

**WEST VIRGINIA
SECRETARY OF STATE
KEN HECHLER
ADMINISTRATIVE LAW DIVISION**

Form #3 ☐

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Aug 23 2 21 PM '00

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: Division Environmental Protection-Office Oil & Gas TITLE NUMBER: 35

CITE AUTHORITY: 22-1-3, 22-1-10, and 22-6-2

AMENDMENT TO AN EXISTING RULE: YES ☐ NO ☒

IF YES, SERIES NUMBER OF RULE BEING AMENDED: _____

TITLE OF RULE BEING AMENDED: _____

IF NO, SERIES NUMBER OF RULE BEING PROPOSED: 7

TITLE OF RULE BEING PROPOSED: "Certification of Gas Wells"

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



Executive Office
#10 McJunkin Road
Nitro, WV 25143-2506
Telephone No: (304)759-0575
Fax No: (304)759-0526



West Virginia Bureau of Environment

Cecil H. Underwood
Governor

Michael C. Castle
Commissioner

August 23, 2000

Ms. Judy Cooper
Director, Administrative Law
Division
Secretary of State's Office
Capitol Complex
Charleston, WV 25305

RE: 35CSR7 - "Certification of Gas Wells"

Dear Ms. Cooper:

This letter will serve as my approval to file with your Office the above-referenced Legislative rule as "Notice of Agency Approval of a Proposed Rule and Filing with the Legislative Rule-Making Review Committee."

Your cooperation in the above request is very much appreciated. If you should have any questions or require additional information, please call Carrie Chambers in my Office at 759-0515.

Sincerely,

Michael C. Castle
Commissioner

MCC:cc

cc: John Johnston
Carrie Chambers

QUESTIONNAIRE

(Please include a copy of this form with each filing of your rule: Notice of Public Hearing or Comment Period; Proposed Rule, and if needed, Emergency and Modified Rule.)

DATE: August 23, 2000

TO: LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

FROM: (Agency Name, Address & Phone No.) Division Environmental Protection-Office Oil & Gas

#10 McJunkin Road, Nitro, WV 25143

Phone - John Johnston 759-0514

Phone - Carrie Chambers 759-0515

LEGISLATIVE RULE TITLE: "Certification of Gas Wells"

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

2. a. Date filed in State Register with Notice of Hearing or Public Comment Period:

July 17, 2000

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

Statewide news release/DEP's InDepth Newsletter circulated statewide

c. Date of Public Hearing(s) *or* Public Comment Period ended:

August 16, 2000

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

Attached X

No comments received

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

August 23, 2000

- f. Name, title, address and phone/fax/e-mail numbers of agency person(s) to receive all *written correspondence* regarding this rule: (Please type)

John Johnston, Chief, Oil & Gas Office #10 McJunkin Rd., Nitro, WV 25143,

phone 759-0514, fax 759-0529, e-mail JJohnston@mail.dep.wv.state.us

Carrie Chambers, Director's Office, #10 McJunkin Rd., Nitro, WV 25143, phone

759-0515, fax 759-0526, e-mail CChambers@mail.dep.wv.state.us

- g. **IF DIFFERENT FROM ITEM 'f',** please give Name, title, address and phone number(s) of agency person(s) who wrote and/or has responsibility for the contents of this rule: (Please type)

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 or comment period:

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

d. Attach findings and determinations and reasons:

Attached

**BUREAU OF ENVIRONMENT
DIVISION OF ENVIRONMENTAL PROTECTION
BRIEFING DOCUMENT**

Rule Title: 35CSR7 - "Certification of Gas Wells"

A. Authority: §22-1-3, 22-1-10, and 22-6-2

B. Summary of Rule:

This proposed rule is a reinstatement of a previous rule, and will allow the Office of Oil and Gas to make a determination of the physical characteristics of a producing formation in order to qualify for a "tight sands producing credit." The original fee has been increased from \$40 to \$100 to account for inflation.

C. STATEMENT OF CIRCUMSTANCES WHICH REQUIRE RULE:

The federal tight sands credit may be reinstated, and this proposed rule will allow state oil and gas producers to take the credit.

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

This proposed rule is no less stringent, nor more stringent, than the federal counterpart rule.

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:

These proposed rule amendments were discussed during the meeting of the Environmental Protection Council on July 6, 2000. Those minutes are attached.

MINUTES

ENVIRONMENTAL PROTECTION ADVISORY COUNCIL

July 6, 2000, Director's Conference Room, Nitro

The twenty-first meeting of the DEP Advisory Council was held Thursday, July 6, 2000, in the Director's Second Floor Conference Room located in Nitro. Chairman Mike Castle called the meeting to order at 10:00 a.m.

ATTENDING:

Advisory Council Members:

Mike Castle, Chairman
Lisa Dooley
Jacqueline Hallinan
Bill Raney
Rick Roberts
Bill Samples

Environmental Protection:

Greg Adolfson	Ava King
John Ailes	Brian Long
John Benedict	Pam Nixon
Al Blankenship	Rocky Parsons
Carrie Chambers	Jennifer Pauer
Dick Cooke	Cap Smith
Mike Dorsey	Randy Sovic
Andy Gallagher	Charlie Sturey
Randy Huffman	Darcy White
John Johnston	

1) Review and Approval of April 6, 2000 Minutes.
The April 6 Minutes were approved with note of two minor revisions.

2) Discussion of Proposed Rule Amendments - 2001 Legislative Session. In accordance with WV Code §22-1-1(c), and DEP's rule-making procedure policy that was implemented in 1998, and included involving DEP's Advisory Council in DEP's rule-making process as early as possible to enable the Council to review, comment, and make recommendations to the Director on the proposed Legislative rules before they are filed for public

hearing, the following proposed rules were brought to the Council's attention.

John Benedict, Deputy Chief of the Office of Air Quality (OAQ), reviewed the following OAQ rules:

- 45CSR1 - "NO_x Budget Trading Program as a Means of Control and Reduction of Nitrogen Oxides"
- 45CSR6 - "To Prevent and Control Air Pollution From Combustion of Refuse"
- 45CSR15 - "Emission Standards for Hazardous Air Pollutants Pursuant to 40 CFR Part 61"
- 45CSR16 - "Standards of Performance for New Stationary Sources Pursuant to 40 CFR part 60"
- 45CSR23 - "To Prevent and Control Emissions From Municipal Solid Waste Authorities"
- 45CSR25 - "To Prevent and Control Air Pollution From Hazardous Waste Treatment, Storage, or Disposal Facilities"
- 45CSR30 - "Requirements for Operating Permits"
- 45CSR34 - "Emission Standards for Hazardous Air Pollutants for Source Categories Pursuant to 40 CFR Part 63"

In discussion of 45CSR1, John explained to the Council that they did not have the companion rule (which is 45CSR26) to this proposed rule amendment, but Council will be provided a copy of the proposed rule when the draft is complete. Both rules have been drafted as a response to EPA's NO_x SIP Call. Failure of states to respond to the SIP Call will result in a NO_x federal implementation plan or federal program to reduce NO_x emissions under Section 126 of the CAA. John explained that OAQ is late in drafting both rules because they were waiting until several issues were settled in federal court. EPA is now requiring, and the federal courts concurred, that states develop rules and meet the conditions of the SIP Call by October 28, 2000. EPA's SIP Call affects major utility sources, cement kilns, and large industrial-type boilers (those exceeding 250 lbs/mmBtu). The SIP Call originally included internal combustion engines.

45CSR1 establishes standards specifically for non-utility boilers, and follows EPA's model rule that states are to use in developing their SIPs. The model rule incorporates standards to allow sources to trade emissions between states. Therefore, states do not have a lot of flexibility to adjust their state-specific rules, if they want their sources to participate in a national NO_x budget-trading program.

John informed the Council that 45CSR15 adopts by reference the new federal provisions for emission standards for hazardous air pollutants (NESHAPS), and other regulatory requirements as outlined in 40 CFR Part 61, as of June 1, 2000. This also applies to 45CSR16, which specifically includes associated reference methods, performance specifications, other test methods, and a minor correction to the reporting requirements for industrial-commercial-institutional steam generating units.

45CSR6 prevents and controls particulate matter air pollution from the combustion of refuse by the prohibition of open burning. This proposed rule also establishes weight and visible emission standards for incinerators and incineration, and is part of the West Virginia State Implementation Plan (SIP) approved by EPA. The rule does not prohibit bonfires, campfires, or other forms of open burning for the purposes of personal enjoyment and comfort, but establishes standards for open burning. The proposed revisions are intended to exempt certain flares and flare stacks from the requirement to obtain a permit under 45CSR13.

45CSR23 - This rule was first promulgated approximately three years ago, and for the most part adopts new federal standards by reference. There is a specific plan that each state puts together for "existing sources" that OAQ has done for previous rule versions, and the plan for West Virginia has been approved by EPA.

45CSR25 - This rule establishes a program of air quality regulation over the treatment, storage, and disposal of hazardous wastes. John informed Council that this proposed rule amendment is incorporating additional federal requirements promulgated by EPA, as of June 1, 2000. There is a shift from the Resource Conservation and Recovery Act (RCRA) requirements into the Clean Air Act (CAA) programs that OAQ operates. Many of the RCRA provisions previously contained in this rule are now being shifted to 45CSR34 (which will be discussed later in the meeting). John said this proposed rule amendment is also

necessary to maintain consistency with the Office of Waste Management's current rule - 33CSR20.

45CSR26 (copy not provided for Council at this time) specifically addresses NO_x reduction requirements for electric generating units. This rule deviates somewhat from EPA's model rule, but follows the Governor's Coalition proposal. EPA's model rule requires electric generating units .15 lb/mmBtu NO_x limits, which is roughly an 85% reduction in NO_x emissions. Whereas, the Governor's coalition proposal requires .25 lb/mmBtu NO_x limits, or 65% reduction from their 1999 emissions.

45CSR30 establishes a comprehensive air quality operating permits program consistent with the requirements of Title V of the federal Clean Air Act and 40 CFR Part 70. These proposed amendments will incorporate various corrections and revisions associated with the November 1995 Federal Register Notice. John said OAQ has deferred making these changes until now in anticipation of additional changes they believe EPA will make in Part 70. There also has not been a great deal of concern since OAQ has received interim approval of the program since 1994; however, EPA was recently sued for issuing these interim approvals. This put OAQ in the position of amending the rule to comply with the November 1995 requirements, so that OAQ can receive final approval from EPA. John said the rule may need to be modified again in the near future when (and if) EPA modifies the Part 70 requirements.

45CSR34 - This rule provides authority for the Director to determine and enforce case-by-case maximum achievable control technology (MACT) standards for major hazardous air pollutant sources, in the absence of a federal standard under certain circumstances, as required for permit program approval under Title V of the CAA. John said this proposed amendment does delete the requirement that OAQ do a case-by-case MACT analysis for sources that modify. He said this is a fairly significant change in the rule. Previously, and even under OAQ's Title V program, sources that do even slight modifications and were to eventually receive a MACT standard from EPA, were required to make some kind of guess as to what that standard was under such modification, and then do a case-by-case analysis to make that source comply with what everybody thought would be the ultimate MACT standard for that source. EPA was sued over this particular requirement, and has since removed the requirement from the Title V program. As mentioned earlier in the meeting, OAQ is also proposing incorporating the provisions in 45CSR25, pertaining to hazardous waste combustors, into this rule.

After discussions and questions concerning OAQ's proposed rules, Council recommended the following to Chairman Castle:

Bill Raney deferred to Ray Joseph, representing the natural gas industry, for questions concerning Section 6 of 45CSR6 (To Prevent and Control Air Pollution From Combustion on Refuse) requirements for Permits before the installation and use of emergency flares. The concern from Mr. Joseph was that in certain situations emergency flares would exceed permitting trigger levels requiring a permit pursuant to 45CSR13. John Benedict concurred that permits would be required under those circumstances. However, that should not be that much of a burden since the emissions from a majority (90% []) of emergency flares used in the natural gas industry would be below permit trigger levels. It was noted that Section 6 was specifically revised to allow the use of emergency flares for the natural gas industry, and that others in OAQ were more directly involved in drafting the specific language in Section 6. Mr. Benedict recommended that proposed rule 45CSR6 go to public notice as drafted, and that the OAQ would meet with representatives of the natural gas industry to further discuss their concerns, and possibly consider revisions in Section 6.

Bill Raney asked if the Administrative Procedures Act requires Fiscal Notes to be completed as to the implications of the rule on the regulated community. Carrie Chambers advised Mr. Raney that fiscal notes are prepared for each rule before they are filed for public hearing, but the fiscal note requires information on the cost to the state in implementing the proposed rules, not on the regulated community. The Fiscal Notes are a work-in-progress, and will be submitted to Council after they are completed. Mr. Raney expressed his concern by stating that he has a problem in approving the proposed rules without the Council reviewing these documents beforehand. He said agencies have typically been known to crank out the standard responses to the fiscal notes, which leads to problems during the Legislative Rule-Making process. Bill Samples said he wasn't sure if the Council has a right to approve or disapprove the proposed rules, but only that the Director is to consult with Council on the proposed amendments, and then consider their comments. Mr. Raney stated that he would still like his concerns noted and included in the minutes that will be filed with the proposed rules.

Mr. Raney said he would also like to ask why there is nothing on the agenda concerning the Environmental Quality Board's (EQB) Water Quality Standards rule. Carrie Chambers explained that she has included a copy of EQB's rule (and also three of the Solid Waste Management Board's proposed rules), for Council's review, in the notebooks containing DEP's rules. She went on to explain that since the Boards have their own rule-

making authority under §22B-3-4, they are not required to go before the Advisory Council during the rule-making process.

Mr. Raney said that DEP has a huge obligation in regards to water quality standards, regardless of who has the rule-making authority. He also said that the rules as proposed are huge, and the implications to the regulated community are immense.

Chairman Castle said he would try to find someone from OWR or EQB to discuss EQB's rule later in the meeting.

□ 60CSR4 - "Awarding of West Virginia Stream Partners' Program Grant Rule."

Jennifer Pauer, Program Coordinator for the Stream Partners' Program, briefed Council members on the proposed amendments to 60CSR4. Jennifer said this rule was filed as an emergency rule in March. After one year of implementing the rule, it was discovered that the rigid spending caps contained in the original rule made it difficult to implement as intended by §20-13-4. The proposed amendments will loosen these spending caps, and therefore make it easier for grant recipients to complete their watershed improvement projects. The rule also contains minor technical cleanup.

After discussion and questions from the Council, there were no substantive recommendations made to the Director concerning the proposed amendments to 60CSR4.

□ 199CSR1 - "Surface Mining Blasting Rule"

Darcy White, Office of Explosives and Blasting (OEB), briefed Council on 199CSR1. Darcy explained that many of the proposed amendments to the Surface Mining Blasting rule are technical cleanup in nature and also involve changing the order of some provisions to improve clarity. Sections covering inspections and enforcement and appeals were extracted from portions of existing 38CSR2, the Surface Mining and Reclamation rule. These sections are being amended into the current rule to ensure OEB has authority to enforce a program that will satisfy OSM requirements. Another section extracted from 38CSR2 deals with pre-blast survey requirements, and is necessary if OEB is to gain OSM approval of the proposed rules. Darcy said that subsection 3.11 also contains a proposed revision that allows the Director to further restrict blasting on a case-by-case basis as an alternative to prohibiting blasting altogether. To correspond with the blaster's certification rules approved by OSM, and to help improve certified blaster's professionalism and knowledge,

the requirements for blaster's certification is also being proposed as an amendment to this rule.

Larry Harris, Advisory Council member, was unable to attend the meeting; however, he expressed the following comments on 199CSR1 by e-mail. He asked whether these blasting rules will also apply to the quarry bill and rules. He said that in the Surface Mining Blasting rule there seems to be some consideration of the premining groundwater/wells. This presumes that any taking of this water right from nearby landowners is cause for a claim. Is this also true for limestone quarries?

Darcy responded by saying that no, 199CSR1 applies only to coal mining. Blasting requirements for quarries are addressed in §22-4 (revised during the past legislative session, and effective this July). Rocky Parsons is currently working on a rules package as required by this legislation. Until those are promulgated, there is no change in blasting requirements for quarries.

After discussion and questions from the Council, there were no recommendations made to the Director concerning the proposed amendments to 199CSR1.

John Johnston, Chief of the Office of Oil and Gas, discussed the following proposed rules.

□ 35CSR4 - "Oil and Gas Wells and Other Wells"

□ 35CSR7 - "Certification of Gas Wells"

John told Council that there are three proposed amendments to 35CSR4 and one to 35CSR7 that are both fairly straightforward.

He said the proposed amendments in 35CSR4 will: 1) allow the plats to be submitted electronically. This is the first step in relation to authorizing permitting electronically for oil and gas wells; 2) will apply to the procedure for well transfer. These proposed amendments will eliminate the pre-circular, and cut the paperwork and mailing in half that the Office of Oil and Gas must perform in the transfer process. This will also allow the transfer of well responsibility to occur in a more timely manner; and 3) will waive the new certification for the reuse of plats when applying for plugging permits.

35CSR7 - The Federal Energy Regulatory Commission is proposing to reinstate certain regulations regarding well category determination under the Natural Gas Policy Act of 1978, Section 503. This section allows natural gas producers to obtain tax credits under Section 29 of the Internal Revenue Code.

Section 503 first requires a determination by the local regulatory agency that a well is producing one of the types of gas eligible for the Section 29 tax credit. The promulgation of these proposed rules will enable the Office of Oil and Gas to review and conduct the first determination.

After discussion and questions from the Council, there were no substantive recommendations made to the Director concerning the proposed amendments to 35CSR4 and 35CSR7.

The following Office of Waste Management rules were discussed:

- 33CSR3 - "Yard Waste Management Rule"
- 33CSR5 - "Waste Tire Management Rule"
- 33CSR20 - "Hazardous Waste Management Rule"
- 33CSR32 - "Underground Storage Tank Insurance Fund"

Dick Cooke, Assistant Chief, Office Waste Management (OWM), briefed Council on 33CSR3. He said OWM has taken a policy statement, that with a change in the yard waste laws approximately two years ago, provided for the Director to provide for reasonable and necessary exceptions to the prohibition of yard waste in landfills. This provision was not incorporated into the rule as the Legislature intended at that time. This proposed amendment incorporates that exception into the rule, and will allow West Virginia residents to dispose of small quantities of domestic yard waste in solid waste landfills, where there is no other option available.

Dick Cooke explained to Council that SB 427 (the Tire Bill) mandated that emergency rules be promulgated under 33CSR5. The proposed emergency rule, among other amendments, will allow the disposal of waste tires in solid waste landfills, but only when the state agency authorizing the remediation or cleanup program has determined there is no reasonable alternative available. The proposed amendments also adds permitting or other requirements for salvage yards, waste tire dealers, waste tire transporters, and commercial landfill facilities.

Mike Dorsey, Assistant Chief, OWM, next discussed 33CSR20. He explained the rule is being amended to adopt by federal reference the 1999 changes made to 40 CFR Parts 260 through 279. Those amendments include Hazardous Waste Management System: Modification of the Hazardous Waste Program, Hazardous Waste Lamps, and 180-day Accumulation Time Under RCRA for Waste Water

Treatment Sludges from the Metal Finishing Industry. These amendments are less stringent than federal regulations and are intended to assist the regulated community, and encourage recycling and waste minimization.

Mike said OWM has two rule amendments this year that deal with underground storage tanks. The first, 33CSR30, applies to a very small segment of the population. This rule, as well as federal EPA requirements, requires that all underground storage tanks (UST) have corrosion protection by December 22, 1998. Many UST systems were upgraded to meet the standards rather than new USTs being installed; however, the UST inspectors are finding that many of the systems were not installed correctly. Since the current rules do not specifically require certification of persons who install corrosion protection, the burden falls solely on the UST owners and/or operators to correct the system. This proposed amendment should prevent this from continuing in the future.

33CSR32, OWM's final proposed rule, deals with the Underground Storage Tank Insurance Fund. This rule requires that accrued interest on the UST Insurance Trust Fund Capitalization Fund remain in that fund. The UST Administrative Fund has been depleted, and the annual registration fee assessment no longer generates enough revenue to support the UST program. The expenditures from the UST Administrative Fund are used as the required match for the federal grant. Unless more revenue is deposited in the UST Administrative Fund, there will be insufficient funds to pay personnel and other operating costs. The proposed amendments to this rule will allow the transfer of the interest money and alleviate the need to increase the annual registration fees. Mike said this amendment has the full support of the UST Advisory Committee.

After discussion of OWM's proposed rules, the following amendment to 33CSR5 (the Waste Tire Disposal rule) was offered by Counsel:

Bill Samples said that section 3.1.a indicates that a permit is required for persons who generate waste tires, but he couldn't find a definition of "generator," and this could be confusing when trying to interpret the rule. Cap Smith, Chief of OWM, said that is a very good point, and it will certainly be taken into consideration during the public hearing/comment period timeframe.

The following Office of Mining and Reclamation rules were discussed:

- 38CSR2 - "WV Surface Mining Reclamation Rule"

□ 38CSR3 - "Rules for Quarrying and Reclamation"

John Ailes, Assistant Chief, OMR, briefly described the proposed amendments to 38CSR2, and noted that most of the amendments deal with Office of Surface Mining program amendments.

After discussion/questions concerning 38CSR2, the following comments were made by Council:

In Section 14.15.f, OMR is proposing to tie contemporaneous reclamation to reclamation liability. The proposed amendment stated that the reclamation liability cannot exceed the bond posted for the site. Bill Raney stated his concern with limiting the area to be disturbed based upon liability. He questioned who would be determining reclamation liability, and how. He said that he understands the reasoning, but would like to go on record as being "cautiously reserved," and additional comments would be forthcoming during the public hearing/comment period.

The proposed amendment to strike Section 23, which deals with coal extraction as an incidental part of development of land for commercial, residential, industrial or civic use, was questioned by Council. John explained to Council that this provision was amended into the rule a few years ago, but never approved by OSM, and therefore deleted from the rule mainly as a cleanup. Bill Raney said that he is hesitant to see the Section deleted from the rule since it is still in DEP's statute, and has been beneficial to businesses several times throughout the state. After further discussion, Chairman Castle agreed to reinstate Section 23 and will work with OSM to seek program approval.

Rocky Parsons, OMR Assistant Chief, discussed the newly-proposed Quarry mining rules, 38CSR3, authorized in HB 4055, effective June 8. He said that the Statue was developed through the stakeholders' process, and the rules have been drafted the same way. DEP intends to file the rules as "Emergency," and at the same time file the rules to go through the normal legislative rule-making process. He said it is still a working document, but any changes made will be as a result of the stakeholders' process.

After discussion/questions on 38CSR3, the following comments are noted by Council members:

Mr. Larry Harris commented by e-mail on 38CSR3. He stated that his concerns for quarries are "related to degradation of nearby streams and water tables. Where limestone is located the quality of streams is generally high, often being trout streams. Quarries can alter the quality of the stream through siltation,

and the quantity through alterations of the water table due to blasting. Hence, we want to make sure that the rules adequately address these two issues. I think that the water quality baseline studies should include a bottom fines analysis of receiving streams. Duffield of the Forest Service has established a direct relationship between the % of fines in stream sediment and the biological productivity of the stream. Having a baseline value for the receiving stream, and requiring monitoring to assure that this figure is not increased to the point where productivity is altered, would be a suitable protection for the stream - Part of 3.5 of the proposed rules."

Mr. Harris also noted his objection to calling streams "Natural Drainways" in subsection 2.17 of the definitions - He stated that "this nomenclature lowers the status of streams to drains, which are essentially industrial conduits or pipes. Very often these streams are manipulated in a way that destroys habitat and degrades the productivity of that stream."

Rocky responded that he will take these comments to the next stakeholders' meeting for their consideration, including a possible rewrite of 2.17.

Mr. Harris also asked if there are any preblast assessments or surveys of the groundwater level. Rocky responded by saying that preblast surveys do require a sampling of the water wells. With, quarries, operations in existence now have a year to do a preblast survey to the nearest protected structure within 1,000 feet of the blasting area. A new permit has to do a preblast survey for any structure within 1,500 feet of the blasting area, as opposed to 1/2 mile with coal.

Bill Samples pointed out section 7.4.b., that deals with sediment control, seems to be awkwardly worded. As it is worded, the Director has to make a very definitive determination on something that the applicant only has to have a reasonable likelihood of. Chairman Castle agreed with this comment, and the rule will be amended accordingly.

Mr. Samples also noted in 7.4.c., that normally in an environmental regulation when something has to be removed, you say it has to be disposed of in an appropriate manner. Chairman Castle agreed with this comment and amendment to this section.

3. Open Discussion.

Chairman Castle introduced Libby Chatfield, Technical Advisor for the Environmental Quality Board. Chairman Castle thanked

Libby for taking the time to appear before Council to discuss 46CSR1, EQB's Water Quality Standard Rule. Randy Sovic, DEP's Office Water Resources, also participated in the discussion.

After discussions/questions concerning the proposed EQB rule, the following comments are noted from Council members:

Bill Raney said that even though the Boards (the Environmental Quality Board and Solid Waste Management Board) are not required to come before the Council with their proposed Legislative rules, he would like to go on record as being "absolutely in opposition" to the proposed Groundwater Quality Standards' rule amendments until a full-blown, socio-economic impact statement is done. He said he does take exception to the fact that the Board can autonomously go forward with the rules without coming to the Advisory Council, and that he believes the obligations and costs will be enormous, both to the state and to industry.

Lisa Dooley stated that she is in complete agreement with Mr. Raney, and would also like to go on record as being opposed to EQB's proposed rule. She said that the proposed rule amendments, especially as they relate to the economic development part, very much concern her. She believes any economic development in West Virginia will be subject to the state's anti-degradation policy. And that policy should be reviewed and compared to surrounding states so that it is not detrimental for businesses and municipalities.

Bill Samples said that there is a multitude of concerns with this rule amendment, and that industry certainly has a major concern with it. He said that other states with anti-degradation rules may not have brought things to a stop, but certainly delayed them. He said that he would also like to go on record as being opposed to this rule amendment.

Rick Roberts asked to be included, for the record, his opposition to the proposed rule.

Director Castle said that the connection and link to DEP with regard to implementing the proposed EQB rules will definitely be taken into consideration.

Before adjournment of the meeting Bill Raney said he would like to go on record to thank Carrie Chambers for putting together the rules package and e-mailing them to Counsel in a timely fashion. Chairman Castle adjourned the meeting at 4:00 p.m.

□
APPENDIX B

FISCAL NOTE FOR PROPOSED RULES

Rule Title: 35CSR7 - "Certification of Gas Wells"

Type of Rule: ☒ Legislative ☐ Interpretive ☐ Procedural

Agency: Division Environmental Protection, Office of Oil & Gas

Address: #10 McJunkin Road, Nitro, WV Attn: John Johnston

1. Effect of Proposed rule:

	ANNUAL FISCAL YEAR				
	INCREASE	DECREASE	CURRENT	NEXT	THEREAFTER
ESTIMATED TOTAL COST	-0-	-0-	-0-	-0-	-0-
PERSONAL SERVICES					
CURRENT EXPENSE					
REPAIRS & ALTERATIONS					
EQUIPMENT					
OTHER					

2. Explanation of Above Estimates:
There will be no additional impact on State Government.

3. Objectives of These Rules:
The federal tight sands credit may be reinstated, and this proposed rule will allow state oil and gas producers to take the credit.

Rule Title: 35CSR7 - "Certification of Gas Wells"

4. Explanation of Overall Economic Impact of Proposed Rule:

A. Economic Impact on State Government:

The proposed rule will give the Office of Oil and Gas the authority to review FERC filings for gas wells in West Virginia. The state may see an increase in drilling, which will bring more jobs and an increase in tax revenue.

B. Economic Impact on Political Subdivisions; Specific Industries; Specific Groups of Citizens: The proposed rule will allow natural gas producers to qualify for Section 29 IRS tax credits.

C. Economic Impact on Citizens/Public at Large.
See A and B above.

Date: July 17, 2000

Signature of Agency Head or Authorized Representative:

Carrie J. Chambers

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

SERIES 7
CERTIFICATION OF GAS WELLS

FILED

APR 23 2 21 PM '00

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

§35-7-1. General.

1.1. Scope. -- This legislative rule shall govern and apply to proceedings under West Virginia Code §22-6-2(c)(11) concerning gas wells and implementation of the Natural Gas Policy Act of 1978, and pertinent federal regulations.

1.2. Authority. -- WV Code §§22-1-3; 22-1-10; 22-6-2; and 22-6-2(c)(11).

1.3 Filing Date. --

1.4. Effective Date. --

§35-7-2. Definitions.

Unless the context in which used clearly requires a different meaning, the definitions contained in West Virginia Code §§22-1-4 and 22-6-1 shall apply to this rule, in addition to the definition expressly set forth in this section. Each definition adopted by this section, whether statutory or by rule, is for the purpose of implementing the Natural Gas Policy Act of 1978, and is intended to be used in any other context:

2.1. "Btu" means British Thermal Unit.

2.2. "Completion location" means any subsurface location from which natural gas is being, or has been produced in commercial quantities.

2.3. "FERC" means the Federal Energy Regulatory Commission.

2.4. "Jurisdictional agency" means the Office of Oil and Gas of the West Virginia Division of Environmental Protection.

2.5. "Marker well" means any well from which natural gas was produced in commercial quantities at any time after January 1, 1970, and before April 20, 1977, including a well, the depth of which was increased on or after February 19, 1977, to a completion location at least one thousand (1,000) feet below the depth of the deepest completion location to such well attained before February 19, 1977; provided, that the term "marker well" shall not include a well the surface drilling of which began on or after February 19, 1977.

2.6. "Marker well completion location" or completion location when used with reference to any marker well, means any subsurface location from which natural gas was produced in commercial quantities after January 1, 1970, and before April 20, 1977.

2.7. "Mcf" used with respect to natural gas means 1,000 cubic feet of natural gas measured at a standard pressure base of 14.73 pounds per square inch (absolute), and a temperature of 60 degrees Fahrenheit.

2.8. "Mile" means a statute mile of five thousand two hundred eighty feet (5,280').

2.9. "Month" means a calendar month.

2.10. "Natural gas" means either natural gas unmixed or any mixture of natural and artificial gas.

2.11. "New well" means any well, the surface drilling of which began on or after February 19, 1977, or the depth of which was increased by means of drilling on or after February 19, 1977, to a completion location which is at least one thousand (1,000) feet below the depth of the deepest completion location of such well attained before February 19, 1977.

2.12. "NGPA" means the Natural Gas Policy Act of 1978.

2.13. "Old well" means any well other than a new well.

2.14. "Production in commercial quantities" means production of natural gas from a well or reservoir which is either sold and 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.

2.15. "Proration unit" means an area around a well as per the following:

2.15.a. For all shallow wells with a depth less than three thousand (3,000) feet, the proration unit will have a one thousand (1,000) foot radius, and shall constitute a proration unit for only the formations for which a well has been completed for production or target formations on wells spudded but not yet completed;

2.15.b. For shallow wells with a depth of three thousand (3,000) feet or more, the proration unit will have a one thousand five hundred (1,500) foot radius and shall constitute a proration unit for only the formations for which a well has been completed for production or target formations on wells spudded but not yet completed; and

2.15.c. For all deep wells, the proration unit will be the drilling unit as defined in WV Code §22C-9-2(13).

2.16. "Recognized enhanced recover techniques" means processes or equipment, or both, which when performed or installed, increase the ultimate recovery of gas from the well, including mechanical or chemical stimulation of the reservoir formation, and devices installed in the well bore or on the surface; provided, that normal well maintenance repair or replacement of equipment or facilities do not qualify as enhanced recovery techniques.

2.17. "Reservoir" means any producible natural accumulation of natural gas, crude oil, or both confined by impermeable rock or water barriers, and characterized by single natural pressure system or confined by lithologic or structural barriers which prevent pressure communication.

2.18. "Well" means any well for the discovery of production of natural gas, crude oil, or both.

§35-7-3. Filing Requirements.

3.1. General Requirements.

3.1.a. No application under this rule will be certified until such time as a copy of Form OP-1, "Operator Registration Form and Designation Form," has been filed.

3.1.b. All forms promulgated by the Office of Oil and Gas and required by this rule, may be replaced by copies of any applicable predecessor form promulgated by the Office of Oil and Gas, or by equivalent company or operator forms.

3.1.c. If an Operator wishes to seek a determination that a well qualifies for more than one (1) category under NGPA, a separate application must be submitted for each category for which a determination is desired.

3.1.d. Each application must be accompanied by a filing fee of one hundred dollars (\$100.00). Where an Operator is submitting several applications at one (1) time, a single check may be submitted for a sum equal to the number of applications multiplied by one hundred dollars (\$100.00).

3.1.e. Applications may be submitted electronically if approved by the Chief

3.1.f. Such other information as the Office of Oil and Gas may require in order to establish by substantial evidence that the well qualifies for NGPA category for which a determination is sought.

3.2. New Onshore Wells Under §102 of the NGPA. -- For each well for which certification is sought under §274.202 of the FERC regulations implementing the NGPA, the following shall be submitted by the operator:

3.2.a. For wells more than 2.5 miles from a marker well:

3.2.a.1. One (1) copy of FERC Form 121;

3.2.a.2. One (1) copy of Form WW-6, "Well Plat";

3.2.a.3. One (1) copy of Form WR-35, "Well Operator's Report of Drilling";

3.2.a.4. One (1) copy of Form FC-48, "State Application for Well Classification";

3.2.a.5. One (1) copy of Form FC-51, "Well Classification Form; Wells Drilled More than 2.5 miles from a Marker Well";

3.2.a.6. A plat to the scale of one inch (1") equals four thousand (4,000) feet produced on some high-quality material, and prepared by a licensed land surveyor or registered engineer, showing all wells within 2.5 miles of the well for which certification is sought and also showing all wells which are producing, or produced after January 1, 1970, natural gas within said 2.5 mile radius, and identifying each such well by the last four (4) digits of the API permit number;

3.2.a.7. A separate sheet tabulating all wells identified on the plat required by paragraph 3.2.a.6 of this section as to linear distance, depth of the top of the producing formation, and the geological name of the formation;

3.2.a.8. Electric logs and directional drilling surveys, if performed in the normal course of drilling and completion of the well; and

3.2.a.9. Satisfactory proof of service that a copy of the complete filing has been served on the first purchaser, if known.

3.2.b. For wells more than one thousand feet (1,000') deeper than a marker well:

3.2.b.1. One (1) copy of FERC Form 121;

3.2.b.2. One (1) copy of Form WW-6, "Well Plat";

3.2.b.3. One (1) copy of Form WR-35, "Well Operator's Drilling Report;

3.2.b.4. One (1) copy of Form FC-48, "State Application for Well Classification;

3.2.b.5. One (1) copy of Form FC-52, "Well Classification Form; Wells Drilled More than One Thousand Feet (1,000') Deeper than a Marker Well";

3.2.b.6. A plat to the scale of one inch (1") equals four thousand (4,000) feet produced on some high-quality material and prepared by a licensed land surveyor or registered engineer, showing all wells within 2.5 miles of the well for which certification is sought and also showing all wells which are producing or produced after January 1, 1970, natural gas within said 2.5 radius and identifying each such well by the last four digits of the API permit number; including specific identification of all marker wells within the 2.5 mile radius, and also indicating the deepest completion locations for each such marker well identified on the plat;

3.2.b.7. A separate sheet tabulating all wells identified on the plat required by paragraph 3.2.b.6. of this section as to linear distance, depth of the top of the producing formation, and the geological name of the formation; and

3.2.b.8. Electric logs and directional drilling surveys if performed in the normal course of drilling and completion of the well.

3.2.c. For new onshore reservoir wells:

3.2.c.1. One (1) copy of FERC Form 121;

3.2.c.2. One (1) copy of Form WW-6, "Well Plat";

3.2.c.3. One (1) copy of Form WR-35, "Well Operator's Drilling Report";

3.2.c.4. One (1) copy of Form FC-48, "State Application for Well Classification";

3.2.c.5. One (1) copy of Form FC-53, "Well Classification Form; New Onshore Reservoir Wells";

3.2.c.6. Subsurface cross-section charts;

3.2.c.7. Formation structure map;

3.2.c.8. A gas analysis; and

3.2.c.9. Electric logs and directional drilling surveys if performed in the normal course of drilling and completion of the well.

3.3. New Onshore Production Wells Under §103 of the NGPA - For each well for which certification is sought under §274.204 of the FERC regulations implementing the NGPA, the following shall be submitted by the operator:

3.3.a. One (1) copy of FERC Form 121;

3.3.b. One (1) copy of Form WW-6, "Well Plat";

3.3.c. One (1) copy of Form WR-35, "Well Operator's Drilling Report";

3.3.d. One (1) copy of Form FC-48, "State Application for Well Classification";

3.3.e. One (1) copy of Form FC-53, "Well Classification Form; New Production Onshore Wells";

3.3.f. Sub-surface cross-section charts;

3.3.g. Formation structure map;

3.3.h. A gas analysis; and

3.3.i. Electric logs and directional drilling surveys if performed in the normal course of drilling and completion of the well.

3.4. High Cost-Natural Gas Under §107 of the NGPA - For each well for which certification is sought under §274.205 of the FERC regulations implementing the NGPA, the following shall be submitted by the operator.

3.4.a. One (1) copy of FERC Form 121;

3.4.b. One (1) copy of Form WW-6, "Well Plat";

3.4.c. One (1) copy of Form WR-35, "Well Operator's Drilling Report";

3.4.d. One (1) copy of Form FC-48, "State Application for Well Classification";

3.4.e. One (1) copy of Form FC-55, "Well Classification Form; High Cost Gas";

3.4.f. Electric logs; and

3.4.g. Directional drilling surveys if made in the ordinary course of drilling and completing the well.

3.5. Stripper Wells under §108 of the NGPA -- For each well for which certification is sought under §274.206 of the FERC regulations implementing the NGPA, the following shall be submitted by the operator:

3.5.a. One (1) copy of FERC Form 121;

3.5.b. One (1) copy of Form WW-6, "Well Plat";

3.5.c. One (1) copy of Form WR-35, "Well Operator's Drilling Report";

3.5.d. One (1) copy of Form WR-39, "Report of Production", for twelve (12) consecutive months ending within ninety (90) days of the date of application;

3.5.e. Production records for a period of ninety (90) consecutive days ending within ninety (90) days of the date of application;

3.5.f. If items required by subdivision 3.5.d. and 3.5.e. of this section are not available, tax records or verified copies of billing statements for twelve (12) calendar months ending within ninety (90) days of the date of filing;

3.5.g. If the well for which a determination is sought has produced nonassociated natural gas at an average rate not in excess of sixty (60) Mcf per production day, for a ninety (90) day production period ending within ninety (90) days of the date of filing, but such as average rate of production has not been experienced for a twelve (12) month period, the operator shall file as soon as practicable but no later than ten (10) months after the date of application, production records, if available, and if not, tax records or verified copies of billing statements

for a twelve (12) month period, including any part of the indicated ninety (90) day production period;

3.5.h. One (1) copy of Form FC-48, "State Application for Well Classification"; and

3.5.i. One (1) copy of Form FC-56, "Well Classification Form; Stripper Wells".

3.6. Report of Increase in Production; Enhanced Recovery; Seasonally Affected Wells.

3.6.a. Whenever a well, which had previously received a certification as being qualified as a stripper well, produced nonassociated natural gas at a rate exceeding an average sixty (60) Mcf per production day for any ninety (90) day production period, the operator or purchaser shall file a notice containing the following information with the Chief:

3.6.a.1. The names and addresses of the operator and purchaser indicating whether it is the operator or the purchaser who is filing the notice;

3.6.a.2. Identification of the subject well and accurate records reference to the original determination qualifying the well as a stripper well;

3.6.a.3. The monthly production reports, tax records or billing statements upon which the notice is based for the period of production in question;

3.6.a.4. A statement of the production per production day for the period in question;

3.6.a.5. A statement that all the information contained in the notice is true to the best of his information, knowledge and belief; and

3.6.a.6. If the notice is filed by a purchaser, a statement that the notice has been served on the operator.

3.6.b. An operator desiring a determination that an increase in production has been the result of enhanced recovery techniques, shall file with the Chief within thirty (30) days of the date of the notice of an increase in production:

3.6.b.1. One (1) copy of Form FC-57WV, "Request for Determination that Increased Production is the Result of Enhanced Recovery Techniques"; and

3.6.b.2. One (1) copy of Form FC-48WC, "State Application for Well Classification".

3.6.c. An operator desiring a determination that a well previously certified to be a stripper well is seasonally affected, shall file with the Chief within thirty (30) days of the date of the notice of an increase in production:

3.6.c.1. One (1) copy of FC-58WC, "Request for Determination of Seasonally Affected Well";

3.6.c.2. Production records, tax records or billing statements for a period of twenty-four (24) months, including the ninety (90) day or twelve (12) month period which is the subject of a notice of an increase of production;

3.6.c.3. One (1) copy of Form FC-48WV, "State Application for Well Classification"; and

3.6.c.4. Applications may be submitted electronically if approved by the Chief.

3.7. Designation of Tight Formation Areas. -- A determination designating a portion of a formation as a tight formation must be made in the form and manner prescribed in §270.305 of the FERC regulations implementing the NGPA, per Order No. 616.

§35-7-4. Certification Procedures.

4.1 Initial Action by the Office of Oil and Gas. -- Upon receipt of an application to certify a well for the maximum lawful price under §§102, 103, 107 or 108 of the NGPA, the Office of Oil and Gas will conduct a review of the submitted data, along with other information available to it, and prepare a summary report for the Chief. A file number and a determination date will be assigned. One copy of FERC Form 121, and one copy of Form FC-48WC, will be mailed to the Operator notifying them of the file number, determination date, and the date of filing with the Office of Oil and Gas.

4.2. Periodical Circular. -- The Office of Oil and Gas will publish from time to time a circular indicating the status of various applications filed under this rule. Such circular may be published on the Division of Environmental Protection's Website.

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

4.2.a.1. The date received by the Office of Oil and Gas;

4.2.a.2. The NGPA category for which application is made; and

4.2.a.3. The API county and permit number.

4.2.b. The circular will constitute notice of the following:

4.2.b.1. That the initial application was complete or incomplete as received;

4.2.b.2. The scheduled determination date;

4.2.b.3. The determination made by the Office of Oil and Gas and the date of determination; and

4.2.b.4. The date on which the determination order was filed with FERC.

4.3. Notice of Hearing. -- Notice of all filings for applications for certification under this rule will be filed by the Office of Oil and Gas with the Secretary of State and the Capitol News Media, indicating that interested persons may intervene in the application by filing written comments with the Office of Oil and Gas within fifteen (15) days from the date that the circular is filed with the Secretary of State. If objections are made by any interested person, or by the Office of Oil and Gas, or if the Chief determines that other information may be necessary in order to make a determination, a public hearing will be held. On the hearing date, the applicant and all persons who have timely filed objections on or before the date of the hearing will be given an opportunity to present additional evidence.

4.4. Determination. -- After a hearing has been held, a determination as to whether the well qualifies for certification will be made by the Chief. If no objection is made within the time prescribed by subsection 4.3, the Chief will make a determination as to whether the well qualifies for certification. A copy of FERC Form 121 and the order will be mailed to the FERC for final review pursuant to §503 of the NGPA.

4.5. Extra Powers of Chief. -- The Chief may also certify or provide a waiver for a well located within a proration unit as defined in subsection 2.15 of this rule, or any other well sought to be certified under this rule, after notice and hearing.

PUBLIC HEARING

35CSR7 - "CERTIFICATION OF GAS WELLS"

A Public Hearing was held on Wednesday August 16, 2000, at the Division of Environmental Protection Headquarters' Office located at #10 McJunkin Road, Nitro. Jeanne Chandler, DEP's Public Information Office, opened the public hearing at 6:00 p.m., and closed the hearing at 6:30 p.m., when no one came forth to give oral or written comments.

From: <Stan_Pickens@DOM.COM>
To: DEP_EMAIL.NITRO1_PO(J_JOHN)
Date: Thu, Aug 17, 2000 11:51 AM
Subject: 35CSR7 Hearing

John, I request that the " Requirement for Tight Formation Areas " be included in the Office of Oil and Gas' proposed rule 35CSR7, "Certification of Gas Wells."

COMMENTS RECEIVED ON 35CSR7 - "CERTIFICATION OF GAS WELLS"

The following comment (attached) was received from Stan Pickens, Vice President, Dominion Exploration and Development, Box 1248, One Dominion Drive, 26378.

Mr. Pickens recommended that the "Requirements from Tight Formation Areas" be included in the proposed rule.

John Johnston, Chief, Office of Oil and Gas, responded by saying that this was an oversight on DEP's part when the rule was drafted, and the change does need to be made to the proposed rule in order for 35CSR7 to conform to the NGPA Federal Rule, Section 503. The following subsection will be added to correct that oversight.

3.7. Designation of Tight Formation Areas. - - A determination designating a portion of a formation as a tight formation must be made in the form and manner prescribed in §270.305 of the FERC regulations implementing the NGPA, per Order No. 616.