

WEST VIRGINIA
SECRETARY OF STATE

KEN HECHLER

ADMINISTRATIVE LAW DIVISION

Form #3

Do Not Mark In this Box

FILED
1991 OCT 11 AM 9:32
OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

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

AGENCY: Dept. of CLER - Division of Energy TITLE NUMBER: 38

CITE AUTHORITY 22-1-15; 22B-1-2

AMENDMENT TO AN EXISTING RULE: YES NO

IF YES, SERIES NUMBER OF RULE BEING AMENDED: _____

TITLE OF RULE BEING AMENDED: Legislative

IF NO, SERIES NUMBER OF NEW RULE BEING PROPOSED: 21

TITLE OF RULE BEING PROPOSED: NA

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

Roger O. Hall
Roger Hall



STATE OF WEST VIRGINIA

DIVISION OF ENERGY

DEPARTMENT OF COMMERCE, LABOR AND ENVIRONMENTAL RESOURCES

1615 WASHINGTON STREET, EAST • CHARLESTON, WEST VIRGINIA 25311 • TELEPHONE (304) 348-3500 • FAX: (304) 348-2452

GASTON CAPERTON
GOVERNOR

E. W. "WOODY" WAYLAND
COMMISSIONER

August 14, 1991

Mr. John Ranson
Secretary
Department of Commerce, Labor
and Environmental Resources
Room R-151
Capitol Complex
Charleston, West Virginia 25305

Dear Secretary Ranson:

I submit herewith a request to file new regulations concerning Abandon Wells (CSR-38-21). The regulations are the result of a task force on abandon wells that have meeting for the last year.

The group made up of IOGA, WVONGA, the coal association and citizen groups have put together this regulatory change and will be proposing changes to the statute.

Sincerely,

Theodore M. Streit
Director
Section of Oil and Gas

TMS:cr

Encl. as stated

Approved:
John M. Ranson
8/16/91

To Ted Streit

for you



STATE OF WEST VIRGINIA
DIVISION OF ENERGY

DEPARTMENT OF COMMERCE, LABOR AND ENVIRONMENTAL RESOURCES

1615 WASHINGTON STREET, EAST • CHARLESTON, WEST VIRGINIA 25311 • TELEPHONE: (304) 348-3500 • FAX: (304) 348-2452

7/20/91
Doyle
Ted discuss these briefly
with me. Would you give them
a separate review and then
advise me verbally what you
opine. That
J.W.

GASTON CAPERTON
GOVERNOR

E. W. "WOODY" WAYLAND
COMMISSIONER

DOE/SO&G-0977

July 17, 1991

E. W. "Woody" Wayland, Commissioner
Division of Energy
1615 Washington Street East
Charleston, West Virginia 25311

Dear Commissioner Wayland:

I am proposing to promulgate the enclosed regulations on Abandoned wells, under the powers granted to me in West Virginia Code 22-1-12.

This section requires you to decide whether or not you wish to review these regulations, and if so, to file a notice of review with me within 30 days. If you choose not to review them, you can either mark them approved or do nothing which will be considered an approval.

If you have any further questions on this procedure or the regulations, please feel free to contact me.

Sincerely,

Theodore M. Streit
Director
Section of Oil and Gas

TMS:las

Encls. (as stated)

Approved
E.W. Wayland

FILED
MAY 22 1973

FISCAL NOTE FOR PROPOSED RULES

Rule Title: Operator's Designation of Bona Fide Future Use of Oil and Gas Wells - Qualification for Inactive Status

Type of Rule: Legislative Interpretive Procedural

Agency Division of Energy Address 1615 Washington St., E.
Charleston, WV 25311

1. Effect of Proposed Rule	ANNUAL		FISCAL YEAR		
	Increase	Decrease	Current	Next	Thereafter
Estimated Total Cost	\$	\$	\$	\$	\$
Personal Services	30,000		30,000		
Current Expense	15,000		15,000		
Repairs and Alterations					
Equipment	5,000		5,000		
Other					

2. Explanation of above estimates.

We anticipate hiring a bona fide future use application reviewer

3. Objectives of these rules:

To make oil and gas operators come forward and affirm their intentions and responsibilities concerning plugging or non-producing wells

4. Explanation of Overall Economic Impact of Proposed Rule.

A. Economic Impact on State Government.

Presently there are hundreds of wells being abandoned each year. These wells, if not plugged by the operator of the well, will have to be plugged by the state at the cost of \$5,000-\$10,000 per well.

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


This will require the oil and gas industry to affirmatively declare that they have a use for any well that has not produced in the past year. Cost per filing approximately \$50.00 - \$100.00

C. Economic Impact on Citizens/Public at Large.

Very little impact except to pay for increased personnel for DOE

Date August 22, 1991

Signature of Agency Head or Authorized Representative



Director-Section of Oil and Gas

FILE-
AUG 22 11:13

WEST VIRGINIA DIVISION OF ENERGY
SECTION OF OIL AND GAS

Title 38 Series 21

Operator's Designation of Bona Fide
Future Use of Oil and Gas Wells
Qualification for Inactive Status

August 22, 1991

The purpose of these rules is to require operators of oil and gas wells to file a bona-fide future use application on any well that is presumed abandoned under WV Code 22B-1-19. It also provides the operator with possible future uses and the Section of Oil and Gas with assurances that the well is environmentally sound. These regulations are all new.

FILED
1991 OCT 11 AM 9:32
OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

TITLE 38
DIVISION OF ENERGY
SECTION OF OIL AND GAS
SERIES 21
OPERATOR'S DESIGNATION OF BONA FIDE
FUTURE USE OF OIL AND GAS WELLS
QUALIFICATION FOR INACTIVE STATUS

38-21-1 General.

1.1 Scope -- This legislative rule establishes requirements pertaining to the operator's designation of bona fide future use of wells and certification of inactive status and information and data to be required by the Director as necessary to such designation.

1.2 Authority -- WV Code 22B-1-1; 22B-1-2; 22B-1-3; 22B-1-4; 22B-1-5; 22B-1-6; 22B-1-7; 22B-1-11; 22B-1-19; 22B-1-23; 22B-1-24; 22B-1-26; 22B-1-28; 22B-1-29; 22B-1-30; 22B-1-32; 22B-1-34; 22B-4-5

1.3 Filing Date --

1.4 Effective Date --

1.5 Forms -- An index of all current forms and copies of any forms currently used under or required by this rule may be obtained from the Director. The Section of Oil and Gas reserves the right to amend any forms prospectively to accord more fully with West Virginia Code Chapter 22B and this rule.

38-21-2 Definitions

Unless the context in which used clearly requires a different meaning, the definitions contained in West Virginia Code 22-1-3 and 22B-1-1 shall apply to this rule in addition to the definitions set forth below:

2.1 "WV Code" shall mean the West Virginia Code of 1931, as amended.

2.2 "Abandoned well" shall mean any well which is completed as a dry hole or which has not produced in commercial quantities for a period of twelve consecutive months.

2.3 "Active Status" shall mean any well producing oil or gas in commercial quantities, or being operated pursuant to underground injection control permits, or being operated in conjunction with the underground storage of hydrocarbons.

2.4 "Barrel" shall mean forty-two (42) U. S. gallons of two

hundred thirty-one (231) cubic inches each of liquid, including slurries, at a temperature of sixty (60) degrees Fahrenheit.

2.5 "Completion of the drilling process" shall mean the date on which a drilling rig ceases operation on the drilling site for more than thirty (30) consecutive days.

2.6 "Cubic foot of gas" shall mean the volume of gas contained in one (1) cubic foot at a standard pressure base of fourteen point seven three (14.73) pounds per square inch (absolute) and a standard temperature of sixty (60) degrees Fahrenheit.

2.7 "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.

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

2.9 "Initial gas-oil ratio test" shall mean the gas-oil ratio test performed for the purpose of completing Form WR-36, "Well Operator's Report of Initial Gas-Oil Ratio Test," to designate the type of well.

2.10 "Log or Well log" shall mean a systematic, detailed geologic record of all formations, including coal, fresh water, and salt water encountered in the drilling of a well.

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

2.12 "Payout ratio" shall mean for the purposes of these regulations, the ratio of the estimated gross receipts of income from the well divided by the estimated cost of completing and placing the well into production.

2.13 "Production in ~~commercial~~ commercial quantities" shall mean production of natural gas or oil or both from a well or reservoir which is either sold or delivered to one other than the operator, or retained by the operator or any owner of the production at severance for beneficial economic use: Provided, that natural gas used for the testing of natural gas wells or for other field uses which are production related, shall not be considered produced in commercial quantities.

38-21-3 Operational Requirements for Designation of Bona Fide Future Use

3.1 All operators wishing in order to demonstrate bona fide future use for any of a well that is not active and to

~~therefore~~ avoid having such well deemed abandoned under West Virginia Code 22B-1-19, must file with the Director a Designation of Bona Fide Future Use for each such well. To establish a bona fide future use and maintain the well in inactive status the operator shall, in addition to any other information requested by the Director, submit such information as the operator believes establishes the bona fide future use, and shall consider the following information as appropriate:

- 3.1.1 The Api number of the well.
- 3.1.2 The date on which the well was completed.
- 3.1.3 Whether the well is covered by a bond.
- 3.1.4 The date on which the well first produced.
- 3.1.5 The results of the initial gas-oil ratio test, if available.
- 3.1.6 The last date on which the well was produced.
- 3.1.7 The average monthly production at the time production ceased.
- 3.1.8 The formation(s) from which the well produced.
- 3.1.9 The estimated remaining recoverable reserves associated with the well without reworking the well.
- 3.1.10 Whether reworking the well to recover additional reserves is possible.
- 3.1.11 The estimated remaining recoverable reserves associated with the well after reworking.
- 3.1.12 The method used to establish reserve estimates in sections 3.1.9 and 3.1.11.
- 3.1.13 Whether secondary recovery is possible.
- 3.1.14 Whether production from other formations is possible.
- 3.1.15 Whether the well can be drilled deeper.
- 3.1.16 The estimated cost to deepen the well.
- ~~3.1.17 Whether "free gas" is being provided from the well.~~
- 3.1.18 Whether the well is covered by a gas sales contract.
- 3.1.19 Whether the well is connected to a gas meter or how it is measured at the transfer of ownership or custody.

- 3.1.2019 Other equipment connected to the well.
- 3.1.210 Whether the well is connected to a pipeline system.
- 3.1.221 A description of the line pressure of the receiving pipeline.
- 3.1.232 Whether a compressor is in place and whether it is in use on the well.
- 3.1.243 If the well is not connected to a pipeline, the distance to the nearest pipeline that would accept production from the well.
- 3.1.254 Whether a shut-in royalty is being paid.
- 3.1.265 The operator's schedule for putting the well into production.
- 3.1.276 Whether the well is currently used for a capable of use for gas storage.
- 3.1.287 Whether the well is capable of being used as a liquid injection well.
- 3.1.298 Whether money has been escrowed for use to plug the well in the future.
- 3.1.3029 Any other information which the operator considers relevant.

38-21-4 Inactive Status

4.1 Upon submittal of a completed operator's designation of bona fide future use to the Director, any permitted well which satisfies the following requirements, as reflected in the data and information provided in the designation, will be deemed to be in inactive status:

4.1.1 the condition of the well is sufficient to prevent waste of oil or gas, and to prevent the pollution of waters of the State;

4.1.2 the operator, in the designation of bona fide future use, presents a viable plan for utilizing the well within a reasonable time; and

4.1.3 the operator satisfies the bonding requirements of West Virginia Code Chapter 22B.

4.2 Upon receipt of a designation of bona fide future use, he Oil and Gas Section will conduct a review of the submitted data along with other information available to it, and prepare a report for the Director.

4.3 The Director will consider whether sufficient data and information concerning inactive status of the well in question has been provided.

4.4 The Director may require the operator of any well in inactive status to monitor the mechanical integrity of such well and to report the same to the Director on forms provided by the Director for that purpose.

4.5 The inactive status of any well will be valid for the time period requested by the operator, not to exceed five (5) years from the date of filing with the Director, or unless and until the Director terminates such inactive status upon finding the operator has failed to comply with the provisions of this series or other law or the well does not satisfy the requirements of this series.

4.6 Any well that is not in active or inactive status shall be deemed abandoned and shall be promptly plugged by the operator.

38-21-5 Reports

5.1 The operator shall file a separate designation of bona fide future use for each well for which it seeks a determination from the Director.

5.2 The operator's designation of bona fide future use will be filed with the Director and made on such forms as the Director may approve.

5.3 Should the operator desire to extend the inactive status period, the operator shall file a new designation of bona fide future use on forms prescribed by the Director, within two (2) weeks prior to the end of the inactive status period.

38-21-6 Variance

Upon request or the Director's own initiative, the Director may grant a variance from requirements of this Series upon a showing by an operator that alternative practices will satisfy the requirements of West Virginia Code Chapter 22B.

38-21-7 Effect on ~~Nongovernmental~~Nongovernmental Actions

Neither the filing, (submission, or completion) of the operator's designation, nor the well's status as inactive pursuant to these

regulations or West Virginia Code 22B-1-19, nor acceptance,
receipt, review, report, consideration, or termination by
the Director or the Oil and Gas Section shall be
admissible as evidence as to the truth of a matter
asserted regarding a claim or cause of action between
nongovernmental parties.

DATE: October 10, 1991
TO: LEGISLATIVE RULE-MAKING REVIEW COMMITTEE
FROM: Dept. of CLER - Division of Energy
LEGISLATIVE RULE TITLE: NA (Title 38)

1. Authorizing statute(s) citation 22-1-15; 22B-1-2
2. a. Date filed in State Register with Notice of Hearing:
August 22, 1991
- b. What other notice, including advertising, did you give of the hearing?
Newspapers (see attached)
Independent Oil & Gas Association newsletter
West virginia Oil & Natural Gas Association newsletter
- c. Date of hearing(s): October 2, 1991
- d. Attach list of persons who appeared at hearing, comments received, amendments, reasons for amendments.
Attached No comments received
- e. Date you filed in State Register the agency approved proposed Legislative Rule following public hearing:
(be exact)
October 10, 1991
- f. Name and phone number of agency person to contact for additional information:
Theodore M. Streit, Director
Division of Energy - Section of Oil and Gas
1600 Washington Street East, Charleston, WV 25311
PH: 348-3057 - 3026

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

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

NA

b. Date of hearing: NA

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

NA

d. Attach findings and determinations and reasons:

Attached NA



STATE OF WEST VIRGINIA

DIVISION OF ENERGY

DEPARTMENT OF COMMERCE, LABOR AND ENVIRONMENTAL RESOURCES

1615 WASHINGTON STREET, EAST • CHARLESTON, WEST VIRGINIA 25311 • TELEPHONE: (304) 348-3500 • FAX: (304) 348-2452

GASTON CAPERTON
GOVERNOR

E. W. "WOODY" WAYLAND
COMMISSIONER

DOE/SO&G-0984

August 27, 1991

Herald-Dispatch
946 Fifth Avenue
Huntington, WV 25701

Dear Sir/Madam:

I would appreciate your running the enclosed Notice of Hearing as a public service announcement in your newspaper.

If you have any questions please call Lois Simpkins at 348-3057, Ext. 37.

Sincerely,

A handwritten signature in black ink, appearing to read "T. Streit".

Theodore M. Streit, Director
Section of Oil and Gas

TMS:las

Enclosure (as stated)



STATE OF WEST VIRGINIA

DIVISION OF ENERGY

DEPARTMENT OF COMMERCE, LABOR AND ENVIRONMENTAL RESOURCES

1615 WASHINGTON STREET, EAST • CHARLESTON, WEST VIRGINIA 25311 • TELEPHONE: (304) 348-3500 • FAX: (304) 348-2452

GASTON CAPERTON
GOVERNOR

E. W. "WOODY" WAYLAND
COMMISSIONER

DOE/SO&G-0984

August 27, 1991

Charleston Gazette-Mail
P. O. Box 2992
Charleston, WV 25330

Dear Sir/Madam:

I would appreciate your running the enclosed Notice of Hearing as a public service announcement in your newspaper.

If you have any questions please call Lois Simpkins at 348-3057, Ext. 37.

Sincerely,

A handwritten signature in black ink, appearing to read "TMS".

Theodore M. Streit, Director
Section of Oil and Gas

TMS:las

Enclosure (as stated)



STATE OF WEST VIRGINIA

DIVISION OF ENERGY

DEPARTMENT OF COMMERCE, LABOR AND ENVIRONMENTAL RESOURCES

1616 WASHINGTON STREET, EAST • CHARLESTON, WEST VIRGINIA 25311 • TELEPHONE: (304) 348-3500 • FAX: (304) 348-2452

GASTON CAPERTON
GOVERNOR

E. W. "WOODY" WAYLAND
COMMISSIONER

DOE/SO&G-0984

August 27, 1991

The Clarksburg Telegram
324-326 Hewes Avenue
Clarksburg, WV 26301 -

Dear Sir/Madam:

I would appreciate your running the enclosed Notice of Hearing as a public service announcement in your newspaper.

If you have any questions please call Lois Simpkins at 348-3057, Ext. 37.

Sincerely,

Theodore M. Streit, Director
Section of Oil and Gas

TMS:las

Enclosure (as stated)



STATE OF WEST VIRGINIA

DIVISION OF ENERGY

DEPARTMENT OF COMMERCE, LABOR AND ENVIRONMENTAL RESOURCES

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GASTON CAPERTON
GOVERNOR

E. W. "WOODY" WAYLAND
COMMISSIONER

DOE/SO&G-0984

August 27, 1991

Parkersburg Sentinel
519 Juliana Street
Parkersburg, WV 26101

Dear Sir/Madam:

I would appreciate your running the enclosed Notice of Hearing as a public service announcement in your newspaper.

If you have any questions please call Lois Simpkins at 348-3057, Ext. 37.

Sincerely,

A handwritten signature in cursive script, appearing to read "T. Streit".

Theodore M. Streit, Director
Section of Oil and Gas

TMS:las

Enclosure (as stated)



STATE OF WEST VIRGINIA

DIVISION OF ENERGY

DEPARTMENT OF COMMERCE, LABOR AND ENVIRONMENTAL RESOURCES

1615 WASHINGTON STREET, EAST • CHARLESTON, WEST VIRGINIA 25311 • TELEPHONE: (304) 348-3500 • FAX: (304) 348-2452

GASTON CAPERTON
GOVERNOR

E. W. "WOODY" WAYLAND
COMMISSIONER

DOE/SO&G-0984

August 27, 1991

The Dominion Post
Greer Building
Morgantown, WV 26505

Dear Sir/Madam:

I would appreciate your running the enclosed Notice of Hearing as a public service announcement in your newspaper.

If you have any questions please call Lois Simpkins at 348-3057, ext. 37.

Sincerely,

Theodore M. Streit, Director
Section of Oil and Gas

TMS:las

Enclosure (as stated)

NOTICE OF HEARING

The Director of the Section of Oil and Gas, WV Division of Energy, has announced that a hearing regarding a new proposed rule; Title 38 Series 21 - Operator's Designation of Bona Fide Future Use of Oil and Gas Wells - Qualification for Inactive Status, is scheduled for Wednesday, October 2, 1991 at 10:00 AM in the WV Division of Energy Conference Room, 1615 Washington Street East, Charleston, WV 25311.

PUBLIC HEARING RECORD
WEST VIRGINIA DIVISION OF ENERGY
OPERATORS' DESIGNATION OF BONA FIDE FUTURE USE
OF OIL AND GAS WELLS QUALIFICATION FOR INACTIVE STATUS

CSR 38-21

October 2, 1991

The hearing record was opened at 10:00 AM October 2, 1991 with Ted Streit, Director of the Oil and Gas Section presiding. In appearance was David B. McMahon who submitted written comments. Additional written comments where filed by David M. Flannery prior to the hearing. No other comments were filed. The hearing record was closed at 10:30 AM.

COMMENTS ON
PROPOSED RULE
OIL AND GAS SECTION
DIVISION OF ENERGY
PROPOSED TITLE 38, SERIES 21
OPERATOR'S DESIGNATION OF BONA FIDE
FUTURE USE OF OIL AND GAS WELLS
QUALIFICATION FOR INACTIVE STATUS

1. OVERALL COMMENT

Abandoned oil and gas wells are generally a blight on the State. Many of the older wells were poorly cased. Even better cased wells with time deteriorate. Wells with bad or deteriorated casing cause tremendous pollution of good underground water aquifers by allowing the good aquifers to mix with sulfurous, salt or otherwise polluted underground aquifers, or even polluted surface waters. The effort by the State to identify wells for plugging that have no bona fide future use is lauded by surface owners and citizen environmentalists.

However, certain aspects of the proposed rule are not clear, unnecessarily adversely affect surface owners' interest, deprive parties with an interest in the matter from participating in a governmental decision affecting their interests, and may affect private rights.

2. THE MECHANICS OF DESIGNATION OF WELLS WITH A BFU IS ONLY ACCEPTABLE BECAUSE OF FINANCIAL LIMITATIONS AND SHOULD BE "SUNSET."

This commentator understands that the intent of the rule is that an operator may file a designation if it, on its face, states a bona fide future use. When the submission is made, the well will be deemed to have a bona fide future use unless the State reviews the application and determines that it does not.

The State's interest in a rigorous evaluation of each designation is not high because there will be so many wells that receive no designation at all. These undesignated wells will be more than enough to consume the State's resources available for plugging the abandoned wells without the State challenging the validity of the future use for wells for which a designation is filed.

This commentator does not dispute the practical judgment 1) that the State's plugging resources are limited and 2) that the State's resources generally are limited. It would be difficult to have sufficient budget of sufficient staff to adequately review all the

bona fide future use designations. However, this commentor wants the record to be straight that for this job to be properly done there should be adequate state staff to review the designations of bona fide future use, and they should not be denied or granted unless reviewed.

Further, any support from ~~the operator~~ ^{this commentor} will be predicated on the interested parties approaching the various finance committees and obtaining funding for the one position.

Also, since this practical financial limitation is not forever, and these rules could be forever, these rules should contain a sunset provision for, say ten years.

3. THE STATE'S POWER OF TERMINATION COULD BE MISREAD AND SHOULD BE CLARIFIED

This commentor is not sure that the language adopted in Section 4.5 fulfills the purpose stated in the first paragraph of the previous section of this comment.

Section 5.1 requires the operator to file a designation of bona fide future use for each well.¹ Section 4.1 calls upon the operator to complete a designation of bona fide future use to the director. (The commentor first suggests that the first phrase of Section 4.1 needs some form of the verb "file" or "submit" since a designation should not be "completed . . . to the director".) After the bona fide future use designation is completed, (filed, or submitted) to the director, any well whose designation on its face² meets the requirements of 4.1.1 through .3 is deemed to be "inactive," and therefor not "abandoned" and subject to plugging.

That "deemed" status continues for five years or until terminated by the director. The director can "terminate" the status upon a finding that, "[T]he operator has failed to satisfy the requirements of this series." Section 4.5 What if the operator has done all of his duties, but the well does not meet the requirements? The language of the regulation in the immediately preceding quotation should be amended to read, "the operator has failed to comply with the provisions of this series or other law or the well does not satisfy the requirements of this series."

¹ It would flow better if this section came before section 4.1.

² "As reflected in the data and information provided in the designation"

4. THE REQUIREMENT THAT WELLS ONLY PROVIDING FREE GAS BE PLUGGED SHOULD BE ELIMINATED

Section 3.1.17 says that information about "free gas" is appropriate information to be submitted by the operator. However, it does not appear that the regulation allows the provision of free gas to be a bona fide future use to avoid plugging. Section 2.2 defines "abandoned well" as one that is not produced in "commercial quantities". Therefore a well which produces only "free gas" is an "abandoned well" and these regulations require it to be plugged.

A large number of rural people have the financial and lifestyle advantages of having "free gas." Even if they just get gas from a gathering pipeline, and even if they have to pay for "free gas" to some degree, it is still an enormous benefit to them. It should not be removed unless necessary.

Abandoned wells do need to be plugged. Plugging a well does not pay for itself. The best way to get abandoned wells plugged is to have someone financially responsible for the costs of plugging a well with financial incentive to get on with plugging when it needs done. The current method to make sure that an abandoned well gets plugged at the end of its life (when it is no longer generating the money necessary for it to be plugged) is for a bond to be required. That is the law now for more recent drilled wells. New legislation is going to be proposed which requires all wells to be bonded, even those which were not required to be bonded.

The bonding statutes should satisfy the State's interest that wells be plugged. If the State's interest is covered in that manner, the State should not, in addition, require all wells to be plugged if they only supply free gas.

The definition of an "abandoned well" in Section 2.2 should be modified by adding at the end the words "or has not actively produced gas for direct use by persons with a lawful right to receive it", or words to that effect.

5. SURFACE OWNERS ARE CONSTITUTIONALLY ENTITLED TO, AND SHOULD BE GIVEN, SOME NOTICE AND RIGHT TO CONTEST THE STATE'S ACTION IN THIS MATTER

The Administrative Procedures Act is not just a creature of statute, but has an underpinning of constitutional requirement. See Citizen's Bank v. West Virginia Board of Banking and financial institutions, 160 W.Va. 220; 233 S.E.2d 719 (1977). There can be little doubt that the owner of surface whose land has on it an oil and gas well which has been drilled through his fresh water aquifers has standing in this regard. The action proposed by the regulations is "state action" adversely affecting property rights

of surface owner all of which gives rise to due process rights. See Snyder v. Callaghan, 284 S.E.2d 241 (1981) (where downstream riparian owners were given the right to protest a permit regarding the discharge of water upstream.)

Due process, of course, is only that process which is due given the specific situation. Where the permit does list the name and address of the surface owner, the postage stamp and an extra photocopy is all of the cost involved in notice. It seems obvious that such a person would have the right to receive a copy of the designation that is filed. Where no address is so easily available some form of publication in a local county paper might suffice.

Notice is only one half of the problem. As contemplated by the drafters of this rule, a facially adequate bona fide use designation is deemed to place the well in inactive status so it is not considered to be abandoned. The State is not even required to review and consider termination of the submissions. So a facial statement of a bona fide use, even if it is a patent fraud, will stand unless affected parties have some mechanism to make the State consider termination.

Rule 4.5 needs to have a provision allowing any party who can demonstrate an interest in the well to request that any deemed inactive status be terminated by the director. The director should then be required to issue a decision. Something like the following would suffice:

Any party with an interest in the well in question may request the director to terminate any deemed bona fide future use and inactive status of a well. The director shall issue a decision on whether or not to terminate a deemed inactive status within ninety days of any request to do so.

6. THE DIRECTOR'S DETERMINATION OF, OR THE DEEMING OF, EXISTENCE OF A BONA FIDE FUTURE USE SHOULD NOT BIND PRIVATE PARTIES PRIVATE DISPUTES

The State's actions or inactions should not bind parties to a private dispute. This is particularly true given that the primary purpose of the current regulation is to spend the resources that the State has to get wells plugged that everyone agrees are abandoned; and given the possibility that the number of requests for bona fide future use status may exceed the ability of the State to adequately review, report and make a decision on the termination of each one.

There are cases where disputes arise between mineral owners and operators as to whether a well is abandoned. For example, the mineral owner may sue the operator alleging that the secondary term

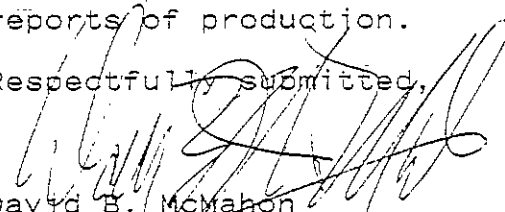
of a lease has ended due to abandonment (so the mineral owner can lease to another operator). In such circumstances the Director's limited attention to "determinations", particularly "deemed" bona fide future use, should not be admissible at a trial of a conflict between the parties. The commentor suggests the following language be added as a new section.

Neither the filing (submission or completion) of the operator's designation, nor the well's status as inactive pursuant to these regulations or West Virginia Code 22-1-B-19, nor acceptance, receipt, review, report, consideration or termination by the Director or the Oil and Gas Section shall be admissible as evidence as to the truth of a matter asserted regarding a claim or cause of action between nongovernmental parties.

7. "REPORTS"

Section 5 requires the operator to file a designation of bona fide use for each well. That appears to mean every well even if there has been commercial production. It seems that it only makes sense to require reports to be filed for wells which do not have substantial production unless the Department does not wish to compare these filings against reports of production.

Respectfully submitted,



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WRITER'S DIRECT DIAL NO.

August 9, 1991

Mr. Theodore M. Streit
Director
Oil & Gas Section
West Virginia Division of Energy
1615 Washington Street, E.
Charleston, West Virginia 25305

Re: Bona Fide Future Use Regulation.

Dear Ted: ---

Since our last meeting, I have received a few additional comments on the terms of the bona fide future use rule which I would like to pass on to you in this letter in the hope that these comments might be addressed before the regulations are formally promulgated:

1. Section 2.2 - It is believed that this definition of "abandoned well" would be more meaningful if the following words were deleted: "is completed as a dry hole or which." By removing these words, "abandoned well" would be defined in terms of whether the well has produced in commercial quantities for a period of twelve consecutive months which would, of course, be triggered in the case of a well that was completed as a dry hole.

2. Section 2.3 - It is also believed that this definition of "active status" would be improved if the following words were added after the word "producing" in the first line of the definition: "or capable of producing." The addition of these words would take account of situations where an operator might successfully drill a well but not be able to produce it for such reasons as lack of available pipeline.

ROBINSON & MCELWEE

Mr. Theodore M. Streit
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3. Section 3 - I continually get questions from operators about the factors that are set forth in Section 3 and whether those factors must each be mandatorily addressed. I have assured them that these factors are optional factors and that they may pick and choose which of those factors they wish to rely upon in an effort to make their demonstration of bona fide future use. Perhaps more needs to be done with this language to indicate that these are by way of illustration of the types of factors that should be considered.

4. Section 4 - I believe that the first line of this section would read better if it were revised as follows: "Upon submittal of a completed operator's designation of bona fide future use to the director,".

If you have any questions regarding any of these proposals for change, please contact me by telephone. I will, of course, be present at the upcoming meeting of the group that is reviewing these rules and we can discuss them at that time as appropriate.

Very truly yours,



David M. Flannery

DMF/kck

cc: Mr. Curtis P. Cook
Mr. Douglas Maddy
Mr. Robert Radabaugh
Mr. David McCluskey
Mr. James A. Crews

RESPONSE TO COMMENTS FILED AT PUBLIC HEARING ON PROPOSED BONA-FIDE
FUTURE USE REGULATIONS - WV CSR 38-21

Notice of the proposed rule making to establish requirements pertaining to an operator's designation of bona fide future use of wells and certification of inactive status, was made on August 22, 1991, by the W. Va. Division of Energy Oil & Gas Section as authorized under W. Va. Code 22B-1-1, 22B-1-2, 22B-1-3, 22B-1-4, 22B-1-5, 22B-1-6, 22B-1-7, 22B-1-11, 22B-1-19, 22B-1-23, 22B-1-24, 22B-1-26, 22B-1-28, 22B-1-29, 22B-1-30, 22B-1-32, 22B-1-34, 22B-4-5.

The proposed regulations attempt to provide requirements that an operator in order to show he has bona fide future use for a well must at a minimum declare that future use. The regulations also provide that the state will review that use to determine if it meets certain criteria. It also provides that if the state does nothing the operator will automatically be granted inactive status for 5 years.

Written and oral comments were solicited on or before October 2, 1991, and the Section received comments from one attorney representing surface owners, and one attorney representing oil and gas owners. These comments may be viewed or copies obtained by writing to: Director, Oil and Gas Section, Division of Energy, W. Va. Department of Commerce, Labor & Environmental Resources, 1615 Washington Street, Charleston, W. Va. 25311.

All of the comments were given careful consideration and a few changes were made in the regulations. These changes incorporated either suggestions made in the comments or ideas initiated by the suggestions.

A discussion of these changes is as follows:

Both comments indicated that there should be a change in Section 4. Suggested language would be as follows: "Upon submittal of a completed operator's designation of bona fide future use to the director," This change has been incorporated since it does not change the intent of the regulations.

One of the comments was that this regulation should be "sunset" so that when the agency gets adequate funding for its Oil and Gas Section it can review all of these applications instead of granting inactive status by inaction. (ie if the state does nothing the operator's application is approved.). If the agency were to get funding to review these applications more fully it could ask for a change of the regulation or it could exercise its options under Section 4 which allows the director to terminate the inactive status. Therefore no change was proposed.

One person who commented had a better definition for an abandoned well. The regulation uses the same definition that is found in WV Code 22B-1-19, and as such the state felt too much confusion would arise if the regulations were not the same.

One person who commented also wanted to include in the active status provision that a well was active if it was "capable of producing" in addition to just producing. It is the state's position that a well of that type would be granted inactive status and would have a bona fide future use. Under the proposed regulations any well that is not producing is not active. In order for that well not to be declared abandoned the operator would have to file with the director a request for inactive status. If the suggestion of the person who commented was followed then the state would have some wells that were not producing that would not have to file for inactive status because by definition they would be active with no production. The state would not easily be able to determine which wells would be required to file since it would not have the data necessary to make that determination until and after the operator filed his inactive request. However this comment and another led the state to clarify when an operator must file his inactive request. The proposed change is in Section 3.1.

There was a suggestion that clear language be put in Section 3 that would state to the operator that he is not mandated to address each of the factors listed. The purpose of Section 3 is to give the operator guidance as to what the state will be looking at in determining bona fide future use. In all circumstances it will not be a requirement to furnish data on all items. The state does not believe that it is necessary to change the language of the regulations for

that purpose.

One of the persons who commented stated that Section 5 should come before Section 4. The state believes by changing the wording in Section 3.1 and Section 5.1 better explains the intent of Section 5 which is to explain the reporting requirements for a well that the operator is seeking inactive status.

One person who commented stated that Section 4.5 may be interpreted that the only way an operator's inactive status could be revoked is by failure to file and not some other reason that makes engineering, legal, or environmental sense. In order not to limit the powers of the Director, the state incorporated the suggested language in Section 4.5

One of the comments was that the state should consider free gas as a bona fide future use. The State has taken the position that free gas by itself does not constitute a bona fide future use since it is a way for oil and gas operators to have a politically popular method to avoid their statutorily mandated responsibilities of plugging wells that are of no commercial use. The state did, however, wish to know if an individual was using a well for free gas in order to approach that person with the pro's and con's of well ownership prior to an operator trying to convince that landowner to take over this responsibility for the operator. However to avoid the controversy the state has decided to remove the free gas provisions from the

regulations.

One comment stated that surface owners due process was not being protected because there was no effective way surface owners could comment on whether a well was considered active, inactive or abandoned. The state recognizes that there may be various parties that may have an interest in the action of state government concerning abandoned wells and as such, plans to disseminate the information it receives on these wells as widely as possible. However, to require a oil and gas operator to notify an individual with whom he has no property relationship, can be both burdensome and cost prohibitive. The state is trying to bring these wells into compliance and does not want to burden the process. These regulations do not grant or remove any property rights that do not already exist between the parties. WV Code 22B-1-28 delineates who the effected parties are in actions concerning plugging of abandoned wells and gives them recourse to file before the director a request for a hearing.

In order to strengthen this, however and in order to make sure that no individual uses this procedure to effect their property rights the state has added the language suggested by a person who commented in a new Section as follows:

38-21-7 Effect on nongovernment parties.

Neither the filing (submission or completion) of the operator's designation, nor the well's status as inactive pursuant to these regulations or West Virginia Code 22B-1-19, nor acceptance, receipt, review, report, consideration or termination by the director or the Oil and Gas Section shall be admissible as evidence as to the truth of a matter asserted regarding a claim or cause of action between

nongovernmental parties.