





BUREAU OF ENVIRONMENT  
10 McJunkin Road  
Nitro, WV 25143-2506

CECIL H. UNDERWOOD  
GOVERNOR

JOHN E. CAFFREY  
COMMISSIONER

July 28, 1997

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

RE: 35CSR5 - Designation of Future Use and Inactive  
Status for Oil and Gas Wells Rule

Dear Ms. Cooper:

This is to advise you that I am giving approval for filing of the above-referenced rule with your Office and the Legislative Rule-Making Review Committee as an agency-approved rule.

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

Sincerely yours,

  
John E. Caffrey  
Commissioner

JEC:cc

Attachment

DATE: July 31, 1997

TO: LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

FROM: WV Div. of Environmental Protection - Office of Oil and Gas

LEGISLATIVE RULE TITLE: Designation of Future Use and Inactive Status for Oil and Gas Wells Rules

1. Authorizing statute(s) citation WV Code 22-6-1 through 7, 22-6-11, 22-6-19, 22-6-23, 22-6-24, 22-6-26, 22-6-28, 22-6-29, 22-6-30, 22-6-34, 22-9-5, and 22-10-1 through 12.

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

June 19, 1997

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

Indepth, Public Notice Bulletin, State-wide News Release

c. Date of Hearing(s) July 22, 1997

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

Attached \_\_\_\_\_ No comments received X

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

July 31, 1997

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

Theodore M. Streit, Chief

WV Div. of Environmental Protection - Office of Oil and Gas

#10 McJunkin Road, Nitro, WV 25143-2506

304-759-0514

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

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

N/A

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b. Date of hearing: N/A

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

N/A

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d. Attach findings and determinations and reasons:

Attached N/A

**BUREAU OF ENVIRONMENT  
DIVISION OF ENVIRONMENTAL PROTECTION**

**BRIEFING DOCUMENT**

**Rule Title:** 35CSR5 - Designation of Future Use and Inactive Status  
For Oil and Gas Wells Rules

**A. AUTHORITY:** WV Code 22-6-1 through 7, 22-6-11, 22-6-19, 22-6-23, 22-6-24, 22-6-26, 22-6-28, 22-6-29, 22-6-30, 22-6-34, 22-9-5, 22-10- 1 through 12

**B. SUMMARY OF RULE:**

Rule establishes requirements pertaining to an oil and gas operators designation of bona fide future use of wells and certification of inactive status.

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

Technical clean-up to change code references, punctuation, spelling, etc., and removing those provisions that are contrary to the law.

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

There is no federal counterpart.

**E. CONSTITUTIONAL TAKINGS DETERMINATION:**

*In accordance with §22-1A-1 and 3(c), the Director 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 their meeting, July 2, the Environmental Protection  
Advisory Council reviewed and discussed this rule - there  
were no substantive changes as a result of their discussion.  
See attached minutes of that meeting."

MINUTES

ENVIRONMENTAL PROTECTION ADVISORY COUNCIL

July 2, 1997 - Office of Air Quality's Conference Room

The seventh meeting of the DEP Advisory Council was held July 2, 1997 in the Office of Air Quality's Conference Room in Charleston. The meeting was called to order at 1:00 p.m. by Chairman Jack Caffrey.

Attending:

Advisory Council Members:

Jack Caffrey, Chairman  
Jacqueline Hallinan  
Larry Harris  
Martha Moore  
William Raney  
Rick Roberts  
William Samples

DEP:

Mark Scott	John Johnston
Cap Smith	John Benedict
Mike Dorsey	Lucy Pontiveros
Russ Hunter	Karen Watson
Ted Streit	
Gene Coccari	

Discussion:

1. Review minutes of May 5, 1997 meeting.

The minutes of the May 5 meeting were approved without amendment.

2. Review Proposed DEP Rules.

In accordance with WV Code §22-1-3(c) which requires the Director of the Division of Environmental Protection to consult with the Advisory Council members prior to proposing any new rule (or amendments to a rule), the following rules were presented to the members. Mark Scott told the Council members that if they have comments concerning the amendments to the rules they will be made part of the rule package when it is filed with Legislative Rule-Making and the Secretary of State's Office August 1. The Council members may also submit written comments to Carrie Chambers until the close of each respective public hearings. These will also be made part of the rule package when filed.

a) Office of Mining and Reclamation - 38CSR2 "Surface Mining Reclamation Rule":

Russ Hunter, Counsel for OMR, explained the proposed amendments to the Surface Mining Rule. He said the amendments mainly relate to four areas: 1) to allow for coal removal incidental to commercial development of real estate; 2) re-mining provisions; 3) special reclamation costs; and 4) ownership and control issues.

Gene Coccari, Manager of the Ownership and Control Unit in the Office of Mining and Reclamation, briefed Council members on amendments to that section of the rule. He explained that the proposed state rules appear to be more stringent than the interim federal rule currently in place in that the proposed rules allow DEP to link and block parent companies of permittee, which is not specifically addressed in the federal rule.

b) Office of Waste Management - 33CSR20 "Hazardous Waste Management Rule":

Mike Dorsey, Office of Waste Management, explained that the Hazardous Waste rule is updated annually to reflect changes in the federal regulations and were not substantive changes. He said there are two other amendments in the rule: 1) the appendix that currently contains a synopsis of the small quantity generator rule has been eliminated; and 2) a change in the groundwater monitoring requirements for hazardous waste permits (which is being done in conjunction with a change in the groundwater rule). Also, the rule is amended by clarifying what information is to be included in the administrative record of a permit.

In response to a question by Bill Raney, Mike explained that the proposed rule differs from existing federal requirements in three ways: 1) We require all generators of hazardous waste to notify of their activity, EPA does not require conditionally-exempt small quantity generators (CESQGS) to notify; 2) The EPA regulations say that CESQGS can put their wastes into municipal landfills if they are permitted to accept that waste. West Virginia's Solid Waste rule states that no hazardous waste may go into the state's landfills; therefore, none are permitted to accept the waste; and 3) In the permitting requirements, we have given the chief of Waste Management greater latitude in deciding what sampling parameters must be utilized and what frequently may be required at permitted facilities than the federal rule.

c) Office of Oil and Gas: 35CSR1 "Miscellaneous Water Pollution Control Rule"; 35CSR2 "Oil and Gas Operations - Solid Waste Rule"; 35CSR3 "Coalbed Methane Wells Rule"; 35CSR4 "Oil and

Gas Wells and Other Wells Rule"; 35CSR5 "Designation of Future Use and Inactive Status for Oil and Gas Wells Rule"; and 35CSR6 "Abandoned Wells Rule":

Ted Streit, Chief of the Office of Oil and Gas, stated that Series 1 through 6 of the Oil and Gas rules were not part of DEP's 1997 Technical Cleanup Bill. Therefore, they are being filed this session to update code references, provisions that are contrary to current law, office, names, titles, punctuation, etc. There are no substantive changes to these rules.

Ted said two additional oil and gas rules - 38CSR16 "Certification of Gas Wells" and 38CSR14 "Dam Safety" are being repealed. 38CSR16 is being repealed because the underlying state and federal statute that required the agency to classify the wells no longer exists, and 38CSR14 is being repealed and a comparable rule in the Office of Water Resources (47CSR34 - "Dam Safety") enforces dam safety.

d) Office of Air Quality - 45CSR25 "To Prevent and Control Air Pollution From Hazardous Waste Treatment, Storage or Disposal Facilities"; 45CSR33 "Acid Rain Provisions and Permits"; 45CSR44 "Emission Standards for Hazardous Air Pollutants Pursuant to 40 CFR Part 63"; 45CSR23 "To Prevent and Control Emissions From Municipal Solid Waste Landfills"; and 45CSR7 "To Prevent and Control Particulate Air Pollution From Manufacturing Process Operations:"

John Johnston, Chief of the Office of Air Quality, presented Air Quality's proposed rule amendments to the Council. He stated that 45CSR25, 45CSR33, and 45CSR34 were amended to incorporate by reference federal requirements that are necessary to keep the program up to date under Title 5, and that they do not contain any substantive changes.

John said the proposed new rule, 45CSR23 "To Prevent and Control Emissions from Municipal Solid Waste Landfills" will establish standards of performance and emission guidelines for municipal solid waste landfills. The standards will require facilities with municipal solid waste landfill emissions exceeding approximately 55 tons per year to install an air pollution control system within 2.5 years. These standards will also be adopted by reference. The advisory council inquired about the stringency of the rule, the difference between non-municipal and municipal solid wastes, and if the rule will impact landfills that are closed.

John said the agency filed 45CSR7 - "To Prevent and Control Particulate Air Pollution From Manufacturing Process Operations" as an emergency rule on June 27 as authorized in HB 2333. This emergency rule will establish specific emissions performance

standards for pot and marble fiberglass operations, and will only affect one existing fiberglass production facility located in Vienna, Wood County. A counterpart, permanent rule effecting the same amendment, has also been filed.

After discussion of OAQ's rules, John Johnston asked John Benedict, Assistant OAQ Chief, to discuss the ongoing Ozone Transport Assessment Group (OTAG) issue and the outcome of meetings with EPA and other affected states.

The Council members inquired about the non-attainment situation in the Weirton area (and other areas in West Virginia). John Benedict briefly discussed the current status of that situation and the possible EPA-imposed sanctions within one year if West Virginia's SO<sup>2</sup> and PM<sup>10</sup> SIP are deficient.

The Council members were then briefed by Earl Billingsley of the Air Quality Office on the application by Virginia Power for an opacity variance at their Mt. Storm Power plant.

3) Consideration of issues raised at May 5, 1997 meeting.

(1) Mr. Caffrey informed the Council that DEP will hold a training session for DEP staff on how to more effectively work with the Legislature.

(2) Mark explained that the list of policies and procedures requested by the Council members is in the process of being completed. He distributed a list of policies compiled to date. After a brief discussion, Council requested that Mark provide a list of DEP policies and procedures, the title, effective date, policy number, and the name of DEP's office contact for the Council's review.

(3) Mark updated the Council members on the pay equity issue raised in the last meeting and informed them that DEP's EEO coordinator would be undertaking a more detailed study later this year to clarify if DEP has a problem in this area.

(4) The Council members expressed concern over the TMDL issue and why there was such a change in the ranking of streams between the 1994 and 1996 303(d) lists provided to EPA. Council requested an update on this issue at a future meeting.

4) The following issues were discussed for upcoming meetings:

(1) Regulation of the timbering industry - Mark Scott suggested that Bill Maxey, Director of the Division of Forestry, be invited to attend a future Council meeting to discuss this issue;

- (2) The Legislative agenda for the 1998 Session;
- (3) Presentation by DEP's Manager of Information Services on DEP's one-stop grant and our vision of future computer capabilities;
- (4) Acid mine drainage;
- (5) Valley fills and mountain top removal practices at mining operations;
- (6) Industry's concerns about the Office of Oil and Gas as a regulatory agency;
- (7) Status of the Elkins landfill;
- (8) Corps of Engineers nationwide permits and conditions required by DEP in those permits;
- (9) An update of the Volunteer Remediation and Development program;
- (10) Regulation of chicken waste in the poultry industry in the eastern panhandle;
- (11) DEP's proposed consolidated building; and
- (12) Status of the coal mining mitigation, including council consideration of supporting studies funded by DEP's mitigation fund.

A brief discussion was held concerning date and place of the next Council meeting. Bill Raney suggested incorporating the next meeting with the national AML Conference scheduled at Canaan Valley August 17-20.

The meeting concluded at 4:30 p.m.

**APPENDIX B**

**FISCAL NOTE FOR PROPOSED RULES**

Rule Title: 36CSR5 - Designation of Future Use and Inactive Status For Oil and Gas Wells Rules  
 Type of Rule:  Legislative  Interpretive  Procedural  
 Agency WV Division of Environmental Protection - Office of Oil & Gas  
 Address #10 McJunkin Road  
Nitro, West Virginia 25143-2506

**1. Effect of Proposed Rule**

	ANNUAL FISCAL YEAR				
	INCREASE	DECREASE	CURRENT	NEXT	THEREAFTER
<u>ESTIMATED TOTAL COST</u>	\$ 0	\$ 0	\$ 0	\$ 0	\$ 0
PERSONAL SERVICES	0	0	0	0	0
CURRENT EXPENSE	0	0	0	0	0
REPAIRS & ALTERNATIONS	0	0	0	0	0
EQUIPMENT	0	0	0	0	0
OTHER	0	0	0	0	0

2. Explanation of above estimates:  
 N/A

3. Objectives of these rules:

Technical clean-up to update Code references, punctuation, etc. for existing rules.

Rule Title: 35CSR5 - Designation of Future Use and Inactive Status for Oil and Gas Wells Rules

4. Explanation of Overall Economic Impact of Proposed Rule.

A. Economic Impact on State Government.

N/A

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

N/A

C. Economic Impact on Citizens/Public at Large.

N/A

Date: 6/14/97

Signature of Agency Head or Authorized Representative

J. D. D.

**TECHNICAL CLEANUP**  
**OFFICE OF OIL AND GAS**  
**35CSR5**  
**PREVIOUSLY 38CSR21**

The paragraph numbering, punctuation, etc., in this rule has been modified to conform to the Secretary of State's legislative rule, 153CRS6.

RECEIVED

97 JUL 31 AM 9:28

OFFICE OF WEST VIRGINIA  
SECRETARY OF STATE

**TITLE ~~38.35~~**  
**BUREAU OF ENVIRONMENT**  
**DIVISION OF ENVIRONMENTAL PROTECTION**  
**SECTION OFFICE OF OIL AND GAS**

**SERIES-~~21.5~~**  
**OPERATOR'S DESIGNATION OF BONA FIDE**  
**FUTURE USE OF OIL AND GAS WELLS**  
**QUALIFICATION FOR INACTIVE STATUS**  
**DESIGNATION OF FUTURE USE AND INACTIVE STATUS FOR**  
**OIL AND GAS WELLS RULES**

**§~~38-21-1~~ 35-5-1. General.**

1.1. Scope -- This legislative rule establishes requirements pertaining to the operator's designation of bona fide future use of wells and certification of inactive status and information and data to be required by the chief as necessary to such designation.

1.2. Authority -- WV Code §§~~22B-1-1; 22B-1-2; 22B-1-3; 22B-1-4; 22B-1-5; 22B-1-6; 22B-1-7; 22B-1-11; 22B-1-19; 22B-1-23; 22B-1-24; 22B-1-26; 22B-1-28; 22B-1-29; 22B-1-30; 22B-1-32; 22B-1-34; 22B-4-5; 22B-5-1 through 12 22-6-1; 22-6-2; 22-6-3; 22-6-4; 22-6-5; 22-6-6; 22-6-7; 22-6-11; 22-6-19; 22-6-23; 22-6-24; 22-6-26; 22-6-28; 22-6-29; 22-6-30; 22-6-32; 22-6-34; 22-9-5; 22-10-1 through 12.~~

1.3. Filing Date -- ~~June 6, 1993~~ \_\_\_\_\_

1.4. Effective Date -- ~~July 1, 1993~~ \_\_\_\_\_

1.5. Forms -- rule. 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 West Virginia Code Chapter ~~22B~~ W. Va. Code §22 and this rule.

~~§38-21-2~~ 35-5-2. Definitions

Unless the context in which used clearly requires a different meaning, the definitions contained in ~~West Virginia Code §22-1-3~~ W. Va. Code §22-1-2 and ~~§22B-1-1~~ §22-6-1 shall apply to this rule in addition to the definitions set forth below:

- 2.1. "W Va. Code" shall mean the West Virginia Code of 1931, as amended.
- 2.2. "Abandoned well" shall mean any well which is completed as a dry hole or which has not produced in commercial quantities for a period of twelve consecutive months.
- 2.3. "Active Status" shall mean 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.
- 2.4. "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.
- 2.5. "Chief" shall mean the Chief of the Office of Oil and Gas as designated by the Director of the Division of Environmental Protection.
- 2.6. "Completion of the drilling process" shall mean the date on which a drilling rig ceases operation on the drilling site for more than thirty (30) consecutive days.
- 2.7. "Cubic foot of gas" shall mean the volume of gas contained in one (1) cubic foot at a standard pressure base of fourteen point seven three (14.73) pounds per square inch (absolute) and a standard temperature of sixty (60) degrees Fahrenheit.
- 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 barrel of oil on the basis of the initial gas-oil ratio test.
- 2.10. "Initial gas-oil ratio test" shall mean the gas-oil ratio test performed for the purpose of completing Form WR-36, "Well Operator's Report of Initial Gas-Oil Ratio Test," to designate the type of well.
- 2.11. "Log or Well log" shall mean a systematic, detailed geologic record of all formations, including coal, fresh water, and salt water encountered in the drilling of a well.

2.12. "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 barrel of oil on the basis of the initial gas-oil ratio test.

2.13. "Payout ratio" shall mean for the purposes of these regulations, the ratio of the estimated gross receipts of income from the well divided by the estimated cost of completing and placing the well into production.

2.14. "Production in commercial quantities" shall mean production of natural gas or oil or both from a well or reservoir which is either sold or delivered to one other than the operator, or retained by the operator or any owner of the production at severance for beneficial economic use: Provided, that natural gas used for the testing of natural gas wells or for other field uses which are production related, shall not be considered produced in commercial quantities.

~~§38-21-3.~~ 35-5-3. **Procedure for Designation of Bona Fide Future Use.**

3.1. Any operator seeking designation of bona fide future use for a well shall submit to the chief a Designation of Bona Fide Future Use on forms prescribed by the chief which shall require the following information:

3.1.a. The name and address of the operator;

3.1.b. The location of the well;

3.1.c. The API number of the well ~~if any~~;

3.1.d. A viable plan for utilizing the well including an estimated time for commencement of the future use of the well; and

3.1.e. Any other information requested by the chief.

3.2. The operator shall file a separate designation of bona fide future use for each well for which it seeks a determination from the chief.

3.3. In order to extend the inactive status period, the operator shall file a new Designation of Bona Fide Future Use on forms prescribed by the chief within two (2) weeks prior to the end of the inactive status period.

The operator shall notify the chief of a change in an inactive well's status to either active or abandoned within thirty days after the change in status.

~~§38-21-4.~~ 35-5-4. **Demonstration of Designation of Bona Fide Future Use.**

4.1. For any well which is not in active status, an operator must demonstrate bona fide future use to avoid having such well deemed abandoned under W.Va. Code ~~§22B-1-19~~ ~~§22-6-19~~. In order to establish bona fide future use, the operator shall submit information and data sufficient to satisfy the chief that there is a bona fide future use for the well. The operator should consider the following information:

4.1.a. The date on which the well was completed;

4.1.b. The method which the well meets the financial responsibility requirements of W.Va. Code ~~22B-5-4~~ and ~~22B-5-5~~ §22-10-4 and §22-10-5;

4.1.c. The date on which the well first produced;

4.1.d. The results of the initial gas-oil ratio test;

4.1.e. The last date on which the well was producing;

4.1.f. The average monthly production at the time production ceased;

4.1.g. The formation(s) from which the well produced;

4.1.h. The estimated remaining recoverable reserves associated with the well without reworking the well;

4.1.i. Whether reworking the well to recover additional reserves is possible;

4.1.j. The estimated remaining recoverable reserves associated with the well after reworking;

4.1.k. The method used to establish reserve estimates in subdivisions 4.1.h and 4.1.j;

4.1.l. Whether secondary recovery is possible;

4.1.m. Whether production from other formations is possible;

4.1.n. Whether the well can be drilled deeper;

4.1.o. The estimated cost to deepen the well;

4.1.p. Whether the well is covered by a gas sales contract;

4.1.q. Whether the well is connected to a gas meter or how it is measured at the transfer of ownership or custody;

- 4.1.r. Other equipment connected to the well;
- 4.1.s. Whether the well is connected to a pipeline system;
- 4.1.t. A description of the line pressure of the receiving pipeline;
- 4.1.u. Whether a compressor is in place and whether it is in use on the well;
- 4.1.v. If the well is not connected to a pipeline, the distance to the nearest pipeline that would accept production from the well;
- 4.1.w. Whether a shut-in royalty is being paid;
- 4.1.x. The operator's schedule for putting the well into production;
- 4.1.y. Whether the well is ~~currently used for~~ or capable of use for gas storage;
- 4.1.z. Whether the well is capable of being used as a liquid injection well;
- 4.1.aa. Whether money has been escrowed for use to plug the well in the future; and
- 4.1.bb. Any other information which the operator considers relevant to establishing a bona fide future use.

~~§38-21-5.~~ 35-5-5. Inactive Status.

5.1. Upon submittal of a completed Designation of Bona Fide Future Use to the chief any permitted well which satisfies the following requirements shall be deemed to be in inactive status:

- 5.1.a. The condition of the well is sufficient to prevent waste of oil or gas;
- 5.1.b. The condition of the well is sufficient to prevent pollution of waters of the State; and
- 5.1.c. The operator satisfies the bonding requirements of W.Va. Code ~~22B-1-1~~ §22-6-1 et seq.

5.2. The chief shall determine whether sufficient data and information have been provided to make a determination that the well has a bona fide future use and is properly deemed in inactive status.

5.3. The chief may require the operator of any well in inactive status to monitor the mechanical integrity of such well and to require the operator to submit reports on the integrity of the well to the chief.

5.4 . The inactive status of any well with a designation of bona fide future use shall be valid for the time period requested by the operator, not to exceed five (5) years from the date of filing with the chief, unless inactive status is revoked pursuant to subsection 5.5 of this rule, or unless the operator elects to extend the inactive status period pursuant to the provisions of subsection 3.3 of this rule.

5.5. The chief may revoke the inactive status of any well upon a finding that:

5.5.a. The operator has failed to comply with the provisions of W.Va. Code ~~22B-1-1~~ §22-6-1 et seq;

5.5.b. The operator has failed to comply with the provisions of this rule;

5.5.c. The well does not satisfy the requirements of this rule; or

5.5.d. The well does not have a bona fide future use.

5.6. Any well that is not in active or inactive status shall be deemed abandoned and shall be promptly plugged by the operator.

~~§38-21-6.~~ 35-5-6. Effect on Nongovernmental Actions.

Neither the filing, (submission, or completion) of the operator's designation, nor the well's status as inactive pursuant to these regulations or W.Va. Code ~~22B-1-19, 22-6-19~~ nor acceptance, receipt, review, report, consideration or termination by the chief or the ~~Oil and Gas Section Office of Oil and Gas~~ shall be admissible as evidence as to the truth of a matter asserted regarding a claim or cause of action between nongovernmental parties.

Report of the Public Hearing on Oil and Gas Regulations on July 22, 1997

- 35CSR1**      **Miscellaneous Water Pollution**
- 35CSR2**      **Oil and Gas Operations - Solid Waste Rule**
- 35CSR3**      **Coalbed Methane**
- 35CSR4**      **Oil and Gas Wells and other Wells**
- 35CSR5**      **Designation of Future Use and Inactive Status**
- 35CSR6**      **Abandoned Wells**

and the repeal of

- 38CSR14**      **Dam Control**
- 38CSR16**      **Certification of Gas Wells**

The hearing was opened at 6:00 PM on July 22, 1997 at DEP Nitro headquarters. No comment was given at the hearing and no one attended. One person offered written comments and those are enclosed.

**DAVID B. McMAHON • ATTORNEY AT LAW****922 Quarrier St., Suite 525, Charleston, West Virginia 25314****Phone 304-344-3144 • Fax 344-3145****e-mail wvdauid@access.mountain.net**

July 22, 1997

Theodore Streit  
WV Division of Environmental Protection  
#10 McJunkin Road  
Nitro, WV 25143-2506

Re: Public Comment on  
Amended and Redesignated Rules  
35 C.S.R. 1, 2, 3, 4, 5, and 6, and  
and Repealed Rules 38 C.S.R. 14 and 16.

Dear Mr. Streit,

I represent two classes of small surface owners. One is surface owners who do not own the minerals or whose predecessors have leased the minerals. These surface owners either do, or may in the future, have oil or gas wells on their lands over which they have no control and from which they receive little if any benefit. The other class of surface owners I represent own land close enough to existing and potential oil and gas wells that the beneficial use of their property may be impaired and their ground and surface water is exposed to adverse effects from problem oil and gas well drilling on neighboring lands.

Please consider this one document as comments upon each of the Rule changes proposed.

Most of the changes are substantively benign, merely doing "clean-up" of cross references and so on. This is beneficial to the users of the rules. I have a comment or two on the small substantive changes.

The changes to Series 1 through 6 are stated to be, and appear to be, technical clean-up for references to changed code and so on. In that regard this change is good government and the Division of Environmental Protection should be praised for updating these rules to promote ease of use by those in the industry and the members of the general public. In addition, when the issues are complex or important enough, those in the industry and the general public may call upon lawyers for assistance. The easier these Rules are to use, the less lawyer time is needed to understand them, and the more likely it is that lawyers who do not specialize in the area can understand and use them.

38 C.S.R. 16 was the product of the federal National Gas Policy Act which no longer exists. So the repeal of this Rule is a similarly applaudable clarification.

I understand that the repeal of 38 C.S.R. 14 flows from the second reorganization of the environmental protection structure of state government. I understand that the provisions of this rule are identical to other rules that are enforceable by other branches of state government and that there is no substantive change in the protections of the citizens from hazardous dams and impoundments. This clarification of the law is also therefore welcome.

There are a few substantive changes that are stated to have the effect of conforming the Rule to the statute. I would like to comment on a few of those.

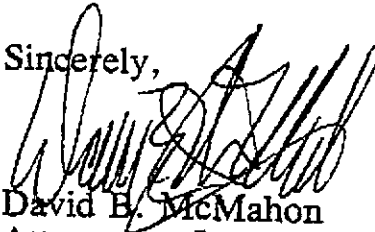
Series 3, "Coal Bed Methane Wells" makes a change at new 8.2.a which limits the ability of the Office of Oil and Gas to allow variances from the cement content requirements. It is my recollection that this variance was permitted when the head of the Office of Oil and Gas was required to have an engineering degree. That requirement has been removed. The head may also have had civil service protection. That is no longer true. At the time such variances were placed into the law I had no objection. Variances would encourage the evolution of newer and better materials and procedures. In addition the professional requirements of the head of the Office of Oil and Gas, and his civil service status, protected the process somewhat from political influence. Despite the benefits of allowing variances, I now heartily approve removing variance authority because of the removal of civil service protection and professional requirements.

Series 4, "Oil and Gas Wells and other Wells", makes a change at 5.2.1.5 regarding fees which is consistent with the statute. The Office of Oil and Gas is grossly under-funded with less than 20 inspectors for tens of thousands of wells. Any increase in revenues to improve funding the for Office of Oil and gas is laudable.

Series 6, "Abandoned Wells" makes a change at 6.3.c that conforms the rule to the statute. All oil and gas wells and their internal structures will eventually deteriorate. Once things have deteriorated, then many of those wells will cause pollution problems. All wells should therefore be properly plugged as soon as funds can be made available. The statute so requires. Therefore it is proper to delete the provision of the rule which approves the non-plugging of wells for "an indefinite period."

Thank you for your consideration of these comments. If comments from others raise points to which I feel the need to respond, I ask that I be allowed to do so.

Sincerely,



David B. McMahon  
Attorney at Law

DBM/dbm

Response to comments.

<b>35CSR1</b>	<b>Miscellaneous Water Pollution</b>
<b>35CSR2</b>	<b>Oil and Gas Operations - Solid Waste Rule</b>
<b>35CSR3</b>	<b>Coalbed Methane</b>
<b>35CSR4</b>	<b>Oil and Gas Wells and other Wells</b>
<b>35CSR5</b>	<b>Designation of Future Use and Inactive Status</b>
<b>35CSR6</b>	<b>Abandoned Wells</b>

and the repeal of

<b>38CSR14</b>	<b>Dam Control</b>
<b>38CSR16</b>	<b>Certification of Gas Wells</b>

The Division received one comment to the proposed changes to the above listed regulations. These comments were in support of the proposed changes and other issues that were not part of the regulations. No changes were made to the proposed regulations.