

WEST VIRGINIA
SECRETARY OF STATE
KEN HECHLER
ADMINISTRATIVE LAW DIVISION

Form #6

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OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

**NOTICE OF FINAL FILING AND ADOPTION OF A LEGISLATIVE RULE AUTHORIZED
BY THE WEST VIRGINIA LEGISLATURE.**

AGENCY: Division of Environmental Protection TITLE NUMBER: 38

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: 21

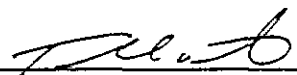
TITLE OF RULE BEING PROPOSED: Bona-fide Future Use

THE ABOVE RULE HAS BEEN AUTHORIZED BY THE WEST VIRGINIA LEGISLATURE.

AUTHORIZATION IS CITED IN (house or senate bill number) HB-100

SECTION 64-3-17-(a), PASSED ON May 26, 1993

THIS RULE IS FILED WITH THE SECRETARY OF STATE. THIS RULE BECOMES EFFECTIVE ON
THE FOLLOWING DATE: July 1, 1993


Theodore M. Streit, Chief
Office of Oil and Gas
#10 McJunkin Road
Nitro, West Virginia 25143-2506
759-0514

**TITLE 38
DIVISION OF ENVIRONMENTAL PROTECTION
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 Chief 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; 22B-5-1 through 12.

1.3 Filing Date -- _____

1.4 Effective Date -- July 1, 1993

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 Chief. The Office 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 "Chief" shall mean the Chief of the Office of Oil and Gas as designated by the Director of the Division of Environmental Protection.

2.6 "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.

2.7 "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.

2.8 "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.

2.9 "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.

2.10 "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.

2.11 "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.

2.12 "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.

2.13 "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.

2.14 "Production in 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. Procedure for Designation of Bona Fide Future Use.

3.1 Any operator seeking designation of bona fide future use for a well shall submit to the Chief a Designation of Bona Fide Future Use on forms prescribed by the Chief which shall require the following information:

3.1.1 The name and address of the operator;

3.1.2 The location of the well;

3.1.3 The Api number of the well, if any;

3.1.4 A viable plan for utilizing the well including an estimated time for commencement of the future use of the well; and,

3.1.5 Any other information requested by the Chief.

3.2 The operator shall file a separate Designation of bona fide future use for each well for which it seeks a determination from the Chief.

3.3 In order to extend the inactive status period, the operator shall file a new Designation of Bona Fide Future Use on forms prescribed by the Chief, within two (2) weeks prior to the end of the inactive status period.

The operator shall notify the Chief of a change in an inactive well's status to either active or abandoned within thirty days after the change in status.

§38-21-4. Demonstration of Designation of Bona Fide Future Use.

4.1 For any well which is not in active status, an operator must demonstrate bona fide future use to avoid having such well deemed abandoned under W.Va. Code 22B-1-19. In order to establish bona fide future use, the operator shall submit information and data sufficient to satisfy the Chief that there is a bona fide future use for the well. The operator should consider the following information:

4.1.1 The date on which the well was completed;

4.1.2 The method which the well meets the financial responsibility requirements of W.VA. Code 22B-5-4 and 22B-5-5.

4.1.3 The date on which the well first produced;

4.1.4 The results of the initial gas-oil ratio test;

4.1.5 The last date on which the well was producing;

4.1.6 The average monthly production at the time production ceased;

4.1.7 The formation(s) from which the well produced;

4.1.8 The estimated remaining recoverable reserves associated with the well without reworking the well;

4.1.9 Whether reworking the well to recover additional reserves is possible;

4.1.10 The estimated remaining recoverable reserves associated with the well after reworking;

4.1.11 The method used to establish reserve estimates in sections 4.1.8 and 4.1.10;

4.1.12 Whether secondary recovery is possible;

4.1.13 Whether production from other formations is possible;

4.1.14 Whether the well can be drilled deeper;

4.1.15 The estimated cost to deepen the well;

4.1.16 Whether the well is covered by a gas sales contract;

4.1.17 Whether the well is connected to a gas meter or how it is measured at the transfer of ownership or custody;

4.1.18 Other equipment connected to the well;

4.1.19 Whether the well is connected to a pipeline system;

4.1.20 A description of the line pressure of the receiving pipeline;

4.1.21 Whether a compressor is in place and whether it is in use on the well;

4.1.22 If the well is not connected to a pipeline, the distance to the nearest pipeline that would accept production from the well;

4.1.23 Whether a shut-in royalty is being paid;

4.1.24 The operator's schedule for putting the well into production;

4.1.25 Whether the well is currently used for or capable of use for gas storage;

4.1.26 Whether the well is capable of being used as a liquid injection well;

4.1.27 Whether money has been escrowed for use to plug the well in the future; and,

4.1.28 Any other information which the operator considers relevant to establishing a bona fide future use.

§38-21-5. Inactive Status.

5.1 Upon submittal of a completed Designation of Bona Fide Future Use to the Chief, any permitted well which satisfies the following requirements shall be deemed to be in inactive status:

5.1.1 The condition of the well is sufficient to prevent waste of oil or gas;

5.1.2 The condition of the well is sufficient to prevent pollution of waters of the State; and

5.1.3 The operator satisfies the bonding requirements of W.Va. Code 22B-1-1 et seq.

5.2 The Chief shall determine whether sufficient data and information have been provided to make a determination that the well has a bona fide future use and is properly deemed in inactive status.

5.3 The Chief may require the operator of any well in inactive status to monitor the mechanical integrity of such well and to require the operator to submit reports on the integrity of the well to the Chief.

5.4 The inactive status of any well with a designation of bona fide future use shall be valid for the time period requested by the operator, not to exceed five (5) years from the date of filing with the Chief, unless inactive status is revoked pursuant to 5.5 of this rule, or unless the operator elects to extend the inactive status period pursuant to the provisions of 3.3 of this rule.

5.5 The Chief may revoke the inactive status of any well upon a finding that:

5.5.1 The operator has failed to comply with the provisions of W.Va. Code 22B-1-1 et seq.

5.5.2 The operator has failed to comply with the provisions of this rule;

5.5.3 The well does not satisfy the requirements of this rule; or

5.5.4 The well does not have a bona fide future use.

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

§38-21-6. Effect on 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 W.Va. Code 22B-1-19, nor acceptance, receipt, review, report, consideration or termination by the Chief 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.

SENATE BILL NO. 185

(By Senator Manchin)

[Introduced March 1, 1993; referred to the
Committee on Natural Resources; and then to
Natural Resources; and then to the Committee
on the Judiciary.]

8

9

10 A BILL to amend article three, chapter sixty-four of the code of
11 West Virginia, one thousand nine hundred thirty-one, as
12 amended, by adding thereto a new section, designated section
13 sixteen, relating to authorizing the division of
14 environmental protection to promulgate legislative rules
15 relating to an operator's designation of bona fide future use
16 of oil and gas wells - qualification for inactive status.

17 Be it enacted by the Legislature of West Virginia:

18 That article three, chapter sixty-four of the code of West
19 Virginia, one thousand nine hundred thirty-one, as amended, be
20 amended by adding thereto a new section, designated section
21 sixteen, to read as follows:

22 ARTICLE 3. AUTHORIZATION FOR DEPARTMENT OF COMMERCE, LABOR AND
23 ENVIRONMENTAL RESOURCES TO PROMULGATE LEGISLATIVE RULES.

24 §64-3-16. Division of environmental protection.

1 The legislative rules filed in the state register on the
2 eleventh day of October, one thousand nine hundred ninety-one,
3 modified by the division of environmental protection to meet the
4 objections of the legislative rule-making review committee and
5 refiled in the state register on the ninth day of November, one
6 thousand nine hundred ninety-two, relating to the division of
7 environmental protection (operator's designation of bona fide
8 future use of oil and gas wells - qualification for inactive
9 status), are authorized.

10

11 NOTE: The purpose of this bill is to authorize the Division
12 of Environmental Protection to promulgate legislative rules
13 relating to an operator's designation of bona fide future use of
14 oil and gas wells - qualification for inactive status.

15

16 This section is new; therefore, strike-throughs and
17 underscoring have been omitted.



KEN HECHLER
Secretary of State

MARY P. RATLIFF
Deputy Secretary of State

A. RENEE COE
Deputy Secretary of State

CATHERINE FREROTTE
Executive Assistant

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DONALD R. WILKES
Director, Corporations

(Plus all the volunteer
help we can get)

FAX: (304) 558-0900

STATE OF WEST VIRGINIA

SECRETARY OF STATE

Building 1, Suite 157-K
1900 Kanawha Blvd., East
Charleston, WV 25305-0770

RECEIVED
Director's Office
JUL 28 93
MAIL ROOM
Environmental Protection

TO: Roger T. Hall

AGENCY: Environmental Protection

FROM: JUDY COOPER, DIRECTOR, ADMINISTRATIVE LAW DIVISION

DATE: July 26, 1993

THE ATTACHED RULE FILED BY YOUR AGENCY HAS BEEN ENTERED INTO OUR COMPUTER SYSTEM. PLEASE REVIEW, PROOF AND RETURN IT WITH ANY CORRECTIONS. IF THERE ARE NO CORRECTIONS, PLEASE SIGN THIS MEMO AND RETURN IT TO THIS OFFICE. YOU WILL BE SENT A FINAL VERSION OF THE RULE FOR YOUR RECORDS.

PLEASE RETURN EITHER THE CORRECTED RULE OR THIS FORM WITHIN TEN (10) WORKING DAYS OF THE DATE YOU RECEIVED THIS REQUEST. CALL IF YOU HAVE ANY QUESTIONS.

SERIES: 21 TITLE: 38 Environmental Protection

* THE ATTACHED RULE HAS BEEN REVIEWED AND IS CORRECT.

SIGNED: Roger T. Hall / C.C.
TITLE OF PERSON SIGNING: Special Asst. to Director
DATE: Aug. 16, 1993

* THE ATTACHED RULE HAS BEEN REVIEWED AND NEEDS CORRECTING. THE CORRECTIONS HAVE BEEN MARKED.

SIGNED: _____
TITLE OF PERSON SIGNING: _____
DATE: _____

NOTE: IF YOU ARE NOT THE PERSON WHO HANDLES THIS RULE, PLEASE FORWARD TO THE CORRECT PERSON.

KEN HECHLER
Secretary of State

MARY P. RATLIFF
Deputy Secretary of State

A. RENEE COE
Deputy Secretary of State

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May 28, 1993

Theodore M Streit, Chief
Environmental Protection
Office of Oil & Gas
10 McJunkin Road
Nitro, WV 25143

HB 100 authorizing, Title 38, Series 21, Abandoned Wells, passed the Legislature on **May 26, 1993**. It is now awaiting the Governor's signature.

You have sixty (60) days after the Governor signs HB 100, to final file the legislative rule with the Secretary of State's office. To final file your legislative rule, fill in the blanks on the enclosed form #6, the "Final Filing" form and file the form with our office. Authorization for your legislative rule is cited in **HB 100** section 64-3-17(a). The agency may set the effective date of the legislative rule up to ninety (90) days from the date the legislative rule is final filed with the Secretary of State's office. Please have an authorized signature on the bottom line.

*****IMPORTANT: IF YOUR AGENCY HAS COMPLETED THE LEGISLATIVE RULE ON A COMPUTER SYSTEM THAT USES A 3 1/2" OR 5 1/4" DISK, PLEASE SUBMIT A CLEAN COPY, WITH ALL UNDERLINING AND STRIKE-THROUGHS TAKEN OUT, TO OUR OFFICE WHEN FINAL FILING THE RULE. STATE ON THE DISK THE FORMAT THE RULE IS IN AND THE TITLE IT IS FILED UNDER. THIS WILL MAKE IT QUICKER FOR US TO ENTER YOUR RULES ON THE LEGISLATIVE DATA BASE. REMEMBER THE TEXT OF THE COMPUTER FILED RULE MUST BE IDENTICAL - WORD FOR WORD, COMMA FOR COMMA, WITH ALL UNDERLINING AND STRIKE-THROUGHS TAKEN OUT, AS THE HARD COPY AUTHORIZED BY THE LEGISLATURE.**

After the final rule is entered into the legislative data base, the rule will be sent to the agency for review and proofing. Following confirmation or corrections, as the case may be, the Secretary of State shall submit to the agency a final version of the rule for their records.

If you have any questions or need any assistance, please do not hesitate to call our office.

Thank You
Administrative Law Division