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WEST VIRGINIA LEGISLATURE  
Legislative Rule-Making Review Committee

2003 JAN -8 A 10: 34

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SECRETARY OF STATE

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January 08, 2003

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

TO: Joe Manchin, Secretary of State, State Register

TO: Brett Loflin  
DEP-Oil and Gas Conservation Commission  
1356 Hansford Street  
Charleston, WV 25301

FROM: Legislative Rule-Making Review Committee

Proposed Rule: **Rule of the Commission, 39CSR1**

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

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 Recommends that the Legislative rule be withdrawn; a statement of reasons for such recommendation is attached.

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SCANNED

ANALYSIS OF PROPOSED LEGISLATIVE RULE

**Agency:** Oil and Gas Conservation Commission

**Subject:** Rules of the Commission

**CSR Cite:** 39 CSR 1

**Counsel:** JAA

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2002 DEC - 6 P 12:54

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PERTINENT DATES

Filed for public comment: June 13, 2002

Public comment period ended: July 18, 2002

Filed following public comment period: July 24, 2002

Filed LRMRC: July 24, 2002

Filed as emergency: n/a

**Fiscal Impact:** \$6,000.00. New rule provisions allows emergency hearings which are expected to increase the number of hearings held by the Commission each year.

ABSTRACT

Section Summary

Section 2 definitions are amended. Several definitions are revised and new definitions inserted. A new definition of "offset operator" includes owners of parcels within an oil or gas pool within half the distance to the next possible drill site. The definition of test well is deleted, and the definition of "unit" has been revised.

Section 4, operational rules, is amended to allow an emergency hearing in cases where operations might be unduly delayed. The complaining party is to provide a list of all offset operators. The Commission must make "reasonable" attempts to notify offset

operators. New Section 4.4.f requires every deep well permit applicant to meet with Commission staff to review their reclamation plan. Section 4.5 provides new notice requirements for all new deep well permit applicants. The applicant must provide a class I legal advertisement in the county where the deep well is to be located. Specifics regarding the content of the advertisement are provided. Currently Section 4.7 allows for confidentiality of documents submitted for deep well applications for one year. This section is amended to allow the Commission to grant extensions, not to exceed three years, for these documents. This section is also being amended to require that the report required to be submitted to the Commission stating whether the production is segregated or commingled be sent by the operator, certified mail, to all offset operators. Currently the Commissioner is required to send this notice.

Section 6.1.a provides special field rules. Hearing dates time-frames for applications have been extended from 10 days up to 30 days, to 20 days up to no 45 days. Section 6.3 is amended to allow entering into evidence "proprietary" information in the course of an application hearing and the Commission may order such information sealed and not subject to disclosure to other parties or the public. Section 6.7 is being deleted, removing the requirement that the Commission meet at least monthly. New Section 6.4 provides that absent of special field rules, the Commission may order the pooling of interests and formation of a drilling unit. All parties are to be given notice and applicants must provide documentation regarding the pooling. The pooling order may be revised based on new information and notice of any revisions must be sent to all affected parties.

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#### AUTHORITY

Statutory authority: W.Va. Code, §22C-9-5. Rules; notice requirements.

(a) The commission may propose rules for legislative approval in accordance with the provisions of article three, chapter twenty-nine-a of this code, to implement and

make effective the provisions of this article and the powers and authority conferred and the duties imposed upon the commission under the provisions of this article.

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ANALYSIS

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

No.

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

Yes.

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

No.

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

Yes.

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

Yes.

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

No.

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

Yes.

VIII. OTHER.

Counsel has technical modifications to suggest.