

WEST VIRGINIA
SECRETARY OF STATE
KEN HECHLER
ADMINISTRATIVE LAW DIVISION

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OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

Form #6

**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: Series 22

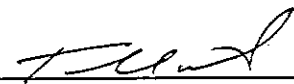
TITLE OF RULE BEING PROPOSED: Abandoned Wells

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(c), 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
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 -- 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.

§38-22-2. 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.

SENATE BILL NO. 186

(By Senator Manchin)

[Introduced March 1, 1993; referred to the
Committee on 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 abandoned wells.

16 **Be it enacted by the Legislature of West Virginia:**

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

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

23 **§64-3-16. Division of environmental protection.**

1 The legislative rules filed in the state register on the
2 third day of September, one thousand nine hundred ninety-two,
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 nineteenth day of February,
6 one thousand nine hundred ninety-three, relating to the division
7 of environmental protection (abandoned wells), are authorized.

8

9 NOTE: The purpose of this bill is to authorize the Division
10 of Environmental Protection to promulgate legislative rules
11 relating to abandoned wells.

12

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



KEN HECHLER
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(Plus all the volunteer
help we can get)

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STATE OF WEST VIRGINIA

SECRETARY OF STATE

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

TO: Roger T. Hall

AGENCY: Environmental Protection

FROM: JUDY COOPER, DIRECTOR, ADMINISTRATIVE LAW DIVISION

DATE: September 3, 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: 22 TITLE: 38 Environmental Protection

* THE ATTACHED RULE HAS BEEN REVIEWED AND IS CORRECT.

SIGNED: _____

TITLE OF PERSON SIGNING: _____

DATE: _____

* 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.

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE
SEP 21 9 24 AM '93
FILED

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Secretary of State

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Plus all the volunteer
help we can get

FAX: (304) 558-0900

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 22, 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(c)**. 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