 operator's proposed well where the use of such water wells and springs is conspicuous;

19.2.b.2. Mailing notice to dwellings located within one thousand (1,000) feet of the 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 conspicuous; or

19.2.b.3. By any other means reasonably calculated by the Chief to provide adequate notice to the occupant/user.

19.2.c. Form - The notice provided by the operator in accordance with this section shall be in a form approved by the Chief, which, at a minimum, shall contain a statement of the user's right to request sampling and analysis, advise the user of his or her independent right to sample and analyze any water supply at the expense of the user, advise the user whether or not the operator will utilize an independent laboratory to analyze any sample, and advise the user of the availability through the Chief of a list of laboratories.

19.2.d. Timing - For all wells, such notice shall be given at least forty-eight (48) hours prior to the commencement of well drilling. For well drilling permitted after August 1, 1993, the operator shall provide such notice prior to the time of the filing of any permit application with the Chief.

19.2.e. Filing with the Chief - At the time of the filing with the Chief of the permit application for well drilling, the operator shall file with the Chief a statement describing whether any such users were identified and the manner in which any such users were provided with notice.

#### 19.3. Sampling and Analysis.

19.3.a. Approved Methods - The operator shall collect and analyze samples in accordance with methods approved by the Chief or as set forth at 40 CFR Part 136.

19.3.b. Parameters - The operator shall analyze samples for the following parameters:

19.3.b.1. pH;

19.3.b.2. Iron;

19.3.b.3. Total dissolved solids;

19.3.b.4. Chloride;

19.3.b.5. Detergents (MBAS); and

19.3.b.6. Any others parameters as determined by the operator.

19.3.c. Laboratories - The laboratory utilized by the operator shall be approved by the Chief as being capable of performing sample analyses in accordance with this section.

19.3.d. Distribution of Results - The 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 to any of the users who may have requested such analysis in accordance with this section.

19.3.e. Certification of Results - The submission of analytical results on behalf of the operator pursuant to ~~subdivision~~ subsection 19.3.d. shall be made by a responsible operator representative or contractor knowledgeable of and responsible for the sampling and analysis of such samples, who shall make the following certification:

“I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.”

#### 19.4. Operators Right of Entry.

19.4.a. After notice as required by this section, the operator (or any other contractor or laboratory directed by the 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 by subsection 19.1 above. This right of entry may be exercised for this purpose without the permission of the landowner or water or spring users.

19.4.b. If any owner of the land or user 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 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.

19.4.c. If the operator or contractor does not enter onto land and obtain a water test because of a protest or action to block the operator's or contractor's entry, the protest or action to block entry shall be admissible as evidence in an action between the operator and any landowner or water well or spring user in which the results of the test would have been relevant.

19.4.d. The operator is liable for any reasonable actual damages done other than normal wear and tear

of the property while gathering the sample required by this section. This provision does not limit other provisions of the law.

**§35-4-20. Groundwater Remediation.**

20.1. Where the facilities or activities of an operator cause or contribute to the concentration of a certain constituent in groundwater that exceeds standards of purity and quality for groundwater promulgated by the state Environmental Quality Board pursuant to W. Va. Code §22-12-5, every reasonable effort shall be made by the operator to identify, remove, or mitigate the source of such contamination. Within thirty (30) days following written request by the Chief, the 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.

**§35-4-21. Construction of Pits and Impoundments with Capacity of Greater Than Five Thousand (5,000) Barrels.**

21.1. All pits and impoundments used in association with an oil and gas operation, whether permitted or not, shall be constructed only in locations appropriate for the storage of water, including wastewater, and shall be designed, constructed, located, maintained, and used in accordance with this rule and in such a manner as to minimize adverse environmental impacts and to assure safety to the public. Notice of construction of all pits and impoundments shall be provided to the Office prior to construction. Such notice shall identify the location and dimensions of the pit or impoundment. The Office shall have the authority for inspection of these sites and the enforcement of this rule.

21.2. Design and Construction Requirements. – All pits and impoundments shall:

21.2.a. Be constructed in accordance with plans designed and certified by a West Virginia registered professional engineer;

21.2.b. Provide adequate freeboard of no less than two (2) feet to resist overtopping by waves or sudden increases in volume and to provide adequate slope protection against surface erosion and sudden drawdown; and

21.2.c. Have a stable foundation during all phases of construction and operation and be designed based on adequate and accurate information on the foundation conditions.

21.3. In constructing the dike or embankment, the operator shall remove all topsoil from the foundation, install cutoff trenches where necessary to ensure stability, provide for proper compaction and ensure against excessive settlement by excluding sod, roots or frozen soil from the embankment. Permanent vegetative cover, free of brush and trees, shall be established on all dikes and embankments.

21.4. A pit or impoundment that is constructed in such a manner that it (a) Rises twenty-five (25) feet or more above the natural bed of a stream or watercourse as measured from the downstream toe of the embankment and does or can impound fifteen (15) acre-feet or more of water; or (b) Rises six (6) feet or more above the natural bed of a stream or watercourse as measured from the downstream toe of the embankment and does or can impound fifty (50) acre-feet or more of water is, by definition, a dam and is thereby subject to the provisions of the West Virginia Dam Control Act, W. Va. Code § 22-14-1, et seq.

21.5. Any impoundment that does not meet the criteria of section 21.4 above and that is intended to be left permanent shall meet the requirements set forth by the United States Department of Agriculture's Natural Resources Conservation Service "Conservation Practice Standard – Ponds" (Code 378). No pits may be left permanent.













21.6. Inspections.

21.6.a. After construction and prior to the placement of any fluid, all pits and impoundments, shall be inspected by a West Virginia registered professional engineer to ensure compliance with the certified design and construction plan. If the inspection reveals that the pit or impoundment has been constructed in accordance with the plan, the professional engineer shall certify that in writing to the Chief. Placement of fluid in the pit or impoundment shall not begin until the certification has been filed with the Chief.

21.6.b. All pits and impoundments containing fluid must be inspected every three (3) days for the life of the pit or impoundment. Such inspection must be conducted by a company representative experienced in pit and impoundment construction. A company official shall certify to the Office monthly that the inspections have been conducted. If an inspection discloses a potential hazard, the company shall promptly inform the Office of the findings and of the emergency procedures formulated for public protection and remedial action.

APPENDIX A

The symbols shall be as follows:

- New Drilling Location: - 
  - New Fracturing or Stimulating Location: -  F/S
  - Cancelled Application or Permit: -  CNC
  - Oil Well: - 
  - Gas Well: - 
  - Dry Hole: - 
  - Liquid Injection Well: -  LI
  - Waste Disposal Well: -  WD
  - Abandoned Well: -  -  -  LI -  WD
-

# West Virginia Department of Environmental Protection

## ADVISORY COUNCIL MEETING MINUTES

Wednesday, June 3, 2009  
601 57th Street, SE, Charleston, West Virginia  
West Virginia Room – 3rd Floor

### IN ATTENDANCE:

#### *Members of the Council:*

Lisa Dooley  
Jackie Hallinan  
Larry Harris  
Karen Price  
Bill Raney  
Rick Roberts

#### *DEP:*

Raymond Franks II	General Counsel
Kristin Boggs	Associate General Counsel
Kathy Cosco	Chief Communications Officer
Tom Clarke	Director, Division of Mining & Reclamation
James Martin	Chief, Office of Oil & Gas
Robert Bates	Division of Water & Waste Management
Bill Brannon	Division of Water & Waste Management
Carroll Cather	Division of Water & Waste Management
Ellen Herndon	Division of Water & Waste Management
Jeff Knepper	Division of Water & Waste Management
Teresa Koon	Division of Water & Waste Management
Sudhir Patel	Division of Water & Waste Management
Yogesh Patel	Division of Water & Waste Management
Bill Timmermeyer	Division of Water & Waste Management
Ken Politan	Division of Mining & Reclamation
Jim Mason	Division of Air Quality

#### *Others:*

Don Garvin	Interested Citizen
Steve Hannah	Interested Citizen
Dave Yaussy	Interested Citizen

## **OLD BUSINESS:**

Raymond Franks called the meeting to order at 1:45 p.m. Mr. Franks noted that two members of the Council had pointed out a minor discrepancy in the April minutes as circulated, and that for expediency's sake the error would be corrected following the meeting and the April and June minutes each moved for approval at the September meeting.

Mr. Franks provided to the Council information it had requested at the April meeting regarding ongoing projects in the Office of Abandoned Mine Lands and recruiting potential for environmental inspectors. The Council agreed to review the information and discuss it in more detail at the September meeting.

## **NEW BUSINESS:**

Mr. Franks turned the meeting over to Kristin Boggs for presentation and discussion of the 2010 proposed Legislative Rules:

### **DIVISION OF WATER & WASTE MANAGEMENT – WATER RULES**

**47CSR10 – NPDES Rule:** Promulgated last in 2008. The proposed revisions reflect changes made to the Federal rule regarding Concentrated Animal Feeding Operations (CAFOs), which became effective in November 2008. EPA gave DEP two years to revise the State rules and start issuing permits. The revisions include a clarified definition of CAFO, a detailed explanation of the permitting process and the process for permit exemption, and an explanation of the required nutrient management plan. Technical revisions and corrections are made throughout.

**47CSR26 – Water Pollution Control Permit Fee Schedules:** Promulgated last in 2000. The proposed revisions reflect the CAFO changes made in the NPDES Rule. The fees for CAFOs will be as follows: \$300 for the initial application; \$300 for permit renewal; \$50 for permit modification; and \$50 for the annual permit fee. Technical revisions and corrections are made throughout.

**47CSR12 – Requirements re Groundwater Standards:** Promulgated last in 2002. The proposed revisions reflect updates and additions made to EPA's 2006 edition of the Drinking Water Standards & Health Advisories. Technical revisions and corrections are made throughout.

**47CSR59 – Monitoring Well Rule.** Promulgated last in 1994. The proposed revisions add new language to incorporate "high" and "low" risk boreholes, experience requirements for those persons applying for monitoring well driller certificates, recertification and training requirements for monitoring well drillers, and definitions. Technical revisions and corrections are made throughout.

**47CSR60 – Monitoring Well Design Standards.** Promulgated last in 1996. The proposed revisions bring this rule in conformance with the 47CSR59 *Monitoring Well Rule* definition changes, and "high" and "low" borehole requirements. Technical revisions and corrections are made throughout.

## **DIVISION OF WATER & WASTE MANAGEMENT – WASTE MANAGEMENT RULES**

**33CSR1 – *Solid Waste Management Rule*:** Promulgated last in 2006. The proposed revisions include removing the requirement that free day tonnage count toward monthly/daily totals and clarifying the definition of pick-up truck. Technical revisions and corrections are made throughout.

**33CSR20 – *Hazardous Waste Management System*:** Promulgated last in 2009. The proposed rule reflects the annual incorporation-by-reference (IBR) revisions made by DEP to its hazardous waste rule. The proposed revisions include changes to the academic laboratory waste provisions to allow alternative requirements for hazardous waste determination and accumulation of unwanted materials at labs owned by and affiliated with colleges and universities. Other proposed revisions are directed at the hazardous waste code 019 provisions, which expand the exclusion for sludges generated from the chemical conversion coating of aluminum using a zinc phosphating process. The F019 waste code exclusion only applies to the automobile or light truck manufacturing industry. This IBR specifically excludes two federal amendments that are currently undergoing reconsideration by the EPA, *i.e.*, revisions to the definition of solid waste and expansion of RCRA comparable fuel exclusion. Technical revisions and corrections are made throughout.

Mr. Franks asked whether the Council had any questions about the seven DWWM rules. Mr. Raney inquired about the impetus for the change in the monitoring well rules, since they have not been revised in several years. Ms. Boggs responded that the changes in the rules reflect changes in technology and practice over time. There were no further questions from the Council.

## **OFFICE OF OIL AND GAS RULE**

**35CSR4 – *Oil & Gas Wells and Other Wells*:** Promulgated last in 2001. The proposed revisions include updating the permit fees to reflect the 2005 statutory change, clarifying general requirements for pit and impoundment construction, and adding a new section setting forth requirements for constructing pits and impoundments that exceed a certain size. Technical revisions and corrections are made throughout.

Mr. Franks asked whether the Council had any questions about the OOG rule. Dr. Harris expressed concern that the current statutory bond amount may not suffice given the larger pits associated with Marcellus wells. Mr. Martin explained that the bond is a performance bond, not designed to cover any specific area of the well operation. Dr. Harris then asked about protections for surface owners whose water supply is impaired from drilling operations, in response to which Mr. Martin pointed out the statutory and regulatory remedies. There were no further questions from the Council.

## **DIVISION OF MINING & RECLAMATION RULE**

**47CSR30 – *Mining NPDES Rule*:** Promulgated last in 2009. The proposed revisions include deleting the certification language for NPDES maps and decreasing from two years to one the raw mine drainage water quality data required for abandonment of a deep mine. Technical revisions and corrections are made throughout.

Mr. Franks asked whether the Council had any questions about the DMR rule. Ms. Dooley inquired whether the changes were substantive or merely technical. Ms. Boggs explained that although the changes appeared merely technical, they had real-world effects upon licensed professional engineers and surveyors, whom the rule required to swear to the contents of a NPDES map under penalty of perjury. Engineers and surveyors could not obtain insurance for such an oath, because they did not create the maps and were therefore subjecting themselves to criminal penalties for work that was not entirely within their control. There were no further questions from the Council.

#### **DIVISION OF AIR QUALITY RULES**

**45CSR8 – *Ambient Air Quality Standards*:** Promulgated last in 2009. The proposed revisions include deletion of redundant measurement method language for lead and addition of new national primary and secondary ambient air quality standards for lead.

**45CSR14 – *Permits for Construction and Major Modification of Major Stationary Sources of Air Pollution for the Prevention of Significant Deterioration*:** Promulgated last in 2009. The proposed revisions incorporate the New Source Review Program for Particulate Matter Less Than 2.5 Micrometers. Other miscellaneous revisions and corrections are also included, so that the rule comports with federal counterpart language.

**45CSR16 – *Standards of Performance for New Stationary Sources*:** Promulgated last in 2009. The proposed rule reflects the annual IBR revisions to New Source Performance Standards, including Stationary Spark-Ignition Internal Combustion Engines, Fossil Fuel-Fired Steam Generators and Industrial-Commercial-Institutional Steam Generating Units, Stationary Combustion Turbines, Nonroad Spark Ignition Engines, Alternative Work Practice To Detect Leaks From Equipment, Petroleum Refineries and Performance Specification 16 for Predictive Emissions Monitoring Systems, Amendments to Testing and Monitoring Provisions, and Nonmetallic Mineral Processing Plants. The IBR exclusion for the vacated Clean Air Mercury Rule has been removed.

**45CSR19 – *Permits for Construction and Major Modification of Major Stationary Sources of Air Pollution Which Cause or Contribute to Nonattainment*:** Promulgated last in 2005. The proposed revisions incorporate the New Source Review Program for Particulate Matter Less Than 2.5 Micrometers, Reasonable Possibility in Recordkeeping, Ethanol Production Facilities, and 8-Hour Ozone National Ambient Air Quality Standard provisions. Other proposed revisions to the rule remove references to pollution control projects and clean units per the 2005 decision by the United State Court of Appeals for the District of Columbia Circuit that vacated the parallel federal provisions. Other miscellaneous revisions and/or corrections are also included, so that the rule comports with federal counterpart language.

**45CSR25 – *Control of Air Pollution from Hazardous Waste Treatment, Storage and Disposal Facilities*:** Promulgated last in 2009. The proposed rule reflects the annual IBR revisions to the Hazardous Waste rule.

**45CSR33 – *Acid Rain Provisions and Permits*:** Promulgated last in 2006. The proposed rule

reflects the annual IBR revisions, including Air Pollution Control, Transport of Emissions of Nitrogen Oxide and Sulfur Dioxide; Amendments to Monitoring Provisions; Revisions to Acid Rain Program Rules, and Revisions to the Continuous Monitoring Rule for the Acid Rain Program.

**45CSR34 – *Emission Standards for Hazardous Air Pollutants*:** Promulgated last in 2009. The proposed rule reflects the annual IBR revisions to the Hazardous Air Pollutant rule. Excluded from incorporation by reference are the national emission standards for hazardous air pollutants affecting non-major (area) sources of hazardous air pollutants for Iron and Steel Foundries, Plating and Polishing Operations, Ferroalloys Production Facilities, and Metal Fabrication and Finishing Source Categories.

Mr. Franks asked whether the Council had any questions about the seven DAQ Rules, and there were none.

On general comment, Dr. Harris inquired about water quality standards for mercury, citing a newspaper report that DEP supported less stringent standards based on data that State residents consume relatively fewer fish per capita. Mr. Clarke explained the factual context of the reported quote and the method by which EPA developed the point three (0.3) standard. With respect to the rules presentation, Dr. Harris suggested a return to the practice of providing Council with written summaries of the proposed rules, along with justifications for the proposed changes. The suggestion was well-received.

Mr. Franks then opened the floor to questions from the general public. Don Garvin, Legislative Coordinator for the West Virginia Environmental Council, inquired about acid rain standards, to which Mr. Mason responded that the State's standards with respect to acid rain derive from Title VI of the federal Clean Air Act.

Dr. Harris then asked whether the downturn in the energy market has caused any decrease in the number of permit applications to drill gas wells in the Marcellus Shale. Mr. Martin responded that the economy has had some effect on the number of permit applications overall, and that he could later provide Dr. Harris with more precise statistics.

Mr. Garvin complimented the Agency and the Office of Oil & Gas on finally requiring pits to be lined. Mr. Raney then thanked DEP staff for their hard work on the rules.

With no further comments forthcoming from the Council or public, Mr. Franks reminded everyone that the next meeting is scheduled for Wednesday, September 23, 2009. On motion from Mr. Raney, seconded by Mr. Roberts, Mr. Franks declared the meeting adjourned at 2:45 p.m.