



WEST VIRGINIA SECRETARY OF STATE

MAC WARNER

ADMINISTRATIVE LAW DIVISION

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Office of West Virginia
Secretary Of State

NOTICE OF AN EMERGENCY RULE

AGENCY: Oil And Gas Conservation Commission TITLE-SERIES: 39-01

RULE TYPE: Legislative Amendment to Existing Rule: Yes

RULE NAME: Rules Of The Commission

CITE STATUTORY AUTHORITY FOR PROMULGATING EMERGENCY RULE:

22C-9-4

IF THE EMERGENCY RULE WAS PROMULGATED TO COMPLY WITH A TIME LIMIT ESTABLISHED BY CODE OR FEDERAL STATUTE OR REGULATION, CITE THE CODE PROVISION, FEDERAL STATUTE OR REGULATION AND TIME LIMIT ESTABLISHED THEREIN:

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THE ABOVE RULE IS BEING FILED AS AN EMERGENCY RULE TO BECOME EFFECTIVE AFTER APPROVAL BY THE SECRETARY OF STATE OR THE 42ND DAY AFTER FILING, WHICHEVER OCCURS FIRST. THE FACTS AND CIRCUMSTANCES CONSTITUTING THE EMERGENCY ARE AS FOLLOWS:

The development of hydraulic fracturing as an economic method to extract hydrocarbons from wells drilled horizontally into tight shale formations has started a resurgence in the U.S. chemical manufacturing sector. Recently, the American Chemistry Council (ACC) identified over 300 projects that are either up-and-running, getting built or on the drawing board. The ACC valued these projects at \$185 billion stating that they could create about 450,000 new jobs. West Virginia is located in the middle of a basin of tight shales known as the Shale Crescent. This emergency rule is needed to prevent substantial harm to the public interest by West Virginia to be strongly considered for future development investment by demonstrating to potential petro-chemical investors that the West Virginia is willing to provide efficient regulatory processes that, left unchanged, add costs and impedes hydrocarbon development.

Currently, Rule W.Va. C.S.R. § 39-1-4.2 requires all wells developed below the top of the Onondaga formation to be spaced 3000 feet apart from an existing well. That spacing distance is impractical and uneconomical when the hydrocarbons are to be extracted from horizontal wells using hydraulic fracturing. Both industry and the Oil and Gas Commission (the Commission) agree that the existing 3000 feet spacing requirement between wells is inappropriate where hydrocarbon extraction is actively occurring from the Utica formation in northern West Virginia. While current rules do authorize the Commission to grant exceptions to the 3000 foot requirement, every exemption is well-specific. Consequently, every company desiring to hydraulically fracture a formation below the top of the Onondaga must formally request a public hearing before the Commission to obtain an exception to the existing 3000-foot rule, bring witnesses to Charleston to build a record that supports and justifies each requested exception.

Presently, there is no consensus among industry experts that have provided evidence to the Commission, under oath, as to the most appropriate spacing to be used in the Utica formation in Northern West Virginia. Some industry experts believe that 800 feet spacing is appropriate in the Utica formation while others believe that spacing between wells should be no less than 1300 feet.

This emergency rule gives the Commission the authority to craft formation and geographic-specific Operational Rules as knowledge is gained and science and technology advances, that will (1) allow the majority of developers to forego the necessity of repetitively appearing before the commission on routine wells, while (2) recognizing and being protective of the correlative rights of nearby mineral and surface property owners. The use of the proposed Operations Rules recognizes the reality that spacing limitations allowed for one formation (based on existing production on northern West Virginia) may be inappropriate for a different formation or even the same formation located in southern West Virginia. Further, the proposed rule gives the Commission the ability to quickly adjust existing Operational Rules, upon request, as (1) new scientific evidence is discovered, (2) new technologies are developed, or (3) new formations become economically viable to development. It also provides the Commission to adjust Operational rules, sua sponte, to prevent a substantial public harm.

This emergency authority to create Operational Rules is needed today to attract petro-chemical/hydrocarbon development into the state of West Virginia. It is imperative to act with haste because, as noted above, industry is already making long-term billion dollar investment decisions and this emergency rule removes a recognized hurdle to bring development dollars into West Virginia and will better position West Virginia to have a seat at the investment table. Any delay, even one as short as one-year, could potentially cost the state millions of dollars in investments, tax revenues, and direct and indirect employment opportunities. Failing to act now could cause substantial harm to the public interest, whereas implementing this rule cannot harm the public interest.

DOES THIS EMERGENCY RULE REPEAL A CURRENT RULE? No

HAS THE SAME OR SIMILAR EMERGENCY RULE PREVIOUSLY BEEN FILED AND OR EXPIRED? No

SUMMARIZE IN A CLEAR AND CONCISE MANNER THE OVERALL ECONOMIC IMPACT OF THE PROPOSED LEGISLATIVE RULE:

A. ECONOMIC IMPACT ON REVENUES OF STATE GOVERNMENT:

NA

B. ECONOMIC IMPACT ON THE STATE OR ITS RESIDENTS:

NA

C. FISCAL NOTE DETAIL:

Effect of Proposal	Fiscal Year		
	2019 Increase/Decrease (use "-")	2020 Increase/Decrease (use "-")	Fiscal Year (Upon Full Implementation)
1. Estimated Total Cost	0	0	0
Personal Services	0	0	0
Current Expenses	0	0	0
Repairs and Alterations	0	0	0
Assets	0	0	0
Other	0	0	0

2. Estimated Total Revenues

0

0

0

D. EXPLANATION OF ABOVE ESTIMATES (INCLUDING LONG-RANGE EFFECT):

NA

BY CHOOSING 'YES', I ATTEST THAT THE PREVIOUS STATEMENT IS TRUE AND CORRECT.

Yes

Susan Rose--By my signature, I certify that I am the person authorized to file legislative rules, in accordance with West Virginia Code §29A-3-11 and §39A-3-2.

TITLE 39
LEGISLATIVE RULE
WEST VIRGINIA OIL AND GAS CONSERVATION COMMISSION

SERIES 1
RULES OF THE COMMISSION

§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 to all activities subject to the jurisdiction of the Oil and Gas Conservation Commission 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 Commission. Where special field rules apply, the special field rules shall govern to the extent of any conflict.

1.2. Authority. -- W. Va. Code §22C-9-4.

1.3. Filing Date. -- ~~April 20, 2006.~~

1.4. Effective Date. -- ~~April 20, 2006.~~

§39-1-2. Definitions.

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

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

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

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

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.

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.

2.7. "Completion" means that an oil well is considered completed when the well is first capable of producing new oil through wellhead equipment. A gas well is considered completed when the well is capable of producing gas through wellhead equipment. A dry hole is 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) well bore.

2.8. "Conventional Deep Well" means a deep well permitted in accordance with article 6, chapter 22 of the West Virginia Code, drilled to a depth below the top of the Onondaga formation targeting a non-shale type reservoir whether drilled vertically or horizontally.

2.89. "Cubic Foot of Gas" means 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.

2.910. "Day" means a period of twenty-four (24) consecutive hours.

~~2.40~~11. "Designated Agent" means 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 this rule may be served.

~~2.41~~12. "Field" means a geographic area which is underlain or appears to be 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.

~~2.42~~13. "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.

~~2.43~~14. "Heel" means the physical turn when a well's trajectory is changing from vertical to horizontal.

~~2.43~~15. "Hearing" means a proceeding in which any matter is heard before the Commission.

2.16. "Horizontal Unconventional Deep Well" means a deep well permitted in accordance with article 6A, chapter 22 of the West Virginia Code, drilled to a depth below the top of the Onondaga formation utilizing horizontal drilling techniques and targeting a shale or low permeability reservoir.

~~2.46~~17. "Log or Well Log" means a systematic detailed geological record of formations encountered in the drilling of a well.

~~2.45~~18. "Offset Operator" means 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 there from, 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.

~~2.46~~19. "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.

~~2.47~~20. 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 this rule.

~~2.48~~21. "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.

2.1922. "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 Commission may conform the size and shape of the drilling unit upon which a deep well is situated to the applicable special field rules.

2.2023. "Statute" means WV Code §22C-9.

2.24. "Toe" means the terminus of the horizontal well bore.

2.2125. "Unit" means a mineral tract or two (2) or more mineral tracts which have been combined in such a manner that the combined tracts may be regarded as a common tract for the drilling and operation of a deep oil or gas well.

2.2226. "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.

§39-1-3. General Rules.

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

3.2. Access to records. -- The Commission and/or its authorized agent shall have access to such deep well and lease records, wherever located, as may be necessary in the performance of its statutory duties. All persons or operators, drilling or servicing deep wells, shall permit the Commission and/or 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.

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 Commission, in order to perform its statutory duties, may require by rule or regulation.

3.4. Tests and surveys. -- When deemed necessary or advisable in the performance of its statutory duties, the 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.

3.5. Corrective action. -- The 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.

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).

3.7. Consent Agreements. -- When it appears that a violation of WV Code §22C-9-1 et seq., this rule, or any order or final decision of the commission, has occurred, the commission may issue an order

or enter into a consent agreement to administratively dispose of the matter. If a consent agreement between the parties cannot be reached, the commission may elect to exercise its options provided in §22C-9-12.

3.8. 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 Commission or at its direction.

3.9. Forms upon request. -- Forms required by the 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 Commission approval or to change plans previously approved by the Commission must be filed with the Commission, unless otherwise directed, and must receive 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 rule to be given to or received from the 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 W. Va. 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.

4.2.1 Conventional Deep Wells

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

The Commission shall have the discretion to determine pattern location of conventional 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.

4.2.2 Horizontal Unconventional Deep Wells

To prevent waste, protect correlative rights, and to prevent substantial harm to the public interest, in the absence of an application for special field rules or special field rules approved by the Commission establishing drilling units or authorizing different horizontal unconventional deep well spacing or location patterns for a particular field, pool, geographic area, or parts thereof:

4.2.2.a The Commission, at the request of an operator, or to prevent substantial harm to the public interest, may establish a geographic area by formation, establishing an Operational Order for horizontal unconventional deep wells. Any operator intending to apply for an Operational Order, shall send a request for public hearing along with the application which shall include the applicant's name, address, description of the area, map generally depicting the area to be covered by the request, and the geological formation or other formations to be considered for the Operational Order to the Commission. The map should be of a scale sufficient to identify the area for a Class II legal advertisement.

4.2.2.b The Commission shall set a day, time, and place for the public hearing to be not less than twenty (20) days but no more than forty-five (45) days. The Commission shall publish a Class II legal advertisement in the county newspapers for which the proposed Operational Order would affect stating the date, time, and location of the public hearing. In addition to the opportunity to appear, any operator may file written comments on the requested Operational Order.

4.2.2.c At the hearing any operator of land within the requested area or offset operator affected by the request as to the spacing of deep wells within the requested Operational Order area may present evidence. That evidence shall be technical in nature and define characteristics of the reservoir to be covered by the Operational Order.

4.2.2.d Within 20 days of the hearing, the Commission may issue an Operational Order for a defined area, after considering all the evidence presented in support and in opposition to the Operational Order. The Operational Order may be amended from time to time by the Commission in the public interest after notice and public hearing.

4.2.2.e The Operational Order will: define the area to be covered by the order, establish minimum well spacing, to include distances between laterals which will be controlled by the same operator, establish minimum distances between wells adjacent to other operators, establish minimum lease or unit boundary set backs parallel to the lateral, toe to toe, heel to heel, or toe to heel setbacks for units of the same operator, establish minimum lease or unit boundary setbacks parallel to the lateral, toe to toe, heel to heel, or toe to heel setbacks for units in cases where different operators are involved.

4.2.2.f Adjacent operators within the Operational Order area may enter into a written agreement setting agreed upon lateral, toe, and heel spacing so long as they do not reduce that spacing below the minimum distances set by the Operational Order for that area. The executed memorandum of agreement with the spacing terms must be submitted to the commission with each application for which the operator is relying on the agreement.

4.2.2.g Horizontal unconventional deep well unit sizes established by the Commission may exceed 640 acres provided that the unit size is no greater than the area covered by the entire length of the well plus the length of the Operational Order toe and heel setbacks, multiplied by the lateral spacing between wells, plus 10%. Unit size may also be increased beyond the 10% to insure no lease acreage is stranded by the operator's development plan. Multiple well units are allowed under the same guidelines as single well units.

4.2.2.h The Operational Order for the defined area shall be enforceable until amended by a new Operational Order covering that area or part thereof which may be requested by any operator of land within the proposed area, offset operator affected by the Operational Order, or by the Commission to prevent substantial harm to the public interest by hearing as defined in this rule.

4.2.2.i Exceptions to the Operational Order spacing may be granted by hearing under the provisions of 4.3 of this rule.

4.3. Exception to location of wells.

When exception to Rule 39-1-4.2 of 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 Rule 39-1-4.4.

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 subsection 4.4 of this rule does not accurately reflect the hereinabove information. The plat shall show:

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;

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

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 Commission, after notice and hearing, may grant or deny the application and require the withholding or approve issuing of a permit pursuant to subsection 4.4 of 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 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 Commission or by an authorized agent to ascertain compliance with this rule. The Commission will provide the Chief of the Office of Oil and Gas with a statement either approving or disapproving the application based upon the applicant's compliance with Oil and Gas Conservation rules, statutes, and orders. The permit will be issued by the Chief of the Office of Oil and Gas when the applicant has complied with this rule. The application shall contain, or show by plat or sketch, in addition to the requirements of this rule, the following:

4.4.a. For all wells permitted pursuant to W. Va. 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;

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;

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. 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 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;

4.4.d. Any other information which the Commission, by order, rule or policy, may require to perform its statutory duties.

4.4.e. 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. 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 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 Commission, by rule, may require in the performance of its statutory duties.

4.6. 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 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 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 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. 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:

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

4.7.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 Commission.

4.8. 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. Multiple pool completion or commingling in one (1) conventional deep well bore.

In the absence of special field rules, an operator will, within seventy-two (72) hours after commencing to complete a conventional deep well in more than 1 pool, file written notice to the Commission of the intended multiple completion. Within fourteen (14) days after the multiple completion and before any production for the conventional 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 conventional deep well and deep wells within (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 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 Commission determines no waste will result from the completion, the completion will be approved without notice and hearing.

In the event the pools are segregated, the Commission may require tests as it deems necessary to determine the effectiveness of the segregation of the different producing pools.

4.10. Intentional and unintentional deviation in drilling conventional deep wells.

Before beginning intentional directional drilling of a conventional deep well, 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, the 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 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 Commission's request, before completion of drilling operations and before sale of hydrocarbons is made from the well, run cased hole deviation surveys or directional surveys on the well bore.

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. 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 Commission to perform its statutory responsibilities. In conventional deep well gas testing, the methods prescribed in the Interstate Oil Compact Commission's "Manual of Gas Well Testing" shall be used.

4.12. 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 Commission within fifteen (15) days after the completion of the test. Upon request, the 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 Commission to perform 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:

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;

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

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

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;

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;

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;

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

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 Commission may enter an order as provided in W. Va. 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 Commission.

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

§39-1-6. Special Field Rules.

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 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 Commission within ten (10) days or the conference will not be held, and the evidence required in Section 6.2. The 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 Commission within the ten (10) days after the date of the prehearing notice, the 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 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 this section, indicating where there is disagreement with the applicant, sufficient to permit all operators to attempt to resolve the difference.

6.1.a. The 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 twenty (20) days and not more than forty-five (45) days after receipt of the application except under emergency hearing rules as defined herein.

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 counter plan with the Commission and all operators of lands directly and immediately affected and state briefly the issues.

6.2. The 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 W. Va. Code §22C-9-10, require evidence from an applicant as follows:

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;

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;

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

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

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.

6.3. 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 Commission or any interested parties. The 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 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 in 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. Rebuttal testimony and exhibits and subsequent testimony and exhibits may be permitted at the discretion of the 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 Commission. No order shall be made which is not supported by competent legal evidence.

6.3.c. The Commission shall enter a spacing order or dismiss the application therefore 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 W. Va. 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 W. Va. 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.

6.5. Upon receipt by the commission of a request for pooling or special field rules the commission may issue an order requiring the operator of a well or wells in question to establish an interest bearing escrow account for the deposit of proceeds attributable to conflicting working interests and/or royalty interests where a conflict exists as to ownership or where ownership cannot be determined. The pooling order shall require the operator to submit a monthly report to the commission detailing the

funds deposited in the escrow account. The order shall require the operator to obtain approval from the commission for the release or disbursement of funds from the escrow account. The order is subject to the appeal provisions of §22C-9-11. After the time frame for an appeal has expired, the operator shall seek approval from the commission to release those funds required to be disbursed.