

WEST VIRGINIA
SECRETARY OF STATE
KEN HECHLER
ADMINISTRATIVE LAW DIVISION

Form #1

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OFFICE OF THE SECRETARY OF STATE

NOTICE OF PUBLIC HEARING ON A PROPOSED RULE

AGENCY: Shallow Gas Well Review Board TITLE NUMBER: 50

RULE TYPE: Procedural; CITE AUTHORITY WV Code 22-7

AMENDMENT TO AN EXISTING RULE: YES ☐ NO ☒

IF YES, SERIES NUMBER OF RULE BEING AMENDED: _____

TITLE OF RULE BEING AMENDED: _____

IF NO, SERIES NUMBER OF NEW RULE BEING PROPOSED: Series 1

TITLE OF RULE BEING PROPOSED: Rules of Practice Before the Board

DATE OF PUBLIC HEARING: July 15, 1987 TIME: 2:00 pm

LOCATION OF PUBLIC HEARING: Conference Room, Department of Energy
322 70th St. SE
Charleston, WV 25304

COMMENTS LIMITED TO: ORAL ☐, WRITTEN ☐, BOTH ☒

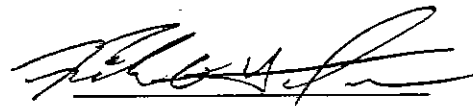
COMMENTS MAY ALSO BE MAILED TO THE FOLLOWING ADDRESS: Shallow Gas Well Review Bd.
322 70th St. SE

The Department requests that persons wishing to make comments at the hearing make an effort to submit written comments in order to facilitate the review of these comments.

Charleston, WV 25304

The issues to be heard shall be limited to the proposed rule.

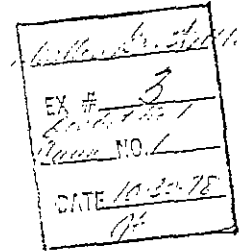
ATTACH A **BRIEF** SUMMARY OF YOUR PROPOSAL





STATE OF WEST VIRGINIA
OFFICE OF THE SECRETARY OF STATE
CHARLESTON 25305

A. JAMES MANCHIN
SECRETARY OF STATE



STATE REGISTER FILING

I, Thomas E. Huzzey, Chairman,
Title or Position

Shallow Gas Well Review Board, hereby submit to record in
Department or Division

the State Register on 8 1/2 x 11" paper two (2) copies of

- ☒ (X) proposed rules and regulations concerning topics of material not covered by existing rules and regulations;
- ☐ () proposed rules and regulations superseding rules and regulations already on file;
- ☒ (X) notice of hearing;
- ☐ () findings and determinations;
- ☐ () rules and regulations; or
- ☐ () other - specify () .

This filing pertains to

Chapter 22
Article 4B 7
Series _____
Section _____
Page No. _____

- ☒ (X) proposed rules and regulations are required to go to Legislative Rule Making Committee;
- ☐ () proposed rules and regulations are excluded from Legislative Rule Making Committee;

September 29, 1978
Date Submitted

Thomas E. Huzzey
Signature of Person Authorizing
this Filing



State of West Virginia

Department of Mines

Oil and Gas Division

Charleston 25305

BEFORE THE SHALLOW GAS WELL REVIEW BOARD
OF THE STATE OF WEST VIRGINIA

IN THE MATTER OF THE GENERAL RULES AND REGULATIONS)	
OF THE SHALLOW GAS WELL REVIEW BOARD OF THE STATE)	DOCKET NO. 1
OF WEST VIRGINIA AND THE RULES OF PRACTICE AND)	
PROCEDURE PERTAINING THERETO.)	CAUSE NO. 1

NOTICE OF HEARING

TO ALL INTERESTED PERSONS AND TO WHOM IT MAY CONCERN:

NOTICE IS HEREBY GIVEN, that the Shallow Gas Well Review Board will receive exhibits and testimony relevant to modification of its proposed Rules and Regulations at a hearing set for:

DATE: October 30, 1978

TIME: 9:00 a.m.

PLACE: Conference Rooms A-B
Conference Center, Capitol Complex
Charleston, West Virginia

IN THE NAME OF THE STATE OF WEST VIRGINIA

SHALLOW GAS WELL REVIEW BOARD
OF THE STATE OF WEST VIRGINIA

By: Thomas E. Huggen
Chairman

Dated at Charleston, West Virginia

September 29, 1978

WEST VIRGINIA ADMINISTRATIVE REGULATIONS

Department of Mines
Chapter 22-4B

(1978)

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Well Review Board

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WEST VIRGINIA ADMINISTRATIVE REGULATIONS

Department of Mines

Chapter 22-4B

SERIES I

(1978)

PART I GENERAL PROVISIONS

1.01 Scope and Construction

(a) The procedures and rules of practice set forth herein shall govern and apply to all proceedings before the West Virginia Shallow Gas Well Review Board.

(b) These rules shall be liberally construed to secure the just, prompt and inexpensive conduct of all proceedings consistent with adequate consideration of the issues involved.

1.02 Authority

These rules are promulgated pursuant to the authority of Code § 22-4B-6 and Article 3, Chapter 29A of the Code.

1.03 Effective Date

These rules were promulgated on the _____ day of _____, 1978, and become effective on the _____ day of _____, 1978.

1.04 Filing Date

These rules were filed in the office of the Secretary of State on the _____ day of _____, 1978.

1.05 Definitions

As used in these rules:

(a) The terms "Board", "Chairman", "coal operator", "coal seam" or "workable coal bed", "Commissioner", "Department" or "Department of Mines", "Deputy Director", "drilling unit", "gas", "gas operator", "owner", "person", "plant", "pool", "royalty owner", "shallow well", "tract comprising a drilling unit", "well", and "well operator" shall have the meanings set forth in Code § 22-4B-2.

(b) The term "Code" shall mean the West Virginia Code of 1931, as amended.

(c) The term "barrel" shall mean 42 U. S. gallons of 231 cubic inches of liquids, including slurries, at a temperature of 60 degrees Fahrenheit.

(d) The term "cubic foot of gas" shall mean the volume of gas contained in one cubic foot of space at a standard pressure base and a standard temperature base. The standard pressure base shall be 14.73 pounds per square inch and the standard temperature base shall be 60 degrees Fahrenheit.

(e) The term "day" shall mean a period of 24 consecutive hours.

(f) The term "designated agent" shall mean the resident of the State of West Virginia designated by a gas operator or well operator as the agent or attorney in fact of such operator.

upon whom process, notices, orders or other communications issued pursuant to Chapter 22 of the Code may be served.

(g) The term "gas-oil ratio test" shall mean a test, by any means generally accepted in the industry, to determine the number of cubic feet of gas produced per barrel of oil produced.

(h) The term "gas well" shall mean any well which produces or appears capable of producing a ratio of 6,000 cubic feet of gas or more to each barrel of oil on the basis of the initial gas-oil ratio test.

(i) The term "initial gas-oil ratio test" shall mean the gas-oil ratio test performed for the purpose of completing Form IV-36, "Well Operator's Report of Initial Gas-Oil Ratio Test", to designate the type of well.

(j) The term "log" or "well log" shall mean a systematic, detailed geological record of all formations, including coal, fresh water and salt water, encountered in the drilling of a well.

(k) The term "oil well" shall mean any well which produces or appears capable of producing a ratio of less than 6,000 cubic feet of gas to each barrel of oil on the basis of the initial gas-oil ratio test.

1.06. Parties

(a) In proceedings concerning the location of shallow wells under Code § 22-4B-7, the parties shall be:

(1) The well operator who proposes to drill a shallow well, and

(2) All coal seam owners who have objected to such proposed drilling pursuant to Code § 22-4-3b, and

(3) The Department, if it has included an objection in the notice of objection.

(b) In proceedings to establish drilling units under Code §§ 22-4B-9, 10 and 11, the parties shall be:

(1) The gas operator who has applied for the establishment of a drilling unit, and

(2) The royalty owners of gas underlying the tracts which comprise the proposed drilling unit, and

(3) The gas operators of the tracts which comprise the proposed drilling unit, and

(4) All persons who have objected to the establishment of the proposed drilling unit pursuant to Code § 22-4B-9(c).

(c) In proceedings to resolve disputes concerning the costs of drilling and operating a well under a pooling order issued by the Board, the parties shall be all royalty owners and gas operators owning interests in the gas produced from the drilling unit for which the pooling order was issued.

1.07 Intervention

Any person claiming a right of participation as a party

with a direct pecuniary interest may intervene in a proceeding and become a party upon petition to the Board and the granting of such petition. The petition must set forth the direct pecuniary interest of the petitioner in the proceeding and show that the petitioner's participation will assist in the determination of the issues in question. A petition for leave to intervene may be filed at any stage of a proceeding before the commencement of the hearing. In the discretion of the Board, a person may be denied intervention in a matter in which he could have participated as a party but failed to avail himself of the opportunity to do so; and a person shall be denied intervention unless he has a direct pecuniary interest in the proceeding. The Board may permit intervention limited to a particular stage of the proceeding.

1.08 Filing and Service of Documents and Orders

(a) Where to file. All documents required to be filed in a proceeding described in these rules shall be filed with the Chairman, West Virginia Shallow Gas Well Review Board, Department of Mines, _____, Charleston, West Virginia.

(b) How to file. All filing may be accomplished by personal delivery or first class mail.

(c) When filing effected. Filing is effective upon delivery.

(d) Copies to be served. Copies of all documents

filed in any proceeding described in these rules shall be served upon all other parties to the proceeding.

(e) Method of service; service of attorney. Service of documents shall be accomplished by personal delivery or by registered or certified mail, return receipt requested, unless otherwise provided in these rules. Whenever a party is represented by an attorney who has signed any document filed on behalf of such party or otherwise entered an appearance on behalf of such party, service thereafter shall be made upon the attorney.

(f) When service effected. In the case of personal delivery, service is effective upon delivery. In the case of mailing, service is effective upon mailing.

(g) Proof of service. Unless otherwise provided in these rules, all documents required to be served shall be accompanied by proof of service in the form of a certificate of service. The certificate of service shall include a statement of how service was accomplished.

1.09 Consolidation of Proceedings

The Board may at any time order a proceeding described in these rules consolidated with any other such proceeding then pending before the Board which involves the same parties and similar issues of law and fact.

1.10 Hearings

All hearings shall be conducted by the Board in accord-

ance with the provisions of Part V of these rules, and all such hearings shall be open to the public.

PART II RULES APPLICABLE TO PROCEEDINGS CONCERNING
THE LOCATION OF SHALLOW GAS WELLS

2.01 Scope

The rules in this part govern and are applicable to proceedings concerning the location of shallow wells under Code § 22-4B-7. In addition to the rules contained in this part, the general rules of practice before the Board contained in Part I and the rules relating to hearings held by the Board contained in Part V are also applicable to such proceedings.

2.02 How Initiated; Notice of Meeting

(a) Upon receipt of a Form IV-15, "Notice to West Virginia Shallow Gas Well Review Board of Objection Under Code § 22-4-36 to a Proposed Drilling Site", from the Deputy Director, the Chairman shall call a meeting of the Board. Such meeting shall be scheduled not less than 10 days nor more than 20 days from receipt by the Chairman of the notice of objection, and notice of such meeting shall be given by the Chairman at least ten days in advance thereof to all parties and the remaining members of the Board.

(b) The notice of each meeting called by the Chairman pursuant to subsection (a) of this section shall issue in the

name of the State, shall specify the style of the proceeding and a docket number assigned by the Chairman, shall state that such meeting is being called for the purpose of holding a conference and, if necessary, a hearing concerning the objections to proposed drilling, shall state the date, time and place of the meeting, and shall be signed by the Chairman.

(c) The notice of each meeting required by subsection (a) of this section shall be given in the manner provided in Code § 22-4B-6. A copy of such notice, including proof of service or publication thereof, shall be retained in the record of the proceeding by the Chairman. Proof of service or publication of such notice shall be made by (i) a verified return if service was made personally, (ii) a certificate of service or return receipt if service was by certified mail, or (iii) a copy of the published notice if service was by publication.

(d) The Chairman shall also mail, by regular United States mail, a copy of all notices given pursuant to subsection (a) of this section to all other persons who have specified to the Chairman an address to which all such notices may be mailed.

2.03 Agreed Location

(a) At any time prior to a meeting called pursuant to the provisions of section 2.02 of these rules, the parties may agree upon either the drilling location as proposed by the well operator or an alternate drilling location on the tract.

(b) If all parties agree to a drilling location prior to a meeting of the Board, the well operator shall immediately file a notice that an agreement has been reached with the Chairman. Such notice shall specify the nature of the agreement and shall include a copy of the plat filed with the Department pursuant to Code § 22-4-2. Any change in the drilling location from the drilling location proposed by the well operator shall be shown on the plat and the distance and direction to the new drilling location from the proposed drilling location shall also be shown. Copies of the notice of an agreed location, including a copy of the plat, shall be served upon all other parties.

(c) Upon receipt of any notice of agreement filed pursuant to subsection (b) of this section, the Chairman shall promptly cancel the meeting of the Board and shall issue a written order stating that an agreement has been reached, stating the nature of such agreement, and directing the Department to grant the well operator a drilling permit for the location agreed upon. The original of such order, together with the entire record of the proceeding, shall be filed with the Department within 5 days after receipt of a notice of agreement. A copy of the order shall be mailed by registered or certified mail to all parties.

2.04 Conference

(a) If a drilling location is not agreed upon pursuant

to the provisions of section 2.03 of these rules, the parties shall meet with the Board at the time and place fixed by the Chairman to consider the objections to proposed drilling. At such conference, the parties may agree upon either the drilling location as proposed by the well operator or an alternate drilling location on the same tract.

(b) If all parties agree upon a drilling location, the Board shall issue a written order stating that an agreement has been reached, stating the nature of such agreement, and directing the Department to grant the well operator a drilling permit for the location agreed upon. Any change in the drilling location from the drilling location proposed by the well operator shall be indicated on the plat enclosed with the notice of objection filed with the Chairman by the Deputy Director and the distance and direction to the new drilling location from the proposed drilling location shall also be shown on such plat. The original of the Board's order, together with the entire record of the proceeding, shall be filed with the Department within 5 days after the conference of the Board at which the drilling location was agreed upon. A copy of the order shall be mailed by registered or certified mail to all parties.

2.05 Hearings

(a) If the parties present or represented at the conference with the Board are unable to agree upon a drilling

location, then, unless they otherwise agree, the Board shall, without recess for more than one business day, hold a hearing to consider the application for a drilling permit. Such hearing shall be conducted in the manner provided in Part V of these rules and the pertinent provisions of Article 5, Chapter 29A of the Code shall apply to and govern such hearing.

(b) Within 20 days after the close of such hearing, the Board shall issue and file with the Department a written order in accordance with Code §§ 22-4B-7 and 8. The entire record of the proceedings shall be filed with the Department simultaneously with the order, and a copy of the order shall be mailed by registered or certified mail to all parties at the time such order is filed.

(c) Any member of the Board may file a separate opinion with the Department within 25 days after the close of a hearing. A copy of any such opinion shall be mailed by registered or certified mail to all parties at the time it is filed.

PART III RULES APPLICABLE TO PROCEEDINGS TO ESTABLISH
 DRILLING UNITS

3.01 Scope

The rules in this part govern and are applicable to proceedings concerning the establishment of drilling units under Code §§ 22-4B-9, 10 and 11. In addition to the rules contained

in this part, the general rules of practice before the Board contained in Part I and the rules relating to hearings held by the Board contained in Part V are also applicable to such proceedings.

3.02 How Initiated; Notice of Meeting

(a) Upon receipt of an application to establish a drilling unit, the Chairman shall call a meeting of the Board. Such meeting shall be scheduled not less than 10 days nor more than 20 days from receipt by the Chairman of the application to establish a drilling unit, and notice of such meeting shall be given by the Chairman at least 10 days in advance thereof to all parties and the remaining members of the Board.

(b) The notice of each meeting called by the Chairman pursuant to subsection (a) of this section shall issue in the name of the State, shall specify the style of the proceedings and a docket number assigned by the Chairman, shall state that such meeting is being called for the purpose of holding a conference and, if necessary, a hearing concerning the application to establish a drilling unit, shall state the date, time and place of the meeting, and shall be signed by the Chairman.

(c) The notice of each meeting required by subsection (a) of this section shall be given in the manner provided in Code § 22-4B-6. A copy of such notice, including proof of service or publication thereof, shall be retained in the record of the

proceeding by the Chairman. Proof of service or publication of such notice shall be made by (i) a verified return if service was made personally, (ii) a certificate of service or return receipt if service was by certified mail, or (iii) a copy of the published notice if service was by publication.

(d) The Chairman shall also mail, by regular United States mail, a copy of all notices given pursuant to subsection (a) of this section to all other persons who have specified to the Chairman an address to which all such notices may be mailed.

3.03. Conference

(a) The parties shall meet with the Board at the time and place fixed by the Chairman for consideration of an application to establish a drilling unit, and the applicant shall be called upon to show that the drilling location on the proposed drilling unit has been agreed to by all of the owners of the coal seams underlying such drilling location. Failure to make such showing shall result in dismissal of the application by the Board, but such dismissal shall not prevent the applicant from later filing a similar application when the drilling location is agreed to by all of the owners of the coal seams underlying such drilling location.

(b) If the Board finds that the applicant has shown that the drilling location on the proposed drilling unit has been agreed to by all owners of coal seams underlying such drilling

location, then the parties shall confer with the Board concerning the boundary of the proposed drilling unit and the pooling of the separately-owned interests in the gas to be produced from the drilling unit. The parties may agree upon either the drilling unit as proposed by the applicant or as changed to satisfy all valid objections of the parties, and also may agree upon the pooling of the separately-owned interests in the gas to be produced from such drilling unit.

(c) If the parties agree upon the boundary of a drilling unit and also agree upon the pooling of the separately-owned interests in the gas to be produced from such drilling unit, the Board shall determine whether the criteria provided in Code § 22-4B-10(c) have been met. If the Board finds that such criteria are satisfied, the Board shall issue a written order specifying the boundary of the drilling unit agreed upon and approving the voluntary pooling agreement. Any change in the boundary of the drilling unit from the boundary proposed by the applicant shall be shown on the plat filed with the Board as part of the application. The original of the Board's order, together with the entire record of the proceeding, shall be filed with the Department within 20 days after the conference of the Board at which the boundary of the drilling unit was agreed upon. A copy of the order shall be mailed by registered or certified mail to all parties.

3.04 Hearings

(a) If the parties present or represented at the conference with the Board are unable to agree upon the boundary of the drilling unit or the pooling of the separately-owned interests in the gas to be produced from such drilling unit, then, unless the parties otherwise agree, the Board shall, without recess for more than one business day, hold a hearing to consider the issues in dispute. Such hearing shall be conducted in the manner provided in Part V of these rules and the pertinent provisions of Article 5, Chapter 29A of the Code shall apply to and govern such hearing.

(b) Within 20 days after the close of such hearing, the Board shall issue and file with the Department a written order in accordance with the provisions of Code §§ 22-4B-10 and 11. The entire record of the proceedings shall be filed with the Department simultaneously with the order, and a copy of the order shall be mailed by registered or certified mail to all parties at the time such order is filed.

(c) Any member of the Board may file a separate opinion with the Department within 25 days after the close of the hearing. A copy of any such opinion shall be mailed by registered or certified mail to all parties at the time it is filed.

PART IV

DISPUTES UNDER POOLING ORDER

4.01 Scope

The rules in this part govern and are applicable to disputes concerning the costs of drilling and operating a well under a pooling order issued by the Board pursuant to Code § 22-4B-11. In addition to the rules contained in this part, the general rules of practice before the Board contained in Part I and the rules relating to hearings held by the Board contained in Part V are also applicable to such proceedings.

4.02 Initiation of Proceedings; Petition to Resolve Dispute

(a) Proceedings for the resolution of disputes concerning the costs of drilling and operating a well under a pooling order issued by the Board may be initiated by any party to such pooling order by filing a petition to resolve dispute.

(b) Such petition shall be filed with the Chairman and copies thereof shall be served upon all other parties owning interests in the gas produced from the drilling unit for which the pooling order was issued.

4.03 Contents of Petition

(a) A petition to resolve a dispute shall identify the subject drilling unit, shall state the name and address of all persons owning interests in such drilling unit, and shall contain a short and plain statement of (1) the facts underlying the dispute, (2) such party's position with respect to each issue of

law or fact in dispute, and (3) the relief requested by such party.

(b) A copy of the pooling order which is involved in the dispute shall be attached to each petition.

4.04 Notice of Meeting

(a) Upon receipt of a petition to resolve dispute, the Chairman shall call a meeting of the Board. Such meeting shall be scheduled not less than 30 days from receipt by the Chairman of the petition, and notice of such meeting shall be given by the Chairman at least 10 days in advance thereof to all owners of interests in the gas produced from the drilling unit and of the remaining members of the Board.

(b) The notice of each meeting called by the Chairman pursuant to subsection (a) of this section shall issue in the name of the State, shall specify the style of the proceeding and a docket number assigned by the Chairman, shall state that such meeting is being called for the purpose of holding a hearing concerning the petition, shall state the date, time and place of the hearing, and shall be signed by the Chairman.

(c) The notice of such meeting required by subsection (a) of this section shall be given in the manner provided in Code § 22-4B-6. A copy of such notice, including proof of service or publication thereof, shall be retained in the record of the proceeding by the Chairman. Proof of service or publication of

such notice shall be made by (1) a verified return if service was made personally, (2) a certificate of service or return receipt if service was by certified mail, or (3) a copy of the published notice if service was a publication.

(d) The Chairman shall also mail, by regular United States mail, a copy of all notices given pursuant to subsection (a) of this section to all other persons who specify to the Chairman an address to which all such notices may be mailed.

4.05 Hearing

(a) At the time and place fixed by the Chairman for the meeting of the Board and for hearing on the petition to resolve dispute, the Board shall hold a hearing to consider the petition. Such hearing shall be conducted in the manner provided in Part V of these rules and the pertinent provisions of Article 5, Chapter 29A of the Code shall apply to and govern such hearing.

(b) Within 20 days after the close of such hearing, the Board shall issue and file with the Department a written order resolving the dispute and either granting, granting in part or denying the relief requested in the petition. The entire record of the proceedings shall be filed with the Department simultaneously with the order, and a copy of the order shall be mailed by registered or certified mail to all parties.

(c) Any member of the Board may file a separate opinion with the Department within 25 days after the close of the hearing.

A copy of any such opinion shall be mailed by registered or certified mail to all parties.

PART V HEARINGS

5.01 Scope

Unless otherwise specified in these rules, the rules in this part shall govern and apply to hearings conducted by the Board pursuant to the authority provided in Article 4B, Chapter 22 of the Code or rules and regulations promulgated pursuant thereto.

5.02 Quorum; Presiding Officer

No hearings shall be held by the Board unless at least two members of the board are present. The Chairman shall preside over every hearing unless he is absent, in which case, the two members present shall decide who shall preside over the hearing.

5.03 Powers of Presiding Officers

(a) The Chairman or other presiding officer in his absence, subject to the rules set forth in this section, may:

- (1) Administer oaths and affirmations;
- (2) Issue subpoenas in accordance with the provisions of §29A-5-1;
- (3) Rule upon offers of proof and receive relevant evidence;
- (4) Permit evidentiary depositions to be taken

and read as in civil actions in the circuit courts of this State;

(5) Permit discovery depositions with the agreement of the Board;

(6) Regulate the course of a hearing;

(7) Dispose of procedural requests or similar matters;

(8) Hold conferences for the settlement or simplification of the issues with the consent of the parties; and

(9) Take any other action in connection with such hearing authorized by law.

5.04 Notice of Hearing

Unless otherwise specified in these rules, no hearing shall be conducted under these rules or otherwise unless the parties to the proceedings shall have received at least 10 days' written notice of a meeting of the Board at which a hearing may be held.

5.05 Representation at Hearings

At hearings held pursuant to these rules, any party may represent himself or be represented by an attorney at law admitted to practice before the courts of any state or the District of Columbia. In addition, any party which is also an operator may be represented by a full-time employee.

5.06 Conduct of Hearing

(a) Conduct of attorneys before the Board shall be the

same as required of attorneys before the Circuit Courts of the State of West Virginia. Any person testifying in response to a subpoena or subpoena duces tecum issued by the Chairman and any person testifying in support of an application or in opposition thereto shall be required to do so under oath or affirmation administered by the Chairman or other presiding officer. Witnesses shall be examined with courtesy and respect, and their good faith shall be presumed.

(b) Smoking shall not be permitted in the hearing room during session or during recess.

(c) Electronic recording of any hearing is prohibited except as may be required by the Board for preserving a record thereof for the use of the Board in connection with the matter being heard. The taking of photographs in or broadcasting of proceedings from any hearing room or so close thereto as to disturb the hearing is prohibited.

(d) A transcript of testimony shall be taken and preserved as part of the permanent record. Parties may examine the official transcript or purchase copies thereof from the court reporter or Board.

5.07 Applicability of Administrative Procedures Act

All of the pertinent provisions of Article 5, Chapter 29A of the Code shall apply to and govern hearings conducted under these rules with like effect as if the provisions of said

Article 5 were set forth in extenso of this section. If any provision of these rules of practice and procedure is inconsistent with any pertinent provision of said Article 5, the provision of said Article 5 shall control.

5.08 Burden of Proof

(a) In proceedings concerning the location of shallow wells, the party objecting to the proposed drilling location shall have the burden of proving its case by a preponderance of the evidence, except that the gas operator shall have the burden of proving its case by a preponderance of the evidence if (1) the Department has objected to the proposed drilling location, or (2) the well is proposed to be drilled to a depth of 3,000 feet or more and the drilling location is less than 2,000 feet from the nearest existing well as defined in Code § 22-4B-8(b).

(b) In proceedings to establish drilling units, the party initiating the proceeding shall have the burden of proving its case by preponderance of the evidence.

5.09 Proposed Findings, Conclusions and Orders

The Chairman, or other presiding officer in the Chairman's absence, may request the submission by parties of proposed findings of fact, conclusions of law and orders, together with a supporting brief. Such proposals and briefs shall be served upon all parties, and shall contain adequate references to the record and authorities relied upon.

5.10 Hearings to be Public

All hearings to be conducted under these rules shall be open to the public. Notice to the public shall be as follows:

(1) The Board shall file with the Secretary of State's office a Notice containing the time, date and place of all regularly scheduled meetings of the Board.

(2) The Board shall file with the Secretary of State's office a Notice or Notices containing the time, date and place of all hearings to be heard by the Board pursuant to Code 22-4B-7. Said Notice shall be filed with the Secretary of State at least ten (10) days before the date set for the hearing.

(3) The Board shall file with the Secretary of State's office a Notice containing the time, date, place and purpose of all special meetings to be held by the Board. Said Notice must be filed with that office at least twenty-four (24) hours in advance.

(4) Copies of all Notices required to be filed by this Regulation with the Secretary of State's office shall also be delivered to the Capitol News Media Office W-123, State Capitol Building.

(5) None of the provisions of this Regulation shall apply to Board actions taken in the event of an emergency requiring immediate official action.

5.11 Written Orders

(a) As soon as practicable after conclusion of a hearing, the members of the Board shall meet to consider the evidence and issue an order which shall be in writing and shall include a statement of:

(1) findings and conclusions and the reasons therefor on the material issues of fact and law; and

(2) the appropriate ruling or order in compliance with the provisions of Code §22-4B-7 or Code §22-4B-10.

(b) The original of all written orders issued by the Board shall be filed with the Department within 20 days after the hearing which is the subject of such order. The record of the proceeding shall be simultaneously filed with the Department, and a copy of the order shall be served, by certified mail, upon all parties at the time the order is filed. Unless the order otherwise provides, the order shall become effective upon filing unless a party makes application for re-hearing or modification in accordance with section 5.12 of these rules.

5.12 Re-opening; Re-hearing; Modification

(a) Applications for re-opening a proceeding after hearing and before written order shall be made by petition filed prior to service of an order. Such petition shall state specifically the grounds relied upon and, if it be for the purpose of introducing additional evidence, shall also state the nature and purpose of the evidence to be introduced.

(b) Applications for re-hearing or re-argument after issuance of a written order shall be made by petition filed within 30 days after service of such order. Such petition shall state specifically the grounds relied upon and, if any written order is sought to be vacated, reversed or modified by reason of (1) matters arising since the issuance of such order, (2) consequences which would result from compliance with the Board's order or (3) facts not in the possession of the petitioner prior to issuance of such

order, such reasons shall also be stated.

(c) Applications for modification of written orders, which seek only a change in the date such order shall take effect, shall be made by petition filed within 30 days after service of the written order, except that, in the event of unforeseen emergencies satisfactorily shown by the petitioner, such relief may be sought informally by telegram or otherwise, upon notice to all parties or attorneys who appeared in the proceeding.

(d) A copy of each petition filed under this section shall be served on all other parties to the original proceeding and such petition shall be accompanied by a certificate showing service upon such parties. Within 15 days after such service, an adverse party may file and serve a reply to the petition.

(e) Upon the filing of the reply or upon the failure of an adverse party to reply within 15 days after service of a copy of the petition on such party, the Board shall consider the petition, the replies thereto, and the record of the proceeding, and, if it determines a hearing upon the petition to be necessary, shall, after 10 days' notice to all parties in the manner provided in Code §22-4B-6, hold such hearing in accordance with the provisions of Part V of these rules. As soon as practicable after consideration of the petition, the replies thereto and the record of the proceeding, the Board shall issue an order either granting in part or denying the relief requested in the petition.

(f) The filing of a petition seeking (i) re-hearing or re-argument after issuance of a written order or (ii) modification of a written order pursuant to subsections (b) and (c) of this section, shall not stay the time for appeal of such written order to the

circuit court unless the Board orders re-hearing or re-argument or modifies the written order, in which case, the time for appeal pursuant to Code §22-4B-13 shall begin to run anew after the Board's final action.

5.13 Appeal

If an appeal is filed pursuant to Code §22-4B-13, the Deputy Director shall be responsible for certifying and forwarding the entire record of the proceedings to the circuit court.



State of West Virginia

Department of Mines

Oil and Gas Division

Charleston 25305

TO: ALL OIL, GAS, AND COAL OPERATORS DATE: September 29, 1978

FROM: Thomas E. Huzzey, Chairman
Shallow Gas Well Review Board

RE: General Rules and Regulations of the
Shallow Gas Well Review Board

Chapter 22-4B-6-(b) states, "The chairman shall also mail a copy of such notice to all other persons who have specified to the chairman an address to which all such notices may be mailed."

Will you please return this letter with your proper address if it is different from that shown on the envelope, to the Shallow Gas Well Review Board if you desire to receive future notices of hearings from the Board. Also indicate whether you desire to receive a copy of the proposed regulations in the appropriate block on the form below.

☐

Desire to receive Notices of Hearings

☐

Desire to receive copy of proposed regulations

NAME _____

ADDRESS _____

STATE _____

Return to:

Shallow Gas Well Review Board
Department of Mines - Oil and Gas Division
Charleston, West Virginia 25305

TEH/rf