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OCT 18 8 44 AM '00

WEST VIRGINIA LEGISLATURE  
Legislative Rule-Making Review Committee

OFFICE OF WEST VIRGINIA  
SECRETARY OF STATE

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October 16, 2000

NOTICE OF ACTION TAKEN BY THE LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

TO: Ken Hechler, Secretary of State, State Register

TO: Carrie Chambers  
DEP-Oil and Gas, Office of  
10 McJunkin Road  
Nitro, WV 25143

FROM: Legislative Rule-Making Review Committee

Proposed Rule: Certification of Gas Wells, 35CSR7

The Legislative Rule-Making Review Committee recommends that the West Virginia Legislature:

1. Authorize the agency to promulgate the Legislative rule
  - (a) as originally filed \_\_\_\_\_
  - (b) as modified by the agency       ✓
2. Authorize the agency to promulgate part of the Legislative rule; a statement of reasons for such recommendation is attached. \_\_\_\_\_
3. Authorize the agency to promulgate the Legislative rule with certain amendments; amendments and a statement of reasons for such recommendation is attached. \_\_\_\_\_
4. Authorize the agency to promulgate the Legislative rule as modified with certain amendments; amendments and a statement of reasons for such recommendation is attached. \_\_\_\_\_
5. Recommends that the Legislative rule be withdrawn; a statement of reasons for such recommendation is attached.

SCANNED

ANALYSIS OF PROPOSED LEGISLATIVE RULE

FILED

SEP 21 10 37 AM '00

Agency: Office of Oil and Gas  
Subject: Certification of Gas Wells  
CSR Cite: 35CSR7  
Counsel: JAA

OFFICE OF WEST VIRGINIA  
SECRETARY OF STATE

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PERTINENT DATES

Filed for public comment: July 17, 2000  
Public comment period ended: August 16, 2000  
Filed following public comment period: August 23, 2000  
Filed LRMRC: August 23, 2000  
Filed as emergency: n/a

Fiscal Impact: None.

ABSTRACT

Brief Summary

This is a prior rule which is being revived based on the Federal Energy Regulatory Commission proposal to reinstate regulations regarding well category determinations under the Natural Gas Policy Act of 1978. This tax credit is for gas retrieved from coal seams and other locations that require special recovery methods. If the federal program is reimplemented, natural gas producers may be eligible for tax credits under Section 29 of the Internal Revenue Code. Federal regulations require that the state regulatory agency determine that a well is producing the type of gas eligible for the tax credit.

Section Summary

Section 1 provides that this rule establishes procedures for determining well eligibility and certification under the Natural Gas Policy Act of 1978.

Section 2 defines terms.

Section 3 provides general requirements for application for well certification. Each application must be accompanied by a fee of \$100.00. If the operator of the well wishes to have the well designated in more than one category under the Natural Gas Policy Act of 1978 [NGPA], an application must be submitted for each category.

Subsection 3.2 provides what information must be submitted for each new well for which the operator is seeking designation. This section provides requirements for new wells, wells that are more than 2.5 miles from marker wells, for wells at least 1,000 deeper than marker wells, and stripper wells. Plat maps, tabulation sheets and other relevant information is required. The rule specifies what is to be contained in the maps and tabulation sheets for each type of well, and what forms that the Office of Oil and Gas provides that must also be completed. Electronic submission of these forms is authorized, upon approval by the Chief of the Office of Oil and Gas.

Subsection 3.6 establishes reporting requirements for stripper wells when production at the well exceeds a specified amount. The operator of a stripper well that has a specified production increase may submit forms to obtain a designation that the increase was the result of enhanced recovery techniques.

Section 4 provides a process to certify that wells are eligible for maximum lawful price requirements and the resulting tax credit pursuant to the NGPA. The Office of Oil and Gas is required to periodically publish a status list of all pending certification applications. Upon notice of application, interested parties may object and request a public hearing to present evidence regarding the application. The Chief will make a certification determination following the hearing. The Chief may also certify or wave certification of wells located within a proration unit, or any other well sought to be certified following notice and hearing.

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**AUTHORITY**

Statutory authority: W.Va. Code, §22-6-2 provides the following:

- (a) The director shall have as his or her duty the supervision of the execution and enforcement of matters related to oil and gas

set out in this article and in articles eight and nine of this chapter.

(b) The director is authorized to enact rules necessary to effectuate the above stated purposes....

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ANALYSIS

I. HAS THE AGENCY EXCEEDED THE SCOPE OF ITS STATUTORY AUTHORITY IN APPROVING THE PROPOSED LEGISLATIVE RULE?

No.

II. IS THE PROPOSED LEGISLATIVE RULE IN CONFORMITY WITH THE INTENT OF THE STATUTE WHICH THE RULE IS INTENDED TO IMPLEMENT, EXTEND, APPLY, INTERPRET OR MAKE SPECIFIC?

Yes.

III. DOES THE PROPOSED LEGISLATIVE RULE CONFLICT WITH OTHER CODE PROVISIONS OR WITH ANY OTHER RULE ADOPTED BY THE SAME OR A DIFFERENT AGENCY?

No.

IV. IS THE PROPOSED LEGISLATIVE RULE NECESSARY TO FULLY ACCOMPLISH THE OBJECTIVES OF THE STATUTE UNDER WHICH THE PROPOSED RULE WAS PROMULGATED?

Yes.

V. IS THE PROPOSED LEGISLATIVE RULE REASONABLE, ESPECIALLY AS IT AFFECTS THE CONVENIENCE OF THE GENERAL PUBLIC OR OF PERSONS AFFECTED BY IT?

Yes.

VI. CAN THE PROPOSED LEGISLATIVE RULE BE MADE LESS COMPLEX OR MORE READILY UNDERSTANDABLE BY THE GENERAL PUBLIC?

No.

VII. WAS THE PROPOSED LEGISLATIVE RULE PROMULGATED IN COMPLIANCE WITH THE REQUIREMENTS OF CHAPTER 29A, ARTICLE 3 AND WITH ANY REQUIREMENTS IMPOSED BY ANY OTHER PROVISION OF THE CODE?

Yes.

VIII. OTHER.

Counsel has technical modifications to suggest.