

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

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Form #3

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

WV Div. of Environmental Protection  
Office of Oil and Gas

AGENCY: \_\_\_\_\_ TITLE NUMBER: 28 35

CITE AUTHORITY WV Code 22-1-13, 22-1-15, 22B-1-2, and 22B-1-2(c)(11).

AMENDMENT TO AN EXISTING RULE: YES  NO

IF YES, SERIES NUMBER OF RULE BEING AMENDED: 28 9

TITLE OF RULE BEING AMENDED: Certification of Gas Wells

IF NO, SERIES NUMBER OF NEW RULE BEING PROPOSED: \_\_\_\_\_

TITLE OF RULE BEING PROPOSED: \_\_\_\_\_

*Formerly 38-16*

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

  
\_\_\_\_\_  
Authorized Signature

7.20



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

CECIL H. UNDERWOOD  
GOVERNOR

JOHN E. CAFFREY  
COMMISSIONER

July 28, 1997

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

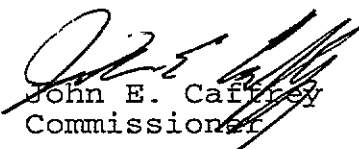
RE: 38CSR14 - Dam Safety

Dear Ms. Cooper:

This is to advise you that I am giving approval for filing of the above-referenced rule with your Office and the Legislative Rule-Making Review Committee as an agency-approved rule.

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

Sincerely yours,

  
John E. Caffrey  
Commissioner

JEC:cc

Attachment

DATE: July 31, 1997

TO: LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

FROM: WV Div. of Environmental Protection - Office of Oil and Gas

LEGISLATIVE RULE TITLE: Certification of Gas Wells

1. Authorizing statute(s) citation WV Code 22-1-13, 22-1-15,  
22B-1-2, and 22B-1-2(c)(11).

2. a. Date filed in State Register with Notice of Hearing  
June 19, 1997

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

Indepth, Public Notice Bulletin, State-wide News Release

c. Date of Hearing(s) July 22, 1997

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

Attached \_\_\_\_\_ No comments received X

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

July 31, 1997

f. Name and phone number(s) of agency person(s) to  
contact for additional information:

Theodore M. Streit, Chief

WV Div. of Environmental Protection - Office of Oil and Gas

#10 McJunkin Road, Nitro, WV 25143-2506

304-759-0514

3. If the statute under which you promulgated the submitted rules requires certain findings and determinations to be made as a condition precedent to their promulgation:

a. Give the date upon which you filed in the State Register a notice of the time and place of a hearing for the taking of evidence and a general description of the issues to be decided.

N/A

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b. Date of hearing:     N/A    

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

N/A

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d. Attach findings and determinations and reasons:

Attached     N/A

**BUREAU OF ENVIRONMENT  
DIVISION OF ENVIRONMENTAL PROTECTION**

**BRIEFING DOCUMENT**

**Rule Title:** 38CSR16 - Certification of Gas Wells

**A. AUTHORITY:** WV Code 22-1-13, 22-1-15, 22B-1-2, and 22B-1-2(c)(11)

**B. SUMMARY OF RULE:**

Rule governs and applies to proceedings under WV Code 22B-1-2(c)(11) concerning gas wells and implementation of the Natural Gas Policy Act of 1978 and pertinent federal regulations.

**C. STATEMENT OF CIRCUMSTANCES WHICH REQUIRE RULE:**

Rule to be repealed because neither statute or procedures in place under oil and gas law.

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

N/A

**E. CONSTITUTIONAL TAKINGS DETERMINATION:**

N/A

**F. CONSULTATION WITH THE ENVIRONMENTAL PROTECTION  
ADVISORY COUNCIL:**

"At their meeting, July 2, the Environmental Protection  
Advisory Council reviewed and discussed this rule - there  
were no substantive changes as a result of their discussion.  
See attached minutes of that meeting."

MINUTES

ENVIRONMENTAL PROTECTION ADVISORY COUNCIL

July 2, 1997 - Office of Air Quality's Conference Room

The seventh meeting of the DEP Advisory Council was held July 2, 1997 in the Office of Air Quality's Conference Room in Charleston. The meeting was called to order at 1:00 p.m. by Chairman Jack Caffrey.

Attending:

Advisory Council Members:

Jack Caffrey, Chairman  
Jacqueline Hallinan  
Larry Harris  
Martha Moore  
William Raney  
Rick Roberts  
William Samples

DEP:

Mark Scott	John Johnston
Cap Smith	John Benedict
Mike Dorsey	Lucy Pontiveros
Russ Hunter	Karen Watson
Ted Streit	
Gene Coccari	

Discussion:

1. Review minutes of May 5, 1997 meeting.

The minutes of the May 5 meeting were approved without amendment.

2. Review Proposed DEP Rules.

In accordance with WV Code §22-1-3(c) which requires the Director of the Division of Environmental Protection to consult with the Advisory Council members prior to proposing any new rule (or amendments to a rule), the following rules were presented to the members. Mark Scott told the Council members that if they have comments concerning the amendments to the rules they will be made part of the rule package when it is filed with Legislative Rule-Making and the Secretary of State's Office August 1. The Council members may also submit written comments to Carrie Chambers until the close of each respective public hearings. These will also be made part of the rule package when filed.

a) Office of Mining and Reclamation - 38CSR2 "Surface Mining Reclamation Rule":

Russ Hunter, Counsel for OMR, explained the proposed amendments to the Surface Mining Rule. He said the amendments mainly relate to four areas: 1) to allow for coal removal incidental to commercial development of real estate; 2) re-mining provisions; 3) special reclamation costs; and 4) ownership and control issues.

Gene Coccari, Manager of the Ownership and Control Unit in the Office of Mining and Reclamation, briefed Council members on amendments to that section of the rule. He explained that the proposed state rules appear to be more stringent than the interim federal rule currently in place in that the proposed rules allow DEP to link and block parent companies of permittee, which is not specifically addressed in the federal rule.

b) Office of Waste Management - 33CSR20 "Hazardous Waste Management Rule":

Mike Dorsey, Office of Waste Management, explained that the Hazardous Waste rule is updated annually to reflect changes in the federal regulations and were not substantive changes. He said there are two other amendments in the rule: 1) the appendix that currently contains a synopsis of the small quantity generator rule has been eliminated; and 2) a change in the groundwater monitoring requirements for hazardous waste permits (which is being done in conjunction with a change in the groundwater rule). Also, the rule is amended by clarifying what information is to be included in the administrative record of a permit.

In response to a question by Bill Raney, Mike explained that the proposed rule differs from existing federal requirements in three ways: 1) We require all EPA generators of hazardous waste to notify of their activity, EPA does not require conditionally-exempt small quantity generators (CESQGS) to notify; 2) The EPA regulations say that CESQGS can put their wastes into municipal landfills if they are permitted to accept that waste. West Virginia's Solid Waste rule states that no hazardous waste may go into the state's landfills; therefore, none are permitted to accept the waste; and 3) In the permitting requirements, we have given the chief of Waste Management greater latitude in deciding what sampling parameters must be utilized and what frequently may be required at permitted facilities than the federal rule.

c) Office of Oil and Gas: 35CSR1 "Miscellaneous Water Pollution Control Rule"; 35CSR2 "Oil and Gas Operations - Solid Waste Rule"; 35CSR3 "Coalbed Methane Wells Rule"; 35CSR4 "Oil and

Gas Wells and Other Wells Rule"; 35CSR5 "Designation of Future Use and Inactive Status for Oil and Gas Wells Rule"; and 35CSR6 "Abandoned Wells Rule":

Ted Streit, Chief of the Office of Oil and Gas, stated that Series 1 through 6 of the Oil and Gas rules were not part of DEP's 1997 Technical Cleanup Bill. Therefore, they are being filed this session to update code references, provisions that are contrary to current law, office, names, titles, punctuation, etc. There are no substantive changes to these rules.

Ted said two additional oil and gas rules - 38CSR16 "Certification of Gas Wells" and 38CSR14 "Dam Safety" are being repealed. 38CSR16 is being repealed because the underlying state and federal statute that required the agency to classify the wells no longer exists, and 38CSR14 is being repealed and a comparable rule in the Office of Water Resources (47CSR34 - "Dam Safety") enforces dam safety.

d) Office of Air Quality - 45CSR25 "To Prevent and Control Air Pollution From Hazardous Waste Treatment, Storage or Disposal Facilities"; 45CSR33 "Acid Rain Provisions and Permits"; 45CSR44 "Emission Standards for Hazardous Air Pollutants Pursuant to 40 CFR Part 63"; 45CSR23 "To Prevent and Control Emissions From Municipal Solid Waste Landfills"; and 45CSR7 "To Prevent and Control Particulate Air Pollution From Manufacturing Process Operations:"

John Johnston, Chief of the Office of Air Quality, presented Air Quality's proposed rule amendments to the Council. He stated that 45CSR25, 45CSR33, and 45CSR34 were amended to incorporate by reference federal requirements that are necessary to keep the program up to date under Title 5, and that they do not contain any substantive changes.

John said the proposed new rule, 45CSR23 "To Prevent and Control Emissions from Municipal Solid Waste Landfills" will establish standards of performance and emission guidelines for municipal solid waste landfills. The standards will require facilities with municipal solid waste landfill emissions exceeding approximately 55 tons per year to install an air pollution control system within 2.5 years. These standards will also be adopted by reference. The advisory council inquired about the stringency of the rule, the difference between non-municipal and municipal solid wastes, and if the rule will impact landfills that are closed.

John said the agency filed 45CSR7 - "To Prevent and Control Particulate Air Pollution From Manufacturing Process Operations" as an emergency rule on June 27 as authorized in HB 2333. This emergency rule will establish specific emissions performance

standards for pot and marble fiberglass operations, and will only affect one existing fiberglass production facility located in Vienna, Wood County. A counterpart, permanent rule effecting the same amendment, has also been filed.

After discussion of OAQ's rules, John Johnston asked John Benedict, Assistant OAQ Chief, to discuss the ongoing Ozone Transport Assessment Group (OTAG) issue and the outcome of meetings with EPA and other affected states.

The Council members inquired about the non-attainment situation in the Weirton area (and other areas in West Virginia). John Benedict briefly discussed the current status of that situation and the possible EPA-imposed sanctions within one year if West Virginia's SO<sup>2</sup> and PM<sup>10</sup> SIP are deficient.

The Council members were then briefed by Earl Billingsley of the Air Quality Office on the application by Virginia Power for an opacity variance at their Mt. Storm Power plant.

3) Consideration of issues raised at May 5, 1997 meeting.

(1) Mr. Caffrey informed the Council that DEP will hold a training session for DEP staff on how to more effectively work with the Legislature.

(2) Mark explained that the list of policies and procedures requested by the Council members is in the process of being completed. He distributed a list of policies compiled to date. After a brief discussion, Council requested that Mark provide a list of DEP policies and procedures, the title, effective date, policy number, and the name of DEP's office contact for the Council's review.

(3) Mark updated the Council members on the pay equity issue raised in the last meeting and informed them that DEP's EEO coordinator would be undertaking a more detailed study later this year to clarify if DEP has a problem in this area.

(4) The Council members expressed concern over the TMDL issue and why there was such a change in the ranking of streams between the 1994 and 1996 303(d) lists provided to EPA. Council requested an update on this issue at a future meeting.

4) The following issues were discussed for upcoming meetings:

(1) Regulation of the timbering industry - Mark Scott suggested that Bill Maxey, Director of the Division of Forestry, be invited to attend a future Council meeting to discuss this issue;

- (2) The Legislative agenda for the 1998 Session;
- (3) Presentation by DEP's Manager of Information Services on DEP's one-stop grant and our vision of future computer capabilities;
- (4) Acid mine drainage;
- (5) Valley fills and mountain top removal practices at mining operations;
- (6) Industry's concerns about the Office of Oil and Gas as a regulatory agency;
- (7) Status of the Elkins landfill;
- (8) Corps of Engineers nationwide permits and conditions required by DEP in those permits;
- (9) An update of the Volunteer Remediation and Development program;
- (10) Regulation of chicken waste in the poultry industry in the eastern panhandle;
- (11) DEP's proposed consolidated building; and
- (12) Status of the coal mining mitigation, including council consideration of supporting studies funded by DEP's mitigation fund.

A brief discussion was held concerning date and place of the next Council meeting. Bill Raney suggested incorporating the next meeting with the national AML Conference scheduled at Canaan Valley August 17-20.

The meeting concluded at 4:30 p.m.

**APPENDIX B**

**FISCAL NOTE FOR PROPOSED RULES**

Rule Title: 38CSR16 - Certification of Gas Wells

Type of Rule:  Legislative     Interpretive     Procedural

Agency: WV Division of Environmental Protection - Oil & Gas

Address: #10 McJunkin Road  
Nitro, West Virginia 25143-2506

**1. Effect of Proposed Rule**

	ANNUAL FISCAL YEAR				
	INCREASE	DECREASE	CURRENT	NEXT	THEREAFTER
<u>ESTIMATED TOTAL COST</u>	\$ 0	\$ 0	\$ 0	\$ 0	\$ 0
PERSONAL SERVICES	0	0	0	0	0
CURRENT EXPENSE	0	0	0	0	0
REPAIRS & ALTERNATIONS	0	0	0	0	0
EQUIPMENT	0	0	0	0	0
OTHER	0	0	0	0	0

**2. Explanation of above estimates:**

N/A

**3. Objectives of these rules:**

Rule to be repealed because neither statute or procedures in place under oil and gas laws.

Rule Title: 38CSR16 - Certification of Gas Wells

4. Explanation of Overall Economic Impact of Proposed Rule.

A. Economic Impact on State Government.

N/A

B. Economic Impact on Political Subdivisions; Specific Industries; Specific groups of Citizens.

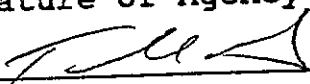
N/A

C. Economic Impact on Citizens/Public at Large.

N/A

Date: \_\_\_\_\_

Signature of Agency Head or Authorized Representative

  
\_\_\_\_\_

~~ARTICLE 38~~  
~~LEGISLATIVE RULES~~  
~~DIVISION OF ENERGY~~  
~~SECTION OF OIL AND GAS~~

RECEIVED

97 JUL 31 AM 9:29

OFFICE OF WEST VIRGINIA  
SECRETARY OF STATE

~~SERIES 16~~  
~~CERTIFICATION OF GAS WELLS~~

~~§38-16-1. General.~~

~~1.1. Scope. This legislative rule shall govern and apply to proceedings under West Virginia Code §22B-1-2(e)(11) concerning gas wells and implementation of the Natural Gas Policy Act of 1978 and pertinent federal regulations.~~

~~1.2. Authority. WV Code §§22-1-13; 22-1-15; 22B-1-2; and 22B-1-2(e)(11).~~

~~1.3. Filing Date. June 12, 1987~~

~~1.4. Effective Date. June 12, 1987~~

~~1.5. Former Rule Superseded. This legislative rule supersedes West Virginia Legislative Rule "Office of Oil and Gas", Department of Mines, Chapter 22-4, Series 5, Part 2, Certification of Gas Wells under the Natural Gas Policy Act of 1978 and Code §22-4-1(a)(c), in effect on July 11, 1985. Such rule was continued in effect pursuant to West Virginia Code §22-1-15 for the benefit of the Division of Energy inasmuch as it pertained to the provisions of the West Virginia Energy Act.~~

~~§38-16-2. Definitions.~~

~~Unless the context in which used clearly requires a different meaning, the definitions contained in West Virginia Code §§22-1-3 and 22B-1-1 shall apply to this rule in addition to the definition expressly set forth in this Section 2. Each definition adopted by this Section 2, 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. "West Virginia Code" shall mean the West Virginia Code of 1931, as amended.~~

~~2.2. "FERC" shall mean the Federal Energy Regulatory Commission.~~

~~2.3. "NGPA" shall mean the Natural Gas Policy Act of 1978.~~

~~2.4. "Natural gas" shall mean either natural gas unmixed or any mixture of natural and artificial gas.~~

~~2.5. "Well" shall mean any well for the discovery or production of natural gas, crude oil, or both.~~

~~2.6. "New well" shall mean 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.~~

~~2.7. "Old well" shall mean any well other than a new well.~~

~~2.8. "Marker well" shall mean 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.~~

~~2.9. "Reservoir" shall mean 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.~~

~~2.10. "Completion location" shall mean any subsurface location from which natural gas is being, or has been produced in commercial quantities.~~

~~2.11. "Marker well completion location" or completion location when used with reference to any marker well shall mean any subsurface location from which natural gas was produced in commercial quantities after January 1, 1970 and before April 20, 1977.~~

~~2.12. "Mcf" used with respect to natural gas shall mean 1,000 cubic feet of natural gas measured at a pressure 14.73 pounds per square inch (absolute) and a temperature of 60 degrees Fahrenheit.~~

~~2.13. "Btu" shall mean British Thermal Unit.~~

~~2.14. "Month" shall mean a calendar month.~~

~~2.15. "Mile" shall mean a statute mile of five thousand two hundred eighty (5,280) feet.~~

~~2.16. "Jurisdictional agency" shall mean the Section of Oil and Gas of the West Virginia Division of Energy.~~

~~2.17. "Production in commercial quantities" shall mean 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.~~

~~2.18. "Recognized enhanced recover techniques" shall mean 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.~~

~~2.19. "Proration unit" shall mean an area around a well as per the following:~~

~~2.19.1. 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;~~

~~2.19.2. 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~~

~~2.19.3. For all deep wells, the proration unit will be the drilling unit as defined in West Virginia Code §22-8-2(13).~~

~~§38-16-3. Filing requirements.~~~~3.1. General requirements.~~

~~3.1.1. 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.~~

~~3.1.2. All forms promulgated by the Section of Oil and Gas and required by this rule may be replaced by copies of any applicable predecessor form promulgated by the Section of Oil and Gas or by equivalent company or operator forms.~~

~~3.1.3. 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.~~

~~3.1.4. Each application must be accompanied by a filing fee of forty dollars (\$40). 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 forty dollars (\$40).~~

~~3.1.5. Such other information as the Section 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:~~

~~3.2.1. For wells more than 2.5 miles from a marker well:~~

~~3.2.1.1. One (1) copy of FERC Form 124;~~

~~3.2.1.2. One (1) copy of Form WAW-6, "Well Plat";~~

~~3.2.1.3. One (1) copy of Form WR-35, "Well Operator's Report of Drilling";~~

~~3.2.1.4. One (1) copy of Form FC-48, "State Application for Well Classification";~~

~~3.2.1.5. One (1) copy of Form FC-51, "Well Classification Form; Wells Drilled More than 2.5 miles from a Marker Well";~~

~~3.2.1.6. A plat to the scale of one inch (1") equals four thousand feet (4,000) 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;~~

~~3.2.1.7. A separate sheet tabulating all wells identified on the plat required by Section 3.2.1.6 as to linear distance, depth of the top of the producing formation, and the geological name of the formation;~~

~~3.2.1.8. Electric logs and directional drilling surveys, if performed in the normal course of drilling and completion of the well; and~~

~~3.2.1.9. Satisfactory proof of service that a copy of the complete filing has been served on the first purchaser, if known.~~

~~3.2.2. For wells more than one thousand feet (1,000') deeper than a marker well:~~

~~3.2.2.1. One (1) copy of FERC Form 121;~~

~~3.2.2.2. One (1) copy of Form WW-6, "Well Plat";~~

~~3.2.2.3. One (1) copy of Form WR-35, "Well Operator's Drilling Report;~~

~~3.2.2.4. One (1) copy of Form FC-48, "State Application for Well Classification;~~

~~3.2.2.5. One (1) copy of Form FC-52, "Well Classification Form; Wells Drilled More than One Thousand Feet (1,000') Deeper than a Marker Well";~~

~~3.2.2.6. 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 wells within the 2.5 mile radius, and also indicating the deepest completion locations for each such marker well identified on the plat;~~

~~3.2.2.7. A separate sheet tabulating all wells identified on the plat required by section 3.2.2.6, as to linear distance, depth of the top of the producing formation, and the geological name of the formation;~~

~~3.2.2.8. Electric logs and directional drilling surveys if performed in the normal course of drilling and completion of the well.~~

~~3.2.2.9. Satisfactory proof of service that a copy of the complete filing has been served on the first purchase, if known.~~

~~3.2.3. For new onshore reservoir wells:~~

~~3.2.3.1. One (1) copy of FERC Form 121;~~

~~3.2.3.2. One (1) copy of Form WW-6, "Well Plat";~~

~~3.2.3.3. One (1) copy of Form WR-35, "Well Operator's Drilling Report";~~

~~3.2.3.4. One (1) copy of Form FC-48, "State Application for Well Classification";~~

~~3.2.3.5. One (1) copy of Form FC-53, "Well Classification Form; New Onshore Reservoir Wells";~~

~~3.2.3.6. Subsurface cross-section charts;~~

~~3.2.3.7. Formation structure map;~~

~~3.2.3.8. A gas analysis;~~

~~3.2.3.9. Electric logs and directional drilling surveys if performed in the normal course of drilling and completion of the well; and~~

~~3.2.3.10. Satisfactory proof of service that a copy of the complete filing has been served on the first purchaser, if known.~~

~~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:~~

~~3.3.1. One (1) copy of FERC Form 121;~~

~~3.3.2. One (1) copy of Form WAW-6, "Well Plat";~~

~~3.3.3. One (1) copy of Form WR-35, "Well Operator's Drilling Report";~~

~~3.3.4. One (1) copy of Form FC-48, "State Application for Well Classification";~~

~~3.3.5. One (1) copy of Form FC-53, "Well Classification Form; New Production Onshore Wells";~~

~~3.3.6. Sub-surface cross-section charts;~~

~~3.3.7. Formation structure map;~~

~~3.3.8. A gas analysis;~~

~~3.3.9. Electric logs and directional drilling surveys if performed in the normal course of drilling and completion of the well; and~~

~~3.3.10. Satisfactory proof of service that a copy of the complete filing has been served on the first purchaser, if known.~~

~~3.4. High Cost Natural Gas Under §107 of the NGPA. For each well for which~~

~~3.4.8. Satisfactory proof of service that a copy of the complete filing has been served on the first purchaser, if known.~~

~~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:~~

~~3.5.1. One (1) copy of FERC Form 121;~~

~~3.5.2. One (1) copy of Form WW 6, "Well Plat"~~

~~3.5.3. One (1) copy of Form WR 35, "Well Operator's Drilling Report";~~

~~3.5.4. 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;~~

~~3.5.5. Production records for a period of ninety (90) consecutive days ending within ninety (90) days of the date of application;~~

~~3.5.6. If items required by Section 3.5.4. and 3.5.5. 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;~~

~~3.5.7. 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 a ninety (90) day production period ending within ninety (90) days of the date of filing, but such an 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.~~

~~3.5.8. One (1) copy of Form FC 48, "State Application for Well Classification";~~

~~3.5.9. One (1) copy of Form FC 56, "Well Classification Form; Stripper Wells".~~

~~3.5.10. Satisfactory proof of service that a copy of the complete filing has been served on the first purchaser, if known.~~

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

~~3.6.1. 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 Administrator:~~

~~3.6.1.1. The names and addresses of the operator and purchaser indicating whether it is the operator or the purchaser who is filing the notice;~~

~~3.6.1.2. Identification of the subject well and accurate records reference to the original determination qualifying the well as a stripper well;~~

~~3.6.1.3. The monthly production reports, tax records or billing statements upon which the notice is based for the period of production in question;~~

~~3.6.1.4. A statement of the production per production day for the period in question.~~

~~3.6.1.5. A statement that all the information contained in the notice is true to the best of his information, knowledge and belief; and~~

~~3.6.1.6. If the notice is filed by a purchaser, a statement that the notice has been served on the Operator.~~

~~3.6.2. An Operator desiring a determination that an increase in production has been the result of enhanced recovery techniques shall file with the Director within thirty (30) days of the date of the notice of an increase in production:~~

~~3.6.2.1. One (1) copy of Form FC 57WV, "Request for Determination that Increased Production is the Result of Enhanced Recovery Techniques", and~~

~~3.6.2.2. One (1) copy of Form FC 48WC, "State Application for Well Classification".~~

~~3.6.3. An operator desiring a determination that a well previously certified to be a stripper well is seasonally affected, shall file with the Director within thirty (30) days of the date of the notice of an increase in production;~~

~~3.6.3.1. One (1) copy of FC 58WC, "Request for Determination of Seasonally Affected Well";~~

~~3.6.3.2. 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; and~~

~~3.6.3.3. One (1) copy of Form FC 48WV, "State Application for Well Classification".~~

#### ~~§38-16-4. Certification procedures.~~

~~4.1 Initial Action by the Section 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 Section 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 Director. 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 and the Purchaser (if known) notifying them of the file number, determination date and the date of filing with the Section of Oil and Gas.~~

~~4.2. Periodical Circular~~

~~4.2.1. The Section of Oil and Gas will publish from time to time, but not less often than monthly, a circular indicating the status of various applications filed under this rule.~~

~~4.2.2. The circular will identify each well by applicant and by a file number which will indicate:~~

~~4.2.2.1. The date received by the Section of Oil and Gas;~~

~~4.2.2.2. The NGPA category for which application is made; and~~

~~4.2.2.3. The Api county and permit number.~~

Report of the Public Hearing on Oil and Gas Regulations on July 22, 1997

- 35CSR1**      **Miscellaneous Water Pollution**
- 35CSR2**      **Oil and Gas Operations - Solid Waste Rule**
- 35CSR3**      **Coalbed Methane**
- 35CSR4**      **Oil and Gas Wells and other Wells**
- 35CSR5**      **Designation of Future Use and Inactive Status**
- 35CSR6**      **Abandoned Wells**

and the repeal of

- 38CSR14**      **Dam Control**
- 38CSR16**      **Certification of Gas Wells**

The hearing was opened at 6:00 PM on July 22, 1997 at DEP Nitro headquarters. No comment was given at the hearing and no one attended. One person offered written comments and those are enclosed.

**DAVID B. McMAHON • ATTORNEY AT LAW****922 Quarrier St., Suite 525, Charleston, West Virginia 25314****Phone 304-344-3144 • Fax 344-3145****e-mail wvdauid@access.mountain.net**

July 22, 1997

Theodore Streit  
WV Division of Environmental Protection  
#10 McJunkin Road  
Nitro, WV 25143-2506

Re: Public Comment on  
Amended and Redesignated Rules  
35 C.S.R. 1, 2, 3, 4, 5, and 6, and  
and Repealed Rules 38 C.S.R. 14 and 16.

Dear Mr. Streit,

I represent two classes of small surface owners. One is surface owners who do not own the minerals or whose predecessors have leased the minerals. These surface owners either do, or may in the future, have oil or gas wells on their lands over which they have no control and from which they receive little if any benefit. The other class of surface owners I represent own land close enough to existing and potential oil and gas wells that the beneficial use of their property may be impaired and their ground and surface water is exposed to adverse effects from problem oil and gas well drilling on neighboring lands.

Please consider this one document as comments upon each of the Rule changes proposed.

Most of the changes are substantively benign, merely doing "clean-up" of cross references and so on. This is beneficial to the users of the rules. I have a comment or two on the small substantive changes.

The changes to Series 1 through 6 are stated to be, and appear to be, technical clean-up for references to changed code and so on. In that regard this change is good government and the Division of Environmental Protection should be praised for updating these rules to promote ease of use by those in the industry and the members of the general public. In addition, when the issues are complex or important enough, those in the industry and the general public may call upon lawyers for assistance. The easier these Rules are to use, the less lawyer time is needed to understand them, and the more likely it is that lawyers who do not specialize in the area can understand and use them.

38 C.S.R. 16 was the product of the federal National Gas Policy Act which no longer exists. So the repeal of this Rule is a similarly applaudable clarification.

I understand that the repeal of 38 C.S.R. 14 flows from the second reorganization of the environmental protection structure of state government. I understand that the provisions of this rule are identical to other rules that are enforceable by other branches of state government and that there is no substantive change in the protections of the citizens from hazardous dams and impoundments. This clarification of the law is also therefore welcome.

There are a few substantive changes that are stated to have the effect of conforming the Rule to the statute. I would like to comment on a few of those.

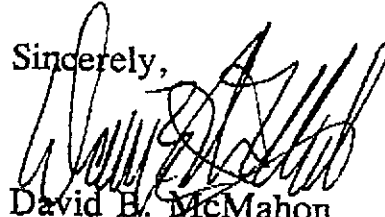
Series 3, "Coal Bed Methane Wells" makes a change at new 8.2.a which limits the ability of the Office of Oil and Gas to allow variances from the cement content requirements. It is my recollection that this variance was permitted when the head of the Office of Oil and Gas was required to have an engineering degree. That requirement has been removed. The head may also have had civil service protection. That is no longer true. At the time such variances were placed into the law I had no objection. Variances would encourage the evolution of newer and better materials and procedures. In addition the professional requirements of the head of the Office of Oil and Gas, and his civil service status, protected the process somewhat from political influence. Despite the benefits of allowing variances, I now heartily approve removing variance authority because of the removal of civil service protection and professional requirements.

Series 4, "Oil and Gas Wells and other Wells", makes a change at 5.2.1.5 regarding fees which is consistent with the statute. The Office of Oil and Gas is grossly under-funded with less than 20 inspectors for tens of thousands of wells. Any increase in revenues to improve funding the for Office of Oil and gas is laudable.

Series 6, "Abandoned Wells" makes a change at 6.3.c that conforms the rule to the statute. All oil and gas wells and their internal structures will eventually deteriorate. Once things have deteriorated, then many of those wells will cause pollution problems. All wells should therefore be properly plugged as soon as funds can be made available. The statute so requires. Therefore it is proper to delete the provision of the rule which approves the non-plugging of wells for "an indefinite period."

Thank you for your consideration of these comments. If comments from others raise points to which I feel the need to respond, I ask that I be allowed to do so.

Sincerely,



David B. McMahon  
Attorney at Law

DBM/dbm

Response to comments.

- 35CSR1**      **Miscellaneous Water Pollution**
- 35CSR2**      **Oil and Gas Operations - Solid Waste Rule**
- 35CSR3**      **Coalbed Methane**
- 35CSR4**      **Oil and Gas Wells and other Wells**
- 35CSR5**      **Designation of Future Use and Inactive Status**
- 35CSR6**      **Abandoned Wells**

and the repeal of

- 38CSR14**      **Dam Control**
- 38CSR16**      **Certification of Gas Wells**

The Division received one comment to the proposed changes to the above listed regulations. These comments were in support of the proposed changes and other issues that were not part of the regulations. No changes were made to the proposed regulations.