

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: July 24, 2002

TO: LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

FROM: (Agency Name, Address & Phone No.) Oil and Gas Conservation Commission

1356 Hansford Street

Charleston, WV 25301 558-6076

LEGISLATIVE RULE TITLE: Title 39, Series 1

1. Authorizing statute(s) citation 22C-9

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

June 13, 2002

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

None

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

July 18, 2002

hearing for the taking of evidence and a general description of the issues to be decided.

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

TITLE 39

FILED

LEGISLATIVE RULES
WEST VIRGINIA OIL AND GAS CONSERVATION COMMISSION 24 A 11: 23

SERIES 1
RULES OF THE COMMISSION

OFFICE WEST VIRGINIA
SECRETARY OF STATE

§39-1-1. General.

1.1. Scope. -- All rules and regulations of a general nature herein promulgated are to prevent waste, protect correlative rights and to conserve oil and gas in the State of West Virginia and are applicable in to all activities subject to the jurisdiction of the Oil and Gas Conservation Commission, pools and fields developed subsequent to their adoption, except as may be amended, modified, altered or enlarged generally or in specific pools or fields by orders hereafter issued by the Commissioner. Where special field rules apply, the special field rules shall govern to the extent of any conflict.

1.2. Authority. -- W.Va. Code §22C-9

1.3. Filing Date. -- ~~December 20, 1988~~

1.4. Effective Date. -- ~~December 20, 1988~~

§39-1-2. General rules Definitions.

~~3.1.~~ 2.1. "Annual" ~~shall means~~ twelve consecutive calendar months beginning January 1 and ending December 31.

~~3.2.~~ 2.2. "Authorized Agent" means a representative as designated by the Commission.

~~3.3.~~ 2.3. "Barrel" means forty-two (42) United States gallons of 231 cubic inches each at a temperature of sixty (60) degrees Fahrenheit.

~~3.4.~~ 2.4. "Code" means the Code of West Virginia, 1931, as amended.

~~3.5.~~ 2.5. "Commission" means the West Virginia Oil and Gas Conservation Commission, composed of three (3) members appointed by the Governor, the Secretary of the Department of Environmental Protection and the Chief of the Office of Oil and Gas of the Department of Environmental Protection.

~~3.6.~~ 2.6. "Commissioner and Chairman" means the person appointed by the Governor, possessing a degree from an accredited college or university in petroleum engineering or geology and must be a registered professional engineer.

~~3.7.~~ 2.7. "Completion" means that Aan oil well shall be considered completed when the well is first capable of producing new oil through wellhead equipment ~~into lease tanks from the ultimate producing interval after the producing string has been run.~~ A gas well shall be considered completed when the well is capable of producing gas through wellhead equipment ~~from the ultimate producing zone after the producing string has been run.~~ A dry hole shall be considered completed when all provisions of plugging have been performed, pursuant to the

requirements of the Office of Oil and Gas. A multiple completion is the completion of more than one pool of hydrocarbon fluids into one (1) wellborewell bore.

~~3.8.—2.8.~~ "Cubic Foot of Gas" means ~~in these Rules and Regulations~~ the volume of gas contained in 1 cubic foot of space at a standard pressure base and a standard temperature base. The standard pressure base shall be fourteen and seventy-three hundredths (14.73) psia, and the standard temperature base shall be sixty (60) degrees Fahrenheit.

~~3.9.—2.9.~~ "Day" means a period of twenty-four (24) consecutive hours.

~~3.10.—2.10.~~ "Designated Agent" ~~— means The designated agent shall be a~~ resident of the State of West Virginia, as required by the Office of Oil and Gas, upon whom process, notices, orders or other communications issued pursuant to ~~these Rules and Regulations~~ this rule may be served. ~~Change in designated agent must be received by the Commissioner within five (5) days after such change.~~

~~3.11.—2.11.~~ "Field" means a geographic area which is ~~underlaid~~ underlain or appears to be ~~underlaid~~ underlain by at least one (1) pool; and "Field" shall include the underground reservoir or reservoirs containing oil or gas or both. The words "Field" and "Pool" are synonymous when only one (1) ~~underground~~ reservoir is involved; however, "Field" may relate to two (2) or more pools.

~~3.12.—2.12.~~ "Gas Well" means any well which produces 6,000 cubic feet or more than 6,000 cubic feet of gas to each one (1) barrel of oil on initial gas-oil ratio test, defining oil and gas as in the statute.

~~3.13.—2.13.~~ "Hearing" means a proceeding in which any matter is heard before the ~~Commissioner~~ Commission.

~~3.14.—2.14.~~ "Log or Well Log" means a systematic detailed geological record of formations encountered in the drilling of a well.

~~3.15.—2.15.~~ "Offset Operator" shall mean any owner of any tract or parcel, with the right to develop, operate, and produce oil and gas from a pool and to appropriate the oil and gas produced therefrom, either for such person or for such person and others; located within one half of the distance to the next possible drill site, based on either special field rules or spacing as set forth in this Rule. In the event that there is no oil and gas lease in existence with respect to the tract in question, the owner of the oil and gas rights therein shall be considered an operator.

~~3.16.—2.16.~~ "Oil Well" means any well which produces less than 6,000 cubic feet of gas to each one barrel of oil on initial gas-oil ratio test, defining oil and gas as in the statute.

~~3.17.—2.17.~~ The words, "Person, Operator, Royalty Owner, Independent Producer, Oil, Gas, Pool, Well, Shallow Well, Deep Well, Drilling Unit, Waste, Correlative Rights, and Just and Equitable Share of Production", are defined by the statute and said definitions are hereby adopted in ~~these Rules and Regulations~~ this rule.

~~3.18.—2.18.~~ "Purchaser" means any person who directly or indirectly purchases, transports, takes or otherwise removes oil, gas or other hydrocarbon to his account from a well, lease, drilling unit or pool.

~~3.19.2.19.~~ "Special Field Rules" are rules ordered after a deep well has been drilled establishing a field or pool and an application is filed by the operator of the deep well or by the operator of any lands directly and immediately affected by the drilling of such deep well or wells in the field or pool. The special field rules will designate the field or pool by name, the area to which they are applicable, the acreage of each drilling unit, the shape thereof, the minimum distance from the outside boundary of each drilling unit at which a deep well may be drilled and a minimum distance between deep wells. The ~~Commissioner~~Commission may conform the size and shape of the drilling unit upon which a deep well is situated to the applicable special field rules.

~~3.20.2.20.~~ "Statute" means article ~~[nine]~~ four a, chapter ~~twenty two~~ ~~[twenty-two C]~~ of the Code of West Virginia, 1931, as amended WV Code §22C-9.

~~3.21.2.21.~~ "Test Well" means a well intended to discover a "new" pool. ~~(22-8-2(a)(9))~~ "Pool" "Unit" means a lease mineral tract or two (2) or more leases mineral tracts which have been combined in such a manner that the combined leases tracts may be regarded as a common lease tract for the drilling and operation of a deep oil or gas well.

~~3.22.2.22.~~ "Well Spacing" means the pattern or minimum distances from drilling unit boundary lines and from other deep wells drilling to or producible from the same pool, at which deep wells may be located ~~on the surface~~.

§38-1-3. Definitions General Rules.

~~2.1.~~ ~~3.1.~~ Duties of the ~~Commissioner~~Commission. -- The duties of the ~~Commissioner~~Commission shall be as described in the statute.

~~2.2.~~ ~~3.2.~~ Access to records. -- The ~~Commissioner~~Commission and/or ~~his~~ ~~its~~ authorized agent shall have access to such deep well and lease records, wherever located, as may be necessary in the performance of ~~his~~ ~~its~~ statutory duties. All persons or operators, drilling or servicing deep wells, shall permit the ~~Commissioner~~Commission and/or ~~his~~ ~~its~~ authorized agent, to come upon any lease, property or deep well operated or controlled by them, and to inspect the record and operation of such deep wells and to have access at reasonable time to such records of deep wells; Provided, That information so obtained shall be kept confidential.

~~2.3.~~ ~~3.3.~~ Reports. -- All operators and purchasers of oil and gas within the state shall, from time to time, file such reports containing such information and covering such periods as the ~~Commissioner~~Commission, in order to perform ~~his~~ ~~its~~ statutory duties, may require by rule or regulation.

~~2.4.~~ ~~3.4.~~ Tests and surveys. -- When deemed necessary or advisable in the performance of ~~his~~ ~~its~~ statutory duties, the ~~Commissioner~~Commission, by rule or regulation, may require tests and surveys to determine the occurrence of waste of oil, gas, water or reservoir energy and the magnitude thereof.

~~2.5.~~ ~~3.5.~~ Corrective action. -- The ~~Commissioner~~Commission shall require correction of any condition which is causing or is likely to cause waste of oil or gas and require the proper plugging and abandonment of any deep well or wells no longer used or useful.

~~2.6.~~ 3.6. Well designations. -- The operator, upon completion of any deep well, shall install and maintain, upon the deep well site, proper identification thereof, including, but not limited to, the operator's name, name of lease, number of the well, API number (composed of state, county and permit number).

~~2.7.~~ 3.7. Naming of fields. -- All oil and gas fields subject to the statute discovered subsequent to the adoption of these rules and regulations shall be named by the ~~Commissioner~~ Commission or at ~~his~~ its direction.

~~2.8.~~ 3.8. Forms upon request. -- Forms required by the ~~Commissioner~~ Commission will be furnished upon request.

§39-1-4. Operational rules.

4.1. Notices - General and emergency.

Any written notice of intention to do work which requires the ~~Commissioner's~~ Commission approval or to change plans previously approved by the ~~Commissioner~~ Commission must be filed with the ~~Commissioner~~ Commission in triplicate, unless otherwise directed, and must receive ~~his~~ its Commission approval before the work is begun.

In case of emergency or a situation where operations might be unduly delayed, any written notice or approval required by ~~these rules and regulations~~ to be given to or received from the ~~Commissioner~~ Commission may be given or received orally ~~or by wire or electronically~~, and, ~~if~~ approval is obtained, the transaction shall be confirmed in writing within ten (10) working days as a matter of record. The Chair of the Commission may also call an emergency hearing in cases where operations might be unduly delayed, by filing a prior notice with the Office of the Secretary of State pursuant to the Open Governmental Proceedings Act in WV Code §6-9A-3. Included with any request for emergency hearing, the requesting party shall provide the Commission with the names, addresses and telephone numbers of all offset operators as defined herein. The Commission will make reasonable attempts to notify said offset operators.

4.2. Location of wells.

To prevent ~~of~~ waste, in the absence of an application for special field rules or special field rules ordered by the ~~Commissioner~~ Commission establishing drilling units or authorizing different deep well spacing or location patterns for a particular field or pool or parts thereof, each deep well drilled shall be not less than 3,000 feet from a permitted deep well ~~drilling to location or from an existing well~~ capable of producing hydrocarbons from the objective pool of the deep well and no deep well shall be less than 400 feet from a lease or unit boundary.

The ~~Commissioner~~ Commission shall have the discretion to determine pattern location of deep wells adjacent to an area governed by special field rules where there is sufficient evidence to indicate that the pool or reservoir spaced by the special field rules may extend beyond the boundary of the spacing order and the uniformity of the spacing pattern is necessary to ensure orderly development of the pool or field.

4.3. Exception to location of wells.

When exception to ~~Operational Rule 39-1-4.2 of these rules~~ this rule or a special field rule applicable to the location of deep wells is desired, the operator shall

file a supplemental application to the application required by ~~Operational Rule 39-1-4.4 of these Rules and Regulations with the Commissioner.~~

The supplemental application shall be accompanied by a plat or sketch, with appropriate coordinates, drawn to the scale of 1 inch equaling to 2,000 feet accurately showing to scale all other completed, drilling or permitted deep oil and gas wells on said property or surrounding property within a distance of 2 miles if the plat or sketch submitted under ~~Operational Rule subsection 4.4 of these rules~~ this rule does not accurately reflect the hereinabove information. The plat shall show:

~~(a)4.3.a.~~ (a)4.3.a. The location at which a deep oil or gas well could be drilled in order to be in compliance with the applicable order, or rule;

~~(b)4.3.b.~~ (b)4.3.b. The location at which the applicant requests permission to drill; and

~~(c)4.3.c.~~ (c)4.3.c. The location at which deep oil or gas wells have been drilled or could be drilled in accordance with the applicable special field order or rule, directly or diagonally offsetting the proposed exception.

~~The Commissioner~~Commission, after notice and hearing, may grant or deny the application and require the withholding or approve issuing of a permit pursuant to ~~Operational Rule subsection 4.4 of these rules~~ this rule.

No exception shall prevent any operator from drilling a deep oil or gas well on adjacent lands, directly or diagonally offsetting the exception, at locations permitted by any applicable special field rules ordered by the ~~Commissioner~~Commission.

4.4. Application for permit.

All complete applications, as established by the Office of Oil and Gas and field reviewed by Office of Oil and Gas inspectors, to be submitted to the Chief of the Office of Oil and Gas for a permit to drill, redrill, stimulate, operate, plug, abandon, deepen, case fracture, pressure, convert or combine any deep well, or physically change any deep well to allow the migration of fluid from one formation to another shall first be reviewed by the Commissioner~~Commissioner~~ or by an authorized agent to ascertain compliance with these rules and regulations ~~this rule~~. The ~~Commissioner~~ Commission will provide the Chief of the Office of Oil and Gas with a statement either approving or disapproving the application based upon its compliance with Oil and Gas Conservation ~~Rules and Regulations~~ rule and the statute. The permit will be issued by the Chief of the Office of Oil and Gas when the applicant has complied with ~~all Rules and Regulations~~ this rule. The application shall contain, or show by plat or sketch, in addition to the requirements of ~~subsection (k), section one, article nine, chapter twenty two C of the West Virginia Code, and administrative Rules and Regulations promulgated thereunder~~ this rule, the following:

~~(a)4.4.a.~~ (a)4.4.a. For all wells ~~other than test wells permitted pursuant to WV Code §22C-9-7(b),~~ a certificate of consent and easement from all owners of the surface of the tract on which the deep well is to be drilled; ~~and~~

~~(b)4.4.b.~~ (b)4.4.b. A tabulation of all deep wells within 1 mile of the proposed location, including the API number of the deep well, well name and the name and address of the operator; ~~and~~

~~(e)~~4.4.c. Shown On a plat for a proposed deep well location in an area covered by special field rules, the boundaries of the drilling unit, the distances from the proposed deep well location to the nearest outside boundary and the acreage of each tract within the drilling unit ~~shall be shown~~. Such plat shall accompany the application and shall be drawn to a scale of 1 inch to 2,000 feet. The plat shall be prepared by a licensed land surveyor or registered engineer showing the district and county in which the tract of land upon which the well to be drilled is located, the acreage of the tract, the name of mineral owners or lessees of adjacent tracts, the proposed or actual location of the well determined by survey, the courses and distances of such locations from two (2) permanent points or landmarks on said tracts and the number to be given the deep well. The plat will show all deep oil and gas ~~or including~~ abandoned deep oil and gas wells within 1 mile of the proposed or actual deep well for which a permit is being sought and the distances to each; ~~and~~

~~(d)~~4.4.d. An affidavit of the public notice as required in subsection 4.5;

4.4.e. Any other information which the ~~Commissioner~~Commission, by order, rule or ~~regulation~~policy, may require ~~to order~~ to perform ~~his~~its statutory duties.

4.4.f. In addition, the operator shall schedule with the Commission staff, a reclamation plan review prior to filing a deep well permit application. And shall prepare a well site safety plan and conduct a pre-spud meeting prior to beginning drilling operations on any deep well; and

4.5. Notice Requirements.

Prior to filing any application for the drilling of a new deep well, public notice shall be given by the operator making application. Notice shall be given by Class I legal advertisement in the primary newspaper for the county in which the well is to be drilled. Notice shall include the name of the operator making application, a section of county highway map indicating the proposed location showing at least the area within one (1) square mile of the proposed location, and a statement that any interested persons may contact the WV Oil and Gas Conservation Commission along with the telephone number and address of the Oil and Gas Conservation Commission.

~~4.5.~~ 4.6 Monthly Annual report of oil and gas production.

For each deep oil or gas well, an annual report of production by month shall be filed with the ~~Commissioner~~Commission. The report will be filed on or before the succeeding March 31st. The report will be filed regardless of the status of the deep well.

The report to be submitted by the operator or a person specified by the operator shall include the operator's name, place of business, lease or well name, API number (composed of state, county and permit number), days produced during the report month, volume of oil measured in barrels or gas measured in thousand cubic feet, and other pertinent information as the ~~Commissioner~~Commission, by ~~rule or regulation~~, may require in the performance of ~~his~~its statutory duties.

~~4.6.~~ 4.7. Filing of well logs.

Within ninety (90) days after the completion of drilling or recompletion of a deep well, the operator shall submit to the ~~Commissioner~~a Commission copy of the

well log and the electrical, radioactive or other similar conventional log if they have been run. In addition, as soon as practicable, and upon the request of the ~~Commissioner~~Commission, operators shall file a copy of drill stem test charts, formation water analysis, porosity, permeability or fluid saturation measurements, core analysis and lithologic log or sample description as compiled: Provided, That no such information shall be required unless the operator has compiled such information in the ordinary course of business. No interpretation of the data is to be filed.

All information furnished to the ~~Commissioner~~Commission hereunder with respect to a deep well marked "confidential" shall be kept confidential for one (1) year after the date the information is required to be filed hereunder, unless the owner gives written permission to release such information at an earlier date. For good cause shown by the operator the Commission may extend the period of confidentiality for a one (1) year period. The total period of confidentiality shall not exceed three (3) years.

~~4.7.~~ 4.8. Measurement of oil.

The volume of production of oil shall be computed in terms of barrels of clean oil on the basis of meter measurement or tank measurements of oil level difference, made and recorded to the nearest 1/4 inch of one hundred percent (100%) capacity tables, subject to the following corrections:

(a)4.8.a. Correction for impurities. - The percentage of impurities (water, sand and other foreign substances, not constituting a natural component part of the oil) shall be determined to the satisfaction of the ~~Commissioner~~Commission and the observed gross volume of oil shall be corrected to exclude the entire volume of such impurities; and

(b)4.8.b. Temperature correction. - The observed volume of oil corrected for impurities shall be further corrected to the standard volume at sixty (60) degrees Fahrenheit in accordance with A.S.T.M.D. - 1250, Table 7, or any revisions thereof and any supplements thereto or any close approximation thereof approved by the ~~Commissioner~~Commission.

4.8.4.9. Measurement of Gas. - All gas except gas used on the lease for development purposes and lease operations or free gas, when produced or sold shall be measured by an approved meter of sufficient capacity. The standard pressure base for reporting purposes shall be 14.73 psia regardless of atmospheric pressure at the point of measurement and the standard temperature base shall be sixty (60) degrees Fahrenheit.

4.9.4.10. Multiple pool completion or commingling in one (1) well bore.

In the absence of special field rules, an operator will, within seventy-two (72) hours after commencing to complete a deep well in more than 1 pool, file written notice ~~in the office of the Conservation Commissioner~~ to the Commission of the intended multiple completion. Within fourteen (14) days after the multiple completion and before any production for the deep well is marketed, the operator shall file a report stating whether the production is segregated or commingled, include a diagrammatic sketch of the mechanical installation, name and address of the operators and a plat showing the location of the deep well and deep wells within 2

~~miles~~ (1) one mile of the deep multiple completion well which have been or may be capable of being completed in the same pool or pools.

~~The Commissioner will provide all operator of deep wells, within 2 miles of the multiple completion a copy of the report~~ The operator will provide, by certified mail, a copy of the report to all offset operators. The operator shall provide the Commission with the certified mail receipts. If, within fifteen (15) days no protest is received and the Commissioner-Commission determines no waste will result from the completion within fourteen (14) days, the completion will be approved without notice and hearing.

In the event the pools are segregated, the ~~Commissioner-Commission~~ may required tests as ~~he-it~~ deems necessary to determine the effectiveness of the segregation of the different producing pools.

~~4.10.~~ 4.11. Intentional and unintentional deviation in drilling.

Before beginning intentional directional drilling, other than sidetracking due to hole conditions, when the intent is to direct the bottom of the hole away from the vertical, notice of intention to do so shall be filed with the permit application and approval obtained. Such notice shall state clearly name and address of operator, the deep well's API number, lease name, field or pool, county, the depth, exact surface location of the well bore, proposed direction of deviation and proposed horizontal distance between the bottom of the hole and surface location, reason for intentional deviation and a list of offset operators. Except as provided for in §39-1-4.1, t~~The Commissioner-Commission~~ shall notify offset operators of the applicant's plan and hold the notice ten (10) days. If objection is received, the application will be set for public hearing. If no objection is received, the application shall be approved. If approval is obtained, the operator shall file, with the ~~Commissioner-Commission~~ within sixty (60) days after the completion of the work, an accurate and complete copy of the directional survey.

In all deep wells, all operators shall, when the safety of the well bore is not in jeopardy, survey their well bore for unintentional deviation from the vertical at least every 500 feet or every bit change if less than 500 feet, but ~~no~~ more frequently than 250 feet. The operator shall calculate the cumulative random drift of the bore hole from such survey as drilling progresses. The operator shall file a copy of such record within sixty (60) days after completion of the drilling operation and before sale of hydrocarbons is made from the well.

In the event safety precludes a survey being performed as described above, the operator shall, at the ~~Commissioner's~~ Commission's request, before completion of drilling operations and before sale of hydrocarbons if is made from the well, run cased hole deviation surveys or directional surveys on the well bore ~~to determine that the bore hole is within the confines of the drilling unit.~~

In all deep wells, should the operator calculate or have reason to suspect the cumulative random drift exceeds the surface distance of the well from the nearest drilling unit or lease boundary, the operator shall run a directional survey on the bore hole to determine where the bore hole actually lies and file a copy of such record within sixty (60) days after completing the survey and before the sale of any hydrocarbons is made.

~~4.11.4.12.~~ Production potential, shut-in pressure and gas-oil ratio testing and reports. -- Production potential, shut-in pressure and gas-oil ratio testing and reporting may be required by the ~~Commissioner~~Commission to perform ~~his~~its statutory responsibilities. In deep well gas testing, the methods prescribed in the Interstate Oil Compact Commission's "Manual of Gas Well Testing" shall be used.

~~4.12.4.13.~~ Gas-oil ratio test. -- Each operator shall take a gas-oil ratio test not later than thirty (30) days following the completion or recompletion of any deep well producing from a pool which contains both oil and gas. The results of such test shall be reported to the ~~Commissioner~~Commission within fifteen (15) days after the completion of the test. Upon application request, the ~~Commissioner~~Commission may waive or extend the time for making a gas-oil ratio test. Additional tests may be taken at any time and shall be taken as required by the ~~Commissioner~~Commission to perform ~~his~~its statutory responsibilities.

§39-1-5. Secondary recovery rules.

5.1. Waterflooding and other recovery operation.

Applications for secondary or additional recovery operations, whether by waterflooding or repressuring or pressure maintenance operations, for a pool productive of oil shall contain:

(a)5.1.a. A plat drawn to a scale of 1 inch equal to 2,000 feet showing the area involved, together with the well or wells, including shallow wells and dry and abandoned wells located thereon, all of which shall be properly designated;

(b)5.1.b. The name, description and depth of the formations to be affected;

(c)5.1.c. The log of any injection well or such similar information as is available;

(d)5.1.d. A description of any injection well's casing or the proposed casing program and the proposed method for testing casing before use in any injection well;

(e)5.1.e. A statement as to the type of fluid to be used for injection, its source and the estimated amounts to be injected daily;

(f)5.1.f. A full description of the particular operation for which approval is requested, including the additional oil recovery anticipated and the economic feasibility of the project;

(g)5.1.g. A copy of the unit agreement showing the approval of the plan and its terms of operation by the operators of approximately three fourths (3/4) of the acreage (calculating partial interests on a pro rata basis for operator interests on any parcel owned in common) and the royalty owners of approximately three fourths (3/4) of the acreage (calculating partial interests on a pro rata basis for royalty interests on any parcel owned in common); and

(h)5.1.h. A statement of the designated operator for the unit.

5.2. Unit operations. -- Subsequent to notice and hearing, at which the applicant will provide a copy of the unit agreement showing the approval of the plan and its terms of operation by the operators of at least three fourths (3/4) of the acreage (calculating partial interests on a pro rata basis for operator interests on any parcel owned in common) and the royalty owners of at least three fourths (3/4) of the acreage (calculating partial interests on a pro rata basis for royalty interests on any parcel owned in common), the ~~Commissioner~~Commission may enter an order as provided in ~~section eight, article four a [nine], chapter twenty-two [twenty-two C]~~ of the Code of West Virginia WV Code §22C-9-8.

5.3. Monthly report. - A monthly report of fluids injected and withdrawn shall be filed in a form prescribed by the ~~Commissioner~~Commission.

5.4. Notice of commencement and discontinuance of injection operations. - The ~~Commissioner~~ Commission shall be notified ~~immediately, in writing, upon within~~ three (3) days of the commencement of injection operations and within ten (10) days after the discontinuance of ceasing injection operations. No injection well shall be plugged without a permit.

§39-1-6. Rules of practice and procedureSpecial Field Rules.

6.3-6.1. Any operator intending to apply for special field rules, shall, along with the application which shall show applicant's name and address and describe the area for which a spacing order is requested, send a notice of a prehearing conference to the ~~Commissioner~~Commission and the operators of any lands directly or immediately affected by the proposal. The prehearing notice shall include a list of the names and addresses of all operators to whom it was sent, a statement that a diligent effort has been made to determine to whom the notice must be sent, a statement that opponents to the application must file written notice with the ~~Commissioner~~Commission within ten (10) days or the conference will not be held, and the evidence required in Section 6.16.2 of these rules. The ~~Commissioner~~Commission shall set a day, time and place for the prehearing conference to be not less than twenty (20) days following the date of the prehearing notice. If no written opposition to the application is received by the ~~Commissioner~~Commission within the ten (10) days after the date of the prehearing notice, the ~~Commissioner~~Commission will advise all persons to whom the prehearing notice was sent that a conference will not be held. If any operator relates in writing to the ~~Commissioner~~Commission opposition to the applicant's proposal, within ten (10) days, a conference will be held. Any operator may attend and participate in the conference even though he did not request it. Opponents to the application shall present evidence, as required of an applicant in ~~Section 6.1 of these rules~~this section, indicating where there is disagreement with the applicant, sufficient to permit all operators to attempt to resolve the difference.

6.4-6.1.a The ~~Commissioner~~Commission shall assign the application a cause number and enter the proceeding along with its date of filing on a separate page of the docket. Notice of the docket and the time and place of the hearing shall be in accordance with the provisions of the statute. Hearing shall be not less than ~~ten (10)~~twenty (20) days and not more than ~~thirty (30)~~forty-five (45) days after receipt of the application except under emergency hearing rules as defined herein.

6.5-6.1.b. Any person desiring to protest the granting of the application, shall, at least five (5) days prior to the date of the hearing, file a statement of

opposition and a ~~counterplan~~counter plan with the ~~Commissioner~~Commission and all operators of lands directly and immediately affected and state briefly the issues.

6.1.6.2. The ~~Commissioner~~Commission, in all proceedings relating to the determination of special field rules for the conservation of oil and gas in the State of West Virginia, shall, in addition to the provisions of ~~section ten, article nine, chapter twenty two C of the Code~~WV Code §22C-9-10, require evidence from an applicant as follows:

(a)6.2.a A topographic map at a scale of 1 inch equal to 2,000 feet with an outline of the area for which special field rules are requested;

(b)6.2.b Known lease ownership of the area for which special field rules are requested by plat at a scale of 1 inch equal to 2,000 feet and/or a tabulation of such ownership;

(c)6.2.c Geological mapping, records and testimony relevant to the area to be spaced;

(d)6.2.d Reservoir data anticipated for an average proposed drilling unit within the spaced area; and

(e)6.2.e A comparative economic evaluation of spacing patterns, based on estimated production and rate of production of oil and/or gas of the average proposed drilling unit within the spaced area.

6.6.6.3. The applicant will open the hearing and present the testimony and exhibits offered in support of the application. The applicant's witnesses will be subject to cross-examination by the ~~Commissioner~~Commission or any interested parties. The ~~Commissioner~~Commission shall determine the order of the appearances of the other participants in the hearing. Each interested party affected by the application who has complied with the ~~Rules of Practice and Procedure~~requirements of this section, may present testimony and exhibits in support of or in opposition to the applicant's proposals. The applicant or interested parties may request to enter as evidence information of a proprietary nature. Proprietary information is defined as information that is not readily available to the public domain. If objections arise concerning the proprietary nature of evidence, the Commission may hear arguments with regard to the validity of the request and rule prior to the submission of evidence. If the evidence is found to be of a proprietary nature the Commission will issue a protective order restricting the use of that evidence to the hearing and in deliberations of the Commission. A copy of all proprietary evidence shall be sealed and held by the Commission. All other copies utilized in the hearing shall be returned to the submitting parties. All witnesses shall be subject to cross-examination as previously set forth.

6.3.a. The applicant may offer rebuttal testimony and exhibits, but the witnesses will again be subject to cross-examination. Surrebuttal testimony and exhibits and subsequent testimony and exhibits may be permitted at the discretion of the ~~Commissioner~~Commission.

6.3.b. Closing statements and statements of position may be made by the participants and all other interested persons before the hearing is closed or at such time as designated by the ~~Commissioner~~Commission. No order shall be made which is not supported by competent legal evidence.

~~6.7. In addition to any special hearings which may be held, regular monthly hearings shall be held before the Commissioner. Where circumstances permit, the Commissioner, after sounding the docket, may first call up and dispose of all noncontested matters and motions for continuance.~~

~~6.9.6.3.c. The Commissioner-Commission shall enter a spacing order or dismiss the application therefor within forty-five (45) days after the application for a spacing order has been filed.~~

6.4. In the absence of special field rules and in order to protect correlative rights, an operator may apply to the Commission for the pooling of interests and the formation of a drilling unit. A drilling unit may be established prior to or after completion of a deep well. The interests shall be pooled according to WV Code §22C-9-7(b). The applicant shall adhere to the notice and prehearing conference provisions as provided for in subsection 6.1 of this rule. With regard to reservoir characteristics and well spacing, the applicant shall meet evidence requirements set out in WV Code §22C-9-7(a). After notice and hearing the Commission may enter an order pooling the interests of the effected parties. If, subsequent to an order being entered pooling the interests of the effected parties, additional information is obtained warranting a different drainage area, the pooling order may be revised at the request of an interested party. The pooling order may be revised only after notice and hearing as set forth above.

~~6.10 Any person who is bound by any order of the Commissioner shall have the right to compel a hearing on the matter if no such hearing has been held.~~

DEPARTMENT OF ENVIRONMENTAL PROTECTION
OIL AND GAS CONSERVATION COMMISSION

BRIEFING DOCUMENT

Rule Title: 39CSR1

A. AUTHORITY: WV Code 22C-9

B. SUMMARY OF RULE: Rule is in place to enforce provision WV Code 22C-9. The rule pertains to the permitting and drilling of deep wells in West Virginia. The rule has not been revised since 1988. It was necessary to clean up language to comport with the revisions made to WV Code 22C-9. Some substantial changes were made. First, language in subsection 4.4.(a) was changed (requirement for surface owners consent and easement) to comport with court decision. Second, additional notice requirements found in subsection 4.5. to apply to operators applying for a deep well drilling permit. Third, subsection 4.1. was amended to include a provision for emergency hearings. Fourth, subsection 6.4. was amended to allow for the confidentiality of certain proprietary evidence that is presented in administrative hearings. Fifth, subsection 6.5. was amended to allow for the pooling of interests in a drilling unit prior to the well being drilled.

C. STATEMENT OF CIRCUMSTANCES WHICH REQUIRE RULE: 39CSR1 has not been revised since 1988. Rule will be filed as a Legislative Rule instead of Procedural. Changes to WV Code 22C-9 warranted changes to the applicable rule.

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

APPENDIX B

FISCAL NOTE FOR PROPOSED RULES

Rule Title: Title 39, Series 1 Rules of the Commission
 Type of Rule: X Legislative Interpretive Procedural
 Agency Oil and Gas Conservation Commission
 Address 1356 Hansford Street
Charleston, West Virginia 25301

1. Effect of Proposed Rule

	ANNUAL FISCAL YEAR				
	INCREASE	DECREASE	CURRENT	NEXT	THEREAFTER
<u>ESTIMATED TOTAL COST</u>	\$	\$	\$	\$	\$
PERSONAL SERVICES					
CURRENT EXPENSE	6,000		-0-	6,000	6,000
REPAIRS & ALTERATIONS					
EQUIPMENT					
OTHER					

2. Explanation of above estimates:

Estimates based on Rule resulting in six additional administrative hearings before the Commission. Each hearing cost is approximately \$1,000, for per diem for members, legal advertisements and court reporter and legal representation.

3. Objectives of these rules:

Revised statute necessitated rule revisions. The revisions are mostly clean up. However, substantial changes were made. Amendment to the surface owners consent and easment provision was made to comport with the interpretation of the court. Also, an additional notice provision when a permit to drill a deep well is sought will further protect the correlative rights of adjoining operator and mineral owner interests. New provisions for emergency hearings and confidentiality of proprietary information submitted as evidence will increase requests for pooling

and further protect the rights of royalty owners and operators. Additionally, a provision allowing for the pooling of interests in a drilling unit prior to drilling a well will further protect the rights of royalty owners and operators.

Rule Title: Title 39, Series 1 Rules of the Commission

4. Explanation of Overall Economic Impact of Proposed Rule.

A. Economic Impact on State Government.

Same as outlined in the Effect of Proposed Rule

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

Operators of deep wells will bear the cost of Class II legal advertisement when they apply for a permit to drill. Any other additional cost associated with attending administrative hearings.

C. Economic Impact on Citizens/Public at Large.

None

Date: 5/10/02

Signature of Agency Head or Authorized Representative

State of West Virginia
Department of Environmental Protection
OIL AND GAS CONSERVATION COMMISSION

1356 Hansford Street
Charleston, West Virginia 25301
Telephone: (304) 558-6076
Fax: (304) 558-6047

Barry K. Lay, Chairman

Bob Wise, Governor

M E M O R A N D U M

TO: Legislative Rule-Making Review Committee
FROM: Brett Loflin, Program Manager
RE: 39CSR1
DATE: July 23, 2002

The public hearing was to be held on July 18, 2002. There were no appearances at the hearing, therefore, the record was never opened and no transcript exists. Copies of written comments that were submitted are included in this rule package.

WEST VIRGINIA DEPARTMENT OF ENVIRONMENTAL PROTECTION**ADVISORY COUNCIL MEETING MINUTES**

Wednesday, June 5, 2002
DMR Conference Room - 10 McJunkin Road, Nitro, WV

ATTENDEES:**Advisory Council Members:**

Larry Harris
Bill Samples
Rick Roberts
Lisa Dooley
Bill Raney

DEP:

Bill Adams
Lewis Halstead
James Martin
Brett Loflin
Allyn Turner
Charles Sturey

Ken Ellison
Bill Brannon
Mike Zeto
Greg Adolfson
Jim Mason
Karen Watson

Citizens:

Rebecca Robertson, NiSource

The meeting was called to order at 9:00 a.m. by William E. Adams, Jr., General Counsel.

Welcome/Opening Remarks - Bill Adams

Bill Adams opened by informing everyone that in Secretary Callaghan's absence, he would chair the meeting. Bill further explained that Secretary Callaghan was preparing for his appearance before a Congressional Committee, he sends his regrets. Bill further announced that Director Ellison was present and later, Director Turner as well as Chief James Martin. There was an introduction of the Advisory Council members, an explanation of what group or interest each member represents.

DEP Advisory Council Minutes
June 12, 2002
Page 2

PRESENTATION OF PROPOSED RULES

Division of Mining and Reclamation

Charles Sturey presented rules 38CSR2 and 38CSR4 to the Council. Mr. Raney asked what the genesis of the coal dam safety rule was. Lewis Halstead explained that the changes were being made mostly due to recent flooding and DEP's experience with a large coal dam near Welch. Mr. Harris inquired generally whether the language in the rules that says DEP's goal is to "restore and protect the environment" should place "protect" as the first priority. This suggestion was taken under advisement.

Division of Water Resources

Bill Brannon presented rule 47CSR26 to the Council. He stated that general stormwater fees would be \$300 rather than the \$700 suggested by EPA. An inquiry was made as to how linear footage for water/sewer lines would be used to calculate whether 1-3 acres would be disturbed in order to qualify for a general permit. Director Turner stated that the agency would rely on the applicant's application information but that some clarification would be appropriate. Director Turner also agreed that clarification was needed on whether a \$300 renewal fee would be required and whether it would be based on flow calculations. She noted also that an agreement similar to that with the coal division would be reached with the Office of Oil & Gas to issue the general permits and that Water and Oil & Gas would split the fee.

Office of Innovation

Greg Adolfson announced that he was now employed at the Office of Innovation, but still worked on the Stream Partners program. He presented rule 60CSR4 to the Council dealing with the Stream Partners Program Grants. Mr. Adolfson also gave a brief history of the Office of Innovation and stated that the Office was directed toward more forward thinking instead of reaction oriented.

Division of Waste Management

Ken Ellison presented rules 33CSR20 and 33CSR26 to the Council. Mr. Ellison explained that these two rules are now identical to the federal regulations.

DEP Advisory Council Minutes
June 12, 2002
Page 3

Environmental Enforcement

Mike Zeto presented rule 33CSR8 to the Council.

Mr. Zeto explained that this was a new rule dealing with establishing a mechanism and requirements for the permitting and use of sludge (specifically not sewage sludge) or other materials that have beneficial properties similar to sewage sludge. Mr. Samples questioned whether the requirement that the sludge comprise at least 50% of the applicant's agricultural requirements was too stringent and whether the Secretary should be allowed to waive this requirement. Mr. Zeto responded in the negative and also stated that the sludge must be shown to have significant nutrient value before DEP would approve its use.

Office of Oil and Gas

James Martin was introduced as the Chief of the Office of Oil and Gas.

Brett Loflin (Oil and Gas Conservation Commission) presented rules 39CSR1 and 39CSR2 to the Council. Mr. Loflin explained that 39CSR1 is currently a procedural rule but will be filed as a legislative rule because it contains substantive legal requirements.

Division of Air Quality

Jim Mason presented rules 45CSR1, 16, 26 and 34 to the Council.

Karen Watson presented rules 45CSR13, 25, 30 and 33 to the Council.

Rick Roberts inquired as to whether there would be a budget hole created due to the reduction of fees in the presented rules. Ms. Watson explained that the calculations had not been done regarding this subject but that as soon as the figures were available, they would be presented to the Council. Mr. Adams noted that as with all rules, a fiscal note would be prepared containing this analysis.

OTHER BUSINESS

Upon conclusion of the rules presentations, it was determined that the rules would need to be filed with the Secretary of State's office by June 12, 2002 to begin the thirty-day comment public comment/hearings period.

DEP Advisory Council Minutes

June 12, 2002

Page 4

The Council agreed that proposed rules should be submitted to the Council members via e-mail in the future so that they can be distributed to other interested parties prior to meetings. Moreover, the proposals should be sent more than 3 days before the Council meeting. Past practice apparently gave little or no time to review the proposals prior to the meeting. Mr. Adams agreed that this would be an appropriate change for future Council meetings.

Bill Samples suggested that action be taken as soon as possible regarding the predictability of permitting. Mr. Adams assured him and the Council that is a DEP priority and noted that all divisions and offices were under the Secretary's mandate to respond to permit applications within 24-48 hours.

The meeting adjourned at 12:07 p.m.



Jo Ellen Diehl Yeary
Vice President, Secretary
& General Counsel

BB & T Square
300 Summers Street, Suite 300
Charleston, WV 25301
304-720-7154
304-720-7101 fax

July 16, 2002

Brett Loflin
Oil and Gas Conservation Commission
1356 Hansford Street
Charleston, WV 25301

Re: Proposed Legislative Rules of the Commission

Dear Brett:

Please accept the following written comments of Triana Energy, Inc. concerning the proposed legislative rule of the Oil and Gas Conservation Commission. They are editorial only; no substantive changes.

1. Section 4.2 begins, "To prevent of waste,...." Delete "of."
2. Section 4.4: the first sentence needs to be completed after "ascertain compliance with". There is also a reference to 22C-9-1(k). I must not have access to the most updated version of the statute, because I do not find this section.
3. Section 4.4.e. does not belong in the listing of items to be included in the application. It should be set off by itself.
4. Section 4.10: Insert "mile" after "deep wells within one..." and before "of the deep multiple completion well".
5. Section 6.4: The reference to "section 6 of this rule" should probably be a reference to "subsection 6.1". Also, the last sentence is missing the word "information" after the word "additional".

Thank you for the opportunity to review these.

Very truly yours,



Jo Ellen Diehl Yeary

State of West Virginia
Department of Environmental Protection
OIL AND GAS CONSERVATION COMMISSION

1356 Hansford Street
Charleston, West Virginia 25301
Telephone: (304) 558-6076
Fax: (304) 558-6047

Barry K. Lay, Chairman

Bob Wise, Governor

July 23, 2002

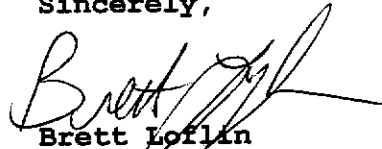
Jo Ellen Diehl Yeary
Triana Energy
300 Summers Street, Suite 300
Charleston, West Virginia 25301

RE: Comments to Proposed Legislative Rules

Dear Ms. Yeary:

Thank you for your comments to the proposed Legislative Rule 39CSR1. The Commission was in agreement with all of your proposed amendments and the necessary changes have been incorporated in the proposed rule.

Sincerely,



Brett Loflin
Program Manager



July 16, 2002

Oil and Gas Conservation Commission
Attention: Brett Loflin
1356 Hansford Street
Charleston, WV 25301

**Re: Comments of the Independent Oil and Gas Association of
West Virginia on Proposed Revisions to 39 C.S.R. 1**

Dear Mr. Loflin:

The Independent Oil and Gas Association ("IOGA") is pleased to provide comments on the proposed revisions to 39 C.S.R. 1, restructuring and modifying the rules of the Oil and Gas Conservation Commission ("OGCC"). IOGA, formed in 1959, is West Virginia's largest oil and gas trade association with more than 350 corporate members. The activities of many of our members are impacted by the rules of the OGCC, particularly as they relate to location, drilling and operation of deep wells in West Virginia. Our comments on the proposed changes are set forth in the paragraphs that follow.

1. Section 1.1. – This section, which sets out the scope of the rules, has been modified in part to delete references to "pools and fields." However, this modification leaves in language that had originally modified the deleted language and the proposed change results in an awkward description of the scope. It is recommended that the first sentence in this section and after the phrase "activities subject to the jurisdiction of the Oil and Gas Conservation Commission" be deleted.

2. Section 2.1. – It is recommended that the word "consecutive" be inserted before the word "calendar" in the proposed definition of "annual."

3. Section 2.7. – IOGA supports the revisions made to this section but for purposes of consistency, IOGA also recommends that the OGCC revise the provision for multiple completion as follows: "A multiple completion is the completion of more than one producing interval of oil or gas into one (1) wellbore."

4. Section 2.1. – The proposed rule would delete the definition of "test well" because references to such wells have been eliminated in other proposed changes to the rule. However, for reasons discussed below, it may be desirable to include a definition for "discovery

well” or “discovery deep well” as that term is used in West Virginia Code § 22C-9-7(a), because no definition for that term is provided in the statute. It is recommended that the following be inserted as a definition in the proposed rule:

“Discovery well” or “discovery deep well” means a deep well intended to discover or establish a new pool.

5. Section 4.1. – It is suggested that the phrase “or by wire” describing how notices or approval may be given be replaced with the phrase “or electronically,” to recognize the vast array of forms of communication that are available.

With respect to the proposed language relating to emergency hearings in this section, it is suggested that corresponding cross references be included in this section and in 39 C.S.R. 2 to alert interested parties to the fact that there are procedural requirements which appear in both rules.

6. Section 4.4. – The end of the first sentence ends abruptly. It is suggested that it end with the following “. . . shall first be reviewed by the Commission or by an authorized agent to ascertain compliance with this rule.”

7. Section 4.4.a. – The proposed language deletes the reference to “test wells” and instead references wells “permitted pursuant to West Virginia Code § 22C-9-7(b).” This proposed change makes the intent of this provision less clear. Because the referenced section of the code (§ 22C-9-7(b)) does not contain a permitting requirement, it is not clear when a well will be “permitted pursuant to” that section. In lieu of the proposed change, it is recommended that the following language be inserted in this subsection:

For all deep wells other than discovery deep wells, as identified in West Virginia Code § 22C-9-7(a), a certificate of consent and easement from all owners of the surface of the tract on which the deep well is to be drilled;

8. Section 4.4.d. – See comments to Section 4.5, below.

9. Section 4.5. – The proposed language would create a new requirement for a public notice to be provided at the time of filing an application for the drilling of any new deep well. The Oil and Gas Conservation Commission has no statutory authority to require such a notice provision. Moreover, the notice provision is inadequate because it fails to prescribe what procedures, if any, that the Commission, or applicant, must follow in the event that adverse comments are received. It is recommended that this provision be deleted because the Commission has no authority to require such a notice or disapprove an application if adverse comments are received.

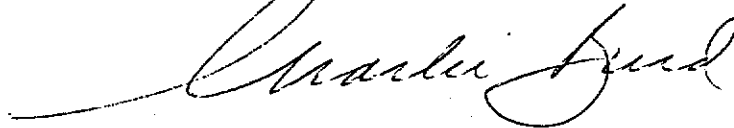
July 15, 2002
Page 3 of 3

10. Section 6.4. – The proposed language allows a drilling unit to be established prior to the completion of a deep well, as well as after the well has been completed. To add clarity to this provision, it is suggested that the next to last sentence in this paragraph be replaced with the following:

If, subsequent to an order being entered pooling the interest of the affected parties, additional information is obtained warranting a different drainage area, then the pooling order may be revised at the request of an interested party.

IOGA thanks the Commission for the opportunity to present these comments and should there be any questions concerning them, please contact the undersigned at 344-9867.

Very truly yours,

A handwritten signature in cursive script, appearing to read "Charlie Burd". The signature is written in black ink and is positioned above a horizontal line.

Charlie Burd
Executive Director

cc: Joseph Pettey
Jeffrey R. Stevens
Ann Bradley

State of West Virginia
Department of Environmental Protection
OIL AND GAS CONSERVATION COMMISSION

1356 Hansford Street
Charleston, West Virginia 25301
Telephone: (304) 558-6076
Fax: (304) 558-6047

Barry K. Lay, Chairman

Bob Wise, Governor

July 23, 2002

Charlie Burd
Independent Oil and Gas Association
405 Capitol Street, Suite 507
Charleston, West Virginia 25301

RE: Response to IOGA Comments on Legislative Rules

Dear Mr. Burd:

Following is the response to your comments dated July 16, 2002 and action taken:

Comment 1, Section 1.1. - Agree with the comment and the change has been made.

Comment 2, Section 2.1 - Agree with the comment and the change has been made.

Comment 3, Section 2.7 - The word pool is used in this section because it is defined in the statute. Therefore, no change was made to the language of the proposed rule.

Comment 4, Section 2.1 - The practice in drafting rules is not to include definitions of terms that are not used in the rule. Therefore, no change was made to the proposed rule.

Comment 5, Section 4.1 - Agree with the first comment and the change has been made. However, the proposed change concerning the cross-referencing was not made. The language in 4.1 with regard to emergency hearings is not strictly procedural in nature. The Commission does not feel that cross-referencing is necessary.

Comment 6, Section 4.4- Agree with the comment and the change has been made.

Comment 7, Section 4.4.a. - The language in section 4.4.a. was drafted to comport with the Circuit Court ruling in Civil Action No. Misc. 82-715, a copy of which is to be filed with the

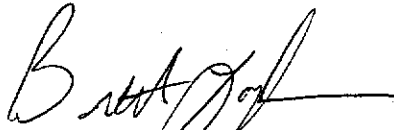
proposed rules. If IOGA's proposed change is incorporated it essentially returns the language back to where it was originally. Therefore, no change was made to the proposed rule.

Comment 8 & 9, Sections 4.4d and 4.5. - The statute gives the Commission authority to require the notice provision in the mandate that the Commission shall safeguard, protect and enforce the correlative rights of operators and royalty owners in a pool of oil or gas to the end that each such operator and royalty owner may obtain his just and equitable share of production from such pool of oil or gas (WV Code 22C-9-1(a)(4)). In addition, the notice is not a request for comments. The purpose of the notice is to inform interested persons that may be affected by the drilling of a deep well, that an application to drill is being filed with the OGCC. They have the same remedies available to them under the existing statute and rule.

Comment 10, Section 6.4 - Agree with the comment with additional language that requires notice and hearing before a pooling order is revised.

Thank you for your comments, if you have any questions you may contact me at (304)558-6076.

Sincerely,



Brett Loflin
Program Manager

STATE OF WEST VIRGINIA

At a Circuit Court for Kanawha County held at the Court House thereof
on the 10th day of May, 1985

RECEIVED

JUN 12 1985

IN THE CIRCUIT COURT OF KANAWHA COUNTY, WEST VIRGINIA
W. VA. OIL & GAS
CONSERVATION COMMISSION

ASHLAND EXPLORATION, INC.,
a Kentucky corporation,

Petitioner,

v.

CIVIL ACTION NO. MISC. 82-715

WALTER N. MILLER, Director of
West Virginia Department of Mines;
THEODORE STREIT, Administrator of
the Office of Oil and Gas Division
of West Virginia Department of Mines;
and THOMAS E. HUZZEY, Commissioner
Oil and Gas Commission of West Virginia,

Respondents.

RECEIVED

MAY 28 '85

ATTY. GEN. OFFICE
Env. Pro. Div.

ORDER

There came on for hearing the Petitioner's Petition for a Writ of Mandamus, and there appeared Ashland Exploration, Inc., the petitioner herein, by counsel, and Walter N. Miller, Director of West Virginia Department of Mines, Theodore Streit, Administrator of the Office of Oil and Gas Division of West Virginia Department of Mines, and Thomas E. Huzzey, Commissioner Oil and Gas Commission of West Virginia, by counsel.

WHEREUPON, the respective parties, by counsel, presented their arguments to the Court, and the Court after reviewing the pleadings, memoranda of authorities and all matters of record filed to date, finds that petitioner's Writ of Mandamus should be granted for the reasons set forth in the Court's letter to counsel for all parties dated

February 8, 1985, which letter is incorporated herein by reference. Wherefore, the Court is of the opinion to and does hereby grant Petitioner's Writ of Mandamus.

Accordingly, it is hereby ORDERED that the Petitioner's Writ of Mandamus be, and the same is hereby granted, and the respondents are hereby ORDERED to grant the petitioner, Ashland Exploration, Inc., the deep well drilling permit requested on August 27, 1982.

-To all of which respondents except and object.

However, it further appearing proper and upon motion of respondents and due notice to all parties herein, it is further ORDERED that these proceedings and the effect of the terms of this Order as set out above shall be stayed until sixty (60) days after the date of entry of this Order so as to give respondents an opportunity to file a Petition for Appeal with the West Virginia Supreme Court of Appeals to contest the Courts ruling herein, and should such a petition be filed on or before said sixty (60) days expire, these proceedings shall be further stayed pending resolution of the petition by the West Virginia Supreme Court of Appeals.

To which stay petitioners except and object.

Approved for entry this 10th day of MAY 1985

Robert R. Smith
JUDGE

STATE OF WEST VIRGINIA
THIRTEENTH JUDICIAL CIRCUIT
KANAWHA COUNTY JUDICIAL BUILDING
CHARLESTON, WEST VIRGINIA 25301

ROBERT K. SMITH
JUDGE

February 8, 1985

Mr. Joseph R. Goodwin
Ms. Lucinda C. Masterton
Goodwin and Goodwin
1717 Charleston National Plaza
Charleston, West Virginia 25301

Mr. L. Eugene Dickinson
Ashland Exploration, Inc.
P. O. Box 391
Ashland, Kentucky 41114

Mr. B. Keith Huffman
Assistant Attorney General
1204 Kanawha Boulevard, East
Charleston, West Virginia 25301

Re: Ashland Exploration, Inc. v.
Walter N. Miller, Director
of West Virginia Department
of Mines et al.
Civil Action No. Misc. 82-715

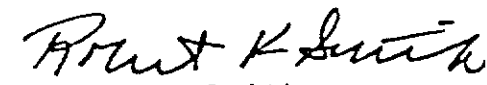
Dear Counsel:

I have thoroughly reviewed all matters of record and all memoranda of authorities submitted by counsel in this mandamus proceeding. I am of the opinion that the surface owner consent and easement requirement in West Virginia Code, 22-4A-7(b)(4) is a radical change imposed upon the common law of West Virginia, and the requirement should be strictly construed and limited to applications for drilling permits for wells to be drilled under pooling and unitization arrangements. In this case pooling and unitization are not involved. Petitioner's well in question is the "test well," Code, 22-4A-7(a)(1), and no applications for permits involving drilling units and pooling have been filed.

This ruling makes it unnecessary to address the various constitutional challenges to the statute.

Counsel for the Petitioner are requested to prepare and submit an order embodying this ruling and incorporating this letter by reference. The order should note the objection and exception of the Respondents to this ruling.

Very truly yours,


Robert K. Smith