

**WEST VIRGINIA
SECRETARY OF STATE**

KEN HECHLER

ADMINISTRATIVE LAW DIVISION

Form #3

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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: Division of Environmental Protection TITLE NUMBER: 38

CITE AUTHORITY 22-1-3, 22-1-4, 22-1-7, 22-1-12, 22-1-16, 22B-1 thru 39
22B-5-1 thru 12

AMENDMENT TO AN EXISTING RULE: YES ___ NO X

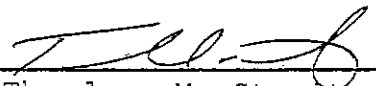
IF YES, SERIES NUMBER OF RULE BEING AMENDED: NA

TITLE OF RULE BEING AMENDED: NA

IF NO, SERIES NUMBER OF NEW RULE BEING PROPOSED: Series 22

TITLE OF RULE BEING PROPOSED: Abandoned Wells

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.


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



DEPARTMENT OF COMMERCE, LABOR & ENVIRONMENTAL RESOURCES

OFFICE OF THE SECRETARY

State Capitol, Room R-151

Charleston, West Virginia 25305-0310

Telephone: (304) 558-3255

Fax No.: (304) 558-4983

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OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

JOHN M. RANSON
Cabinet Secretary

GASTON CAPERTON
Governor

July 31, 1992

Ted Streit
Division of Environmental Protection
#10 McJunkin Road
Nitro, West Virginia 25143

RE: Proposed Rule - Title 38, Series 22 (Abandoned walls)

Dear Ted:

Pursuant to West Virginia Code §5F-2-2(a)(12), I hereby consent to the proposal of the rule specified above.

You may attach a copy of this letter to your filing with the Secretary of State as evidence of my consent.

Sincerely yours,

John M. Ranson
John M. Ranson
Cabinet Secretary

JMR:cjb

B:RUL-DEP-RUL



State of West Virginia
 DIVISION OF ENVIRONMENTAL PROTECTION
 10 McJunkin Road
 Nitro, WV 25143-2506

Gaston Caperton
 Governor

David C. Callaghan
 Director

July 30, 1992

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 OFFICE OF THE
 SECRETARY

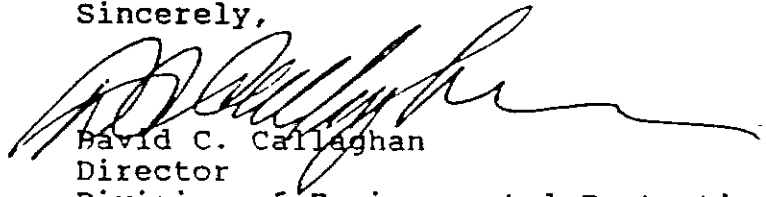
Mr. John Ranson
 Secretary
 Department of Commerce, Labor
 and Environmental Resources
 Room R-151
 Capitol Complex
 Charleston, West Virginia

Dear Secretary Ranson:

I submit herewith a request to file new regulations concerning Abandoned wells (38-CSR-22). The regulations are the result of a task force on abandoned wells that have been meeting for the last year.

The group made up of IOGA, WVONGA, the coal association and citizen groups have put together this regulatory change which was mandated by changes in the statute.

Sincerely,



David C. Callaghan
 Director
 Division of Environmental Protection

Encl: as stated

FISCAL NOTE FOR PROPOSED RULES

Rule Title: Abandoned Wells 38CSR22

Type of Rule: X Legislative _____ Interpretive _____ Procedural _____

Agency Division of Environmental Protection Address #10 McJunkin Road
Nitro, WV 25143-2506

1. Effect of Proposed Rule	ANNUAL		FISCAL YEAR		
	INCREASE	DECREASE	CURRENT	NEXT	THEREAFTER
ESTIMATED TOTAL COST	\$50,000	\$	\$50,000	\$	\$
PERSONAL SERVICES	30,000	\$	\$30,000	\$	\$
CURRENT EXPENSES	15,000		15,000		
REPAIRS AND ALTERATIONS					
EQUIPMENT	5,000		5,000		
OTHER					

2. EXPLANATION OF ABOVE ESTIMATES.

We anticipate creating a position to implement the regulations.

3. Objectives of these rules:

To implement the Abandoned Well Act of 1992.

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 Group of citizens.


This will have the most direct cost to Oil and Gas operators in that the statute has made the penalties for abandoning a well to the State higher.

C. Economic Impact on Citizens/Public at Large.

Very little impact except to pay for increased personnel for DEP.

DATE July 30, 1992.

Signature of Agency Head or Authorized Representative



Theodore M. Streit - Chief Office of Oil and Gas

WEST VIRGINIA DIVISION OF ENVIRONMENTAL PROTECTION

OFFICE OF OIL AND GAS

Title 38 Series 22

Abandoned Wells

July 30, 1992

The purpose of these rules is to implement the Abandoned Well Act of 1992 HB-4476. This legislative rule establishes a variety of requirements pertaining to oil and gas wells in West Virginia, the West Virginia Abandoned Well Act, W.Va. Code §22B-5-1 et seq. and more specifically in relation to abandoned wells, financial responsibility requirements, a priority system for plugging abandoned wells, the declaration of operator status, authorizing interested persons to plug abandoned wells, schedules for plugging wells, and emergency procedures for abandoned wells. These regulations are all new.

TITLE 38
LEGISLATIVE RULE
DEPARTMENT OF COMMERCE, LABOR AND ENVIRONMENTAL RESOURCES
DIVISION OF ENVIRONMENTAL PROTECTION
OFFICE OF OIL AND GAS

SERIES 22
ABANDONED WELLS

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OFFICE OF OIL AND GAS
DIVISION OF ENVIRONMENTAL PROTECTION
REC'D

§38-22-1. General.

1.1. Scope -- This legislative rule establishes a variety of requirements pertaining to oil and gas wells in West Virginia, the West Virginia Abandoned Well Act, W.Va. Code §22B-5-1 et seq. and more specifically in relation to abandoned wells, financial responsibility requirements, a priority system for plugging abandoned wells, the declaration of operator status, authorizing interested persons to plug abandoned wells, schedules for plugging wells, and emergency procedures for abandoned wells.

1.2. Authority -- W.Va. Code §§22-1-3; 22-1-4; 22-1-7; 22-1-12; 22B-1-1; 22B-1-2; 22B-1-3; 22B-1-4; 22B-1-5; 22B-1-6; 22B-1-7; 22B-1-9; 22B-1-10; 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-1-35; 22B-1-36; 22B-1-37; 22B-1-38; 22B-1-39; 22B-5-1 through 12.

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 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.

§38-22-2. Definitions. --

Unless the context in which used clearly requires a different meaning, the definitions contained in West Virginia Code 22B-1-1 and 22B-5-3 shall apply to this rule in addition to the definitions set forth below. The definitions of these rules shall apply to West Virginia Code 22B-5-1 et seq. unless the context clearly expresses a different meaning.

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

2.2. "W.Va. Code" shall mean the Code of West Virginia of 1931, as amended.

§38-22-3. Declaration of Operator Status.

3.1. General requirements.

3.1.1. No declaration of operator status will be made until either an applicant for operator status has complied with the requirements of W.Va. Code 22B-1-26 and the rules promulgated thereunder and Form OP-77A "Declaration of Operator Status" has been filed with the Office of Oil and Gas, or after investigation, the Chief voluntarily declares a party to be designated the operator and to have attained operator status. A party designated by the Chief to be an operator shall be given notice, an opportunity to comment and the right to appeal any designation.

3.1.2. If an operator wishes to apply for declaration of operator status for more than one well, a separate application must be submitted for each well for which a determination is sought. Wells currently covered under an existing bond need not be applied for.

3.1.3. An applicant for operator status shall submit such other information including the right to develop, operate, and produce oil and gas from an oil and gas lease, as the Office of Oil and Gas may require in order to establish by evidence, that the operator qualifies for the declaration of operator status for the well for which a declaration is sought. In the event that more than one applicant applies for operator status for a given well the Chief may declare operator status for more than one party. The Chief shall notify all applicants by certified mail of all applications so that the applicants may privately ascertain whatever rights each has in the well. The Chief may take financial assurance from competing interests, but the Chief will not make the determination of ownership rights to the well or leasehold.

3.1.4. Once operator status has been declared by the Chief, then the operator shall incur all rights and obligations accruing to an operator in regard to operation of the well.

3.1.5. In case of lease default by an operator, if the lessor does not accept responsibility for plugging or operation of the well, then the operator shall have the right to access the wellsite to plug the well, and in the event, neither condition occurs, then the Chief has the right to designate the right to a person to access the wellsite for the purpose of plugging the well.

3.2. Declaration procedures. - The procedure for declaration of operator status will be the same procedure that is outlined in 38 CSR 18-10.3 "Separate Bonds; Blanket Bonds; Financial Responsibility; Registration; Designation of Agent; Transfer of title and operator status; Transfer procedures; Periodical

Circular; Hearings; Ineffective Bonds; and Financial Responsibility from Competing Interests."

§38-22-4. Financial Responsibility Requirements.

4.1. General requirements. - Operators shall comply with W.Va. Code 22B-1-26, "Performance bonds; corporate surety or other security," and any rules promulgated thereunder and 22B-5-4 and 5 and any rules promulgated thereunder for all wells.

4.2. Wells for which an operator is known but are presently unbonded. - Operators of wells which are currently unbonded shall comply with W.Va. Code 22B-1-26, "Performance bonds; corporate surety or other security," and any rules promulgated thereunder and with 22B-5-4 and 5 and any rules promulgated thereunder, by filing form OP-7 for single wells or form OP-8 for multiple wells as provided in the following sections or form OP-77 to transfer such well to the operator's existing fifty thousand dollar (\$50,000) blanket bond.

4.3. Demonstration of unjust hardship; suspension of financial responsibility requirements; percentage payments.

4.3.1. An operator desiring to demonstrate unjust hardship as a result of having to comply with W.Va. Code §22B-5-4 and 5 and therefore, fulfill the legal duties imposed by demonstrating financial responsibility under either W.Va. Code §22B-5-4(b)(1) or (2), shall file with the Chief a request to be authorized to comply with either one of the two sections for purposes of complying with the rules. Such request shall, in addition to any other information as the operator believes establishes such unjust hardship, include information which may be requested by the Chief.

4.3.2. An operator who demonstrates to the satisfaction of the Chief that complying with the financial responsibility requirements will result in an unjust hardship may be authorized to either suspend the financial responsibility requirements in accordance with W.Va. Code §22B-5-4(b)(1) or make percentage payments in accordance with W.Va. Code §22B-5-4(b)(2) and the rules promulgated thereunder.

4.3.3. All requests for determinations under this section shall be in writing and shall be responded to in writing by the Office of Oil and Gas within thirty (30) days of the receipt of the written submittal requesting a determination by the Office of Oil and Gas.

4.3.4. Demonstration of financial responsibility by percentage payments. - In accordance with W.Va. Code §22B-5-4, an operator may be authorized by the Chief to demonstrate financial responsibility by supplying twenty percent of any required amount in accordance with the schedule set forth in W.Va. Code §22B-5-4(b)(2) as follows: supplying twenty percent of any required

amount by no later than the first day of July, one thousand nine hundred ninety-four; forty percent no later than the first day of July, one thousand nine hundred ninety-five; sixty percent no later than the first day of July, one thousand nine hundred ninety-six; eighty percent by the first day of July, one thousand nine hundred ninety-seven; and one hundred percent by the first day of July, one thousand nine hundred ninety-eight, and on such forms as are supplied by the Chief. In the event an operator is not in compliance with the required percentage demonstration of financial responsibility by the required date as set forth previously, the operator shall be considered to be in violation of the financial responsibility requirements, and the Chief shall order the well(s) shut in and may order the wells to be plugged.

4.3.5. The Chief shall have the right to forfeit any amounts deposited prior to the completion of depositing the total amount in the event that the Chief complies with procedures to forfeit a bond.

4.3.6. Demonstration of unjust hardships to suspend financial responsibility requirements. - Except for demonstrating financial responsibility in compliance with W.Va. Code 22B-5-4(b)(2), the determination of unjust hardship to suspend the demonstration of financial responsibility shall not extend beyond the first day of July, one thousand nine hundred ninety-five. In the event an operator is not in compliance with the demonstration of financial responsibility by the required date as set forth previously, the operator shall be considered to be in violation of the financial responsibility requirements, and the Chief shall order the well(s) shut in and may order the wells to be plugged.

§38-22-5. Plugging by Interested Parties.

5.1. Notice requirements.

5.1.1. Any interested party, as defined by W.Va. Code 22B-5-3(c), desiring to plug an abandoned well shall serve the notice required under W.Va. Code 22B-5-7 on Form WW-4(c). A copy of the plugging permit application for the well in question must be served with the notice.

5.1.2. If surface owner of the premises where any abandoned well is situated (including without limitation, the surface reasonably necessary for a site for the work necessary at the well to plug the well and reasonably necessary for access to the well site as set out in Section 5.3 infra.) is not known to the interested party, then the identification of the surface owner may be made pursuant to 38 CSR 18-5.4.1.1. through 5.4.1.4.

5.2. Certificate of Service. - Such interested party shall submit with the application for a plugging permit either a certificate that notice was given as required or proof of service of the notice.

5.3. "Premises where any abandoned well is situated" shall mean all of the surface and other interests;

5.3.1. which are reasonably necessary for a site for the work necessary at the well to plug the well;

5.3.2. which are reasonably necessary for access to the well site; and

5.3.3. which are otherwise reasonably necessary for plugging the abandoned well.

5.4 For the purposes of determining the "Premises where any abandoned well is situated" pursuant to section 5.3, some reasonable easement must exist to plug the well, but in determining which premises are necessary and the amount of premises which are necessary, the interests of the surface or other interests must be equally balanced with the interests of the interested party in plugging the well.

5.5 "Surface owner" shall mean any owners of the surface of the premises where any abandoned well is situated as defined in this section: Provided, that for the purpose of the potential right to take any casing, equipment or other salvage, "surface owner" shall only mean the owner of the surface of the site where the well plugging work is done.

§38-22-6. Priority of Expenditures from the Oil and Gas Reclamation Fund.

6.1. General Requirements.

6.1.1. The Chief of the Office of Oil and Gas shall maintain a census of abandoned wells. Such census shall be based upon the best information available to the Chief and may include studies undertaken to maintain such census, local knowledge of the oil and gas inspectors, the results of investigations as a result of citizen's complaints, whether an operator exists, whether financial responsibility exists to plug the abandoned well, or other such information as may be available.

6.1.2. From time to time the Office of Oil and Gas shall publish a list of abandoned wells. This requirement may be met by the publication of the notice required by section 38-22-3.2. of these rules.

6.1.3. The Chief is authorized to expend funds from the Oil and Gas Reclamation Fund in accordance with the procedures in W.Va. Code 22B-1- 29 and the rules promulgated thereunder. The Chief shall expend funds first for wells in Classification One, second for wells in Classification Two, and third, for wells in Classification Three. The Chief shall expend funds within a classification in the order defined in that classification.

6.2. Priority classification procedure.

6.2.1. All abandoned wells identified by the census of abandoned wells and which do not have an operator or not in compliance with the financial responsibility requirements or do not have an independent source of funding, shall be placed into Classification Two unless the Chief otherwise places the abandoned well(s) into either Classification Three or Classification One.

6.2.2. Any abandoned well in Classification One, Classification Two, or Classification Three may be plugged by an interested party or by the Chief of the Office of Oil and Gas. In the event that an interested party desires to plug a well which is included in Classification One and the interested party has demonstrated to the satisfaction of the Chief that the interested party does not have sufficient funds with which to plug the well, the Chief shall have the discretion to expend funds from the Oil and Gas Reclamation Fund to partially assist in the plugging.

6.3. Classifications.

6.3.1. Classification One. - Abandoned wells in Classification One shall be those that pose an immediate threat to human health, safety, or the environment or are such an impediment to the development of mineral resources as to require immediate plugging. Wells which pose an immediate threat to human health, safety, or the environment shall take priority over those wells which impede the development of mineral resources.

6.3.2. Classification Two.

6.3.2.1. Abandoned wells in Classification Two are those abandoned wells which are not an immediate threat to the environment or which do not hinder or impede the development of mineral resources of this state but which should be plugged consistent with funds in the oil and gas reclamation fund and such other resources as may be available to the Chief.

6.3.2.2. Abandoned wells in Classification Two will include all abandoned wells identified by the abandoned well census and not otherwise placed by the Chief into Classification One or Classification Three.

6.3.3. Classification Three. - Abandoned wells in Classification Three will include all abandoned wells which are not a threat to the environment and which do not hinder or impede the development of mineral resources of this state and for which plugging may be deferred for an indefinite period.

§38-22-7. Schedules for plugging of abandoned wells.

7.1. General.

7.1.1. A "Schedule for Plugging of Abandoned Wells" may be requested by anyone desiring to fulfill the plugging requirements over an extended period. The granting of the Schedule will be for good cause as demonstrated to the Chief.

7.1.2. An operator desiring to plug abandoned wells under the aegis of a Schedule shall submit a request in writing to the Chief. Such request will contain a plan for timing the plugging of the abandoned wells.

7.1.3. The Chief shall respond in writing within thirty (30) days of receipt of such written request.

7.1.4. An operator who has been granted a Schedule shall submit periodic, though not to be less frequently than annual, progress reports detailing work completed.

7.1.5. The granting of a Schedule does not relieve any person of any plugging or reclamation requirements of 22B-1-23, 22B-1-24, 22B-1-30 or any rule promulgated thereunder.

§38-22-8. Emergency procedure.

8.1 Should an abandoned well develop a condition which is dangerous to human health, property, or the environment, the Chief shall be notified immediately. The operator shall immediately take any reasonable remedial action necessary to protect life and property. If no operator is known or can be located, then the Office of Oil and Gas shall conduct an engineering evaluation, and if in the judgment of the Chief the abandoned well poses a dangerous condition as described above, the Chief shall be authorized to take whatever action is deemed appropriate to abate the emergency.

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OFFICE OF THE SECRETARY
DEPARTMENT OF ENVIRONMENTAL PROTECTION

RESPONSE TO COMMENTS FILED AT PUBLIC HEARING ON REGULATIONS
TITLED ABANDONED WELLS
WV CSR 38-22

Notice of the proposed rule dealing with Abandoned Wells to establish requirements to bring the Oil and Gas section into compliance with WV Code 22B-5-1 et al. dealing with abandoned wells, was made on July 31, 1992, by the W. Va. Division of Environmental Protection as authorized under W. Va. Code 22-1-3, 22-1-4, 22-1-7, 22-1-12, 22-1-16, 22B-1-1 through 39, and 22B-5-1 through 12.

The purpose of these rules is to implement the Abandoned Well Act of 1992 HB-4476. This legislative rule establishes a variety of requirements pertaining to oil and gas wells in West Virginia, the West Virginia Abandoned Well Act, W.Va. Code §22B-5-1 et seq. and more specifically in relation to abandoned wells, financial responsibility requirements, a priority system for plugging abandoned wells, the declaration of operator status, authorizing interested persons to plug abandoned wells, schedules for plugging wells, and emergency procedures for abandoned wells. These regulations are all new.

Written and oral comments were solicited on or before August 31, 1992, and the Office received comments from one attorney representing surface owners, and two attorneys representing oil and gas owners. These comments may be viewed or copies obtained by writing to: Chief,

PUBLIC HEARING RECORD
WEST VIRGINIA DIVISION OF ENVIRONMENTAL PROTECTION
ABANDONED WELLS

CSR 38-22

August 31, 1992

The hearing record was opened at 10:00 August 31, 1992 with Ted Streit, Chief of the Office of Oil and Gas presiding. In appearance was David B. McMahon who submitted written comments, Frederick Kolb, Jack Sutherland, and Doug Maddy . Additional written comments where filed by David M. Flannery and John Johnston. No other comments were filed. Mr. Kolb, Mr. Sutherland, and Mr. Maddy concurred with the written comments of Mr. Dave Flannery. The hearing record was closed at 10:30 AM.

Office of Oil and Gas, Division of Environmental Protection, W. Va.
Department of Commerce, Labor & Environmental Resources, #10 McJunkin
Road, Nitro, W. Va. 25326.

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:

All of the comments dealt with typographical errors and as such have been incorporated.