

WEST VIRGINIA
SECRETARY OF STATE
KEN HECHLER
ADMINISTRATIVE LAW DIVISION

Form #6

Do Not Mark In this Box

FILED
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: 6

TITLE OF RULE BEING AMENDED: Abandoned 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

Carri J. Chambers
Authorized Signature

4.20



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

CECIL H. UNDERWOOD
GOVERNOR

May 4, 1998

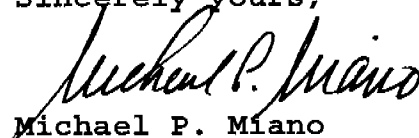
Ms. Judy Cooper
Director, Administrative Law Division
Office of the Secretary of State
Capitol Complex
Charleston, West Virginia 25305

RE: 35CSR6 - "Abandoned 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 6
DIVISION OF ENVIRONMENTAL PROTECTION
OFFICE OF OIL AND GAS**

ABANDONED 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	Filed Modified Rule 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
LEGISLATIVE RULE
BUREAU OF ENVIRONMENT
DIVISION OF ENVIRONMENTAL PROTECTION
OFFICE OF OIL AND GAS

SERIES 6
ABANDONED WELLS RULE

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

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

§35-6-2. Definitions.

Unless the context in which used clearly requires a different meaning, the definitions contained in WV Code §§22-6-1 and 22-10-3 shall apply to this rule, in addition to the definitions set forth below. The definitions of this rule shall apply to WV 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. "WV 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.

§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 WV Code §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 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 well site 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 well site 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 35CSR4, subsection 10.3.

§35-6-4. Financial Responsibility Requirements.

4.1. General requirements. Operators shall comply with WV Code §22-6-26, and any rules promulgated thereunder, and WV 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 WV Code §22-6-26, and any rules promulgated thereunder, and with §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 WV Code §22-10-4 and WV Code §22-10-5 and therefore, fulfill the legal duties imposed by demonstrating financial responsibility under either WV Code §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 WV Code §22-10-4 (b) (1), or make percentage payments in accordance with WV Code §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 WV Code §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.

§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 WV Code §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 35 CSR 4, subdivisions 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 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.

§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 3.2 of this rule.

6.1.c. The chief is authorized to expend funds from the Oil and Gas Reclamation Fund in accordance with the procedures in WV Code §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.

§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 WV Code §§22-6-23, 22-6-24, 22-6-30, or any rule promulgated thereunder.

§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.

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1 Bill-DEP, At

H. B. 4154

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(By Delegates Hunt, Linch, Compton, Jenkins,
Faircloth and Riggs)
[Introduced January 30, 1998; referred 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 abandoned wells.

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

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

4154

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 3.2.e.;

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

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

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

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

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

1 material.;

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

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

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

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

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

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

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

1 per acre of commercial tree species;

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

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

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

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

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

4 On page two hundred thirty-eight, subparagraph
5 14.13.b.6.A., line five, after the word "exceed", by
6 striking out the words "fifty (50) percent of the total
7 permit acreage, or four hundred (400) acres, whichever is
8 less, on operations which consist of at least three spreads
9 of equipment", and inserting in lieu thereof the words
10 "five hundred (500) acres on operations which consist of
11 multiple spreads of equipment";

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

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

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

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

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

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

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

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

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

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

6 **"§61-10-1. General.**

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

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

13 1.3. **Filing Date** -

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

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

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

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

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

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

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

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

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

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

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

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

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

9 §61-10-3. Powers and Limitations -

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

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

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

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

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

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

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

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

11

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

15

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

Senate Bill No. 280

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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 abandoned wells.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 3.2.e.;

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

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

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

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

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

1 material.;

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

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

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

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

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

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

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

1 per acre of commercial tree species;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

6 **"§61-10-1. General.**

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

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

13 1.3. **Filing Date** -

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

11

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

15

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