

**WEST VIRGINIA  
SECRETARY OF STATE  
KEN HECHLER  
ADMINISTRATIVE LAW DIVISION**

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OFFICE OF WEST VIRGINIA  
SECRETARY OF STATE

Form #4

**NOTICE OF RULE MODIFICATION OF A PROPOSED RULE**

AGENCY: Division of Environmental Protection TITLE NUMBER: 38

CITE AUTHORITY 22-1-13; 22B-1-2 and 22B-5-10

AMENDMENT TO AN EXISTING RULE: YES  NO


IF YES, SERIES NUMBER OF RULE BEING AMENDED: \_\_\_\_\_

TITLE OF RULE BEING AMENDED: \_\_\_\_\_

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

TITLE OF RULE BEING PROPOSED: Abandoned Wells

THE ABOVE PROPOSED LEGISLATIVE RULE, FOLLOWING REVIEW BY THE LEGISLATIVE RULE MAKING REVIEW COMMITTEE IS HEREBY MODIFIED AS A RESULT OF REVIEW AND COMMENT BY THE LEGISLATIVE RULE-MAKING REVIEW COMMITTEE. THE ATTACHED MODIFICATIONS ARE FILED WITH THE SECRETARY OF STATE.

  
\_\_\_\_\_  
Theodore M. Streit, Chief  
Division of Environmental Protection  
Office of Oil and Gas  
#10 McJunkin Road  
Nitro, West Virginia 25143-2506  
759-0518

3.60

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

SERIES 22

ABANDONED WELLS

§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 §§22-1-13; 22B-1-2; 22B-5-10.

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.

2.3. "Interested party" means any owner, operator or lessee of the surface, oil, gas, water, coal or other mineral resource under, on, adjacent or in close proximity to any lands upon which

an abandoned well exists, and whose lands, rights or interests are or might be affected by such abandoned well.

### §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.

**§38-22-4. Financial Responsibility Requirements.**

4.1. General requirements. - Operators shall comply with W.Va. Code 22B-1-26, 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, 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 W.Va. Code §22B-5-5 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 suspend financial responsibility or make percentage payments. 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 of unjust hardship 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. - An operator may be authorized by the Chief to demonstrate financial responsibility by supplying a percentage of any required amount in accordance with the following schedule: 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. Such payment shall be accompanied by such forms as prescribed by the Chief. In the event an operator is not in compliance with the required percentage demonstration of financial responsibility by the required date, 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, 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 shall maintain a census of abandoned wells. The census shall be based upon the best information available to the Chief. Such information may be gathered through and may include studies undertaken to maintain the census, knowledge of the oil and gas inspectors, investigations resulting from 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. As often as practicable but at least once every five years 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.



WEST VIRGINIA LEGISLATURE  
 LEGISLATIVE RULE-MAKING REVIEW COMMITTEE  
 Room M-152, State Capitol  
 Charleston, West Virginia 25305  
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OFFICE OF WEST VIRGINIA  
 SECRETARY OF STATE

Senator Joe Manchin III, Co-Chair  
 Delegate Brian A. Gallagher, Co-Chair

Debra A. Graham, Counsel  
 Marie Nickerson, Admr. Assistant

NOTICE OF ACTION TAKEN BY LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

February 8, 1993

TO: Ken Hechler, Secretary of State, State Register

TO: Ted Streit, Director  
 Section on Oil and Gas  
 Division of Environmental Protection  
 10 McJunkin Road  
 Nitro, West Virginia 25143-2506

FROM: Legislative Rule-Making Review Committee

PROPOSED RULE: Office of Oil and Gas - Abandoned Wells, Series 22

The Legislative Rule-Making Review Committee recommends that the West Virginia Legislature:

1. Authorize the agency to promulgate the Legislative Rule
  - (a) as originally filed \_\_\_\_\_
  - (b) as modified by the agency     X
2. Authorize the agency to promulgate part of the Legislative rule; a statement of reasons for such recommendation is attached. \_\_\_\_\_
3. Authorize the agency to promulgate the Legislative rule with certain amendments; amendments and a statement of reasons for such recommendation is attached. \_\_\_\_\_
4. Authorize the agency to promulgate the Legislative rule as modified with certain amendments; amendments and a statement of reasons for such recommendation is attached. \_\_\_\_\_
5. Recommends that the rule be withdrawn; a statement of reasons for such recommendation is attached. \_\_\_\_\_

Pursuant to Code 29A-3-11(c), this notice has been filed in the State Register and with the agency proposing the rule.