

WEST VIRGINIA
SECRETARY OF STATE
KEN HECHLER
ADMINISTRATIVE LAW DIVISION

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OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

**NOTICE OF AGENCY APPROVAL OF A PROPOSED RULE
AND
FILING WITH THE LEGISLATIVE RULE-MAKING REVIEW COMMITTEE**

AGENCY: WV Div. of Environmental Protection
Office of Oil and Gas TITLE NUMBER: 35*

CITE AUTHORITY WV Code 22-1-3, 22-6-2, and 22-10-1.

AMENDMENT TO AN EXISTING RULE: YES NO

IF YES, SERIES NUMBER OF RULE BEING AMENDED: 6*

TITLE OF RULE BEING AMENDED: Abandoned Wells Rules

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

TITLE OF RULE BEING PROPOSED: _____

*Previously 38CSR22

THE ABOVE PROPOSED LEGISLATIVE RULE HAVING GONE TO A PUBLIC HEARING OR A PUBLIC COMMENT PERIOD IS HEREBY APPROVED BY THE PROMULGATING AGENCY FOR FILING WITH THE SECRETARY OF STATE AND THE LEGISLATIVE RULE MAKING REVIEW COMMITTEE FOR THEIR REVIEW.



Authorized Signature

7.20



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: 35CSR6 - Abandoned 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,

A handwritten signature in dark ink, appearing to read "John E. Caffrey".

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: Abandoned Wells Rules

1. Authorizing statute(s) citation WV Code 22-1-3, 22-6-2, and 22-10-1.
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

b. Date of hearing: N/A

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

N/A

d. Attach findings and determinations and reasons:

Attached N/A

**BUREAU OF ENVIRONMENT
DIVISION OF ENVIRONMENTAL PROTECTION**

BRIEFING DOCUMENT

Rule Title: 35CSR6 - Abandoned Wells Rules

A. AUTHORITY: WV Code 22-1-3, 22-6-2, 22-10-10

B. SUMMARY OF RULE:

Rule establishes requirements pertaining to oil and gas wells and more specifically abandoned wells, financial responsibility, a priority system for plugging abandoned wells, declaration of operator status, authorizing interested parties to plug abandoned wells, schedules for plugging wells, and emergency procedures for abandoned wells.

C. STATEMENT OF CIRCUMSTANCES WHICH REQUIRE RULE:

Technical clean-up to change code references, punctuation, spelling, etc.

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

There is no counterpart regulation.

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 SO² and PM¹⁰ 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: 35CSR6 - Abandoned 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 25143-2056

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: 35CSR6 - Abandoned 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



**TECHNICAL CLEANUP
OFFICE OF OIL AND GAS**

35CSR6

PREVIOUSLY 38CSR22

The paragraph numbering, punctuation, etc., in this rule has been modified to conform to the Secretary of State's legislative rule, 153CSR6.

RECEIVED

97 JUL 31 AM 9:29

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

TITLE ~~38~~ 35
LEGISLATIVE RULE
~~DEPARTMENT OF COMMERCE, LABOR AND ENVIRONMENTAL~~
RESOURCES
BUREAU OF ENVIRONMENT
DIVISION OF ENVIRONMENTAL PROTECTION
OFFICE OF OIL AND GAS

SERIES ~~22~~ 6
ABANDONED WELLS RULES

~~§38-22-1.~~ 35-6-1. General.

1.1. **Scope** -- This legislative rule establishes a variety of requirements pertaining to oil and gas wells in West Virginia, the West Virginia Abandoned Well Act, W.Va. Code ~~§22B-5-1~~ 22-10-1 et seq. and more specifically in relation to abandoned wells, financial responsibility requirements, a priority system for plugging abandoned wells, the declaration of operator status, authorizing interested persons to plug abandoned wells, schedules for plugging wells, and emergency procedures for abandoned wells.

1.2. **Authority** -- W.Va. Code §§~~22-1-13; 22B-1-2; 22B-5-10~~ 22-1-3; 22-6-2; 22-10-10.

1.3. **Filing Date** -- June 6, 1993 _____

1.4. **Effective Date** -- July 1, 1993 _____

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

~~§38-22-2.~~ 35-6-2. Definitions

Unless the context in which used clearly requires a different meaning, the definitions contained in ~~West Virginia Code 22B-1-1~~ W. Va. Code ~~§22-6-1~~ and ~~22B-5-3~~ §22-10-3 shall apply to this rule in addition to the definitions set forth below. The

definitions of these rules shall apply to ~~West Virginia Code 22B-5-1~~ W. Va. Code §22-10-1 et seq. unless the context clearly expresses a different meaning.

2.1. "Chief" shall mean Chief of the Office of Oil and Gas as designated by the Director of the Division of Environmental Protection.

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

2.3. "Interested party" means any owner, operator or lessee of the surface, oil, gas, water, coal or other mineral resource under, on, adjacent or in close proximity to any lands upon which an abandoned well exists, and whose lands, rights or interests are or might be affected by such abandoned well.

~~§38-22-3~~ 35-6-3. Declaration of Operator Status.

3.1. General requirements.

3.1.a. No declaration of operator status will be made until either an applicant for operator status has complied with the requirements of W. Va. Code ~~22B-1-26~~ §22-6-26 and the rules promulgated thereunder and Form OP-77A "Declaration of Operator Status" has been filed with the Office of Oil and Gas, or after investigation, the chief voluntarily declares a party to be designated the operator and to have attained operator status. A party designated by the chief to be an operator shall be given notice, an opportunity to comment and the right to appeal any designation.

3.1.b. If an operator wishes to apply for declaration of operator status for more than one well, a separate application must be submitted for each well for which a determination is sought. Wells currently covered under an existing bond need not be applied for.

3.1.c. An applicant for operator status shall submit such other information including the right to develop, operate, and produce oil and gas from an oil and gas lease, as the Office of Oil and Gas Division may require in order to establish by evidence, that the operator qualifies for the declaration of operator status for the well for which a declaration is sought. In the event that more than one applicant applies for operator status for a given well the chief may declare operator status for more than one party. The chief shall notify all applicants by certified mail of all applications so that the applicants may privately ascertain whatever rights each has in the well. The chief may take financial assurance from competing interests, but the chief will not make the determination of ownership rights to the well or leasehold.

3.1.d. Once operator status has been declared by the chief, then the operator shall incur all rights and obligations accruing to an operator in regard to operation of the well.

3.1.e. In case of lease default by an operator, if the lessor does not accept responsibility for plugging or operation of the well, then the operator shall have the right to access the wellsite to plug the well, and in the event, neither condition occurs, then the chief has the right to designate the right to a person to access the wellsite for the purpose of plugging the well.

3.2. Declaration procedures. - The procedure for declaration of operator status will be the same procedure that is outlined in ~~38-35~~ CSR 4-10.3.

~~§38-22-4.~~ 35-6-4. **Financial Responsibility Requirements.**

4.1. General requirements. - Operators shall comply with W.Va. Code ~~22B-1-26~~ §22-6-26, and any rules promulgated thereunder and ~~22B-5-4 and 5~~ W. Va. Code §22-10-4 and 5 and any rules promulgated thereunder for all wells.

4.2. Wells for which an operator is known but are presently unbonded. - Operators of wells which are currently unbonded shall comply with W.Va. Code ~~22B-1-26~~ §22-6-26, and any rules promulgated thereunder and with ~~22B-5-4 and 5~~ §22-10-4 and 5 and any rules promulgated thereunder, by filing form OP-7 for single wells or form OP-8 for multiple wells as provided in the following sections or form OP-77 to transfer such well to the operator's existing fifty thousand dollar (\$50,000) blanket bond.

4.3. Demonstration of unjust hardship; suspension of financial responsibility requirements; percentage payments.

4.3.a. An operator desiring to demonstrate unjust hardship as a result of having to comply with W.Va. Code ~~§22B-5-4~~ §22-10-4 and W.Va. Code ~~§22B-5-5~~ §22-10-5 and therefore, fulfill the legal duties imposed by demonstrating financial responsibility under either W.Va. Code ~~§22B-5-4(b)(1) or (2)~~ §22-10-4 (b) (1) or (2), shall file with the chief a request to be authorized to suspend financial responsibility or make percentage payments. Such request shall, in addition to any other information as the operator believes establishes such unjust hardship, include information which may be requested by the chief.

4.3.b. An operator who demonstrates to the satisfaction of the chief that complying with the financial responsibility requirements will result in an unjust hardship may be authorized to either suspend the financial responsibility requirements in accordance with W.Va. Code ~~§22B-5-4(b)(1)~~ 22-10-4 (b) (1) or make percentage payments in accordance with W.Va. Code ~~§22B-5-4(b)(2)~~ 22-10-4 (b) (2) and the rules promulgated thereunder.

4.3.c. All requests for determinations of unjust hardship under this section shall be in writing and shall be responded to in writing by the Office of Oil and Gas within thirty (30) days of the receipt of the written submittal requesting a determination by the Office of Oil and Gas..

4.3.d. Demonstration of financial responsibility by percentage payments. - An operator may be authorized by the chief to demonstrate financial responsibility by supplying a percentage of any required amount in accordance with the following schedule: supplying twenty percent of any required amount by no later than the first day of July, one thousand nine hundred ninety-four; forty percent no later than the first day of July, one thousand nine hundred ninety-five; sixty percent no later than the first day of July, one thousand nine hundred ninety-six; eighty percent by the first day of July, one thousand nine hundred ninety-seven; and one hundred percent by the first day of July, one thousand nine hundred ninety-eight. Such payment shall be accompanied by such forms as prescribed by the chief. In the event an operator is not in compliance with the required percentage demonstration of financial responsibility by the required date, the operator shall be considered to be in violation of the financial responsibility requirements, and the chief shall order the well(s) shut in and may order the wells to be plugged.

4.3.e. The chief shall have the right to forfeit any amounts deposited prior to the completion of depositing the total amount in the event that the chief complies with procedures to forfeit a bond.

4.3.f. Demonstration of unjust hardships to suspend financial responsibility requirements. - Except for demonstrating financial responsibility in compliance with W.Va. Code ~~22B-5-4(b)(2)~~ §22-10-4(b)(2), the determination of unjust hardship to suspend the demonstration of financial responsibility shall not extend beyond the first day of July, one thousand nine hundred ninety-five. In the event an operator is not in compliance with the demonstration of financial responsibility by the required date as set forth previously, the operator shall be considered to be in violation of the financial responsibility requirements, and the chief shall order the well(s) shut in and may order the wells to be plugged.

~~§38-22-5.~~ 35-6-5. **Plugging by Interested Parties.**

5.1. Notice requirements.

5.1.a. Any interested party, desiring to plug an abandoned well shall serve the notice required under W.Va. Code ~~22B-5-7~~§22-10-7 on Form WW-4(c). A copy of the plugging permit application for the well in question must be served with the notice.

5.1.b. If the surface owner of the premises where any abandoned well is situated (including without limitation, the surface reasonably necessary for a site for the work necessary at the well to plug the well and reasonably necessary for access to the well site as set out in subsection 5.3 is not known to the interested party, then the identification of the surface owner may be made pursuant to ~~38CSR 4.5.4.1. through 5.4.5.~~ 35 CSR 4-5.4.a through 5.4.e.

5.2. Certificate of Service. - Such interested party shall submit with the application for a plugging permit either a certificate that notice was given as required or proof of service of the notice.

5.3. "Premises where any abandoned well is situated" shall mean all of the surface and other interests:

5.3.a. which are reasonably necessary for a site ~~for the work necessary at the well~~ to plug the well;

5.3.b. which are reasonably necessary for access to the well site; and

5.3.c. which are otherwise reasonably necessary for plugging the abandoned well.

5.4. For the purposes of determining the "Premises where any abandoned well is situated" pursuant to subsection 5.3, some reasonable easement must exist to plug the well, but in determining which premises are necessary and the amount of premises which are necessary, the interests of the surface or other interests must be equally balanced with the interests of the interested party in plugging the well.

5.5. "Surface owner" shall mean any owners of the surface of the premises where any abandoned well is situated as defined in this section: Provided, that for the purpose of the potential right to take any casing, equipment or other salvage, "surface owner" shall only mean the owner of the surface of the site where the well plugging work is done.

~~§38-22-6. 35-6-5.~~ Priority of Expenditures from the Oil and Gas Reclamation Fund.

6.1. General Requirements.

6.1.a. The chief shall maintain a census of abandoned wells. The census shall be based upon the best information available to the chief. Such information may be gathered through and may include studies undertaken to maintain the census, knowledge of the oil and gas inspectors, investigations resulting from citizen's complaints, whether an operator exists, whether financial responsibility exists to plug the abandoned well, or other such information as may be available.

6.1.b. As often as practicable but at least once every five years the Office of Oil and Gas shall publish a list of abandoned wells. This requirement may be met by the publication of the notice required by subsection ~~38-22-6.3.2~~ of these rules.

6.1.c. The chief is authorized to expend funds from the Oil and Gas Reclamation Fund in accordance with the procedures in W.Va. Code ~~22B-1-29~~ §22-6-29 and the rules promulgated thereunder. The chief shall expend funds first for wells in Classification One, second for wells in Classification Two, and third, for wells in

Classification Three. The chief shall expend funds within a classification in the order defined in that classification.

6.2. Priority classification procedure.

6.2.a. All abandoned wells identified by the census of abandoned wells and which do not have an operator or not in compliance with the financial responsibility requirements or do not have an independent source of funding, shall be placed into Classification Two unless the chief otherwise places the abandoned well(s) into either Classification Three or Classification One.

6.2.b. Any abandoned well in Classification One, Classification Two, or Classification Three may be plugged by an interested party or by the chief of the Office of Oil and Gas. In the event that an interested party desires to plug a well which is included in Classification One and the interested party has demonstrated to the satisfaction of the chief that the interested party does not have sufficient funds with which to plug the well, the chief shall have the discretion to expend funds from the Oil and Gas Reclamation Fund to partially assist in the plugging.

6.3. Classifications.

6.3.a. Classification One. - Abandoned wells in Classification One shall be those that pose an immediate threat to human health, safety, or the environment or are such an impediment to the development of mineral resources as to require immediate plugging. Wells which pose an immediate threat to human health, safety, or the environment shall take priority over those wells which impede the development of mineral resources.

6.3.b. Classification Two.

6.3.b.1. Abandoned wells in Classification Two are those abandoned wells which are not an immediate threat to the environment or which do not hinder or impede the development of mineral resources of this state but which should be plugged consistent with funds in the oil and gas reclamation fund and such other resources as may be available to the chief.

6.3.b.2. Abandoned wells in Classification Two will include all abandoned wells identified by the abandoned well census and not otherwise placed by the chief into Classification One or Classification Three.

6.3.c. Classification Three. - Abandoned wells in Classification Three will include all abandoned wells which are not a threat to the environment and which do not hinder or impede the development of mineral resources of this state and for which plugging may be deferred for an indefinite period.

~~§38-22-7.~~ 35-6-7. Schedules for Plugging of Abandoned Wells.

7.1. General.

7.1.a. "Schedule for Plugging of Abandoned Wells" may be requested by anyone desiring to fulfill the plugging requirements over an extended period. The granting of the Schedule will be for good cause as demonstrated to the chief.

7.1.b. An operator desiring to plug abandoned wells under the aegis of a Schedule shall submit a request in writing to the chief. Such request will contain a plan for timing the plugging of the abandoned wells.

7.1.c. The chief shall respond in writing within thirty (30) days of receipt of such written request.

7.1.d. An operator who has been granted a schedule shall submit periodic, though not to be less frequently than annual, progress reports detailing work completed.

7.1.e. The granting of a schedule does not relieve any person of any plugging or reclamation requirements of ~~22B-1-23, 22B-1-24, 22B-1-30~~ W. Va. Code 22-6-23; 22-6-24; 22-6-30 or any rule promulgated thereunder.

~~§38-22-8.~~ 35-6-8. Emergency procedure.

8.1. Should an abandoned well develop a condition which is dangerous to human health, property, or the environment, the chief shall be notified immediately. The operator shall immediately take any reasonable remedial action necessary to protect life and property. If no operator is known or can be located, then the Office of Oil and Gas shall conduct an engineering evaluation, and if in the judgment of the chief the abandoned well poses a dangerous condition as described above, the chief shall be authorized to take whatever action is deemed appropriate to abate the emergency.

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.

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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.

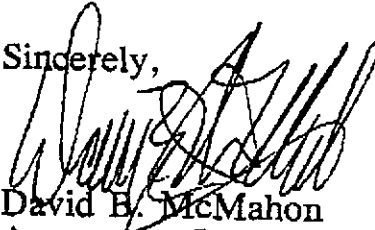
Series 3, "Coal Bed Methane Wells" makes a change at new 8.2.a which limits the ability of the Office of Oil and Gas to allow variances from the cement content requirements. It is my recollection that this variance was permitted when the head of the Office of Oil and Gas was required to have an engineering 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.

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 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.