

WEST VIRGINIA
SECRETARY OF STATE
KEN HECHLER
ADMINISTRATIVE LAW DIVISION

FILED

Jul 26 10 03 AM '95

Form #3

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: Mining & Reclamation
Bureau of Environmental Protection TITLE NUMBER: 38

CITE AUTHORITY WV Code 22-21-3 & 4

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 23

TITLE OF RULE BEING PROPOSED: Coalbed Methane 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.



Authorized Signature



BUREAU OF ENVIRONMENT
10 McJunkin Road
Nitro, WV 25143-2506

GASTON CAPERTON
GOVERNOR

LAIDLEY ELI MCCOY, PH.D.
COMMISSIONER

July 21, 1995

Ms. Judy Cooper
Director, Administrative Law Division
Secretary of State's Office
Building 1, Suite 157K
Charleston, West Virginia 25305

RE: 45CSR23 - "Coalbed Methane Wells"

Dear Ms. Cooper:

This is to advise you that I am giving approval for the filing of the above-captioned agency-approved rule with the Secretary of State's Office and Legislative Rule-Making.

Your cooperation in this regard is very much appreciated. If you have any questions or require additional information, please feel free to contact Roger T. Hall at 759-0515.

Sincerely yours,

A handwritten signature in black ink that reads "Laidley Eli McCoy". The signature is written in a cursive style with a long, sweeping underline that extends to the left.

Laidley Eli McCoy, Ph.D.
Commissioner

LEM;RTH:cc

Attachment

DATE: July 19, 1995
TO: LEGISLATIVE RULE-MAKING COMMITTEE
FROM: Theodore M. Streit - Chief Office of Oil and Gas

LEGISLATIVE RULE TITLE:

1. Authorizing statute(s) citation - **W.Va. Code §22-21-3 and 4**

- 2 .
 - a. Date filed in State Register with Notice of Hearing **June 9, 1995**
 - b. What other notice, including advertising, did you give of the hearing? **Notice in DEP newsletter, notice in various newspapers, notice to individuals that had expressed an interest**
 - c. Date of Hearing(s) **July 13, 1995**
 - d. Attach a 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): **July 26, 1995**
 - f. Name and phone number(s) of agency person(s) to contact for additional information. **Roger Hall - DEP 759-0515**

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: **Not applicable**

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.

b. Date of hearing:

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

d. Attach findings and determinations and reasons:

Attached

PREAMBLE TO A PROPOSED RULE
CONCERNING

COALBED METHANE WELLS
38CSR-23

AGENCY: Bureau of Environment; Division of Environmental Protection
REGULATION: 38 CSR 23; "COALBED METHANE WELLS"
ACTION: Filing of Proposed Rule, Notice of Public Hearing, and Notice of Public Comment Period.

**SUMMARY
& STATEMENT
OF CIRCUM-
STANCES:**

This rule is mandated under the provisions of WV Code 22-21-1 et seq. which created the WV Coalbed Methane Act. The law provides for the orderly development of a coalbed methane (CBM) permitting and regulatory program. Coalbed Methane is a resource that is currently being vented into the atmosphere from coal mines to allow for the safe mining of coal with reduced potential for buildup of methane gas in the mine. In addition, this rule will allow wells to be drilled into coal seams that are not projected to be mined. Technology now exists that allows for the removal of this gas and to sell it as a commercial product. Issues of ownership and which regulatory structure should be incorporated are resolved in the rule. With this rule, the Office of Oil and Gas estimates that 200 coalbed methane wells would be drilled annually, with that number increasing to 400 wells per year.

PUBLIC

A public Hearing will be held as follows:

HEARING:

July 13, 1995, 6 p.m.
Division of Environmental Protection
Training Room - #10 McJunkin Road, Nitro

**PUBLIC
COMMENT
PERIOD:**

Written comments should arrive at the Office of Oil and Gas on or before 4:00 PM July 14, 1995, to receive consideration during the comment review process. Written Comments should be sent to:

Theodore M. Streit - Chief
Division of Environmental Protection
Office of Oil and Gas
#10 McJunkin Road
Nitro, WV 25143-2506

**FEDERAL
COUNTER-
PART REGU-
LATIONS:**

There are no federal counterpart regulations.

TAKINGS:

The Director has determined that nothing in this proposed rule constitutes a constitutional takings of privately owned real property.

FISCAL NOTE FOR PROPOSED RULE

Title of Rule Coalbed Methane Wells 38 CSR 23

Type of Rule X Legislative _____ Interpretive _____ Procedural

Agency: WV Division of Environmental Protection, Office of Oil and Gas

Address: #10 McJunkin Road, Nitro, WV 25143-2506

Show over all effect in items 1 and 2 and in item 3 give explanation of breakdown by fiscal year including long range effect.					
Effect of Proposal	Annual		Fiscal Year		
	Increase	Decrease	Current	Next	Thereafter
1. Personal Services	\$60,000			\$60,000	\$120,000
Current Expenses	\$10,000			\$10,000	\$20,000
Repairs and Alterations					
Equipment	\$10,000			\$10,000	\$20,000
Other					
Estimated Total Cost	\$80,000	\$0	\$0	\$80,000	\$160,000
2. Estimated total Revenue	\$110,000			\$110,000	\$220,000

3. Explanation of the above estimate (including long range effect.)

Coalbed methane is a resource that is currently being vented into the atmosphere in advance of coal mines to allow for the safe mining of coal by reducing the potential for methane gas buildup in the mine. In addition this rule would allow wells to be drilled into coal seams that are not projected to be mined. Technology now exists that allows for the removal of this gas and to sell it as a commercial product. Issues of ownership and which regulatory structure should be incorporated are resolved in this rule. With this rule the Office of Oil and Gas estimates that 200 coalbed methane wells will be drilled annually, with that number expected to increase to 400 wells per year.

The rule calls for a \$250 permit application fee which will be available for program development by the Office of Oil and Gas. The estimated revenue is \$50,000. In addition, severance taxes will be generated on gas sold from these wells which will go to general revenue and is not available to the Office of Oil and Gas for program development. Estimated revenues is currently \$60,000 and may increase in subsequent years.

Expenses are calculated based on what it currently costs the Office of Oil and Gas to issue and monitor gas well permits of the same or similar type. It is estimated that the cost to the Office of Oil and Gas to operate this program will be \$80,000. The anticipated shortfall to the Office of Oil and Gas for program operating cost is estimated to be \$30,000.

DATE

AGENCY

AUTHORIZED REPRESENTATIVE

9-Jun-95

Division of Environmental Protection



**TITLE 38
LEGISLATIVE RULE
BUREAU THE ENVIRONMENT
DIVISION OF ENVIRONMENTAL PROTECTION
OFFICE OF OIL AND GAS**

SERIES 23

COALBED METHANE WELLS

FILED

JUL 26 10 03 AM '95

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

§38-23-1. General.

1.1. Scope. - This rule shall govern and apply to proceedings under W.Va. Code §22-21-1 et. seq. governing coalbed methane wells. Certain portions of this series shall apply to W.Va. Code §22-10-1 et. seq. related to abandoned wells, W.Va. Code §2-12-1 et. seq. related to groundwater protection, and W.Va. Code §22-6-1 et. seq. related to oil and gas wells and other wells.

1.2. Authority. - W.Va. Code §22-21-3 and 4.

1.3. Filing Date. - _____.

1.4. Effective Date. - _____.

1.5 Forms. - An index of 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 may prospectively amend any form at any time without notice to accord more fully with the requirements of W.Va. Code Article 22-21 and this rule.

§23.-23-2. Definitions.

Unless the context in which used clearly requires a different meaning, the definitions contained in W.Va. Code §22-21-2 shall apply to this rule in addition to those definitions set forth below.

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

2.2. "Day" shall mean a period of twenty-four (24) consecutive hours.

2.3. "Designated agent" shall mean a resident of the State of West Virginia designated by an operator as the agent or attorney in fact of the operator upon whom process, notices, orders, or other communications issued pursuant to W.Va. Code §22-21 may be served.

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

2.5. "Surface owner of record", and the term "owner of record of the surface" as used in W.Va. Code §22-21-9, shall mean any person who is an owner of record of surface land or an undivided interest therein, whether or not the surface ownership is severed from the mineral ownership.

2.6. "Operator" or "gas operator" for notice purposes shall mean any person having the right to operate or who does operate an oil or gas well and is interchangeable with the terms "operator" or "well operator" as defined in W.Va. Code §22-6-1. "Operator" or "gas operator" for the purpose of determining responsibility with the plugging of a coalbed methane well shall be any person having the right to operate the coalbed methane well, which may include all royalty interest owners, plus the owners of any business operating the well.

2.7. "Casing" shall have the meaning set forth in W.Va. Code §22-6-1.

2.8. "Cement" shall have the meaning set forth in W.Va. Code §22-6-1.

2.9. "CBM Well Operator" shall mean a coalbed methane well operator as defined in W.Va. Code §22-21-2(f).

2.10. "CBM Well" shall mean a coalbed methane well as defined in W.Va. Code §22-21-2(e).

2.11. "Expanding Cement" shall have the meaning set forth in W.Va. Code §22-6-1.

2.12. "Plat" shall have the meaning set forth in W.Va. Code §22-6-1.

§38-23-3. Inspectors, Inspection Forms, Violations, Abatement.

3.1. Violations, Findings and Orders - Findings and orders of oil and gas inspectors concerning violations discovered during an inspection shall be recorded on the appropriate form listed in Section 3.2. Such finding and orders shall not be construed to limit the Office's power to initiate any other lawful proceedings concerning violations of W.Va. Code §22-21 et seq., or this rule.

3.2. Inspectors' Report Forms.

The report forms to be used by inspectors pursuant to W.Va. Code Chapter 22-21 will be those forms set forth in 38 CSR 18-3.

§38-23-4. Permit Required for Coalbed Methane Well; Permit Fee; Soil Erosion Control Plan.

4.1. Application for Permit; Issuance, Conditions, and Modifications.

4.1.1. An application for any well work permit required for a CBM Well, except permits to plug a well, shall be made on Form WW-5B, "Application for Coalbed Methane Well Work Permit," and shall be accompanied by:

4.1.1.1. A "Notice of Application for a CBM Well Work Permit" in the form prescribed by W.Va. Code §22-21-9

4.1.1.2. A plat in the form prescribed by 22-21-6 (5) and W.Va. Code §22-6, and further described in Section 9 of these rules.

4.1.1.3. A Performance Bond, Corporate Security, or other security in one of the forms prescribed by W.Va. Code §22-6-26, or in lieu thereof cash or collateral security allowed by W.Va. Code §22-21-8,

4.1.1.4. Form WW-9, "Construction and Reclamation Plan," applicable to the plan required by W.Va. Code §22-21-6(d) and a plan for performing the reclamation required by Section 14,

4.1.1.5. With any initial application to drill a Coalbed Methane well the fees required by W.Va. Code §22-21-6(c)(2) (application fee of two hundred fifty dollars), W.Va. Code §22-6-29, (special reclamation fee of one hundred dollars) and any fees associated with any environmental permits required under Chapter 22

4.1.1.6. If applicable, the consent required by W.Va. Code §22-6-21, and

4.1.1.7. If stimulation of the well is proposed, the consent required by W.Va. Code §22-21-7 or in lieu thereof the request for hearing prescribed by W.Va. Code §22-21-7(b),

4.1.1.8. Copies of statements of no objection from persons entitled for notice pursuant to W.Va. Code §22-21-7.

4.1.1.9. A statement describing whether any users under Section 13.3.5 were identified and the manner in which any such users were provided with notice as required under Section 13.3.6.

4.1.1.10. If applicable, the consent required by W.Va. Code §22-21-20.

4.1.2. Where there is more than one type of well work, a single application may be used provided all such well work is noted on the Form WW-5b filed in connection therewith.

4.1.3. The applicant for any permit mentioned in this rule must file an original and two (2) copies of the Application and an original and four (4) copies of the Notice, plat and, except for application for a permit to plug a CBM Well, a Construction and Reclamation Plan.

4.2. Notice to Surface Owners of Record; Proof of Notice; Comments.

4.2.1. For purposes of notice of surface owners of record, pursuant to W.Va. Code §22-21-6, the applicant CBM Well Operator shall be entitled to assume, subject to performing the public record review described in Section 4.2.2 below, that the specific person(s) listed on the relevant tax ticket(s) maintained by the Sheriff pursuant to W.Va. Code §11A-1-8 (as distinguished from the listing of an estate, or of person(s) as "agent" or with "et al" or "heirs" or other designation indicating unspecified owners or record) were in fact surface owners of record when the tax ticket was prepared.

4.2.2. To establish that a surface owner identified on a tax ticket has not transferred an interest in the surface, the CBM Well Operator must review, from the date the surface owner acquired the surface, or for ten (10) years prior to the date of the review, whichever period is shorter, the "Grantor Index" and the "Fiduciary Index" maintained in the office of the Clerk of the County Commission. If the review identifies surface owner(s) in replacement of or in addition to the tax ticket listing, all successor names shall likewise be checked in the Grantor and Fiduciary Indexes to establish the surface owner(s) of record on the date the review is made.

4.2.3. Where the relevant tax ticket(s) list an estate, or list person(s) as "agent" or with "et al" or "heirs" or other designation indicating unspecified owners of records in the office of the clerk of the county Commission to determine whether the total number of such owners is more than three (3) and, if the total number of such owners is three (3) or less, the names(s) of the surface owner(s) of record on the date the review is made.

4.2.4. If the identification of the surface owners of record is made pursuant to the criteria of Sections A, B or C within ninety (90) days of the date of filing of the application for a permit, the CBM Well Operator need not review the records again prior to the filing.

4.2.5. Except where notice by publication is permissible under the provisions of W.Va. Code §22-21-9(c), the notice to surface owners of record required by W.Va. Code §22-21-9 shall consist of true, complete copies of all documents required under Section 4.1.1 of this rule and shall contain a statement of the methods and time limits for filing comment and objection, who may file comment and objection, the name and address of the Chief with whom the comment and objection must be filed, the ability to obtain additional information from the Chief, the fact that such persons may request notice of the

permit decision, and a list of persons qualified to test water as provided in this section.

4.2.6. All comments filed pursuant to the provisions of W.Va. Code §22-21-10 shall be in writing, and should contain the name, address and telephone number of the person filing the comment, the CBM Well Operator's name and CBM Well number, and the approximate location of the proposed CBM Well site including district and county as indicated in the permit application. Comments may be accompanied by other pertinent documents. Other than as prescribed in this rule, no particular form for the comment is prescribed.

4.2.7. Proof of personal service may be made by the return of any sheriff or other official empowered by law to serve process, or by affidavit of personal service on Form WW-70 by any person, including but not limited to any employee or agent of the CBM Well Operator. If service is effected by certified mail, service is effective upon mailing and the return receipt card or other postal receipt for certified mailing with postal stamp affixed or photocopy will be accepted as proof of service.

4.2.8. Notice of publication under the provision of W.Va. Code §22-21-9(c) shall be substantially as provided in Form WW-71CBM. Proof shall be supplied by affidavit of publication from the newspaper.

4.2.9. No permit will be issued until all required proof of notice has been filed with the Chief.

4.3. Notice to Coal Owners or Operators, Proof of Notice.

4.3.1. Notice to Coal Operators, Owners or Lessees - A copy of the completed notice and application of any CBM well permit as required by W.Va. Code §22-21-6, including the associated Construction and Reclamation Plan, Consent and Agreement (if applicable), Plat, and Certificate of Notice required by Sub Section C, shall be used as the form of the notice to Coal Operators, Owners or Lessees required by W.Va. Code §22-21-6, 22-21-7 and 22-21-9, and shall be mailed by registered or certified mail to coal operators, owners or lessees.

4.3.2. Proof of personal service may be made by the return of any sheriff or other official empowered by law to serve process, or by affidavit of personal service on Form WW-70 by any person, including but not limited to any employee or agent of the CBM Well Operator. If service is effected by certified mail, service is effective upon mailing and the return receipt card or other postal receipt for certified mailing with postal stamp affixed or photocopy will be accepted as proof of service.

4.3.4. Notice of publication under the provisions of W.Va. Code §22-21-9 shall be substantially as provided in Form WW-71CBM. Proof shall be supplied by affidavit of publication from the newspaper.

4.3.5. No permit will be issued until all required proof of notice has been filed with the Chief.

4.4. Notice to Natural Gas Owners, Lessees, and Operators.

4.4.1. A copy of the completed notice and application of any CBM Well permit including the plat shall be used as the form of Notice required to be provided to each owner and lessee of record and each operator of natural gas surrounding the well bore of a proposed CBM Well and existing in formations above the top of the uppermost member of the "Onondaga Group" or at a depth less than six thousand feet, whichever is shallower, pursuant to W.Va. Code §22-21-9. Notices to gas operators shall be sufficient if served upon the agent of record with the office of oil and gas.

4.4.2. Proof of personal service may be made by the return of any sheriff or other official empowered by law to serve process, or by affidavit of personal service on Form WW-70 by any person, including but not limited to any employee or agent of the CBM Well Operator. If service is effected by certified mail, service is effective upon mailing and the return receipt card or other postal receipt for certified mailing with postal stamp affixed or photocopy will be accepted as proof of service.

4.4.3. Notice of publication under the provisions of W.Va. Code §22-21-9 shall be substantially as provided in Form WW-71CBM. Proof shall be supplied by affidavit of publication from the newspaper.

4.4.4. No permit will be issued until all required proof of notice has been filed with the Chief.

4.5. Review of Application; Issuance of Permit for CBM Well in the Absence of Objections.

4.5.1. The Chief shall review each application for a CBM Well work permit and shall determine whether or not a permit shall be issued.

4.5.2. No Permit shall be issued less than fifteen days after the filing date of the application for any CBM Well work except plugging or replugging; Provided, that if the applicant certifies that all persons entitled to notice of the application under the provisions of W.Va. Code §22-21-9 have been served in person or by certified mail, return receipt requested, with a copy of the CBM Well work application, including the erosion and sediment control plan, and the plat and further files written statements of no objection by all such persons, the Chief may issue the CBM Well work permit at any time.

4.5.3. Subject to the requirements of W.Va. Code §22-21-22, no permit for plugging or replugging shall be issued less than five days after the filing date of the application except a permit for plugging or replugging a dry hole: Provided, that if the applicant certifies that all persons entitled to notice of the application under the provisions of W.Va. Code §22-21-9 have been served in person or by certified mail, return receipt requested, with a copy of the CBM Well work application, including the erosion and sediment control plan, and the plat and further files written statements of no objection by all such persons, the Chief may issue the CBM Well work permit at any time.

4.5.4. The Chief may cause such inspections to be made of the proposed CBM Well work location as to assure adequate review of the application. The permit shall not be issued, or shall be conditioned, including conditions with respect to the location of the well and access roads, prior to issuance if the Chief determines that:

4.5.4.1. The proposed CBM Well work will constitute a hazard to the safety of persons; or

4.5.4.2. The plan for soil erosion and sediment control is not adequate or effective; or

4.5.4.3. Damage would occur to publicly owned lands or resources; or

4.5.4.4. The proposed CBM Well work fails to protect fresh water sources or supplies.

4.5.5. The Chief shall promptly review all comments filed. If after review of the application and all comments received, the application for a CBM Well work permit is approved, and no timely objection or comment has been filed with the Chief under the provisions of W.Va. Code §§22-21-10, 22-21-11 and 22-21-22 of this article, the permit shall be issued, with conditions, if any.

4.6. Consent and Agreement of Coal Owner or Operator.

4.6.1. Evidence of the Coal Owner, lessee, or operator consent and agreement as required by W.Va. Code §22-21-6 shall be submitted to the Chief on Form WW-5A and shall become a part of the permanent well record.

4.6.2. In the absence of the applicant submitting evidence of a consent and agreement on Form WW-5A a request for hearing before the board may be submitted accompanied by an affidavit which shall include all the information required by W.Va. Code §22-21-7.

4.7 Issuance of Permits.

4.7.1. The determination to deny a permit under the provisions of W.Va. Code §22-21-6(g), or to deny or condition a permit under the provisions of W.Va. Code §22-21-12 shall be in writing and issued within thirty (30) days from the date the Notice and Application in complete form with the required documents are filed, except in those cases where comments or objections have been filed pursuant to W.Va. Code §22-21-10 and §22-21-11 or where an applicant has submitted a request for hearing before the Board as provided by W.Va. Code §22-21-7(b).

4.7.2. The determination to deny, issue or condition a permit under the provisions of W.Va. Code §22-21-13, shall be in writing and issued within thirty (30) days from the date of receipt of the Coalbed Methane Well Review Board order by the Chief in complete form with all documents as required.

4.7.3. In the absence of a pooling order or an order establishing special field rules issued by the Board, no permit to drill a CBM Well within 100 feet of the outside boundary of a coal tract from which coalbed methane will be produced or within 1,600 feet of an existing CBM Well for which a permit application is on file, shall be issued by the Chief unless the CBM Well Operator has provided consent as required by W.Va. Code §22-21-20.

4.7.4. The permit and any conditions to or modifications of the proposed permitted well work shall be issued by endorsement on or attachment to the "Permit" copy of the Application Form WW-5B.

4.7.5. Any permit issued shall expire automatically unless the permit well work is commenced within twenty-four (24) months of the date the permit was issued. No permit shall be extended to authorize the commencement of well work after the expiration date of twenty-four (24) months.

4.7.6. Upon the issuance of any permit pursuant to the provisions of this article the Chief shall transmit a copy of such permit to the Office of the Assessor for the county in which the well is located.

4.7.7. Upon the issuance or denial of any permit pursuant to the provisions of this article the Chief shall transmit a copy of such permit or denial to all persons noticed in the permit application pursuant to W.Va. Code §22-21-9.

4.8. Prior to the construction of roads, locations and pits for any permitted well work, the CBM Well Operator or his contractor shall notify the appropriate oil and gas inspector and allow the opportunity of inspecting and approving the construction and method of reclamation for all proposed areas to be disturbed in siting, drilling, completing or producing the well. In addition, the CBM Well Operator or his contractor shall notify the appropriate district oil and gas inspector twenty-four (24) hours before actual permitted well work is commenced.

4.9 Drilling prohibition 200 feet - No coalbed methane well shall be drilled nearer than two hundred feet from an existing water well or dwelling without first obtaining the written consent of the owner of such water well or dwelling.

§38-23-5. Casing Requirements - Coalbed Methane Wells.

5.1. Fresh Water Casing - For each coalbed methane well, the operator shall run and permanently cement a string of casing through the fresh water bearing strata. The fresh water protective casing shall extend at least thirty (30) feet below the deepest fresh water horizon (that being the deepest horizon which will replenish itself and from which fresh water or usable water for household, domestic, industrial, agricultural, or public use may be economically and feasibly recovered) and shall have cement circulated in the annular space outside the casing. The volume of cement needed shall be calculated using approved engineering methods to assure the return of the cement to the surface. In the event cement does not return to the surface, the district Inspector shall be notified. If the top of cement cannot be located using sound engineering practices approved by the Chief or his authorized representative, then an electric log or similar technology approved by the Chief shall be used. Sound engineering practice approved by the Chief or his authorized representative shall be used to fill the annular space back to the surface. Requests to approve methods, other than pre-approved practices shall be acted upon by the Chief or his authorized representative within twelve (12) hours of actual notice to the Chief or his authorized representative, otherwise the request will be deemed approved. In no case shall the fresh water casing penetrate salt water or extend below sea level. There shall be no oil and gas production through the fresh water casing for new wells or the redrilling of existing wells permitted on or after August 1, 1993. Variances from the requirements of this section shall be granted on a site specific or area basis in accordance with Section 16.

5.2. Casing When Drilling Encounters Coal Seams.

5.2.1. Coal Protection String - Except for those coalbeds which the coalbed methane operator proposes to complete for production or produce from, or where a ventilation hole is being converted to a well, when a well penetrates one or more workable coalbeds, the well operator shall run and cement a string of casing in the hole through the workable coalbed or beds in such a manner as will exclude all oil, gas or gas pressure from such coalbed or beds, except such oil, gas or gas pressure as may be naturally present in each coal seam. Such string of casing shall have cement circulated in the annular space outside the casing. The casing shall either be cemented to the surface or at least into the fresh water casing to at least 100 feet above the uppermost workable coal seam. If the casing is not cemented to the surface, the operator will demonstrate that the casing has been cemented to 100 feet above the uppermost workable coal seam. The volume of cement needed shall be calculated using approved methods to assure cementing to the required level. In the event cement does not return to the required level, every reasonable attempt will be made to fill the annular space by introducing cement from the surface.

The fresh water casing may be extended through the workable coal seams and also serve as the coal protection string provided the casing is cemented as required in Section 5.1 through the fresh water horizons and Section 5.2 through the workable coal seams and Section 23.2.2 regarding when a worked-out coal seam is encountered.

5.2.2. When Drilling Encounters a Mined Zone - Except where the horizon of a previously mined coalbed and its associated gob are expected to be the producing zone, when a coalbed methane well is drilled through the horizon of a coalbed from which the coal has been removed, the hole shall be drilled at least thirty feet below the coalbed, of a size sufficient to permit the placing of a liner which shall start not less than twenty feet below the coal seam and extend not less than 20 feet above the void created by the mined area. This liner, which may be welded to the casing being used, shall be centered in the borehole, and the space between the liner and casing shall be filled with cement as they are lowered into the hole. Cement shall be placed in the bottom of the hole to a depth of at least twenty feet to form a sealed seat for both liner and casing.

Following the setting of the liner, drilling shall proceed in the manner provided in Section 5.2.1. Should it be necessary to drill through the horizon of two or more workable coalbeds from which the coal has been removed, such liner shall be started not less than twenty feet below the lowest such horizon penetrated and shall extend to a point not less than twenty feet above the highest such horizon, provided that, where two or more horizons from which the coal has been removed are sufficiently far apart, separate liners for each horizon or combination of horizons from which coal has been removed may be used. In any event, each segment of liner shall start not less than 20 feet below the lowest such horizon penetrated and extend to a point not less than 20 feet above the highest such horizon.

5.3. For gob wells, drilled after the effective date of these regulations and vent holes converted to gob wells, a single string of casing may be used as the fresh water, coal protection and the production casings. In any event, a string of casing shall extend 30 feet below the deepest fresh water horizon (that being the deepest horizon which will replenish itself and from which fresh water or usable water for household, domestic, industrial, agricultural, or public use may be economically and feasibly recovered). Such casing shall have cement circulated in the annular space outside the casing. The volume of cement needed shall be calculated using approved methods to assure the return of cement to the surface. In the event cement does not return to the surface, every reasonable attempt will be made to fill the annular space by introducing cement from the surface.

5.4. Production Casing - For all coalbed methane wells, production casing shall, through cementing or other mechanical means such as a packer, be set in such a manner as to prevent the migration of stimulation pressure or fluid, or any produced

gas or water into the space between the well bore or any other casing set and the production casing.

The coal protection string may also serve as the production casing. However, if the fresh water casing and the coal protection string are the same as provided for in Section 5.2.1, then a separate string of casing shall be used as the production string, except for those wells as provided for in Section 5.3.

5.5. Cement Type and Strength - When cement is used to fill the annular space around the casing required in this section, it shall be American Petroleum Institute Class A Ordinary Portland Cement with no greater than three percent (3%) calcium chloride; provided that, if the coalbed methane operator furnishes satisfactory proof that different cement types are adequate, the Chief may approve use of such different cement types.

The cement placed in the annular space around the casing shall be allowed to set to a minimum compressive strength of five hundred (500) pounds per square inch using approved engineering data for the type of cement used, or the waiting time for all cement used shall not be less than eight (8) hours.

5.6. Variances from Cementing Requirements - The Chief may also allow, upon sufficient proof by the coalbed methane operator that it will not affect mine safety or fresh water aquifers and upon consent of all coal owners or operators effected, variances from the requirement of Sections 5.2.1, 5.4 and 5.5 regarding the cementing of the coal protection and/or the production casing along its full length.

5.7. Drilling Practices Prior to Freshwater Casing - Prior to the cementing of the freshwater casing as required by Section 11.3, drilling practices and procedures, such as air or water pressure and soaping, shall be conducted using operating practices so as to minimize damage or disturbance or the possibility of unnecessary damages or disturbance to the uncased strata/formations and groundwater contained in any of those formations. The requirements of this section shall not prevent the use of drilling practices and procedures reasonably necessary to the successful drilling of the well in a safe manner. The requirements of this section shall not be construed to prohibit practices specifically allowed by statute or other regulation.

5.8. Blowout Prevention Training - The well operator shall assure that at all times during the operation of the drilling rig a person shall be present that has successfully completed a training course on blowout prevention approved by the Chief.

5.9. Well Identification.

Every well shall have attached or stamped, in a permanent manner, the API identification number which consists of the state (047), county (001 through 109), and permit number. Such number shall be no less than one half (1/2) inch in height and detectable by any interested person approaching the well. Any additional information

the well operator desires to display may be incorporated in such a manner that it will not confuse or distort the permanent API identification number.

§38-23-6. Notice of Plugging and Reclamation of a CBM Well; Right to Take Well; Objection; Plugging Order; Plugging for Mine Through.

6.1. Notice of Intention to Plug and Abandon a CBM Well.

6.1.1. - Prior to filing an application for a permit to plug a coalbed methane well under W.Va. Code §22-21.22, the applicant shall deliver by personal service or by certified mail, return receipt requested, copies of the application, well plat and erosion and sediment control plan to the following:

6.1.2. The "Chief" as defined in W.Va. Code §22-14-2(i).

6.1.3. The owners of record of the surface of the tract on which the CBM Well is located.

6.1.4. The name and address of each coal operator and each coal owner and coal lessee of record or providing a record declaration of notice pursuant to section thirty-six, article six of this chapter of any coal seam which is (i) penetrated by the well; (ii) within seven hundred fifty horizontal feet of any portion of the well bore; or (iii) within one hundred vertical feet of the completed coal seams of the well, except that in the case of an application to plug a well which was converted from a ventilation hole, the name and address only of such owner or operator of the seams penetrated by the well shall be necessary;

6.1.2. An application for a permit to plug a CBM Well shall be made on Form , "Application to Plug and Abandon a CBM Well" and shall be accompanied by:

6.1.2.1. A plat in the form prescribed by W.Va. Code §22-21-6(C)(5);

6.1.2.2. The CBM Well name, well number, and permit number or such other identification as the chief may require;

6.1.2.3. The anticipated date plugging operations will commence;

6.1.2.4. The total depth to which the well was drilled, deepened or converted, the coal seams (stating the depth and thickness of each seam) in which the well was completed for production, and any other coal seams (including the depth and thickness of each seam) which penetrated by the well;

6.1.2.5. A certification to the chief the notice requirements of this article have been completed by the applicant. Such certification shall be by affidavit(s) of personal service or return receipt card(s), or other postal receipt(s) for certified mailing.

§38-23-7. Work Order: Manner and Method of Plugging a CBM Well.

7.1. - An applicant for a permit to plug a well shall set forth a detailed statement of the manner in which the work of plugging and filling such well is to be performed, including:

7.1.1. - location (by depth),

7.1.2. - kind and length of plugs to be used and the method chosen to insure that no gap exists between the bottom of the coal protection string of casing and the expanding cement plug thereunder,

7.1.3. - plans for mudding, cementing, and filling,

7.1.4. - plans for altering or removing casing if required, and

7.1.5. - all other pertinent information regarding said plugging and filling, all of which shall be in compliance with W.Va. Code §22-21-23. The information shall be submitted on Form "Application to Plug and Abandon a CBM Well".

7.2 . Rights of Coal Owner or Operator Pursuant to W.Va. Code §22-21-22 (b).

7.2.1. - Any coal owner or operator noticed within the "Application to Plug and Abandon" and whose coal seam is affected by such well shall have the following rights pursuant to W.Va. Code §22-21-22:

7.2.1.1. - To convert the well to a vent hole or otherwise take the well. In such event the chief, upon determination that the coal owner or operator has placed the well under a mining permit, shall release the well operator's bond and the well operator shall be relieved of further responsibility for the well.

7.2.2. - To file comment or objection with the chief, within fifteen (15) days after receipt of intent to plug, with respect to the proposed manner or method of plugging. The chief shall consider any such comment or objection and issue an order specifying the manner and method of plugging and reclamation.

7.3. Issuance of a Permit to Plug and Abandon a CBM Well.

7.3.1. - The Chief shall issue an order within fifteen (15) days after the expiration of the comment and objection period, either permitting or rejecting such application and endorsed on Form WW-6B. The issuance or rejection

shall be mailed to all parties noticed on the application to plug and abandon a CBM Well. In entering any such order, the chief shall give special consideration to the ability to mine any affected coal seam safely and the protection of any affected coal seam for future mining.

7.3.2. - Verbal permission may be given pursuant to W.Va. Code §22B-1-33(c) in the event the well to be plugged and abandoned is one on which drilling or working operations have been continuously progressing pursuant to authorization granted by the Office. Any verbal permission shall be given by the Chief, or the supervising inspector, or any inspector who is available to supervise the plugging work. Unless such verbal approval is given by the Chief, the well operator shall notify the Chief's office by telephone of such verbal approval no later than the next regular working day.

7.4. - When any coalbed methane well is located in that portion of a coal seam which will be mined within six (6) months, the well operator shall, within sixty (60) days after notice from the coal owner or coal operator that the well is to be mined through, plug the well. The well shall be plugged in accordance with the requirements of Section 8.

§38-23-8. Plugging of Coalbed Methane Wells When a Workable Coal Seam is Encountered.

8.1. All coalbed methane and gob wells shall be plugged upon abandonment and shall be plugged in accordance with a plan filed and approved by the Chief. The approved method of plugging shall require the plugging of the well will be sufficient to allow the well to be mined through safely.

8.2 . Method of Plugging.

8.2.1. Materials Used in Plugging. Any non-porous materials including gels and cements to be used in plugging must be specified in the work order portion of Form WW-6B. All cement, except where expanding cement is used in conjunction with plugging shall be American Petroleum Institute Class A Ordinary Portland Cement with no greater than 3% calcium chloride or alternates approved by the chief. All non-porous materials used in conjunction with plugging shall be at least six percent (6%) bentonite gel.

If the operator furnishes satisfactory proof that different cement or non-porous material types are adequate, the Chief may approve use of such different cement or non-porous materials. Materials and cements must be of a kind and quality accepted by the oil and gas industry and approved by the Chief as suitable for the intended purpose and which otherwise comply with all provisions of law and accepted standards. The Chief may approve the use of non-standard material or cement.

8.3. Length of Plug - All cement plugs, other than those across coal seams, shall be at least one hundred (100) feet in length unless a variance from such a requirement is granted pursuant to Section 16.

8.4. Retrieving Casing and Completing a Seal - The operator shall make reasonable efforts to cut and pull all recoverable casing (as determined by methods approved by the Chief or his authorized representative). Equipment used to pull recoverable casing shall be rated and rigged at or above one hundred and fifty percent (150%) of the estimated weight of the heaviest string of recoverable casing, unless otherwise approved by the chief or his authorized representative. Sufficient instrumentation shall be used to accurately indicate the pulling force applied. When the fresh water casing has not been cemented to surface and the casing cannot be pulled, the operator shall make reasonable attempts to perforate the casing and squeeze cement behind the casing in the vicinity of the fresh water zones to prevent the contamination of the fresh water zone.

8.5. - Cleaning Out and Preparing Wells.

8.5.1. The well shall be cleaned out along its entire length or, in the case of gob wells, if it is not feasible to clean out along the entire length, the well shall be cleaned to the lowest practical depth or at least below the lowest workable coal seam.

8.5.2. Either at the time of drilling the well or at least prior to the application to plug, a suite of logs shall be made consisting of a caliper survey if an open hole section is to be plugged, directional deviation surveys (at a minimum), logs or drillers' records suitable for determining the top and bottom of all coalbeds, logs or other mechanical means to determine the lengths along the casing where cement is present, and the location of the bridge plugs. If the required logs are done at the time of drilling then they shall be filed with the Chief and be available to the coal owner and operator.

8.5.3. When cleaning a well, and based on the information determined in Section 8.5.2, a diligent effort will be made to remove all uncemented casing from at least 20 feet below to 100 feet above each workable coal seam in the well bore. Any remaining uncemented casing, as determined by cement bond log, shall be perforated or ripped at a minimum of 200 feet below and 100 feet above each workable coalbed at intervals spaced close enough to permit expanding cement slurry to infiltrate the annulus between the casing and the well bore.

8.5.4. The wellbore shall be completely filled and circulated with a gel that inhibits any flow of gas, supports the walls of the borehole, and densifies the expanding cement. This gel shall be pumped through open-end tubing run into the well.

8.6. Plugging Coalbed Methane Wells to the Surface. The following procedures shall be used when plugging coalbed methane wells to the surface:

8.6.1. A cement plug shall be set in the wellbore by pumping an expanding cement slurry down the tubing to displace the gel and fill the borehole to the surface. As an alternative, after the expanding cement slurry is pumped down the tubing so that the wellbore is filled to a point approximately 100 feet above the top of the topmost workable coalbed, materials permitted under Section 8.2 may be used to fill the wellbore from that point to the surface.

8.6.2. A small quantity of steel turnings, or other detectable material, shall be embedded in the top of the cement near the surface to serve as a permanent magnetic monument of the borehole.

8.7. - Plugging Coalbed Methane Wells Using the Vent Pipe Method. The following procedures shall be used when using the vent pipe method for plugging coalbed methane wells:

8.7.1. A vent pipe sized appropriately based on the existing casing in the well shall be run into the wellbore to a depth of the lesser of the bottom of the well or 100 feet below the workable coalbed and cemented to 100 feet above the uppermost workable coalbed.

8.7.2. A cement plug shall be set in the wellbore by pumping an expanding cement slurry, Portland cement, or a Portland cement-fly ash mixture down the tubing to displace the gel so that the borehole is filled with cement. The borehole shall be filled with expanding cement from the bottom of the well to 100 feet above the target seam or producing horizon.

8.7.3. All fluid shall be evacuated from the vent pipe to facilitate testing for gases.

8.7.4. The top of the vent pipe shall be protected to prevent liquids or solids from entering the wellbore, but permit ready access to the full internal diameter of the vent pipe when necessary.

8.7.5. The vent shall extend at least 30 inches above the ground and have a tag affixed with the well identification or in some manner identify the well.

8.8. - The Chief may allow alternate plugging methods or waive certain of the requirements of Sections 8.5 and 8.6 provided the coal owner and operator consents in writing to such alternate methods. The chief may also require additional steps to be taken during plugging to insure conformance with any requirements a state or federal agency which has jurisdiction over mine safety may impose or require for a safe mine through of the well.

8.9. - An affidavit of plugging shall be filed with the Chief, stating the plugging method used and any deviations from the proposed plugging plan.

8.10. - Plugging when a coalbed methane well does not encounter a workable coalbed, including the target horizon, or a gob well does not encounter a workable coal seam.

8.10.1. - When a coalbed methane well or gob well does not encounter a workable coalbed, upon abandonment shall be plugged in accordance with the provision of this Section.

8.10.2. - All materials used in plugging shall be in accordance with Section 8.2.

8.10.3. - The wellbore shall be filled from the bottom of the well with non-porous material and cement to the surface. At a minimum, a cement plug extending from the surface to a depth of 100 feet shall be placed in the well.

8.10.4. - An affidavit of plugging shall be filed with the Chief by the operator stating the method of plugging used and any deviation from the plugging plan.

8.11. Permanent Marker.

Except as provided below, upon the completion of the plugging and filling of any abandoned CBM well which was not subsequently converted to a vent hole by the coal operator, a permanent monument or marker consisting of a length of pipe (minimum diameter size six (6) inches) filled with concrete (or the equivalent thereof approved by the Chief) shall be erected over the well. The marker shall extend no less than thirty (30) inches above the surface and no less than ten (10) feet below the surface and into the well, and shall be sealed with concrete for the purpose of making the marker permanent. The API well identification number which consists of the state (047), county (001 through 109), and permit number shall be attached or stamped in a permanent manner to said monument. Such number shall be no less than one half (1/2) inch in height and detectable by any interested person approaching the monument. The erection of a monument shall in no way interfere with the bleeder pipe from the well where such pipe is required, or the vent or other device installed pursuant to W.Va. Code §22-6-24. Such monument shall be accurately described on Form WR-38, "Affidavit of Plugging and Filling Well" as well as the time and manner of plugging and filling and shall be approved by the Chief as a satisfactory landmark which may be used as such in the location of adjacent wells. Two (2) permanent reference points with courses and distances from the abandoned well shall be designated and prescribed on the plat required by 38 CSR 18-13.1 in the form prescribed by 38 CSR 18-9, accompanying the Form WW-6A, "Notice of Intention to Plug and Abandon a Well", or if any change in the plat is necessary, accompanying Form WR-38, "Affidavit of Plugging and Filling Well".

§38-23-9. Form and Contents of Plats.

9.1. Statutory Requirements for Plats - Any plats required to be furnished under W.Va. Code §§22-21-6 or 22-21-15 shall contain all information specified in those statutory sections.

9.2. Additional Requirements for Plats - Any plat required to be furnished under W.Va. Code §§22-21-6 or 22-21-15 for coalbed methane wells shall conform to the standards of accuracy and depiction for plats for wells:

9.2.1. The plat shall conform to the standards and depictions set forth in 38 CSR 18-9.2.1 through 9.2.8.

9.2.2. Topographic Map Location of Coalbed Methane Well - The topographic map location of the coalbed methane well for which any permit application is made pursuant to W.Va. Code § 22-21-6 shall be shown on the plat by a "cross" with the measured distance in feet from the nearest two point five (2.5) minute latitude and longitude intersection using the North East (upper right) border of the plat on a seven point five (7.5) minute (1:24,000) topographic map. Each plat shall indicate the quadrangle name of the topographic map used.

9.2.3. Wells - All wells, including coalbed methane wells, within the scope of the plat, whether active, drilling or abandoned, shall be shown. The scope of every plat shall be sufficient to show all wells within two thousand five hundred (2,500) feet of the well which is the subject of the application. Each well so shown, including the subject well, shall bear a designation that permits the type (oil, gas, coalbed methane, liquid injection under W.Va. Code §22B-1-41, underground storage, or storage observation) and status (active, abandoned, or drilling) of each such well to be determined by use of the API permit number (excluding State and County) for each well having such a permit number, and in parenthesis, and following the API number if such is listed, the kind and status numbers and symbols provided for in Exhibit A.

9.2.4. Other Surface Features - In addition to the surface features and owner identification data required by statute or by the foregoing specification of Section 9.2, the plat shall also show the following surface features lying within the scope of the plat:

9.2.4.1.. dwellings within two hundred (200) feet of the well for which any such permit is being sought;

9.2.4.2. streams.

9.2.5. Names - The plat shall show:

9.2.5.1 .the information specified in W.Va. Code §22-21-6(c)(5);

9.2.5.2. if the application is for a drilling unit, the information specified in §22-21-15(c)(1); Provided, however, that upon establishment of any drilling unit by the Board that differs from the applicant's original unit as shown in said plat, the applicant shall revise the plat so that the information is consistent with the unit established by the Board; and

9.2.5.3. any other information the Chief may require.

9.3. Plat Certification - The plat shall be certified pursuant to the requirements of 38 CSR 9.3.

9.4. Re-use of Plats - Following issuance of an initial permit for a CBM Well, any subsequent application for a new permit involving the same CBM Well may be accompanied by an accurate copy of the plat accepted by the Office for use with the permit issued for the most recent previous application, updated as necessary to reflect new data or additional data not required by statute or this rule; provided, that a new certification as required by Section 9.3 shall be necessary.

9.5. Permanent Character of Plats - The plat submitted under this Section 9 shall be of permanent character as specified in 38 CSR 9.5.

§38-23-10. Rules Applicable to Separate Bonds; Blanket Bonds; Financial Responsibility; Financial Security for Stimulation in the Absence of Consent of Affected Coal Operators or Owners; Regulation; Designation of Agent; Transfer of Title and Operator Status; Transfer Procedures; Periodical Circular; Ineffective Bonds; and Financial Responsibility.

10.1. Separate Bonds - Each permit application filed after the effective date of these regulations for a coalbed methane well shall be accompanied by a separate bond with corporate surety or cash or other collateral security in compliance with W.Va. Code §22-21-8 and shall be submitted with Form OP-7, "Bond for Single Well", except where (a) a blanket bond is being furnished pursuant to W.Va. Code §22-21-8(c); or (b) the permit application is for a permit to convert an existing oil or gas well to a coalbed methane well or to plug a coalbed methane well which is already subject to corporate surety, cash or collateral security which satisfied applicable requirements at the time such corporate surety, cash or collateral security was furnished. Any corporate surety bond, cash or collateral security furnished prior to the effective date of these rules shall remain in effect for the Office until such time as the well operator is issued any new determination of financial responsibility as may be required by these rules.

10.2. Blanket Bonds - Any blanket bond for coalbed methane wells furnished after the effective date of these regulations shall have corporate surety or cash or other collateral security and shall be submitted with Form OP-8 "Blanket Bond for Wells." Any blanket bond with corporate surety, cash or collateral security furnished in connection with any coalbed methane permit or permits issued prior to the effective date of these regulations shall remain in effect for the benefit of the Department until

such time as the well operator is issued any additional permit and such well operator has furnished new or additional corporate surety cash or collateral security complying with W.Va. Code §§22-21-8; provided, that if a blanket bond furnished prior to the effective date of these regulations complies with the requirements of W.Va. Code §22-21-8, a new blanket bond shall not be required to be submitted with a permit application; provided, further, that if a permit application is for a permit to plug a well which is already subject to a corporate surety, cash or collateral security which satisfied applicable requirements at the time such corporate security, cash or collateral security was furnished, no additional corporate security, cash or collateral security shall be required. Any corporate surety bond, cash or collateral security furnished prior to the effective date of these rules shall remain in effect for the Office until such time as the well operator is issued any new determination of financial responsibility as may be required by these rules.

10.3. Financial Security for Individual Coalbed Methane Wells that will be Stimulated in the Absence of consent of Affected Coal Owners or Operators.

10.3.1. In addition to the bond required by W.Va. Code §22-21-8, where a board order directs the Chief to issue a permit authorizing stimulation in the absence of consent of the affected coal operators or owners of workable coal seams, prior to the Chief issuing the permit the applicant must file Form OP-10, "Bond to Stimulate Coalbed Methane Well in the Absence of Coal Owner/Operator's Consent" which form shall be accompanied by a separate bond with corporate surety or cash or other collateral security in the amount set by order of the board pursuant to W.Va. Code §22-21-13(d)(5).

10.4. Registration; Designated Agent; Transfer of Title for Coalbed Methane Well.

10.4.1.1. All persons owning or operating or proposing to own or operate any coalbed methane well in West Virginia shall register with the Director. In all cases an agent or attorney in fact shall be designated on Form OP-1, Operator Registration and Designation of Agent by and for each CBM Well or operator, upon whom process, notices, orders and other communications issued pursuant to W.Va. Code §22-6-6(E) may also be served; but the designation shall not be effective until it has been accepted in writing by the Designee and approved by the Division. Every well owner or operator who has designated such agent or attorney in fact shall within five (5) days after termination of such designation, notify the Division of such termination and designate a new agent on Form OP-1. This rule applies to all well operators, not merely those whom W.Va. Code §22-21-6 subsection (e) specifically requires to designate an agent; provided, that a well operator who is a natural person and a resident of the State of West Virginia may list himself instead of an agent for service of all papers.

10.4.1.2. When title to a CBM Well or the right to operate a CBM Well is transferred from one (1) well owner to another, the Director shall

be notified in writing within five (5) days by the transferor well owner of the name and address of the transferee well owner. A copy of such notification shall be delivered to the transferee well owner. Failure to notify the Director of such transfer shall be a violation of this rule by said transferor and shall be punishable under W.Va. Code §22-21-28; and in addition all bonds of such transferor under W.Va. Code §22-21-8 shall be forfeited.

10.4.1.3. The transferee well owner shall forthwith register with the Division if he has not previously registered such ownership. In any event, said transferee shall forthwith notify the Division of his designated agent or attorney in fact pursuant to Section 4.1.1 unless a designation has already been made and approved. The transferee well owner shall file with the Division the well name and the permit number of the subject well. The county and district in which the subject well is located, the names and addresses of the transferor well owners and the transferee well owners, a copy of the instrument of assignment or transfer, or a certification of such assignment or transfer acceptable to the Director, and the applicable bond, cash, or collateral security, described in W.Va. Code §22-21-8.

10.4.1.4. No assignment or transferor owner shall relieve the transferor well owner of any obligation and liabilities pursuant to these rules or the West Virginia Energy Act unless and until the transferee well owner files with the Division and the well name and the permit number of the subject well, the county and addresses of the transferor well owners and the transferee well owners, a copy of the instrument of assignment or transfer acceptable to the Director, the bond, cash or collateral security, which satisfies the requirements of W.Va. Code §22-21-8, and the name and address of the transferee well owner's designated agent if the transferee well owner would be required to designate such an agent under W.Va. Code §22-21-6.

10.4.1.5. Upon compliance with the requirements of Section 4.1.2 by the transferor well owner and transferee well owner, the Director shall release the transferor well owner from all duties and requirements of this rule, and the Director shall give written notice of release to the transferor well owner of any bond and return to the transferor well owner any cash or collateral securities deposited pursuant to W.Va. Code §§22-21-6, 22-21-9 or 22-21-8.

10.5. Filing requirements and procedure for the transfer of operator and declaration of operator status.

10.5.1. General requirements - The procedures of 38CSR18-10.4. and 38CSR18-10.5 shall apply to coalbed methane wells.

10.6. Transfer Procedures.

10.6.1. If for any reason the bond or other proof of financial responsibility on a well is rendered invalid or ineffective, the operator shall have sixty (60) days in which to replace such bond or other proof of financial responsibility. In the event such bond or other proof of financial responsibility is not replaced, then the Chief shall order the well to be shut in and may order the well to be plugged.

10.7. Nothing in this section shall prohibit the Chief from accepting and holding bonds or other form of financial responsibility from more than one competing interests.

§38-23-11. Waste.

11.1. All CBM well Operators, owners, drillers or contractors shall use reasonable efforts to prevent waste of coalbed methane as defined in W.Va. Code §22-21-2(8),

§38-23-12. Records and Reports.

12.1. Well Records. - Each CBM Well Operator or his contractor shall comply with all the applicable requirements of 38 CSR 18-12, subsections 12.1 and 12.2 related to records required to be kept or submitted to the Chief.

12.2. Annual Reports of Production. - Each CBM Well Operator shall submit to the Chief the annual report of production as required by 38 CSR 18-15.

12.3. Within 30 days after the completion of stimulation of a CBM Well, the CBM Well Operator shall certify on Form WW-30, "Affidavit of Stimulation of CBM Well," the details of the actual stimulation performed, copies of which shall be submitted to the Chief and to the coal owners or operators entitled to notice pursuant to W.Va. Code §22-21-14(c).

12.4. Accident Reports. - If any explosion or other accident causing loss of life or serious personal injury occurs in or about a well or during the drilling, completing or plugging of a well, the CBM Well Operator or his contractor shall give notice, by the most expedient means practical, of the particulars of the explosion or accident to the District Oil and Gas Inspector or the Chief.

12.5. Annual Inspection.

The operator shall conduct an inspection at the surface of each unplugged well at which drilling has been completed more than five (5) years. Such an inspection shall be conducted no less frequently than once each calendar year in a method approved by the Chief. Certification of the performance of such inspection, in a form approved by the Chief, shall be filed with the Office of Oil and Gas in conjunction with the operator's

annual report as required under Section 15.1. Should the operator detect evidence of any significant leakage or other indications of casing integrity failure, the operator shall give notice to the Office of Oil and Gas and take such measures as may be appropriate to eliminate or mitigate the leakage.

§38-23-13. Water Protection, Testing and Redemption.

13.1. Before commencing to drill any CBM well, the CBM Well owner or operator shall make proper and adequate provision to prevent surface and underground water pollution as required by W.Va. Code §22-6-7 and 38 CSR 11.

13.2. When drilling of a CBM Well penetrates a formation known to contain substantial amounts of salt water, drilling will continue to the next casing point by drilling with mud, foaming, or other satisfactory methods for the purpose of isolating the salt water in the formation or preventing the discharge of salt water per se into a fresh water horizon, or above the surface of the ground. In the case of foaming, it is recognized that a certain amount of salt water, mixed with the cuttings, will be discharged above the surface of the ground which will be contained in sump pits no larger than necessary for this purpose.

13.3. Water Testing Rights and Obligations.

13.3.1. Prior to drilling a CBM Well at the request of the owners of record of the surface tract as defined in W.Va. Code §22-6-9 or an occupant of land within one thousand (1,000) feet of the proposed well, the CBM Well Operator shall sample and analyze, in accordance with this section, water from any wells or springs located within one thousand (1,000) feet of the proposed CBM Well that is actually used by such owner or occupant for human consumption, domestic animals, or other general use.

13.3.2. If, prior to drilling, no request is made of the CBM Well Operator pursuant to the previous subsection, the CBM Well Operator shall sample and analyze, in accordance with this section, water from any one known and existing well or spring within one thousand (1,000) feet of the proposed well. If more than one such well or spring exists, the CBM Well Operator shall select for sampling and analysis the one well or spring that, in the CBM Well Operator's judgment, has the highest potential for being influenced by the CBM Well Operator's well work.

13.3.3. If for any reason the CBM Well Operator is unable to sample and to analyze water from any such water wells or springs within one thousand (1,000) feet of the CBM Well Operator's proposed well, the Chief may require the operator to sample and to analyze in accordance with this section water from one existing well or spring located between one thousand (1,000) feet and two thousand (2,000) feet from the CBM Well Operator's proposed well.

13.3.4. At a CBM Well Operator's discretion, any or all water wells or springs within one thousand (1,000) feet of CBM Well Operator's proposed well may be sampled and analyzed in accordance with this section.

13.3.5. Surface Owner Notice - The CBM Well Operator shall give notice to the owner of record of the surface tract as defined in W.Va. Code §22-6-9 of the right of the user who is either an owner or occupant to request the CBM Well Operator to sample and analyze a well or spring in accordance with subsection 13.3.1 of this Section. The CBM Well Operator shall be deemed to have satisfied this requirement if notice is provided by the same methods used in conjunction with the permit application.

13.3.6. Additional Notice - The CBM Well Operator shall make a reasonable attempt to give additional notice of the right to request the operator to sample and analyze a well or spring in accordance with subsection 13.3.1 of this section. The CBM Well Operator will be deemed to have satisfied this requirement if notice is provided by any of the following methods.

a. By personal service or by posting of notice at the entrance to any dwellings located within one thousand (1,000) feet and at any other locations within one thousand (1,000) feet of the CBM Well Operator's proposed well where the use of such water wells and springs is conspicuous;

b. Mailing of notice to dwellings located within one thousand (1,000) feet of the CBM Well Operator's proposed well and posting at any other locations within one thousand (1,000) feet of the operator's proposed well where the use of such water wells and springs is apparent; or

c. By any other means reasonably calculated by the Chief to provide adequate notice to the occupant/user.

13.3.7. Form of Notice - The notice provided by the CBM Well Operator in accordance with this section shall be in a form approved by the Chief, which, at a minimum, shall contain a statement of such user's right to request such sampling and analysis, advise such users of the independent right to sample and analyze any water supply at the expense of the user, advise such users as to whether the operator will use an independent laboratory, or not, to analyze any sample, and to advise such users of the availability through the Chief of a list of laboratories.

13.3.8. Timing - The CBM Well Operator shall provide such notice prior to the time of the filing of any permit application with the Chief.

13.3.9. Methods of Sampling - The CBM Well Operator shall collect and analyze samples in accordance with methods approved by the Chief or set forth at 40 CFR Part 136.

13.3.10. Parameters - The CBM Well Operator shall analyze samples for the following parameters:

13.3.10.1. pH,

13.3.10.2. iron,

13.3.10.3. total dissolved solids,

13.3.10.4. chloride,

13.3.10.5. detergents (MBAS), and

13.3.10.6. any other parameters as determined by the CBM Well Operator.

13.3.11. Laboratories - The laboratory used by the operator shall be approved by the Chief as being capable of performing sample analyses in accordance with this section.

13.3.12. Distribution of Results - The CBM Well Operator shall, no later than thirty (30) days after receipt of such sample analysis provide the results of such sample analysis in writing to the Chief, and any of the users who may have requested such analysis in accordance with this section.

13.3.13. After notice as required by this section, the CBM Well Operator (or any other contractor or laboratory directed by the CBM Well Operator to collect samples of water for analysis by this section) may enter onto land upon which a water well or spring is located to conduct sampling as authorized. This right of entry may be exercised for this purpose without the permission of the landowner or water or spring users.

13.3.14. If any owner of the land or use of the water well or spring protests or acts to block the right of entry, then the right of entry may be enforced by a court with jurisdiction to enter an injunction regarding the land upon which the source or supply is located. However, if any person acts to block the right of entry provided herein, the CBM Well Operator is not required to enforce this right of entry and shall not be liable for any penalty or loss of rights, privileges or permits based on the failure to exercise the right of entry and obtain the water sample otherwise required by this section.

13.3.15. If the CBM Well Operator or contractor does not enter onto land and obtain a water test because of a protest or action to block the CBM Well Operator or contractor's entry, the protest or action to block entry shall be admissible as evidence in an action between the CBM Well Operator and any landowner or water well or spring user in which the results of the test would have been relevant.

13.4. The CBM Well Operator is liable for any reasonable actual damages done, other than normal wear and tear of the property, while gathering the sample required by this section. This provision does not limit other provisions of the law.

13.5. Groundwater Remediation - Where the facilities or activities of an CBM Well Operator cause or contribute to the concentration of a certain constituent in groundwater which exceeds standards of purity and quality for ground water promulgated by the state Water Resources Board pursuant to W.Va. Code §20-5M-5, every reasonable effort shall be made by the CBM Well Operator to identify, remove or mitigate the source of such contamination. Within thirty (30) days following written request by the Chief, the CBM Well Operator shall submit to the Chief a groundwater remediation plan to strive where practical to reduce the level of contamination over time to support drinking water use. Such a plan shall include such groundwater monitoring as may be necessary to demonstrate the effectiveness of the plan.

§38-23-14. Operation and Reclamation.

14.1 - Reclamation under the Construction and Reclamation Plan.

14.1.1. All proposed reclamation methods for construction of roads, drilling locations, and pits, if any, or alternative overflow prevention facilities, shall be submitted on Form WW-9 with the application for any permit under this series, except a permit to plug a well. Such proposed reclamation methods shall be approved by the chief or his designate, prior to the issuance of the permit, all reclamation shall be done under the supervision of the chief. The reclamation may be altered from that set out in said Form WW-9, if found necessary, with the consent of the chief or his designate, due to topography or other conditions not apparent upon initial submission and approval of the proposed reclamation methods.

14.2. Access Roads - All access road shall be constructed and maintained so as to prevent excess sedimentation, maintain natural drainage areas and, if practicable, to direct or carry away from disturbed areas surface water run-off from undisturbed areas.

14.3. Drilling Sites - Drilling sites shall be constructed and maintained to prevent surface run-off carrying excessive sedimentation from the site, to confine all materials leaked or spilled as a result of drilling operations to the drilling site and to prevent excess sedimentation by not placing in any stream any material moved or cut. Upon the plugging of a non-productive well, whether as a continuous operation with other permitted well work or otherwise, all cementing and other waste materials resulting therefrom shall be stored and disposed of accordance with the permits issued for the site.

14.4. Pits - All field constructed pits which are used to contained waste water shall meet the following minimum requirements:

14.4.1. Any pit shall be constructed and maintained so as to prevent seepage, leakage or overflows and to maintain its integrity.

14.4.2. Provisions shall be made for diverting surface water from the pits.

14.4.3. When an operator is unable to maintain adequate freeboard to prevent overflow from any pit, the District Inspector shall be notified by the well operator and an additional pit (or alternative overflow facility) shall be constructed under the supervision of the chief which shall also meet the requirements specified in this Section 14.4.

14.4.4. If existing soil is not suitable to prevent seepage or leakage, other materials which are impervious shall be used as a liner for a pit. Any such liner shall be installed in such a manner as to protect the structural integrity of both pit and liner.

14.4.5. Dikes associated with pits shall be constructed of compacted material and maintained with a slope that will preserve the structural integrity of such dike.

14.4.6. Any unlined dike constructed of existing soil shall be free of trees and other organic matter, large rocks, or any other material which could be reasonably expected to adversely affect the structural integrity of such dike.

14.4.7. Reclamation of the pits shall not cause an overflow or unpermitted discharge of materials to waters of the State.

14.4.8. All drilling pits and alternative overflow prevention facilities shall be constructed, maintained and reclaimed as required by those conditions of any permit issued by the Chief pursuant W.Va. Code §22-6-7 and Section 14.5 of these regulations and so as not to be left in such condition as to constitute a hazard or to prevent use of the surface for agricultural purposes after the expiration of the six (6) month or extended period for reclamation prescribed by W.Va. Code §22-6-30.

14.5. Water Pollution Control Permit.

Collection, storage and discharge of water, fluids, or other wastes in connection with the drilling or operation of CBM wells shall be pursuant to a permit issued by the Chief in accordance with the W.Va. Code §22-6-7.

§38-23-15. Requirements for Production and Gathering Pipelines -

15.1. This rule prescribes the minimum requirements for the safe and efficient installation of all production and gathering pipelines installed, relocated or replaced after June 9, 1983, which are not regulated by the United States Department of Transportation minimum safety standards applicable to pipelines.

15.2. The chief reserves the right to direct the burial of any line installed under this regulation to protect the public safety, by order issued after notice and hearing under the Office's rules.

15.3. Subject to the reservation in Section 15.3.2 of production and gathering lines subject to this rule shall conform with the following:

15.3.1. Lines shall be buried where practical and reasonable; and practical and reasonable shall be construed to mean lines should be buried in the following situations:

15.3.1.1. Where the line crosses agricultural land as defined in W.Va. Code §19-19-2;

15.3.1.2. Where an unburied line would prohibit use of a pre-existing private roadway or other means of access to a part of or all of surface land;

15.3.1.3. Where the line cannot more practically and reasonably be securely suspended to cross stream beds;

15.3.1.4. Where the line crosses a public road, in which event it shall be buried and otherwise installed in accordance with the rules of the public agency having jurisdiction over the road, and

15.3.1.5. Where the Chief decides prior to installation that burial would be practical and reasonable.

15.3.2. All buried lines shall be installed with a minimum of eighteen (18) inches of cover, except where solid rock is encountered in which case the minimum cover shall be six (6) inches;

15.3.3. Whenever a buried line crosses a pre-existing public or private roadway, the location of the line shall be clearly marked at the point of crossing by an appropriate marker; and

15.3.4. A suitable conductive wire shall be installed with plastic pipe to facilitate locating it with an electronic pipe locator; provided, that any other suitable material or means for accomplishing this purpose may be employed.

15.4. Notwithstanding Section 15.3.3. of this rule, the surface owner(s) of record of any tract subject to the provisions of W.Va. Code §22B-1-30(d) shall have the right

to prescribe that a pipeline or specified parts thereof need not be buried. The prescription shall be on Form WR-75, "Permission Not to Bury Production or Gathering Line", unless it is included in the recorded right-of-way or lease under which pipeline is to be installed, which right-of-way or lease was granted by the then surface owner of record. Once executed and delivered to the person who proposed to install and operate the line, the prescription may not be revoked by any subsequent surface owner(s) of record.

15.5. This rule shall not be construed to prohibit a surface owner from preparing a safe crossing of a pipeline for a new means to access of another part of his tract.

§38-23-16. Variances.

16.1. Upon request, or upon his own initiative, the Chief may grant a variance from any other requirements of this Series upon a showing by an operator that alternate practices will satisfy the requirements of the West Virginia Code, would not significantly increase the risk to coal mines, mine workers, fresh water aquifers, surface owners and exhibit sound engineering practice. Prior to taking final action to grant or deny such a variance the Chief shall provide notice of his proposed action to the public and to the surface owners of record and any coal owner, operator or lessee and provide all such persons with an opportunity to comment on such a proposal.

PUBLIC HEARING

38CSR23 - COALBED METHANE WELLS

**WV Division Environmental Protection
#10 McJunkin Road
Nitro, West Virginia**

**July 13, 1995
6 p.m.**

BRIAN FARKAS: Good evening, my name is Brian Farkas and I'm the Public Information Officer for the Division of Environmental Protection. The purpose of tonight's Hearing is on a proposed regulation - Coalbed Methane Wells - 38CSR23. With me this evening is Ted Streit who is Chief of DEP's Office of Oil and Gas.

A few housekeeping tips before we start today's Hearing. If anybody has to use the bathrooms, they are back out this room, go down the hallway which you came up, and just before the steps there is a hallway, and they are right there. There are soft drink machines just around the corner over here if you would like a soft drink during the Hearing. The copy of this proceeding, this proceeding is being taped - if you would like a copy of this Hearing, it's \$5 per tape.

We will conduct the Hearing in three phases: the first phase is Ted will give a brief presentation on some of the highlights of the proposed

regulation. The second part of the Hearing we will then open it up and record your comments for the record. After the comments are recorded, we will then close the formal part of the Hearing and then go into the third phase which is the question and answer. At that time you can ask us questions, and Ted will do his best to answer them.

Before we begin with Ted, the public comment period does close tomorrow, and if you have some written comments based on what you hear tonight, or if you know somebody else who would like to submit written comments, they should be submitted to Ted at the Division of Environmental Protection by 4 p.m., July 14, which is tomorrow. I will now have Ted come up and explain briefly the purpose and some highlights of the proposed rule.

PERSON IN AUDIENCE: Is there a requirement on the number of copies?

BRIAN FARKAS: No, there is not. The only requirement for the number of written copies is placed on the agency when submitting them to the Secretary of State.

TED STREIT: Thank you, Brian. What we are here for today is to deal with coalbed methane wells and the regulatory structure for them.

Back in, uh, well anyway, West Virginia Code 22-21 created the West Virginia Coalbed Methane Act which mandated these regulations. Most of the regulations, uh, are similar to oil and gas regulations, but there are some exceptions. Those exceptions are in areas because of the nature of coalbed methane wells. There are different notice requirements because different owners get noticed than do under an oil and gas well, and there are different technical requirements because a coalbed methane well sometimes can revert to a vent hole and can be converted from a vent hole in a mining operation. In addition, there are some mining considerations that you have to take for these wells that you don't take for an oil and gas well. So that's basically - yeah, most of the people here at this point probably know these things.

Really, there are two entities that regulate coalbed methane wells in West Virginia. The DEP Office of Oil and Gas is the permit issuer, and the Coalbed Methane Review Board is the appeal and also a hearing board where there are objections to the issuance or where consent for certain activities have not been obtained. In addition, the Coalbed Methane Board hears pooling and unitization. These rules do not cover that area, and uh, the Board may at a later date issue some rules on that,

but these only cover what DEP takes care of. Um, on the agenda, Brian, you want to open it for questions now, or take comments?

BRIAN FARKAS: We'll take comments.

TED STREIT: We'll take official comments at this time.

BRIAN FARKAS: The first person who has indicated a desire to speak - Claude Morgan.

CLAUDE MORGAN: My name is Claude Morgan. I am Manager of Gas Projects for Consol Coal Group. Consol supports the Coalbed Methane regulations proposed by the Division of Environmental Protection, Office of Oil and Gas, with the exception of the well transfer notice and hearing procedures set forth in Regulation 10.5. Consol, Inc. objects to regulation 10.5 because it exceeds the statutory authority of the Coalbed Methane Act by providing that notice of any coalbed methane well transfer, whether the coalbed methane well is active or abandoned, be given to any interested person and that a hearing be held if objections are received. Specifically, Section 10.5.1 of the proposed regulations provides that the procedures of 38CSR18-10.4 and 38CSR18-10.5 are applicable to coalbed methane wells with respect to the transfer of operator and declaration of operator status. Under 38CSR18-10.4 and

38CSR18-10.5, any interested person may intervene by filing objections to an application to transfer a well from one operator to another operator or to transfer a well by a single operator to another bond. Further, if objections are made by any interested person, or if the Chief determines that any other information is necessary, a public hearing will be held in which all persons who have filed objections may be given an opportunity to be heard. The questionable statutory authority for the objection status given to any interested person in any corresponding hearing requirements, apparently come from the Abandoned Well Act, West Virginia Code Section 22-10-1. While Abandoned Well Act is applicable to coalbed methane wells, its application is limited to abandoned coalbed methane wells. Any imposition of the requirements of the Abandoned Well Act to the transfer of active coalbed methane wells exceeds the statutory authority of the Coalbed Methane Act. West Virginia Code Section 22-21-1, as well as the conventional Oil and Gas Statute, West Virginia Code Section 22-6-1, neither of these provide for an interested person to object or hearing procedures to determine the transfer of active wells.

A review procedure by the Office of Oil and Gas for the transfer of

active coalbed methane wells is fully supported in order to insure among other things that the proposed transferee operator can fulfill all financial security requirements for plugging and abandonment, and if applicable, to insure the financial security for stimulation in the absence of consent by the affected coal operators or owners under Section 13 of the Coalbed Methane Act. An acceptable review procedure would be that notice and any corresponding objection and/or comment rights be given to those parties set forth in Section 9 of the Coalbed Methane Act. That is, the owners of record of the surface tract on which the coalbed methane well is to be located. The owners of record of any tract which is to be utilized for roads or other lands disturbance, each coal owner and coal operator from whom a consent and agreement provided for in Section 7 of the Coalbed Methane Act is required, or to whose coal seam will be penetrated by the well or is within 750 feet of any portion of the well bore, and each owner and lessee of record and each operator of natural gas surrounding the well bore in existing shallow formations as defined. It is important that the coal owner and operator receive notice because it is their interest that must be financially secured under Section 13 of the Coalbed Methane Act when a coal seam is stimulated in the absence of

their consent.

We are available to discuss this matter in more detail, and will be happy to provide any additional information on this issue. We thank the Division of Environmental Protection and the Office of Oil and Gas for the opportunity to present these comments and respectfully request that regulations governing the transfer of coalbed methane wells be redrafted in accordance with the Coalbed Methane Act.

BRIAN FARKAS: Thank you. The next person, R. Neal Pierce.

R. NEAL PIERCE: Good evening, my name is Neal Pierce. I'm the General Counsel and Secretary for Columbia Natural Resources. Columbia Natural Resources is a major producer of oil and gas in West Virginia. We currently operate in excess of 3,000 wells. We have a significant interest in the prospects for coalbed methane development in West Virginia and other Appalachian-based states as a result of our significant lease in mineral holdings. CNR, as a company, has been actively involved in the policy debate of the development of coalbed methane rules first in Virginia and then at the federal level with the Energy Policy Act and most recently in West Virginia. CNR actively participated in the development and passage of House Bill 4371.

Likewise, we have been an active participant in the process of bringing the proposed implementing rules forward for public review at this rule-making hearing.

In CNR's view, the Division has done an audible job in bringing forth the extensive proposed rule in a timely fashion and on a schedule that will encourage coalbed methane development in West Virginia sooner rather than later. Accordingly, CNR endorses the proposed rule as drafted with one exception which is outlined hereafter.

The proposed rule 38CSR23-10.5.1 states that the procedures of rule 38CSR18-10.4 and 10.5 will apply to coalbed methane wells. In particular, 38CSR18-10.5.3 establishes that all applications for transfer of wells will be published, indicating that interested persons may intervene in the application and further that if objections are made by any interested person, a public hearing will be held. It is CNR's opinion that such a requirement exceeds the statutory authority of the Division on several grounds.

First, Article 21 of the West Virginia Code sets out in elaborate detail the regulatory program for coalbed methane wells, including specific provisions dealing with hearings, standing of parties, and

objections. However, none of these statutory provisions set forth a procedure requiring a hearing on the transfer of wells and clearly none of those provisions give standing to any interested person to intervene or object to a proposed transfer of the ownership or operatorship, or for any other purpose for that matter. Accordingly, there is no statutory basis for the incorporation by reference in these proposed rules of the provisions of 38CSR18-10.5.

Second, Chapter 22, Article 10 of the Code dealing with abandoned wells which forms a portion of the statutory underpinning for 38CSR18-10.5, on its face applies only to oil and gas wells regulated under Chapter 22, Article 6 of the Code. Article 21, Coalbed Methane Wells, are subject to the provisions of Article 10 only as provided by West Virginia Code Section 22-21-3 which states in part as follows:

"Any well which is abandoned or presumed to be abandoned under the provisions of this Article (that is Article 21) shall be treated as an abandoned well under said Article 10."

In CNR's view, this language in Section 22-21-3 clearly limits the Division's Article 10 authority to coalbed methane wells which were

abandoned or presumed abandoned. Accordingly, under the authority of Article 10, the objection and hearing procedures set out in 38CSR18-10.5 would only be applicable to transfers of coalbed methane wells which were abandoned or presumed to be abandoned.

Finally, CNR believes that the proposed procedure is directly contrary to the requirements of West Virginia Code Section 22-21-22, at least where well transfer is related to the statutorily right of a coal owner or operator to take a coalbed methane well and convert it to a vent hole or otherwise use it. In such circumstances, the statute clearly limits the class of persons with an interest in the hearing and objection procedure as set forth in 38CSR18-10.5 could act to directly contravene the requirements of West Virginia Code Section 22-21-22. As a result, CNR believes the Division must amend proposed rule 38CSR23-10.5.1 by deleting it in its entirety or by amending the section by adding after the phrase "coalbed methane wells" the phrase "which are abandoned or presume to be abandoned pursuant to the provisions of Article 21 of the West Virginia Code."

CNR appreciates the opportunity to comment publicly on the proposed rule and except for 38CSR23-10.5, endorses the proposed rule.

CNR encourages the Division to eliminate the questionable procedure incorporated in 38CSR23-10.5 as being beyond the scope of its lawful authority under the pertinent statutes.

BRIAN FARKAS: Thank you. That concludes the list of people who have asked to give an oral presentation this evening. Is there anybody else who would like to make a comment on the record before we close this part of the hearing?

PERSON IN AUDIENCE: I would like to make one small comment.

BRIAN FARKAS: Would you like to come up here and state your name so we can put it on the record?

NELSON STARCHER: My name is Nelson Starcher. I'm with the United Mine Workers. Uh, the only comment I have is on the stimulation of a well. Uh, it doesn't say in there how a well is to be stimulated, and the coal in the Pittsburgh seam that I work in - the top is very bad. It's not good at all. And well stimulation up there - it doesn't work real well. It creates bad top problems and that's not a problem I think that is as bad in the Southern part of the State, but in Northern West Virginia when you mess with the top in Pittsburgh seam coal then

you have problems. I just - I don't want to see anything in there that would allow the top to be played with, uh, because it could cause some coal miner or maybe several coal miners their lives, and we don't want that. Thank you.

BRIAN FARKAS: Thank you. Anybody else like to make a comment? Okay, just as a reminder, the comment period for this regulation - Coalbed Methane Wells - 38CSR23 - ends tomorrow, Friday, July 14 at 4 p.m. If you would like to submit written comments, you have until tomorrow, 4 p.m., to submit the comments, and they should be sent to Ted Streit, Chief of Oil and Gas at the Nitro Office. With that, we will close the formal part of the hearing and open it up to questions and answers. Do you have a comment for the record?

PERSON IN AUDIENCE: Would 4 p.m. apply to the fax machine, sir?

BRIAN FARKAS: As long as there is something that says 4 p.m., I think that if it comes through on the fax, and I think it would say 1400 hours, 1300 hours, - thank you very much - 1600 hours military time, you're fine. With that, I will close the formal part of the Hearing and we can go into the question and answer part.

Public Hearing: Coccoloba Methane 38 CSR 23 Division of Environmental Protection

Time/Date: 6 p.m. 7/13/95

NAME	ADDRESS	COMMENT YES NO	
1. <u>Johann Struelens</u>	<u>Box B1 Adair Mary W.D. 246576</u>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
2. <u>Claude Morcan</u>	<u>CONSEC, P.O. Box 1289, Riverview, Va 21055</u>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
3. <u>R Abel Perce</u>	<u>CNA A.O. Box 6070 Chesapeake WV 25850000</u>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
4. <u>Larry Malone</u>	<u>WV DUNGA PO Box 3231 Chas WV 25832</u>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
5. <u>Danial McAlghin</u>	<u>Washington Legal Serv. P.O. Box 922 Queen Anne St. # 580 QAn 25301</u>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
6. _____	_____	<input type="checkbox"/>	<input type="checkbox"/>
7. _____	_____	<input type="checkbox"/>	<input type="checkbox"/>
8. _____	_____	<input type="checkbox"/>	<input type="checkbox"/>
9. _____	_____	<input type="checkbox"/>	<input type="checkbox"/>
10. _____	_____	<input type="checkbox"/>	<input type="checkbox"/>
11. _____	_____	<input type="checkbox"/>	<input type="checkbox"/>
12. _____	_____	<input type="checkbox"/>	<input type="checkbox"/>
13. _____	_____	<input type="checkbox"/>	<input type="checkbox"/>
14. _____	_____	<input type="checkbox"/>	<input type="checkbox"/>
15. _____	_____	<input type="checkbox"/>	<input type="checkbox"/>

CONSOL Inc.

29 COLLEGE DRIVE
P.O. BOX 1289
BLUEFIELD, VA 24605
(703) 326-6355

July 13, 1995

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

Re: Coalbed Methane Regulations - Comments of CONSOL Inc. in
Opposition to Proposed Transfer Procedures for Coalbed
Methane Wells

Dear Sirs:

CONSOL Inc. supports the coalbed methane regulations proposed by the Division of Environmental Protection, Office of Oil and Gas with the exception of the well transfer notice and hearing procedures set forth in Regulation 10.5. CONSOL Inc. objects to Regulation 10.5 because it exceeds the statutory authority of the Coalbed Methane Act by providing that notice of any coalbed methane well transfer, whether the coalbed methane well is active or abandoned, be given to any interested person and that a hearing be held if objections are received.

Specifically, Section 10.5.1 of the proposed regulations provides that the procedures of 38 CSR 18-10.4 and 38 CSR 18-10.5 are applicable to coalbed methane wells with respect to the transfer of operator and declaration of operator status. Under 38 CSR 18-10.4 and 38 CSR 18-10.5 any "interested" person may intervene by filing objections to an application to transfer a well from one operator to another operator or to transfer a well by a single operator to another bond. Further, if objections are made by any interested person or if the Chief determines that other information is necessary, a public hearing will be held at which all persons who have filed objections may be given an opportunity to be heard.

The questionable statutory authority for the objection status given to any interested person and any corresponding hearing requirements apparently come from the Abandoned Well Act, W. Va. Code Section 22-10-1, et. seq. While the Abandoned Well Act is applicable to coalbed methane wells, its application is limited to abandoned coalbed methane wells. Any imposition of the requirements of the Abandoned Well Act to the transfer of active coalbed methane wells exceeds the statutory authority of the Coalbed Methane Act, W. Va. Code Section 22-21-1, et. seq., as

Division of Environmental Protection
July 13, 1995
Page 2

well as the conventional oil and gas statute, W. Va. Code Section 22-6-1, et. seq. Neither of these provide for an "interested" person to object or hearing procedures to determine the transfer of active wells.

A review procedure by the Office of Oil and Gas for the transfer of active coalbed methane wells is fully supported in order to ensure, among other things, that the proposed transferee operator can fulfill all financial security requirements for (1) plugging and abandonment and, if applicable, (2) to ensure the financial security for stimulation in the absence of consent by the affected coal operators or owners under Section 13 of the Coalbed Methane Act. An acceptable review procedure would be that notice and any corresponding objection and/or comment rights be given to those parties set forth in Section 9 of the Coalbed Methane Act, i.e., the owners of record of the surface tract on which the coalbed methane well is to be located; the owners of record of any tract which is to be utilized for roads or other lands disturbance; each coal owner and coal operator (i) from whom a consent and agreement provided for in Section 7 of the Coalbed Methane Act is required, or (ii) whose coal seam will be penetrated by the well or is within 750 feet of any portion of the well bore; and each owner and lessee of record and each operator of natural gas surrounding the well bore and existing shallow formations as defined. It is important that the coal owner and operator receive notice because it is their interests that must be financially secured under Section 13 of the Coalbed Methane Act when a coal seam is stimulated in the absence of their consent.

We are available to discuss this matter in more detail and will be happy to provide any additional information on this issue. We thank the Division of Environmental Protection and the Office of Oil and Gas for the opportunity to present these comments and respectfully request that regulations governing the transfer of coalbed methane wells be redrafted in accordance with the Coalbed Methane Act.

Respectfully submitted,



Claude D. Morgan
Manager - Gas Operations
CONSOL Inc.

CDM/dmm

COMMENTS ON
COAL BED METHANE WELL PROPOSED RULE 38 C.S.R. 23
AS PROPOSED FOR PUBLIC COMMENT
July 14, 1995

Submitted by:

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These comments are made on behalf of surface owner clients whose interests are:

1) The possibility of damage to the ground water of their land which may occur from the site construction, drilling, casing, production, or plugging a coal bed methane well;

2) Surface pollution, contamination, and damage from the same activities;

3) The loss of use of surface land due to use of the surface for the well site for a well's construction, production and plugging, and, in particular, the fact that methane wells which have more shallow target formations than normal oil and gas wells would generally be closer together and more numerous, and;

4) The fact that the coal bed methane may belong to the surface owner. The transfer of coal bed methane and of the surface impact required for coal bed methane production were probably not in the contemplation of the parties at the time of the severance or lease of the coal and normal oil and gas. So it is the coal bed methane or the rights to use the surface to produce it may belong to the surface owner. (It is recognized that ownership of the coal bed methane is not directly affected by the statute or rule.)

Generally there are many good provisions in the Rule. Primarily these arise out of the generous incorporation of the other oil and gas Rules as amended to comply with the state Groundwater Act. In addition the statutory provision

giving the surface owner some right to comment on the location of wells based on surface use and topography in the statute was a major step forward for surface owners. The rules appear to be a sincere effort to accommodate all of the parties. However, from the surface owners' perspective, there are a variety of places where important improvements need to be made. Those are dealt with below, seriatim.

I. DEFINITION — "OPERATOR" OR "GAS OPERATOR" — 2.6

The term "operator" is not defined by the statute. Therefore, these rules have the option to create a definition of "operator" which is different than that defined for Article 6 of Chapter 22 of the Code. "Operator" is defined in the proposed coal bed and methane rule by referring to WV Code §22-6-1, the statute governing oil and gas wells which are not coal bed and methane wells [hereinafter, "traditional oil and gas wells"]. There have been serious problems with definition of operator set out in WV Code §22-6-1, for traditional oil and gas wells. Under Article 6 it is the operator that has all the responsibility for the safety, maintenance, and, most importantly, plugging of the well. However, there is no requirement that the operator be sufficiently capitalized to plug the wells at the end of their production cycle when those wells will be producing less and less, and finally, no income. While there is a bonding requirement, the traditional blanket bond has no limitation on the number of wells which may be placed under a single \$25,000.00 bond. An operator can go out of business or go bankrupt and there will be grossly insufficient dollars to plug all of the wells.

What can happen is that the owner of the true beneficial interest in the well, the owner of the rights to the well's income and royalty payments who are entitled to get the money that the well makes, can set up a dummy corporation which is the "operator". The royalty owner then pays the operator, under a contract paying the operator just enough to keep the operation going. But the operator isn't paid enough to save money for plugging. Alternatively, the operator can be the technical "income owner", but milk all the money out of the corporation so it does not save money for plugging. When the well stops producing in paying quantities, the operator company goes out of business. The royalty owner and the owner of the other income who got all the money are not responsible for plugging the well. The unplugged well is likely to eventually create environmental problems. The state is left to plug the well with its woefully inadequate abandoned well fund.

Therefore, a better definition of "operator" is needed for coal bed methane wells. The operator should be all the royalty interest owners plus any additional party designated by the royalty interest owners plus the owners of

the operator business. One of the royalty interest and operator owners or the additional designated party could be designated by the royalty interest owners as the only operator to receive all the notices, and the one to be primarily responsible. But, they would all be responsible. This provision would not only benefit surface owners and the State, it would benefit mine owners and mine workers.

II. NOTICE OF SURFACE OWNERS' RIGHTS — 4.2.5 AND 13.3.5

The substance of the requirements for the information that surface owners receive is adequate. However, the requirements are not particularly specific as to the wording. One can easily imagine some very vague, confusing, or even mistaken language drafted by operators either intentionally or unintentionally. Therefore, the notice requirements for these two sections, as well as any other surface owner notice sections in the rule, should further require that notice be given "in a form or using language approved by the Office of Oil and Gas" as is true for traditional oil and gas well notices.

III. FRESH WATER CASING — BASKETS — 5.1

This rule may have been based on the rule for traditional oil and gas wells. At the time those rules were written the requirement for use of cement baskets 30 feet below the fresh water table was considered. But this requirement was not adopted because it was believed that such a basket would make it difficult for the casing to be pulled back out of the well prior to cementing if that was necessary. Subsequent information shows that not to be accurate. Any machine capable of pulling a string of casing is capable of bending the basket backwards. The Office of Oil and Gas should therefore consider whether to add a basket requirement. It is sometimes true that neither probing down from the surface or a well log can accurately tell how far down the cement may have stopped circulating. It can also be difficult to get cement from the surface down into the annular space. A basket may help in some situations.

IV. DISTANCE OF WELL DRILLING FROM A HOUSE OR WATER WELL — 5.1

The proposed rule states that no coal bed and methane well may be drilled closer than 200 feet to a house or water well. This 200 ft distance is a historical distance. It originally came into practice in deeds and leases, and then was adopted into statute and rule, when the method for drilling wells was "cable tools". Modern "rotary drilling" is much quicker, but, it is also a much

louder and obnoxious operation that takes a much larger surface site and does more damage to roads. It also uses underground pressures and a great deal more physical force than cable tool drilling does. It also involves a drilling pit containing more potentially troublesome chemicals.

This 200 foot distance is archaic. It should be 1000 feet, which would only be about 300 yards. The rule could allow a variance from the spacing rules if it was necessary to comply with a requirement for distances from houses and water wells.

V. CASING — CEMENTING CEMENT TICKET POSTING — 5.4

The current rule for traditional oil and gas wells requires that the person or firm which performs the casing cement job has to immediately post the cement ticket (which shows, among other things, the time the cementing job was completed) at a conspicuous place on the well site. After the casing is cemented in the well, no drilling operations should occur until the cement has time to cure. One of the most frequent causes of casing problems when they do occur is that the driller didn't like his people sitting around getting paid to do nothing, so he starts drilling again too soon. The immediate posting of the cement ticket was seen as at least some protection for that the surface owner — one that could be checked on if the surface owner or inspector thought drilling started up too soon. The provision also served as a deterrent because cheaters knew they could get easily caught. The same problem may exist for coal bed methane wells. It is not only the surface owner, but perhaps the mine owner and mine worker that might be affected if a bad casing job allowed water to leak down the outside of the casing into the coal. In addition, methane gas or frac fluid could seep up the outside of the casing into the surface owner's water.

VI. CASING REQUIREMENTS — GRANDFATHERING VENT HOLE CASING — 5.6

This rule provides that if there is already a cased vent hole, then the casing requirements of the statute and rules are not necessary. Unless the current vent hole casing requirements for coal mining are equal or higher than the traditional oil and gas well rule in terms of steel strength, cement quality and return, etc., this may not be sound.

A certain amount of pressure is in the vent pipe, but once the methane/air mix reaches the surface it is generally just allowed to escape freely. However, if a production wellhead is placed over the well, there will surely be times when

the well is shut in. This will cause back pressure down the hole. This back pressure could be larger than the pressure for which the safety tolerance of the vent hole casing requirements for coal mining were designed.

This exception should not be allowed. This section could provide for variances if the operator can establish that the existing casing is within the safety tolerance necessary for the pressures that might occur, etc. In addition, in liner pipe with an outside diameter smaller than the inside diameter of the vent pipe could be placed in the vent hole to make sure there has been no deterioration of the existing vent hole casing.

If it is true that experience to date has shown gob well pressures to be low, it may not be justifiable to increase the vent hole casing. But, the rule should provide that the statutory exception can be denied by the office if excess pressures are found to be a problem.

VII. PLUGGING — WHERE WORKABLE COAL SEAM NOT ENCOUNTERED — 8.10.3

The minimum 100 foot requirement appears to be grossly inadequate. Fresh water could occur below 100 feet and not be cemented off. All the other requirements require cement to be 30 feet below the lowest fresh water. That requirement should be here also. If the hole is not that deep, it should be completely filled with cement.

VIII. BLANKET BONDS — MAXIMUM NUMBER OF WELLS — 10.2

A single well bond is in the amount of \$5000.00. It generally costs \$5000.00 to \$10,000.00 or more to plug a traditional oil and gas well. Coal bed methane wells may be shallower, but they are still expensive to plug. Therefore, the single well bond is barely adequate. Columbia Natural Resources has 3000 wells. If it is using only one bond, that is \$8.33 to plug each well if Columbia goes out of business.

The blanket bond is a \$25,000.00 bond. There is no maximum number of wells that can go under a blanket bond. If only 100 wells are under a blanket bond, that leaves \$250.00 to plug each one should the operators go bankrupt.

There should therefore be additional requirements for blanket bonds. Either there should be a maximum number of wells allowed under one blanket bond, or in order for a company to have a blanket bond it should, as is often required in some of the coal rules, be that the operator has a sufficient rating

under *Standard & Poor's* or *Moody's* regarding its financial solvency. As we learned with Columbia Gas, no company is too big to go bankrupt.

IX. TRANSFER PROCEDURES — 10.3.2

Drafts of comments on the proposed coal bed methane rule by others were critical of some of the well transfer procedures set out in proposed coal bed methane rule. It is absolutely vital that transfer of ownership of coal bed methane be required to be tracked and recorded by the Office of Oil and Gas. This way the state always knows who is responsible for environmental problems, plugging etc. It is important that this material be made public so anyone who can be affected by a well can reliably determine who owns a well and is responsible for it. Publication of Transfers also allows a double check for accuracy and deters fraud. Publication of transfer of wells is important for surface owners because they may know that the transferee has outstanding environmental problems which might prohibit them from being able to get a well to drill a new permit. It ought to be possible for the state to deny the transfer to someone with an outstanding violation the same way it can deny a well work permit. The statutory authority for this may not exist. Even if it does not, the surface owner should at least be able to check public records so that the surface owners can notify the Office of Oil and Gas of problems. This puts the state and the transferee on informal notice that regulatory compliance is an issue with this new operator, and that the situation is going to be monitored. Surface owners would advocate strongly for the hearing procedures if the right to denial of the transfer because of outstanding environmental violations was a possible subject.

X. ANNUAL INSPECTION — PRESSURE TESTING — 12.5

This annual inspection rule was taken from the rule for traditional oil and gas wells. Prior to that rule, no annual inspection was required. It is a physical impossibility for the 12 oil and gas inspectors to inspect the 40,000 producing wells in the state, let alone the additional tens of thousands of non producing wells in the state to make sure there is no pollution. Therefore, an annual inspection by the operator was required for the first time.

Because of the ignorance of those pushing for this requirement, an important requirement was left off. The annual inspection only requires someone to look around and see if there is any liquids or solids on top of the ground. A much better method is to pressure test the various casings, pipes, and annular spaces. This should also be made a requirement so that it can be determined that there is no gas leaking out of the production string or casing into ground water, or

into a workable coal bed that is closer to the surface than the target formation, etc.

XI. CASING — SALT WATER ABOVE FRESH WATER — 13.2

It is relatively unusual in West Virginia to find salt water above fresh water. However when that occurs, 13.2 does not seem to be adequate protection. Unless extremely cautious drilling air pressures are used, the salt water, which will now be mixed with foam, etc., will be pressured into the groundwater aquifer and it will be decades if not eons before all of that is flushed out of the water aquifer so that it does not destroy the purity of the water for drinking. The salt water formation should be cased off before further drilling occurs where there is expected to be fresh water below the salt water.

XII. WATER WELL TESTING — SURFACE OWNER NOTICE REQUIREMENT — 13.3.5

The coal bed methane statute, Article 21 of Chapter 22 of the West Virginia Code, contains a statutory provision for notice to surface owners of permitting. Proposed coal bed and methane Rule 4.2 appears to be the rule carrying out of the statutory provision for notice to surface owners. It included methods for determining who the surface owner is and for service. Proposed Rule 13.3.5 refers to WV Code §22-6-9, the statutory authority for regulation of traditional oil and gas wells. That statutory provision has its own rule.

The coal bed methane rule needs to provide that a persons entitled to permit notification are entitled to notice of the right to have their water wells tested. For convenience, it needs to further provide that those people may be notified about water well testing in the same way that they are notified about the permit. This will allow the water well testing notice to be served on those surface owners at the same time the permit notice is served.

In addition, Rule 13.3.6 is, and should be, required. It provides for other people within 1000 feet of the proposed well to get their water wells tested. These people do not happen to be "surface owners" because the well was drilled on a small tract that is not their tract and because there is no road across their land. Rule 13.3.6 appears to be exactly the same as that for water well testing notification for traditional oil and gas wells. Its general substantive requirements are acceptable. However, the term "conspicuous" in 13.3.6(b) is a little loose. The words "known or apparent" are suggested. The use of a well or spring shouldn't have to jump out at you for its user to get notice. If it looks like there might be a water well there, post the simple

notice. If it turns out there is no water well or spring there, then all that is lost is 10¢ for photocopying. On the other hand, a sharper practicing operator could avoid giving the testing notice to a well he knew was there because it was not conspicuous.

XIII. DRILLING SITE WASTE — "RETAINED ON THE DRILLING SITE" — 14.3

The last phrase of Rule 14.3 appears to be a requirement that all of the pit waste, tank bottoms, extra cement, fluid, etc., that is generated by plugging can not be hauled away from the site for disposal, but just remain there. It may be that this language was intended to be a requirement that this stuff could not be allowed to leak or run off the drilling site. However, it would be an imposition on the surface owner, and perhaps a violation of federal hazardous and solid waste disposal laws, for some of those materials to be left on site. They are more properly disposed of by treatment, landfill, or underground injection.

XIV. PIPELINE BURYING — 15.4

Rule 15.4 refers to §23.7.3 "of this rule". This rule only has 16 sections. The rule for traditional oil and gas wells is Title 38 Series 18 and it only has 20 sections. I am not able to adequately comment on 15.4 until it is clarified.

XV. VARIANCES — 16.1, 5.5

Authorizing variances is always dangerous. There have been times in West Virginia's past where a variance could be granted based on the amount of the operator's contribution to the governor's re-election campaign. Therefore, these provisions need to be very tightly drawn.

In 16.1 the following language should be added to the end of the sentence, "...and not significantly increase the risk to coal mines, mine workers, fresh water aquifers, or the surface."

The variance allowed by 5.5 does not have the requirement of "sound engineering practices." Therefore, the variance should only be granted if it is based on sound engineering practices and again offers no significant increase in the risk to water, water aquifers, and surface owners. Furthermore, these casing requirements are not just to protect the coal mine and the coal miner.

They are to protect grand water and the surface owners' interest. The consent of the surface owners should also be required, or at least notice to the surface owner with the right to comment to the Office of Oil and Gas should be required in order to give the Office of Oil and Gas information about local circumstances that may not otherwise be known. There would be no additional wait since there is already a 15 day waiting period for the notice to the mine coal owner.

Any other variance provisions should be similarly examined.

XVI. SPACING VARIANCES — W.VA. CODE §22-21-5

The spacing requirement is not bad, however the spacing requirement is allowed to be waived by the coal operator without a waiver from the surface owner. It is the surface owner that will have many more, and more closely spaced, well sites on his land. Therefore, the waiver of the surface owner should also be required before a variance in the spacing distance can be allowed.

XVII. POOLING — FORCED POOLING SHALL BE REQUIRED — W.VA. CODE §22-21-5

Only voluntary pooling or pooling forced by the coal operator is provided. Drilling wells without requiring pooling and unitization (including well spacing) is based on the "Rule of Capture" that evolved from the common law used to determine the ownership of deer in early England. We now know this rule of law is not factually justified for any oil and gas well. All oil and gas wells of every kind, including coal bed methane, should be drilled under a forced pooling arrangement with well spacing, unless the operator can show that the spacing of such an arrangement would not get gas that exists in between wells because of the structural geology. Since most West Virginia oil and gas is found in stratigraphic traps and not structural traps, the presumption of forced pooling and spacing should be the law. Without forced pooling, neighboring owners will drill an off-set well drawing gas from and depleting the same pool of gas. The results are:

1. The total recovery of oil or gas from the reservoir pool will be less than if fewer wells were used because the more the wells releasing pressure inefficiently the less total recovery of gas is obtained from the formation.

2. Drilling additional wells ends up using more wells than necessary for less total recovery, so the investors therefore lose money to unnecessary overhead and production costs.

3. More wells means more surface drilling sites and roads, and overall unnecessary surface disturbance.

4. More wells means more chance of problems than fewer wells might cause.

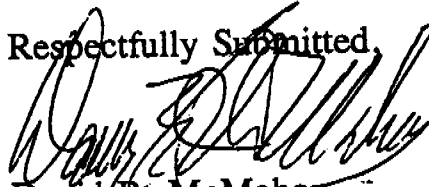
5. Increased cost of gas production is (depending on the elasticity of demand) passed on to consumers.

6. Investors in the original well which has an off-set well drilled to take its gas supply away, are legally robbed.

7. Where wells are spaced, but there is no pooling of the distribution of royalties, someone can own a tract of land between the two tracts of land upon which spaced wells are located. Gas can be drawn out from underneath that middle person's land without compensation. If he has the money he can drill a well to off-set both surrounding wells. That is unlikely. No one would finance such a well since the new middle well would already have two off-setting wells drilled against it. Such a middle well would be unlikely to be profitable. So that middle owner is legally robbed.

Forced pooling should be required by the state for all coal bed methane wells. Unfortunately this may not be able to be done in rules because the statute does not provide for it. If it is possible, it should be done.

Respectfully Submitted,



David B. McMahon,
Attorney at Law

ADDENDUM OF SUGGESTED DRAFTING CLARIFICATIONS

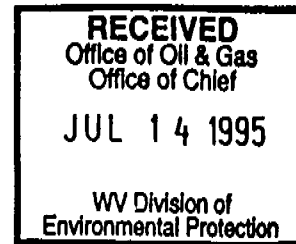
Section 5.6 should more logically appear after §5.3 and before currently proposed §5.4. It is difficult to find where it is located now. §5.6 also has no introductory heading which makes it additionally difficult to find. If the current order of 5.1 through 5.5 is found to be wise because it conforms to the rule for traditional oil and gas well drilling, that might be a good reason to leave it where it is. Otherwise, it should be moved. It should at least have its own heading to stand out better.

The last unnumbered paragraph of §5.1 is a spacing requirement that is stuck in a subsection dealing with fresh water casing. It makes it difficult to find even if you know it is there somewhere. It makes it very easy to miss if you do not know it is there. It needs to be a separate numbered section or at least subsection, and it needs to have a heading.

In the definition section 2.) it would be good to put in a paragraph that notes that definitions in the statute are not repeated in the rule, so for a complete list of definitions the reader also needs to look at the statutory definitions.

To properly use the word "utilized" in section 13.3.5, the last sentence should read, "The CBM well operator shall be deemed to have satisfied this requirement if notice is provided utilizing the same methods required in conduction with the permit application." The term "utilized" is sometimes used as a synonym for the word "use". However, its better connotation is that an existing structure or system as used for one purpose can be "utilized" for an additional purpose. The term "utilize" appears in other places in the rule which might also be examined.

Comments of Columbia Natural Resources
in Response to Notice of Public Hearing
on Proposed Rules to be Promulgated as
Title 38 Series 23 of the Code of State Regulations



Columbia Natural Resources, Inc. (CNR) is a major producer of oil and natural gas in West Virginia and currently operates in excess of 3,000 wells. CNR has a significant interest in the prospects for coalbed methane development in West Virginia and other Appalachian Basin states as a result of its significant lease and mineral holdings.

CNR has been actively involved in the policy debate and development of coalbed methane rules first in Virginia, then at the federal level with the Energy Policy Act and most recently in West Virginia. CNR actively participated in the development of and passage of House Bill 4371. Likewise, CNR has taken an active role in the process of bringing the proposed implementing rules forward for public review at this rulemaking hearing.

In CNR's view, the Division of Environmental Protection has done a laudable job in bringing forth the extensive proposed rule in a timely fashion and on a schedule which will encourage coalbed methane development in West Virginia sooner, rather than later. Accordingly, CNR endorses the proposed rule as drafted with one exception which is outlined below.

Proposed Rule 38 CSR 23-10.5.1 states that the procedures of Rule 38 CSR 18-10.4 and 18-10.5 will apply to coalbed methane wells. In particular, 38 CSR 18-10.5.3 establishes that all applications for transfer of wells will be published "indicating that interested persons may intervene in the application" and further that "if objections are made by any interested person..." a "public hearing will be held...".

It is CNR's opinion that such a requirement exceeds the statutory authority of the Division on several grounds. First, Article 21 of the West Virginia Code sets out in elaborate detail, a regulatory program for coalbed methane wells, including specific provisions dealing with hearings, standing of parties and objections. However, none of these statutory provisions set forth a procedure requiring a hearing on the transfer of wells and clearly none of the provisions give standing to "any interested person" to intervene in or object to a proposed transfer of the ownership or operatorship or for any other purpose for that matter. Accordingly, there is no statutory basis for the incorporation by reference, in these proposed rules of the provisions of 38 CSR 18-10.5.

Second, Chapter 22, Article 10 of the West Virginia Code dealing with abandoned wells, which forms a portion of the statutory underpinning for 38 CSR 18-10.5 on its face applies only to oil and gas wells regulated under Chapter 22, Article 6 of the Code. Article 21 coalbed methane wells are subject to the provisions of Article 10 only as provided by W.V. Code Section 22-21-3 which states in part, as follows "any well which is abandoned or presumed to be abandoned under the provisions of this article [that is Article 21] shall

be treated as an abandoned well under said Article ten." In CNR's view this language in Section 22-21-3 clearly limits the Division's Article 10 authority to coalbed methane wells which are abandoned or presumed abandoned. Accordingly, under the authority of Article 10, the objection and hearing procedure set out in 38 CSR 18-10.5 would only be applicable to transfers of coalbed methane wells which were abandoned or presumed to be abandoned.

Finally, CNR believes that the proposed procedure is directly contrary to the requirements of W.V. Code § 22-21-22 at least where a well transfer is related to the statutory right of a coal owner or operator to take a coalbed methane well and convert it to a vent hole or otherwise use it. In such circumstances, the statute clearly limits the class of persons with an interest and the hearing and objection procedure as set forth in 38 CSR 18-10.5 could act to directly contravene the requirements of W.V. Code § 22-21-22.

As a result, CNR believes that the Division must amend proposed rule 38 CSR 23-10.5.1 by deleting it in its entirety or by amending the section by adding after the phrase "coalbed methane wells" the phrase "which are abandoned or presumed to be abandoned pursuant to the provisions of Article 21 of the W.V. Code."

CNR appreciates the opportunity to comment publicly on the proposed rule and except for 38 CSR 23-10.5 endorses the proposed rule. CNR encourages the Division to eliminate the questionable procedure incorporated in 38 CSR 23-10.5 as being beyond the scope of its lawful authority under the pertinent statutes.

Respectfully submitted,

R. Neal Pierce
General Counsel

**Response to Comments of proposed Coalbed Methane Regulations. -
38CSR23**

A public Hearing was held at 6:00 PM on July 13, 1995 at DEP headquarters in Nitro. In addition written comments were received. Copies of the written comments and a transcript of the hearing are enclosed.

A discussion of the comments is listed below

Public Hearings for transfer of Operator. - Two individual made comments over concerns that the proposed regulations would allow the public to intervene in transfers of operator, where under the statute they have no standing. One individual disagreed and wanted DEP to leave the regulation as it is. The reason DEP developed the regulation the way it did, was so that it would not have to have two distinct well transfer processes, one for coalbed methane wells and one for oil and gas wells. Our experience is that very little public comment comes from well transfers and the agency feels confident it can determine what comment is relevant and what is not. Therefore the agency has not modified the regulations.

Definition - "Operator" or "Gas Operator" - An individual made a comment about the use of the definition for operator to be the same as the definition under 22-6-1. DEP agrees that a better definition of operator is needed, however not the one proposed by the individual. There are three different "Well Operators" in use here:

There is the operator who applies for a coalbed methane permit;

There is the operator who operates oil and gas wells within the area and is to receive notice on future development; and

There is the party the coalbed methane review board designates as operator where more than one party wishes to develop the same unit.

The changes to the definition of operator in has been changed to reflect that reality.

Notice of Surface owners' rights - An individual made a comment that the proposed requirements of notice are not specific enough. As with well work permits the agency puts very specific language on its forms so as to insure constancy. The regulation 4.2.5 was amended to require that notice to surface owners include a copy of the application, which will be on DEP forms. These forms will have the proper format and specificity. Regulation 13 already describes the form of notice required, in 13.3.7.

Fresh Water Casing - An individual made a comment that their should be a requirement for cement baskets on casing 30 foot below the fresh water table.

DEP does not believe that this requirement is needed on all wells. If additional measures are needed on specific wells, DEP would condition the permits.

Distance of well drilling from a house or water well - An individual made a comment that the proposed drilling prohibition within 200 feet of a house or water well is inadequate. DEP believes that 200 feet is a minimum distance. DEP did not modify its rule since it does have the authority to condition the permits as to location if safety is an issue.

Casing - Salt Water above fresh water - An individual made a comment that 13.2 would not be protective if some type of non potable water was found above a potable aquifer. DEP believes that this is as protective that is practicable under those circumstances. If additional measures are needed, DEP would condition the permits.

Water Well Testing Notice requirements - An individual made a comment that 13.3.5 should allow "...people to be notified about water well testing in the same way that they are notified about the permit. " The regulation says, "The CBM Well Operator shall be deemed to have satisfied this requirement if notice is provided by the same methods utilized in conjunction with the permit application". DEP believes that the regulation already says what the individual wanted. The individual also commented in regulation 13.3.6(b) the term "conspicuous" should be modified to "known or apparent.". DEP used the word apparent.

Drilling Site Waste - An individual made a comment that rule 14.3 as it was written was not clear. DEP made a modification to the rule to reflect its intent.

Pipeline Burying - An individual made a comment that Rule 15.4 refers to 23.7.3. of this rule, which does not exist. That was a reference to an old rule number and has been corrected.

Variances - An individual made a comment on the lack of guidance as to where a variance can be made. It is DEP position that variance should only be made where environmental protection and safety can be maintained and so the regulation was modified to reflect that.

Other comments on variance where beyond the authority of DEP in these rules.

Drafting comments - At one individuals request Section 5.6 was moved below 5.2 and became 5.3, 5.3 became 5.4, 5.4 became 5.5, and 5.5 became 5.6. The last unnumbered paragraph of Section 5.1 was made into Section 4.9. The term use was substituted where appropriate for the term utilize.