

WEST VIRGINIA
SECRETARY OF STATE
KEN HECHLER
ADMINISTRATIVE LAW DIVISION

Form #6

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MAY 20 2 34 PM '98

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

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

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

AMENDMENT TO AN EXISTING RULE: YES X, NO _____

IF YES, SERIES NUMBER OF RULE BEING AMENDED: 5

TITLE OF RULE BEING AMENDED: Designation of Future Use and
Inactive Status for Oil and Gas Wells Rule

IF NO, SERIES NUMBER OF NEW RULE BEING PROPOSED: _____

TITLE OF RULE BEING PROPOSED: _____

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

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

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

THIS RULE IS FILED WITH THE SECRETARY OF STATE. THIS RULE BECOMES EFFECTIVE ON
THE FOLLOWING DATE: July 1, 1993

Carrie J. Chambers
Authorized Signature

3.80



BUREAU OF ENVIRONMENT

10 McJunkin Road
Nitro, WV 25143-2506

CECIL H. UNDERWOOD
GOVERNOR

May 4, 1998

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

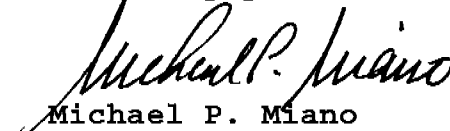
RE: 35CSR5 - "Designation of Future Use and
Inactive Status for Oil &
Gas Wells Rule"

Dear Ms. Cooper:

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

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

Sincerely yours,


Michael P. Miano
Assistant Director

JEC:cc

Attachment

cc: Ted Streit, O&G

RULE PROMULGATION HISTORY ABSTRACT

**TITLE 35 - SERIES 5
DIVISION OF ENVIRONMENTAL PROTECTION
OFFICE OF OIL AND GAS**

**DESIGNATION OF FUTURE USE AND INACTIVE STATUS
FOR OIL AND GAS WELLS RULE**

| | |
|-------------------------|--|
| June 19, 1997 | Notice of Public Hearing Filed with Secretary of State |
| July 22, 1997 | Public Hearing Held |
| July 31, 1997 | Agency Adopted Rule Filed with Secretary of State and Legislative Rulemaking Review Committee |
| December 9, 1997 | Modified Rule Filed with Secretary of State and Legislative Rulemaking Review Committee |
| March 10, 1998 | SB 765 Passed Legislature |
| March 21, 1998 | SB 765 Signed by Governor |
| May 20, 1998 | Final Filed with Secretary of State |

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

SERIES 5
DESIGNATION OF FUTURE USE AND INACTIVE STATUS FOR
OIL AND GAS WELLS RULE

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE
MAY 20 2 34 PM '98
FILED

§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 §§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 perspectivevely to accord more fully with WV Code §22 and this rule.

§35-5-2. Definitions:

Unless the context in which used clearly requires a different meaning, the definitions contained in WV Code §22-1-2 and 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 this rule, 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.

§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;

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.

§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 WV Code §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 WV Code §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 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.

§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 WV Code 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 WV Code §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.

§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 this rule or WV Code 22-6-19, nor acceptance, receipt, review, report, consideration or termination by the chief of the 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.

Senate Bill No. 285

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

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

10 A BILL to amend and reenact section one, article three,
11 chapter sixty-four of the code of West Virginia, one
12 thousand nine hundred thirty-one, as amended, relating
13 to authorizing the division of environmental
14 protection to promulgate a legislative rule relating
15 to the designation of future use and inactive status
16 for oil and gas wells.

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

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

1 as follows:

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

4 **§64-3-1. Division of environmental protection.**

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

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

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

1 section four, article five, chapter twenty-two of this
2 code, relating to the division of environmental protection
3 (emission standards for hazardous air pollutants pursuant
4 to 40 CFR Part 63, 45 CSR 34), is authorized.

5 (d) The legislative rule filed in the state register
6 on the twenty-eighth day of August, one thousand nine
7 hundred ninety-six, authorized under the authority of
8 section six, article seventeen, chapter twenty-two of this
9 code, modified by the division of environmental protection
10 to meet the objections of the legislative rule-making
11 review committee and refiled in the state register on the
12 twenty-second day of October, one thousand nine hundred
13 ninety-six, relating to the division of environmental
14 protection (underground storage tank insurance trust fund,
15 33 CSR 32), is authorized.

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

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

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

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

1 Freeport, Sewickley, Redstone, Pittsburgh, Kittanning, Elk
2 Lick, Peerless, No. 2 Gas, Upper Eagle, No. 5 Block and
3 Stockton Lewiston";

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

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

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

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

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

20 On page twenty-nine, subsection 3.2.e., after the word

1 "period" by striking the remainder of the subdivision
2 3.2.e.;

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

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

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

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

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

1 erosion, and minimize water infiltration into the remaining
2 material.;

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

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

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

1 "requesting the permanent structures be left for
2 recreational or wildlife propagation purposes or for any
3 beneficial uses to the landowner";

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

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

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

1 may the rate be less than four hundred fifty (450) stems
2 per acre of commercial tree species;

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

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

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

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

1 days";

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

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

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

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

1 On page two hundred forty, paragraph 14.15.c.2., line
2 seven, after the word "benches", by inserting the words
3 "without regard to like thickness";

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

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

19 (h) The legislative rule filed in the state register
20 on the twenty-ninth day of August, one thousand nine

1 hundred ninety-six, authorized under the authority of
2 section four, article five, chapter twenty-two of this
3 code, modified by the division of environmental protection
4 to meet the objections of the legislative rule-making
5 review committee and refiled in the state register on the
6 sixteenth day of January, one thousand nine hundred
7 ninety-seven, relating to the division of environmental
8 protection (to prevent and control air pollution from
9 hazardous waste treatment, storage or disposal facilities,
10 45 CSR 25), is authorized.

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

1 3), is authorized.

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

7 **"§61-10-1. General.**

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

12 **1.2. Authority** - West Virginia Code §22-1-3, 22-1-3a,
13 22-20.

14 **1.3. Filing Date** -

15 **1.4. Effective Date** - July 1, 1997.

16 **§61-10-2. Appointment, Salary and Qualifications.**

17 **2.1. Appointment.** - The position of Environmental
18 Advocate will be a full-time position, will be appointed by
19 the Director, and will serve at the will and pleasure of
20 the Director of the Division of Environmental Protection in

1 accordance with the West Virginia Code §22-20-1.

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

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

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

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

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

1 2.3.d. A working familiarity with some of the legal
2 requirements and programmatic functions of the Division of
3 Environmental Protection.

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

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

9 2.3.g. A valid West Virginia driver's license.

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

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

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

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

1 in support of or opposed to the Division of Environmental
2 Protection without the expressed approval of the Director,
3 and under supervision of the Division of Environmental
4 Protection's General Counsel.

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

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

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

1 authorized.

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

13

14 NOTE: The purpose of this bill is to authorize the
15 Division of Environmental Protection to promulgate a
16 legislative rule relating to the Designation of Future Use
17 and Inactive Status For Oil and Gas Wells.

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

9517

35-5

1 Bill-DEP, I

H. B. 4156

2

(By Delegates Hunt, Linch, Compton, Jenkins,

3

Faircloth and Riggs)

4

[Introduced January 30, 1998; referred to the

5

Committee on the Judiciary.]

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9

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

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

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

13 to authorizing the division of environmental

14 protection to promulgate a legislative rule relating

15 to the designation of future use and inactive status

16 for oil and gas wells.

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

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

19 the code of West Virginia, one thousand nine hundred

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

4156

1 as follows:

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

4 **§64-3-1. Division of environmental protection.**

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

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

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

1 section four, article five, chapter twenty-two of this
2 code, relating to the division of environmental protection
3 (emission standards for hazardous air pollutants pursuant
4 to 40 CFR Part 63, 45 CSR 34), is authorized.

5 (d) The legislative rule filed in the state register
6 on the twenty-eighth day of August, one thousand nine
7 hundred ninety-six, authorized under the authority of
8 section six, article seventeen, chapter twenty-two of this
9 code, modified by the division of environmental protection
10 to meet the objections of the legislative rule-making
11 review committee and refiled in the state register on the
12 twenty-second day of October, one thousand nine hundred
13 ninety-six, relating to the division of environmental
14 protection (underground storage tank insurance trust fund,
15 33 CSR 32), is authorized.

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

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

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

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

1 Freeport, Sewickley, Redstone, Pittsburgh, Kittanning, Elk
2 Lick, Peerless, No. 2 Gas, Upper Eagle, No. 5 Block and
3 Stockton Lewiston";

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

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

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

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

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

20 On page twenty-nine, subsection 3.2.e., after the word

1 "period" by striking the remainder of the subdivision
2 3.2.e.;

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

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

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

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

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

1 erosion, and minimize water infiltration into the remaining
2 material.;

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

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

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

1 "requesting the permanent structures be left for
2 recreational or wildlife propagation purposes or for any
3 beneficial uses to the landowner";

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

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

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

1 may the rate be less than four hundred fifty (450) stems
2 per acre of commercial tree species;

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

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

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

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

1 days";

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

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

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

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

1 On page two hundred forty, paragraph 14.15.c.2., line
2 seven, after the word "benches", by inserting the words
3 "without regard to like thickness";

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

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

19 (h) The legislative rule filed in the state register
20 on the twenty-ninth day of August, one thousand nine

1 hundred ninety-six, authorized under the authority of
2 section four, article five, chapter twenty-two of this
3 code, modified by the division of environmental protection
4 to meet the objections of the legislative rule-making
5 review committee and refiled in the state register on the
6 sixteenth day of January, one thousand nine hundred
7 ninety-seven, relating to the division of environmental
8 protection (to prevent and control air pollution from
9 hazardous waste treatment, storage or disposal facilities,
10 45 CSR 25), is authorized.

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

1 3), is authorized.

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

7 **"§61-10-1. General.**

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

12 1.2. **Authority** - West Virginia Code §22-1-3, 22-1-3a,
13 22-20.

14 1.3. **Filing Date** -

15 1.4. **Effective Date** - July 1, 1997.

16 **§61-10-2. Appointment, Salary and Qualifications.**

17 2.1. **Appointment.** - The position of Environmental
18 Advocate will be a full-time position, will be appointed by
19 the Director, and will serve at the will and pleasure of
20 the Director of the Division of Environmental Protection in

1 accordance with the West Virginia Code §22-20-1.

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

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

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

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

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

1 2.3.d. A working familiarity with some of the legal
2 requirements and programmatic functions of the Division of
3 Environmental Protection.

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

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

9 2.3.g. A valid West Virginia driver's license.

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

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

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

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

1 in support of or opposed to the Division of Environmental
2 Protection without the expressed approval of the Director,
3 and under supervision of the Division of Environmental
4 Protection's General Counsel.

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

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

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

1 authorized.

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

13

14 NOTE: The purpose of this bill is to authorize the
15 Division of Environmental Protection to promulgate a
16 legislative rule relating to the Designation of Future Use
17 and Inactive Status For Oil and Gas Wells.

18

19 Strike-throughs indicate language that would be
20 stricken from the present law, and underscoring indicates
21 new language that would be added.