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VIRGINIA OIL AND GAS CONSERVATION BOARD

HEARING OF JULY 15, 1991

9:00 A. M.

AT THE SOUTHWEST VIRGINIA 4-H CENTER CONFERENCE ROOM
ABINGDON, VIRGINIA

July 15, 1991

This matter came on to be heard on this the 15th day of July, 1991, before the Virginia Gas and Oil Board, at the Southwest Virginia 4-H Center, Abingdon, Virginia.

MR. CHAIRMAN: I need to apologize to Mr. Kelly for missing him in the introduction. Bill Kelly on the end of the table to my right. I was looking this way and I didn't even see him come in. We're glad to have you and I apologize. For those of you that are here, before we begin the next item on the agenda, give you an overview of the agenda today so that you'll know what's going on. Item II, the Board giving consideration to issuance of a request for proposal to hire an agent for management of escrow accounts, we're going to continue that to the August meeting because we were not able to make all the contacts in the Treasurer's Office. But what will take place at the next meeting is that the Board will be presented with a draft RFP for approval request for proposal and it will really be something that we do not intent to take public comment on. We only intend to discuss that with the Board and if upon the Board's approval the Department will propose to public that request for proposal. Item III, the petition for appeal of the inspectors decision under 45.1-36123 concerning proposed well Island Creek 1-A at Edisto Resources

1 Corporation, I understand that that's been withdrawn. We
2 will here Items IV petitioned by James H. White and Item
3 V petitioned by Harold Holbrook. Items VI and VII,
4 we've had a request for continuation and that's been
5 granted and a notice published in the local papers. That
6 has to do with Pocahontas Gas Partnerships for proposed
7 BUN 1 and proposed BUS 1. Those have been continued to
8 the August 20th hearing.

9 LADY IN AUDIENCE: Sir, is that the matter concerning Calvin
10 Blankenship, James Calvin Blankenship?

11 MR. CHAIRMAN: I don't know. I'll ask the inspector if he has
12 any knowledge that it is or not.

13 MR. FULMER: It is.

14 LADY IN AUDIENCE: It's been postponed?

15 MR. CHAIRMAN: It's continued until the next hearing at the
16 request of the people that requested the hearing to begin
17 with.

18 LADY IN AUDIENCE: Well, this is his family here and they
19 weren't notified.

20 MR. CHAIRMAN: Well, we're sorry if you didn't get notice. We
21 did grant that.

22 MR. JONES: Mr. Chairman, we'll take this opportunity to talk
23 with these folks if we might to give them a further
24 explanation.

25 MR. CHAIRMAN: Okay.

1 MR. JONES: Thank you, sir.

2 MR. CHAIRMAN: I just want to make sure you plan to do that
3 aside from the Board meeting.

4 MR. JOHNSON: The two matters that I have that are on this
5 docket are White and Holbrook and I have made a motion
6 with the Board for a continuance of those two items. We
7 have just filed an amended application and I'd like to
8 have those rescheduled for the next hearing date.

9 MR. CHAIRMAN: For the August 20th hearing?

10 MR. JOHNSON: For the August 20th. We did file a formal
11 motion with the Board, a notice to counsel, a notice to
12 all the parties. The only people that are involved,
13 really, are my clients and the oil and gas company and
14 the coal and oil and gas owner that the oil and gas
15 operator proposed to drill for. And all of those parties
16 received notice of the motions. If the Board might
17 recall, about two months I asked the Board for a con-
18 tinuance in order to amend the application in order to
19 come into compliance with the formal procedures and the
20 Board allowed me to do that. I'm asking for a con-
21 tinuance for thirty days. I did file the amended
22 application and would ask that that be heard at the next
23 hearing.

24 MR. CHAIRMAN: Okay. Any questions, members of the Board?

25 MR. MCGLOTHLIN: Anybody representing EREX on that? Any

1 objection to the continuance?
2 MR. CHAIRMAN: With that I believe that we have concluded our
3 business.
4 MR. JOHNSON: Are you all granting my motion?
5 MR. CHAIRMAN: Yes. Any further business, members of the
6 Board? If not, we'll adjourn the meeting.

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8 (End of Proceedings for
9 July 15th, 1991.)
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2 CERTIFICATE
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4 COMMONWEALTH OF VIRGINIA

5 COUNTY OF WASHINGTON
6

7 I, Cleadys D. Griffin, Notary Public in and for the
8 Commonwealth of Virginia, at Large, do hereby certify that
9 the foregoing is a true transcript of the proceedings had in
10 the matter held before the Virginia Gas and Oil Board on the
11 15th day of July, 1991; that all of said proceedings were
12 electronically recorded by Marsha D. Sharp, Notary Public in
13 and for the Commonwealth of Virginia, at Large; that said
14 transcript has been reduced to writing by me and that said
15 transcript is a true and correct transcript of the aforesaid
16 to the best of my ability.

17 I further certify that I am not a relative, counsel or
18 attorney for either party, or otherwise interested in the
19 outcome of this action.
20

21 GIVEN under my hand this 23rd day of July, 1991.
22

23 
24 CLEADYS D. GRIFFIN
25 NOTARY PUBLIC

My commission expires March 19, 1993.

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VIRGINIA OIL AND GAS BOARD

HEARING OF JULY 16, 1991

PUBLIC HEARING

9:00 A. M.

AT THE SOUTHWEST VIRGINIA 4-H CENTER CONFERENCE ROOM
ABINGDON, VIRGINIA

July 15, 1991

This matter came on to be heard on this the 15th day of July, 1991, before the Virginia Gas and Oil Board at the Southwest Virginia 4-H Center, Abingdon, Virginia.

MR. CHAIRMAN: Good morning and welcome to the Gas and Oil Board meeting. As custom I'll ask the Board members to introduce themselves. My name is Benny Waspler and I'm chairman of the Gas and Oil Board. I'm assistant director for mining for the Virginia Department of Mines, Minerals, and Energy. I'll tell you before I defer to the Board members that if you have any difficulty hearing feel free, please, to move your chair or move up in the room. The acoustics are not the best in the world.

(MEMBERS INTRODUCED.)

MR. CHAIRMAN: Our first agenda item today is to have a public hearing to receive comments on the proposed Virginia Gas and Oil Board regulations. These regulations will govern conservation of the Commonwealth's gas and oil resources and protection of the correlative rights of gas and oil owners. The regulations are authorized under Article 2 of the Gas and Oil Act of 1990. Regulations will replace the emergency conservation regulations for gas and oil which will expire when this regulation becomes effective. As proposed the regulations will set stand-

1 ards for applying for field rules and drilling units to
2 provide for efficient production of the Commonwealth's
3 gas and oil resources while drilling the minimum neces-
4 sary number of wells, the pooling or grouping together
5 the interest of gas or oil owners around the well to
6 provide for a fair allocation of cost and production
7 between the owners and escrowing revenue attributable to
8 the conflict in claimants to coalbed methane gas until
9 ownership is decided, establishing costs which may be
10 included in a forced pooling drilling unit, submitting
11 miscellaneous petitions before the Board, enforcing
12 regulations and orders of the Board, and hearing appeals
13 of administrative decisions of the director of the
14 Department of Mines, Minerals, and Energy. The proposed
15 regulations were approved for publication during the
16 April 29th, 1991 meeting of the Board. The proposed
17 regulations were published in the May 20th, 1991 issue of
18 the Virginia Register of Regulations at which time the
19 public comment period began. In addition to accepting
20 comments at today's public hearing the Board will accept
21 written comments submitted to the Division of Gas and Oil
22 until 5:00 P. M. this Friday, July 19th, at which time
23 the public comment period will end. I'd like to note
24 that the Department is also promulgating new regulations
25 which will address the Department's regulatory program

1 over gas and oil operations and exploration. The
2 Department's regulation authorized under Article 3 of the
3 Gas and Oil Act is a separate action from this regula-
4 tion. Today we don't have a sign in sheet to register
5 speakers for this public hearing so we'll call for
6 speakers. And when I acknowledge you please come to the
7 table and speak and give us your name and the name of the
8 organization that you represent. If you have written
9 comments you may summarize them orally and submit the
10 full written text. And now I'd ask if there any persons
11 that wish to address the Board at this public hearing?

12 MR. SWARTZ: My name is Mark Swartz and I'm appearing on
13 behalf of OXY, USA. I have four comments with regard to
14 the regs and I think you can assume from that that I
15 think the Department and the sub-committee that worked on
16 these regs did a great job. These are some technical and
17 minor revisions. There's a letter from Mr. Wirth which
18 was sent to the Division of Gas and Oil on July 10th
19 which quotes the changes that I would like to -- well,
20 propose to make and you can refer to that for the actual
21 language. I'd just like to take a minute to cover these
22 four issues with you. First of all, I think we need to
23 take a look at the definition of pooling in the defini-
24 tion section. I think that we dropped the ball when we
25 were drafting that definition and it currently talks in

1 terms of pooling tracts and we're really not doing that.
2 We're pooling estates and interest. And I propose an
3 alternative definition which parallels the pooling
4 statute from the language I try to take out of the
5 statute and I would ask that you consider amending the
6 pooling definition. The second point concerns Section 4,
7 Subdivision G, which changes the provisions to some
8 extent to deal with questions of notice on modifications.
9 What I'm concerned about here is in the event that a
10 Board order needs to be modified at some point after that
11 order is originally entered because things change or
12 something was overlooked. If the amendment cannot
13 reasonably be regarded as effecting everybody -- let's
14 assume you gave 100 people of the first hearing and the
15 modification you propose is only going to effect three or
16 four people, the proposed provision I'm making is to only
17 require notice to the folks whose interests are likely to
18 be effected by the modification. I think the Board has
19 the ability to look at notice questions when petitions
20 for modification come before it to decide whether or not
21 the person has actually identified the right folks that
22 are likely to be effected, but I think to require notice
23 to 75 or 100 people if their interests aren't being
24 effected on modifications is something you need to think
25 about. The third point deals with 7, Subparagraph C,

1 which is a provision that was put in for supplemental
2 orders after elections were made so that there was a
3 complete record in front of the Board and I agree that
4 that needs to be done. The provision as currently
5 proposed does not require that that supplemental order be
6 sent to the folks who were pooled. So I think if we're
7 going to enter a supplemental order with regard to
8 elections and saying that Joe elected and Fred did not,
9 Joe and Fred ought to get copies of that supplemental
10 order and have an opportunity fairly contemporaneous with
11 it's entry to say no, that's not what happened. So, I
12 mean, if we're going to have a problem let's send these
13 orders out to people so they know what's happening. The
14 last point deals with escrow and it's a sentence that I
15 would propose to add at Section 9. We have a very
16 generic escrow provision in the proposed regulations for
17 a reason because I think the Board is trying to develop a
18 scheme for escrowing and it should be general. I would
19 ask, however, that you consider adding a sentence to the
20 escrow provision which would allow well operators to
21 escrow funds when they don't have a forced pooling order
22 from the Board. What I'm saying is that there will
23 situations where you enter into a voluntary pooling
24 agreement with all the claimants and they voluntarily
25 pool and let the development proceed but they haven't

1 resolved the ownership issue and they've deferred that.
2 I think if we're going to set up a super escrow or some
3 escrow mechanism in the Commonwealth the people who
4 voluntarily pool ought to be able to take advantage of
5 the cost savings associated with that until they resolve
6 ownership issues. Thank you.

7 MR. CHAIRMAN: Thank you, Mr. Swartz. Any others that wish to
8 address the Board?

9 MR. JOHNSON: Mr. Wampler and members of the Board, I just
10 have a very few brief comments about these regulations.
11 At the last hearing that I was at in front of this Board
12 I raised the issue with the Board concerning the need and
13 I've also written to the Board concerning the need to
14 provide a procedure and I believe that these regulations
15 are the proper place to so provide where that a oil and
16 gas owner who finds himself in a position of needing to
17 have a unit formed can come to this Board and have the
18 Board require the operator who has applied for or been
19 granted a permit to drill a well to come before the Board
20 and get a pooling order. In other words, a mechanism
21 whereby the intent of the statute and these regulations
22 can be set forth and whereby the Board can require that
23 the intent of the statute itself be implemented. What
24 we're talking about simply is that an applicant can come
25 to this Board and say under the statute I am entitled to

1 be a part of a unit and I want to see a unit formed.
2 Unless this type of procedure is allowed by this Board
3 other than the formal application procedure, unless that
4 type of procedure is allowed people who need to have and
5 should have their oil and gas interests protected will
6 find themselves, as my clients did a couple of months
7 ago, stopped from having something done to protect them.
8 Mr. Fulmer prior to the adoption of the 1990 Act entered
9 several orders as the inspector in which he required the
10 oil and gas operator after a hearing -- he required them
11 to come to this Board and condition the oil and gas
12 permit on coming to this Board and getting a pooling
13 order and forming a statutory or voluntary unit. And
14 that's what I feel that these regulations should address,
15 is that type of a procedure. I am not certain that I
16 have final draft of the regulations that you are looking
17 at. In the regulations that I received from Mr. Counts
18 in February there was a Section 13 which covered mis-
19 cellaneous matters and I would propose a second section.
20 Let me see if I can find it. Thank you, Tom.

21 MR. FULMER: Section 14.

22 MR. JOHNSON: Section 14, thank you. Under Section 14 I would
23 ask that you add a subsection B to that section and I
24 will just briefly read it to you. I've made some copies
25 of this and I'll turn these over to Mr. Wampler. I would

1 ask that you add the words in the case of a proposed
2 permitted well or an existing permitted well any oil and
3 gas owner may petition to the Board for an order requir-
4 ing that a drilling unit be formed prior to any new
5 production from the proposed or existing well by the
6 filing of a petition as set forth in Section -- would be
7 14 A above and complying with the notice of provisions of
8 Section 45.1-361.19 of the Code of Virginia. I believe
9 that if you have a provision in this statute which
10 addresses this situation people will be encouraged to
11 follow this procedure. I think that the only notice that
12 should be required is notice to the persons who have
13 drilled the well and the owners or the proposed driller
14 of the well and the owners of the mineral interest and
15 surface. This is what I think needs to be done. And I
16 think if you don't have this kind of procedure and you
17 don't encourage people to follow this kind of procedure
18 you're just not going to have a situation where people's
19 interest are being protected. All of these regulations
20 have been tightly drafted to require headings on pleas
21 and to require very detailed information for an applicant
22 to get a unit formed. What I'm talking about is the run
23 of the mill property owner who doesn't have a geology
24 department, who doesn't have a surveyor, who doesn't have
25 a lawyer to go out and do title examinations, and who

1 does not have the familiarity with these regulations
2 other than to read the statute and to find from that
3 statute that he or she is entitled to have a unit formed.
4 Again, I put Section 13 and it should be Section 14 of
5 the regulations. There are two other things that I want
6 to say about the regulations. With regard to the various
7 requirements for what should be in a petition to the
8 Board I would say to the Board that these requirements
9 are very technical and lawyers drafted this. Mr. Mason
10 who is a lawyer on this Board with lawyers representing
11 the oil and gas industry, the coal industry, worked on
12 these regulations and they are tightly drawn and they
13 require very detailed information. I'm not going to say
14 that there's anything really wrong with having tightly
15 drawn regulations, but I believe with regard to what the
16 requirements are in each section you should thoroughly
17 look at that to see whether or not that information needs
18 to be in an application. When an application is refused
19 because one of the technical provisions in the regula-
20 tions is not complied with then there is a problem in my
21 view of this. I also want to turn to, and I don't know
22 if I'm citing the right regulation, Regulation 13,
23 Section 13, appeals from the inspector. What the Board
24 is requiring is that when someone goes to the inspector,
25 has to file a written, underline that word, written

1 objection setting forth the grounds by which the request
2 is made to the inspector to deny the permit or somehow
3 alter that permit and then there is a full hearing in
4 front of the inspector in which other issues may be
5 raised during the hearing and then the inspector comes
6 out with a written opinion. All of these things are
7 what's going on right now. You've got a written applica-
8 tion to the inspector saying there is something wrong
9 with this permit. I want a hearing. You have a full
10 hearing in front of the inspector and the inspector
11 reviews these stated reasons why the party objecting to
12 the permit is objecting. In other words, what we're
13 talking about is continuing to limit the focus of what
14 the objections are. Now, what this Board is not saying
15 is after you've made a written application to the
16 inspector and the inspector has had an informal hearing
17 and he'll tell you it's informal. I've been there and
18 when I raise formal objections like lawyers do in
19 courtrooms he says, "Oh, no, Mr. Johnson. This is an
20 informal hearing." But it is formal. Mr. Fulmer has the
21 parties state their reasons why they object to permit.
22 He asks them to give their testimony. It's all recorded.
23 And at the end of all of that Mr. Fulmer issues a written
24 opinion. Now, from that you've got at least two docu-
25 ments that are part of the record in the proceeding.

1 That is the application to the inspector for a hearing
2 stating the written objections and you've got the
3 inspector's formal decision on it's informal hearing in
4 which he sets forth the objections raised at the hearing
5 and then he also sets forth the reasons why he thinks the
6 permit should be granted or denied. Now, from that this
7 Board is saying we want you to focus again. We want you
8 to go back and take everything that's happened and give
9 us another set of objections, give us another set of
10 reasons specifically why the inspector was wrong, and go
11 through the details of all that. I'm saying to you that
12 I don't believe that that is necessary. I think that
13 what you're doing is continuing to burden people,
14 particularly people who don't have counsel, to continual-
15 ly have to comply with these procedural rules. You're
16 continuing to force them to focus and focus and that's
17 great, but this Board is the formal hearing. Mr. Fulmer
18 was the informal hearing, but from that you got plenty of
19 documentation as to what the objections were. And my
20 request to the Board is that the provisions in -- I
21 believe it's Section 13 now, that those provisions be
22 looked at again and that the focus -- well, what the
23 applicant should do is just note his appeal and come
24 before this Board and be able to raise the issues that
25 were stated in his objections and are a part of the

1 record in the opinion of the inspector. Not to have to
2 come back to this Board and say well, I think all of
3 these things that I raised are wrong and the inspector
4 was wrong. The regulations say point out where the
5 inspector was wrong. Now, that's great if you've got a
6 lawyer who has participated in the whole process who
7 filed the application originally, who participated at the
8 hearing. That's great. But if you don't have a lawyer
9 what the other party is going to say is well, you didn't
10 state it in your application to the Board asking for the
11 appeal from the inspector. So again, I feel like what
12 has happened with the regulations is what you would
13 expect and that is that they have become much more
14 detailed. They're requiring a lot of information. What
15 I've really come to say is that there are really a couple
16 of places where you need to be flexible and to allow
17 people who don't have the expertise to be able to come in
18 front of this Board and get a fair hearing. And those
19 are the two places that I think that's necessary. I
20 compliment the committee that worked on these regula-
21 tions. I compliment Mr. Mason for chairing it. I
22 compliment this Board always for your attention in the
23 work that you're doing which is not an easy job. I have
24 told you that several times and I will continue to
25 believe that and compliment you on the hard job that you

1 have to administer this law and to take care of the folks
2 in this part of the world. I appreciate your attention.
3 Thank you.

4 MR. CHAIRMAN: Thank you, Mr. Johnson. Any questions, members
5 of the Board, for Mr. Johnson. I'm going to give the
6 Board an opportunity to ask clarifying questions.

7 MR. JOHNSON: Sure.

8 MR. CHAIRMAN: I should have done that with Mr. Swartz, but
9 I'll be happy to recall him.

10 MR. MASON: I have one. In your proposed addition to Section
11 14 in the second line you say any oil and gas owner. Do
12 you propose that -- does that mean it could be somebody
13 miles away?

14 MR. JOHNSON: Well, it has to be somebody that is effected. I
15 would think that someone that came in here that was miles
16 away and proposed this you would tell them to go home. I
17 think you can look at the statute itself, Mr. Mason, and
18 the statute says that the Board will form units in
19 certain situations and if the person -- it should someone
20 who is entitled to have a unit formed. Maybe we could
21 make reference to the section. An oil and gas owner who
22 is entitled to make application to the Board, we could
23 add some words like that. I certainly don't want this
24 Board to consider forming units because somebody at EREX
25 thinks there ought to be a unit formed on the side of a

1 hill in Buchanan County that's got oil and gas reserves
2 that certainly have nothing to do with that corporation.
3 I think what I'm talking about is someone who is effected
4 by it who's entitled under those regulations to have the
5 unit formed. I think this is very important for you to
6 consider. If you look at the statute it talks about what
7 this Board's suppose to do when someone applies. It says
8 that the Board will. Not may. Not can. Not should.
9 The Board will form units in certain specified situa-
10 tions. And what I'm saying to the Board is that you
11 need to be able to tell an operator whose got a well out
12 there that he will come to this Board and if he doesn't
13 he can't produce. That's as simple as it should be and
14 as simple as it ought to be. And if the operator comes
15 and does that because some oil and gas owner has said
16 that he needs to do that then this Board is protecting
17 the rights that the Board was established for to begin
18 with.

19 MR. MASON: Thank you.

20 MR. CHAIRMAN: Other questions, members of the Board? Thank
21 you, Mr. Johnson. Were there any questions regarding Mr.
22 Swartz' testimony? I apologize for not giving you that
23 opportunity. Okay. If not, are there any other people
24 in the audience that wish to address the Board regarding
25 the Board's proposed regulations? We'll continue to

1 pause for a minute or two to give you time to think about
2 if before we close the opportunity. (Pause.) Any other
3 speakers? If there are no more speakers I'd like to
4 thank you for your comments and close the public hearing
5 on the proposed Virginia Gas and Oil Board regulations.
6 I would also ask the Board if they would wish to author-
7 ize the staff to develop draft responses to the proposed
8 comments to prepare and bring back to you a proposed
9 final regulation for adoption at our August meeting if
10 that would be your pleasure.

11 MR. HARRIS: Let me ask a procedural question.

12 MR. CHAIRMAN: Sure.

13 MR. HARRIS: Do we discuss these at any time or does the
14 staff? Do we as a Board? Would that come before us or
15 does back to the --

16 MR. CHAIRMAN: We can do that now or we can do it on the 20th
17 before they're final. If you have comments now that you
18 want addressed it would be an appropriate time to bring
19 that up for the record.

20 MR. HASON: I was just going to say I would suggest that that
21 would be appropriate if the staff would highlight
22 anything that's different from the last draft. I think
23 that would give us a more appropriate ability to focus on
24 the things that have changes since we last discussed it
25 as opposed to doing in the abstract.

1 MR. CHAIRMAN: Right.

2 MR. HARRIS: That's fine. I just wanted to make sure we had
3 an opportunity to look at it.

4 MR. CHAIRMAN: Absolutely. It's at your pleasure.

5 MR. McGLOTHLIN: Can we also have a copy of the transcript of
6 the testimony of the public hearings?

7 MR. CHAIRMAN: Absolutely.

8 MR. MASON: You will get that along with any written objec-
9 tions.

10 MR. FULMER: Do we have other written objections at this
11 point?

12 MR. MASON: We have at this point, but I'll compile them after
13 Friday and submit them to the Board members.

14 MR. CHAIRMAN: After the close of public comment period you
15 will get copies of all written comments as well as a
16 transcript of the oral comments we received today.

17 MR. McGLOTHLIN: I will make a motion. I don't know what you
18 want, Mr. Wampler, but I'll be happy to make a motion.

19 MR. CHAIRMAN: Authorize the staff to prepare a proposed final
20 draft of the regulations for the Board's consideration or
21 adoption at it's August meeting.

22 MR. McGLOTHLIN: So moved.

23 MR. HARRIS: Second.

24 MR. CHAIRMAN: A motion and a second. Any further questions?
25 If not, all in favor signify by saying yes. (All

1 affirm.) Opposed say no. (None.) The motion carries.
2 Thank you.
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(End of Proceedings for
July 15, 1991.)
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2 CERTIFICATE
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4 COMMONWEALTH OF VIRGINIA
5 COUNTY OF WASHINGTON
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7 I, Cleadys D. Griffin, Notary Public in and for the
8 Commonwealth of Virginia, at Large, do hereby certify that
9 the foregoing is a true transcript of the proceedings had in
10 the matter held before the Virginia Gas and Oil Board on the
11 15th day of July, 1991; that all of said proceedings were
12 electronically recorded by Marsha D. Sharp, Notary Public in
13 and for the Commonwealth of Virginia, at Large; that said
14 transcript has been reduced to writing by me and that said
15 transcript is a true and correct transcript of the aforesaid
16 to the best of my ability.

17 I further certify that I am not a relative, counsel or
18 attorney for either party, or otherwise interested in the
19 outcome of this action.
20

21 GIVEN under my hand this 23rd day of July, 1991.
22

23 
24 CLEADYS D. GRIFFIN
25 NOTARY PUBLIC

My commission expires March 19, 1993.

DONALD R. JOHNSON

ATTORNEY AT LAW

6 W. VALLEY DRIVE

POST OFFICE BOX 535

BRISTOL, VIRGINIA 24203

(703) 466-5444

ADMITTED IN
VA. & W. VA.

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(703) 660-7453

July 18, 1991



Hon. Benny R. Wampler, Chairman
Virginia Gas & Oil Board
Department of Mines, Minerals & Energy
P. O. Box 1416
Abingdon, VA 24210

Re: Virginia Gas & Oil Board Proposed Regulations
VR 480-05-22.2, Et Seq

Dear Mr. Wampler:

As you know, I represent several mineral owners and surface owners in Buchanan, Taxevall, Russell, Dickenson and Lee Counties, Virginia. As an attorney who represents mineral and surface owners and as a citizen of the Commonwealth of Virginia, I am submitting comments to the proposed Regulations.

I previously testified at the hearing held by the Board on July 16 in Abingdon, Virginia. At that time, I propose the addition of a new section (Section 14 D) to accommodate a request from an oil and gas or surface owner for an order from the Board requiring that an operator of a permitted proposed or permitted existing well form a drilling unit prior to any new production from the well. Pursuant to the inquiry of Mr. Bill Mason, a member of your Board, I have redrafted the language suggested by me. A copy of the suggested section is attached as Exhibit A to this letter. With regard to my objections concerning the detail required by proposed Section 13 on appeals from the director's decision, I stated at the hearing on July 16 my objections to the requirements. I would specifically request that paragraphs B 4, B 5 and B 6 of the Regulation be stricken as the information available in the written request for a hearing to the Inspector and the Inspector's decision should more than cover the information outlined. I believe that these provisions are unnecessary and limit access to the Board on appeals from the director's decision, which decision results from an informal hearing.

In addition to the above which I have reviewed with the Board in oral testimony, I would also bring to the Board's attention the following:

Hon. Benny R. Wampler, Chairman
Virginia Gas & Oil Board
July 18, 1991
Page 2

1. The reasonableness, validity and necessity of proposed Section 10 D which provides for "presumption of reasonableness" for costs as "customary and usual within the industry". I do not know whether or not it can be proven that certain costs are "customary and usual within the industry" without significant development of evidence; however, it would appear the costs to be deducted must be those which are necessary and not which are convenient to the operator.

2. I believe that the records requirement of paragraph 11 should be a minimum of five (5) years after the claims have been paid out. It would seem that the records should be made available for a substantial period of time in case any difficulty arises with regard to the validity of any payments made pursuant to an escrow account. These provisions are contained in Section 11 A of the proposed Regulations. Likewise, the provision of 11 B of the Regulations regarding records maintained by operators should also be held for a minimum of five (5) years.

I hope that the above will be of help to the Board in the review and the adoption of the proposed Regulations.

Sincerely yours,


Donald R. Johnson

DRJ/klh

enc: 9 Copies
Exhibit A

cc: Michael Lepchitz, Esq.

EXHIBIT A

SECTION 14 B

In the case of a proposed permitted well or an existing permitted well, any oil or gas owner who is entitled to apply for an order pooling all interests in a drilling unit pursuant to Section 45.1-361.21 or 45.1-361.22 of the Code of Virginia may petition to the Board for an order requiring that a drilling unit be formed prior to any new production from the permitted proposed or existing well by the filing of a petition as set forth in Section 14 A above and complying with the notice provisions of Section 45.1-361.19 of the Code of Virginia.



OXY USA INC.

1600 Front Street, Suite 200
P.O. Box Drawer Q, Richlands, VA 24641
Telephone 703 964-9802 Fax 703 963-0381

July 10, 1991



**Department of Mines, Minerals and Energy
Division of Gas and Oil
P.O. Box 1416
Abingdon, Virginia 24210**

**RE: Virginia Gas and Oil Board
Proposed Regulations
OXY USA Inc's Comments**

Ladies and Gentlemen:

OXY USA Inc would like to submit the following comments as to the proposed regulations:

1. The definition to "pooling" set forth at § 1 should be deleted and the following language substituted therefore;

"Pooling" means the combining of all interests or estates in a Gas, Oil or Coalbed Methane drilling unit for the development and operations thereof. Pooling may be accomplished either through voluntary agreement or through a compulsory order of the board.

Comment: The proposed definition speaks in terms of combining tracts or portions of tracts. Pooling actually combines interests & estates in the acreage subject to the order. The foregoing definition parallels the language of § 45.1-361.22 A. The reference in the second sentence deletes the term "owners" in as much as claimants' interests are also subject to being pooled.

2. The last sentence of subparagraph G. of § 4 of the proposed regulations should be deleted and the following sentence should be substituted therefore;

Each other applicant for a hearing to modify a forced pooling order shall provide notice in accordance with § 45.1-361.19 of the Code of Virginia to each person having an interest in the unit which interest may be affected by the proposed modification.

Comment: In many instances, the respondents noticed in a pooling application are quite numerous. It would seem unduly burdensome to require that notice of a proposed modification of a prior order be given to persons who (a) did not appear at the original hearing of which they had notice and/or (b) to persons whose interests are not affected by the proposed modification.

3. Add the following sentence at the end of subparagraph C of § 7 of the proposed regulations:

Applicant shall mail a true and correct copy of any supplemental order made hereunder within seven (7) days from the date of the applicant's receipt of the supplemental order to all persons identified in said supplemental order.

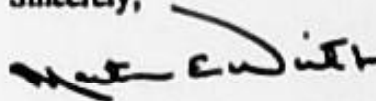
Comment: Respondents should have notice so that they can appear and object if they question or challenge the supplemental order.

4. Add the following sentence to § 9 of the proposed regulations:

The unit operator of a drilling unit subject to a voluntary pooling agreement may petition the Board for an order authorizing the escrow of funds subject to conflicting claims in accordance with Board standards and or regulations regarding escrow of such funds in units subject to a compulsory pooling order.

As always, thank you for the opportunity to make the foregoing comments on the proposed regulations.

Sincerely,



Martin E. Wirth
Coalbed Methane
Project Land Manager

MEW/kmr

cc: P. Patten
M. Swartz

VIRGINIA OIL & GAS ASSOCIATION

P.O. BOX 1837
WISE, VIRGINIA 24293
(703) 328-3739



July 15, 1991

Commonwealth of Virginia
Department of Mines, Mineral and Energy
Division of Gas and Oil
P.O. Box 1416
Abingdon, Virginia 24210



Re: Virginia Gas and Oil Board -
Proposed Regulations, VR 480-05-22.2

Dear Ladies and Gentlemen:

The Virginia Oil and Gas Association (VOGA) is pleased to have the opportunity to submit these written comments concerning the Proposed Regulations which the Virginia Gas and Oil Board (the Board) published in the Virginia Register of Regulations on May 20, 1991. These comments are submitted in lieu of presenting testimony at the public hearing in Abingdon.

VOGA has among its membership representatives of virtually all segments of the oil and gas industry in the Commonwealth of Virginia, from the wellhead to the burner tip. VOGA has participated actively over the years in legislative and administrative matters relating to the regulation of oil and gas operations in Virginia. As vice president of VOGA, I was honored to serve as a member of the Regulatory Working Committee which the Board established to enhance public participation in the regulation drafting process.

The public participation process worked extremely well in the development of these Regulations, and VOGA wishes to compliment the Gas and Oil Board and the Department of Mines, Minerals and Energy in their efforts in developing the Regulations. Our review of the Regulations has turned up only relatively minor clarifications or corrections that we suggest be made. We will set these out briefly in this letter. All references are to the proposed Virginia Gas and Oil Board Regulations, VR 480-05-22.2. As is customary, added language will be underlined, and deleted language will be struck through.

1. Regulation 51. Administrative Provisions. Add language to the first sentence of subsection D so that the sentence will read: "The division shall assign a docket number to each application or petition at the time of filing, and shall notify the applicant of the docket number."

2. Regulation 55. Applications for Field Rules. In subsection A.5.c, delete the words "metes and bounds" from the first sentence. Because a pool covers, virtually by definition, a substantial land area, it is impractical to include a metes and bounds description of its boundaries. Moreover, the inclusion of a metes and bounds description implies a precision in describing the boundaries of the pool that does not exist in fact. A description by reference to a USGS map should be sufficient to describe the boundaries of the pool prior to October 1, 1992, and the use of the State Plane Coordinate System thereafter will add additional precision.

3. Regulation 57. Applications to Pool Interests in a Drilling Unit: Conventional Gas or Oil or No Conflicting Claims to Coalbed Methane Gas Ownership.

A. Subsection A.11 should be amended to read as follows: "A statement of the names of owners, if known, and the percentage of the interest to be escrowed under §45.1-3 61.21.D of the Code of Virginia for each owner whose identity or location is unknown at the time the application to the hearing is filed;". The reason for this change is that the names of unknown owners are, by definition, not known. Nevertheless, information about percentage interest should be included, and, where the identity is known but the location is not, that information should be filed.

B. Subsection A.13 should be amended to read as follows: "~~an estimate of information relating to production over the life of well or wells~~ (to the extent furnished to other participants in the well or wells)". Subsection A.14 should be amended to read as follows: "~~an estimate of information relating to the amount of reserves of the unit~~ (to the extent furnished to other participants in the unit)". The reason for these changes is to insure that the information provided in the pooling application is the same as that provided to other voluntary participants in the well. It is not appropriate for a pooling application independently to require estimates by the applicant of either production or reserves, except to the extent that such information has been previously prepared and supplied to other well participants. If such information is not furnished to other participants, it need not be made a part of the pooling application.

4. Regulation 515. Effective dates for Board Orders. Subsection B.1 should be amended to read as follows: "For a period of ~~one-year~~ two years from the date of issuance, ~~if unless~~ gas or oil operations have not commenced on the well or wells in the unit or units established by the order, in which case orders shall remain in effect as long as such operations continue". The reason for this proposed change is to extend the period of

time from one to two years, and to make it clear that continuation of operations continues the effectiveness of orders.

5. Regulation §18. Closure Orders. Subsection A.1 should be amended to read as follows: "A gas or oil operator ~~continues to produce in excess of an allowable production limit established by the Board after having been ordered by the Director or Board to stop production in excess of the allowable limit~~ is willfully violating an order of the Board; or". The reason for this suggested change is to broaden the authority to issue a closure order beyond merely exceeding allowable production rates.

6. §20. Surveys and Tests.

A. The fifth sentence of subsection A.1 should be amended to read as follows: "Survey data shall be certified in writing as being true and correct by the designated agent or person in charge of a permittee's Virginia operations, or the drilling contractor, and shall indicate the resultant lateral deviation as the ~~sum of the maximum~~ maximum calculated lateral displacement determined between each at any inclination survey point in a producing horizon." This change conforms the language of the Regulation to the purpose of requiring the inclination in the first place: assurance that another party's resources are not being encroached upon.

B. The first sentence of subsection A.3 should be amended to read as follows: "The Board or the Director, ~~on their own initiative or at the request of a gas or oil owner on a~~ contiguous unit or tract, may require the permittee drilling any well to make a directional survey of the well if there is reasonable cause therefor." Unless the contiguous tract owner requests a directional survey, it should not be ordered by the Board or the Director. The issue is one of property rights, which should be asserted, if at all, by the property owner.


C. The first sentence of subsection B.1 should be amended to read as follows: "If a gas or oil well appears capable of producing gas or oil, the permittee shall conduct a potential flow test and, if necessary, a gas/oil ratio test within ten days after the well is completed and capable of producing gas or oil." This change should be self-explanatory.

D. VOGA has a general comment regarding subsection B.3. The nature of Appalachian Basin gas wells dictates that open flow testing be made, the regulation should permit and encourage such testing.

VOGA appreciates the opportunity to make the foregoing comments on the Proposed Regulation. While these comments are not substantive to a great extent, the accommodation of the

comments in the final Regulations will be beneficial to operators and regulators alike.

Sincerely,

A handwritten signature in dark ink, appearing to read "John B. Graham, III". The signature is fluid and cursive, with a large initial "J" and "G".

John B. Graham, III
Vice President

cc: VOGA Board of Directors
VOGA Legal and Technical Committees

U:\vogrig@obtrps.com



ADMINISTRATION
NATURAL AREAS CONSERVATION
PLANNING AND RECREATION SERVICES
SOIL AND WATER CONSERVATION
STATE PARKS

COMMONWEALTH of VIRGINIA

DEPARTMENT OF CONSERVATION AND RECREATION

203 Governor Street, Suite 302

TDD (804) 786-2121

Richmond, Virginia 23219 (804) 786-6124

FAX (804) 786-6124

MEMORANDUM



DATE: July 18, 1991

TO: B. Thomas Fulmer, Virginia Gas and Oil Inspector
DMHE, Division of Gas and Oil

FROM: Jerald P. Moore, Acting Director

SUBJECT: VR 480-05-22.2. Virginia Gas and Oil Regulations

We have reviewed the subject regulations and offer the following comments.

1. There needs to be clarification on whether the Virginia Department of Conservation and Recreation (VDCR) can be "forced pooled" and how that could effect us. In a "forced pool" situation, would the VDCR be considered a "participating operator", "nonparticipating operator" or some other characterization?

2. On page 2445, §10. A., the proposed regulations state that the unit operator of a pooled unit may share all reasonable costs of operating the unit with other participating and nonparticipating operators. Examples of potential costs include, but are not limited to: ecological and environmental, legal expenses, damages and losses to joint property and catastrophe. Several issues arise concerning this situation, if the VDCR were "forced pooled." These issues are:

1. Would the VDCR have to pay for a portion of the costs of any damage that may occur to its own property?
2. Would the VDCR be partially liable for a major catastrophe or legal action?
3. Considering our mission, the philosophical implications of the VDCR being "forced pooled" into an operation which hypothetically had a significant environmental and/or ecological impact may be quite damaging to the Commonwealth's image of being environmentally responsible.

4. Again considering VDCR's mission to conserve and protect certain properties, the potential loss of state resources under any of the 3 options--lease, participation or non-participation--is disturbing. Outside forces can dictate the state subsidization of private speculation by the location of their well drilling operations.

CC: Arthur H. Buehler
Michael L. Lipford
Ronald D. Sutton
Leon E. App

1000 CHARLESTON NATIONAL PLAZA
MAILING ADDRESS P O BOX 2038
CHARLESTON, WEST VIRGINIA 25327

TELEPHONE (304) 345-8900

TELEFAX (304) 345-8909
(304) 343-9833

**KAY,
CASTO,
CHANEY,
LOVE & WISE**
ATTORNEYS AT LAW

3000 HAMPTON CENTER, SUITE C
MAILING ADDRESS P O BOX 1230
MORGANTOWN, WEST VIRGINIA 26507

TELEPHONE (304) 599-8900

TELEFAX (304) 599-8901

PLEASE REPLY TO:
CHARLESTON OFFICE

July 18, 1991

VIA FAX

Department of Mines, Minerals and Energy
Division of Gas and Oil
P.O. Box 1416
Abingdon, VA 24210

Re: Virginia Gas and Oil Board
Proposed Procedural Rules
OXY USA Inc. Comments



Ladies and Gentlemen:

This letter is to comment upon a request made by Attorney Donald Johnson at the Board hearing on Tuesday July 16, 1991. At that time, Mr. Johnson requested that the Board consider adopting a procedural rule which would permit, as I understood the request, the filing of a motion which sought a Board order directing a third party to file an application for forced pooling.

Unlike §45.1-361.20 which permits the Board "on its own motion or upon application of the gas or oil owner" to establish a drilling unit, §§45.1-361.21 and 45.1-361.22 do not authorize the Board to initiate the pooling process "on its own motion". The end result of the procedure proposed by Mr. Johnson would seem to be the entry of a Board order initiating the pooling process "on its own motion", to-wit: an order directing someone other than the movant to file a forced pooling application.

Lastly, the rule proposed by Mr. Johnson would seem unnecessary because any person with standing as either an oil and gas owner or claimant is already specifically authorized to initiate the pooling process by applying for a pooling order under the express terms of §§45.1-361.21 and 45.1-361.22.

KAY, CASTO, CHANEY, LOVE & WISE

Department of Mines, Minerals & Energy

July 18, 1991

Page 2

Therefore, I would respectfully request that the Board decline to implement the procedure suggested by Mr. Johnson.

Yours very truly,


Mark A. Swartz

MAS/mls

cc: Patricia A. Patton, Esq.
Mr. Martin E. Wirth

DICKENSON COUNTY CITIZENS COMMITTEE
"SAVE VIRGINIA'S BABY"
RT 1 BOX 602, CLINCHCO VA 24226
(703) 835-8857

June 26, 1991

Mr. B. T. Fulmer
Virginia Oil & Gas Inspector/DHME
Abingdon, Virginia

Dear Mr. Pulmer:

We have reviewed the Virginia Gas and Oil Board Proposed Regulations, VR 480-05-22.2, and have the following comments.

*We remain opposed to the concept that the Board may appropriate private property for the benefit and use of an energy developer or industrial entity.

*Section 22. Enhanced Recovery. Amend to read:

The board may, upon application, notice and hearing, authorize enhanced recovery projects on a case-by-case basis. No enhanced recovery project shall be authorized that uses drilling fluids or produced waters as the injected motive force and unless at least 51 percent of all of the gas or oil interests, in the area to be covered by the proposed enhanced recovery project, consent to the project. The Board may, on a case-by-case basis, establish a minimum percentage greater than 51 percent for any area of the Commonwealth.

This change will prevent the injection of polluted waters or brines into underground strata under the guise of enhanced recovery operations when in reality a Class II UIC well is established. The disposal of these dangerous fluids is the subject of ongoing controversy and discussions. The industry must not be allowed to inject them as an unregulated fluid associated with enhanced recovery.

That concludes our comments.

It appears, at this time, that our executive committee will be away and unable to attend the hearing scheduled for July 16, 1991. We thank you for the opportunity to provide our comments via the mail.

CC1 DMME

Sincerely,

Sincerely,
Bernard Reilly
Bernard Reilly, President



VIRGINIA GAS AND OIL BOARD REGULATION - SUMMARY OF PUBLIC AND BOARD COMMENTS

VR 480-05-22.2

Gas and Oil Board Regulation

Summary of Public Comments and Board Response

§ 1. Definitions

1. Comment: One commenter suggested that the definition of pooling is inappropriate, since pooling involves the combining of interests and estates, rather than, combining tracts or portion of tracts. The commenter provided language to reflect this.

Response: The Board agrees with the commenter. The relationship of tracts to pooled units is accomplished through the disclosure of interests of such tracts. The definition will be amended to reflect this.

§ 3. Administrative Provisions

1. Comment: One commenter suggested that § 3.D be clarified as to the role of the Division in assigning docket numbers when applications or petitions are submitted. The commenter provided language to accomplish this.

Response: The Board agrees and will amend the section to clarify the Division's responsibility in process of filing petitions.

2. Comment: One commenter suggested that § 3.F be amended to eliminate the \$100 application fee except for applications which request the actual unit as opposed to a request that a unit be required.

Response: The Board disagrees with the commenter. The purpose of the application fee is to process and provide for the disposition of cases brought before the Board under the requirements of the Act. No amendment is needed.

The Board recognizes that a party, who does not receive notice of an application which may affect his interest in a unit, should have the ability to come before the Board and object to any proceedings which may have affected his interest. The Board agrees to amend § 14 to allow for a person who did not receive notice, to file with the Board a petition without having to file an application fee.

VIRGINIA GAS AND OIL BOARD REGULATION - SUMMARY OF PUBLIC AND BOARD COMMENTS

§ 4. Notices of Hearing

1. **Comment:** One commenter suggested the last sentence in G be deleted. The commenter stated that in many instances, the respondents noticed in a pooling application are quite numerous and would be unduly burdensome. The commenter suggested it was unnecessary to give notice to persons who (a) did not appear at the original hearing of which they had notice, and (b) to persons whose interests are not affected by the proposed modification. The commenter suggested new language to be substituted in its place to accomplish this goal.

Response: The Board agrees and will amend this section to provide notice to only those parties who would be effected by a modification of an Order previously issued by the Board. This will be consistent with the approach for permit modifications required under the Act.

§ 5. Applications for Field Rules

1. **Comments:** The commenter stated that in A.5.c, the terms "metes and bounds" should be deleted because the pool covers a large area and is impractical to describe a pool by metes and bounds. The commenter further stated that the use of metes and bounds implies a precision in describing boundaries of the pool that does not exist in fact, and that the use of a description by reference to a USGS map should be sufficient to describe the boundaries of the pool prior to October 1, 1992, and the use of the State Plane Coordinate System thereafter will add additional precision.

Response: The Board disagrees with the commenter. The Board feels that in order to protect the correlative rights of parties who maybe included in a designated pool approved by the Board that those parties should have precise determination of the extent of the pool and whether their rights are affected by an order of the Board. This is consistent with previous rulings by the Board. No amendment is needed.

§ 7. Applications to Pool Interests in a Drilling Unit: Conventional Gas or Oil or No Conflicting Claims to Coalbed Methane Ownership.

1. **Comment:** One commenter suggested that A.11 be amended to read "A statement of the names of owners, if known, and the percentage of the interest to be escrowed under § 45.1-361.21.D of the Code of Virginia for each owner whose identity or location is unknown at the time of the application to the hearing is filed;". Commenter suggests that the names of unknown owners are, by definition, not known.

VIRGINIA GAS AND OIL BOARD REGULATION - SUMMARY OF PUBLIC AND BOARD COMMENTS

Response: The Board agrees that only those owners found by the applicant through due diligent search must be notified of the hearing.

The Board disagrees with the commenter that unlocatable persons not be notified. The Board feels that those persons found to be a party to the proceedings are required to be listed in the petition as to their last known address and be sent notice to that address.

The section will be amended to clarify, who is to be noticed.

2. Comment: One commenter suggested that A.13 be amended. The commenter suggested deleting "an estimate of" and amend to read "information relating to production over the life of the well or wells to the extent furnished to other participants in the well or wells". The commenter stated that the changes would ensure that the information provided in the pooling application is the same as that provided to other voluntary participants in the unit.

Response: The Board does not agree with the commenter. The Board feels that the petition should disclose an estimate of production such that those parties being pooled can upon election make a decision based upon all available data from the operator who is applying for the unit. The commenters proposal implies a more vague requirement of information. No amendment is required.

3. Comment: One commenter suggested that A.14 be amended. The commenter suggested deleting "an estimate of" and amend to read "information relating to the amount of reserves of the unit to the extent furnished to other participants in the unit." The commenter contended that if such information has not been previously prepared and supplied to other well participants, it need not be made a part of the pooling application.

Response: The Board disagrees with the commenter to the extent as set out in the Board's response in Comment #4.

4. Comment: One commenter suggested that C be amended by adding a sentence at the end. The commenter said that respondents should have notice so that they can appear and object if they question or challenge the supplemental order. The commenter provided language to accomplish this.

Response: The Board agrees with the commenter. The Board may upon request by any party to the supplemental order, arbitrate any conflicts which may arise under a Board Order. This is consistent with previous Board rulings on this matter. The section will be amended to reflect this.

5. Comment: One commenter questioned how a state agency would be effected by a forced pooling order and stated that being forced pooled conflicted

VIRGINIA GAS AND OIL BOARD REGULATION - SUMMARY OF PUBLIC AND BOARD COMMENTS

with its mission and is disturbing. Another commenter stated that he objects to forced pooling.

Response: The Gas and Oil Act specifically allows forced pooling and § 45.1-361.16 provides that the provision applies to public and private lands in the Commonwealth. The Board does not have the authority to abrogate statutory provisions.

§ 9. Standards for Escrow Accounts.

1. Comment: One commenter suggested adding language stating: "The unit operator of a drilling unit subject to a voluntary pooling agreement may petition the Board for an order authorizing the escrow of funds subject to conflicting claims in accordance with Board standards and or regulations regarding escrow of such funds in units subject to a compulsory pooling order". The Commenter suggests this for clarity.

Response: The Board believes that an applicant or a party to proceedings before the Board may request that any proceeds of the unit may be escrowed. The Board agrees to amend § 9 to reflect the opportunity to file a petition under § 14 for this purpose.

§ 10. Allowable Cost Which May Be Shared in Pooled Gas or Oil Operations

1. Comment: One commenter questioned whether a Virginia state agency which has custodial responsibilities, if forced pooled, has to pay for a portion of the costs of any damage that may occur to its own property and partially liable for a major catastrophe or legal action.

Response: The purpose of § 10 is to outline the costs which an operator may request that the Board allow him to recover for the drilling and operation of a unit, which the proposed operator has petitioned the Board to establish. The amount and reasonableness of the costs must be reviewed and approved by the Board.

After the unit has been established by the Board, a party to the proceedings has the opportunity to elect to be a participating or nonparticipating operator or sell or lease his interest. In the case of a nonconflicting pooling order or in the case of a conflicting claim pooling order, if the party fails to make an election, he is deemed to have leased. The advantages and disadvantages will vary based on the individual circumstances of the party who is forced pooled.

2. Comment: One commenter questioned the reasonableness, validity and necessity of § 10.D, which provides for "presumption of reasonableness" for

VIRGINIA GAS AND OIL BOARD REGULATION - SUMMARY OF PUBLIC AND BOARD COMMENTS

costs as "customary and usual within the industry". The commenter stated that he does not know whether or not it can be proven that certain costs are customary and usual within the industry.

Response: § 45.1-361.21 requires that the Board establish the sharing of all reasonable cost of the operations of a unit under a compulsory pooled unit and by regulation establish the allowable cost and resolve all disputes by and between oil and gas operators on costs. The Board has held that it can conduct any inquiry to determine the reasonableness of the costs by its own examination and by receiving evidence and testimony on the reasonableness of the cost.

§ 11. Recordkeeping

1. Comment: One commenter suggested that the time periods in this section be amended to a minimum of 5 years such that the records be may made available for a substantial period of time in case any difficulty arises with regard to the validity of any payments made pursuant to an escrow account.

Response: The Board disagrees with the commenter. The Board believes that 24 months is ample time for a person aggrieved by a decision of the Board to secure any records of a unit under a Board order. No amendment is needed.

§ 13. Appeals of the Director's Decisions

1. Comment: One commenter suggested that subsections B.4, B.5, and B.6 be deleted. The commenter stated the written request for a hearing to the Inspector and the Inspector's decision should more than cover the information outlined, making these provisions unnecessary and burdensome.

Response: The Board disagrees with the commenter. The procedures set out in B.4, 5 and 6 reflect the common practice of appeal before any body which hears and decides upon issues raised upon appeal. The Board believes that the procedures do not limit access to the Board. No amendment is needed.

§ 14 Miscellaneous Petitions to the Board

1. Comment: One commenter suggested an addition to § 14 to accomodate a request from an oil and gas or surface owner for an order from the Board requiring that an operator of a permitted proposed or permitted existing well form a drilling unit prior to any new production from the well. The commenter submitted suggested language to accomplish this suggestion. One

VIRGINIA GAS AND OIL BOARD REGULATION - SUMMARY OF PUBLIC AND BOARD COMMENTS

commenter, responding to the comments of the first commenter, suggested that the Board does not have statutory authority to initiate the pooling process "on its own motion", and that any person who has standing is already specifically authorized to initiate the pooling process.

Response: The Board does not believe it has the statutory authority to require upon its own motion to require the establishment of a unit. The Board does recognize that the proposed unit operator and other owners of gas and oil interests, which maybe in conflict, may file a petition to the Board as a claimant under § 45.1-361.22. No amendment is needed.

§ 15. Effective Dates for Board Orders

1. Comment: One commenter suggested that B.1 be amended to two years instead of one year from the date of issuance, and change the rest of the sentence to clarify that the continued operations continue the effectiveness of the order.

Response: The Board believes that one year is a reasonable period of time for expiration of a Board Order. The unit operator, whom the Board Order is subject to, may file before the expiration of the order for an extension order provided reasonable cause is found by the Board that the order should be extended. No amendment is needed.

§ 16. Closure Orders

1. Comment: One commenter suggested that A.1 be amended to broaden the authority to issue a closure order beyond merely exceeding allowable production rates. The commenter provided language to accomplish this.

Response: The Board disagrees with the commenter. § 45.1-361.24 provides for the extent of circumstances that the Director or Board may take on any violation of the Act. No amendment is needed.

§ 20. Surveys and Tests.

1. Comment: One commenter suggested that the language in A.1 be amended for the purpose of assurance that another party's resources are not being encroached upon. The commenter suggested language to accomplish this.

Response: The Board agrees that the purpose of the regulation is to protect correlative rights. Use of an inclination survey or directional survey will determine the position of penetration of a producing formation as to its

VIRGINIA GAS AND OIL BOARD REGULATION - SUMMARY OF PUBLIC AND BOARD COMMENTS

relationship to the unit and the Board Order. The Board further recognizes that the permit issued for the drilling of a well within an unit approved by the Board contains the formations which are allowed to be produced by the well permittee under the Director. The Board will amend this section to reflect the producing horizons and its relationship to the permit issued by the Director.

2. Comment: One commenter suggested that the language in A.3 be amended to reflect that the Board should not order a directional survey, but it should be the responsibility of the contiguous tract owner. Commenter suggested language to accomplish this.

Response: The Board disagrees with the commenter. The Board must have the ability to obtain any information it needs to require compliance with an order issued by the Board in which interest are being compulsory pooled by an order of the Board. No amendment is needed.

3. Comment: One commenter suggested that B.1 be amended such that the operator would not be required to conduct both a potential flow test and a gas/oil ratio test, but that the operator conducts the potential flow test and if necessary preforms the gas/ratio test.

Response: The Board disagrees with the commenter. The Board must have the correct information on determination of a well in order to determine the appropriate unit size of a well in order to protect correlative rights and enforce the conservation provisions of the Act. No amendment is needed.

4. Comment: One commenter stated that in regards to B.3, Appalachian Basin gas wells dictates that open flow testing be made and that the regulation should permit and encourage such testing.

Response: The Board believes that open flow testing can occur. No amendment is needed.

§ 22. Enhanced Recovery.

1. Comment: One commenter suggested that the section be amended to state that no enhanced recovery project be authorized to use drilling fluids or produced waters as the injected motive force.

Response: The use of fluids in an enhanced recovery project is covered under Articles 1 and 3 of the Act. The Board enforces the provisions of Article 2 concerning the protection of correlative rights and conservation of the resource. No amendment is needed.

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VR 480-05-22.2 Virginia Gas and Oil Board Regulations§ 1. Definitions.

The following words and terms, when used in this regulation, shall have the following meaning, unless the context clearly indicates otherwise:

"Act" means the Virginia Gas and Oil Act of 1990, Chapter 22.1 (§ 45.1-361.1 et seq.) of Title 45.1 of the Code of Virginia.

"Applicant" or "petitioner" means a person who files an application, petition, appeal or other request for Board action.

"Complete application" means all the materials required to be filed by the applicant under this regulation.

"Department" means the Department of Mines, Minerals and Energy.

"Director" means the Director of the Department of Mines, Minerals and Energy or his authorized agent.

"Directional survey" means a well survey that measures the degree of departure of a hole, or distance, from the vertical and the direction of departure.

"Division" means the Division of Gas and Oil of the Department of Mines, Minerals and Energy.

"Election" means the performance of an act within the time established or required by statute, order or regulation. An election required to be made by Board order or regulation must be in writing and (i) be personally delivered to the person or agent of the person described in the order or regulation by the date established or required, or (ii) be mailed to the person or agent of the person described in the order or regulation at the address stated therein and be postmarked by the United States Postal Service before midnight on the date established or required.

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"Field" means the general area underlain by one or more pools.

"Gas/oil ratio" means the product of the number of Mcf of natural gas produced from a well divided by the number of barrels of oil produced from the well as determined by a gas/oil ratio test.

"Gas well" means any well which produces or appears capable of producing a ratio of 6,000 cubic feet (6 Mcf) of gas or more to each barrel of oil, on the basis of a gas-oil ratio test.

"Inclination survey" means a well survey to determine the deviation, using the surface location of the well as the apex, of a well bore from the true vertical beneath the apex on the same horizontal subsurface plane.

"Metes and bounds" means the boundary lines of land, with their terminal points, angles and distances.

"Mcf" means, when used with reference to natural gas, one thousand cubic feet of gas at a pressure base of 14.73 pounds per square inch gauge and a temperature base of 60°F.

"Mine development plan" or "Registered operations plan" means a plan filed with the Division of Mines or the Division of Mined Land Reclamation as part of the licensing or permitting for the legal permission to engage in extraction of coal resources.

"Oil well" means any well which produces or appears capable of producing a ratio of less than 6,000 cubic feet (6 Mcf) of gas to each barrel of oil, on the basis of a gas-oil ratio test.

"Pooling" means the combining of all (a) tracts of two or more tracts into one unit for drilling a gas, oil or coalbed methane gas well or wells, or the combining of small tracts sufficient for the granting of a permit or permits to drill a gas, oil or coalbed methane gas well or wells interests

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or estates in a gas, oil or coalbed methane drilling unit for the development and operations thereof.] Pooling may be accomplished either through voluntary agreement [of the owners of interests in the assets] or through a compulsory order of the Board.

"Respondent" means a person named in an application, petition, appeal or other request for Board action and against whom relief is sought by the applicant, or a person who under the terms of a Board order, is required to make an election.

"Unit operator" means the gas or oil owner designated by the Board to operate in or on a pooled unit.

§ 2. Authority and Applicability.

A. This regulation is promulgated by the Virginia Gas and Oil Board pursuant to § 45.1-361.15 of the Code of Virginia.

B. This regulation replaces the emergency Conservation Regulations for Gas and Oil, VR 480-05-22.2.

C. As provided for in the Virginia Acts of Assembly, 1990, Chapter 92, all field rules and orders issued pursuant to the provisions of the Oil and Gas Act of 1982, Chapter 22 (§ 45.1-206 et seq.) of Title 45.1 of the Code of Virginia shall remain in force and effect until modified or revoked pursuant to the provisions of the Gas and Oil Act of 1990, Chapter 22.1 (§ 45.1-361.1 et seq.) of Title 45.1 of the Code of Virginia. The requirements of this regulation are in addition to requirements of field rules and orders.

§ 3. Administrative Provisions.

A. The Virginia Gas and Oil Board shall meet on the third Tuesday of each calendar month unless no action is required by the Board or unless

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otherwise scheduled by the Board. All hearings shall be scheduled in accordance with the requirements for notice by publication in § 45.1-361.19 of the Code of Virginia. Except where otherwise established by the Act, the Board may establish deadlines for filing materials for meetings or hearings scheduled on other than the third Tuesday of each month.

B. Applications to the Board must be filed by the following deadlines:

1. All applications, petitions, appeals or other requests for Board action must be received by the Division at least 30 calendar days prior to the regularly scheduled meeting of the Board.

2. When required, the following material must be filed with the Division at least seven calendar days prior to the regularly scheduled meeting of the Board in order for the application to be considered a complete application:

a. the affidavit demonstrating that due diligence was used to locate and serve persons in accordance with § 45.1-361.19 of the Code of Virginia and § 4 of this regulation; and

b. proof of notice by publication in accordance with § 4.D of this regulation.

C. A complete application that is not filed by the deadlines of this subsection shall be carried over to the next scheduled meeting of the Board. A submission that does not contain a complete application shall not be considered by the Board until the application is complete.

D. The Division shall assign a docket number to each application or petition at the time of filing, and shall notify the applicant of the docket number. The docket number shall be referenced when submitting material regarding the application or petition.

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K. In addition to the other requirements of this regulation, applications to the Board shall meet the following standards:

1. Each application for a hearing before the Board shall be headed by a caption which shall contain a heading including:

- a. "Before the Virginia Gas and Oil Board";
- b. the name of the applicant;
- c. the relief sought; and
- d. the docket number assigned by the Division.

2. Each application shall be signed by the applicant, an authorized agent of the applicant, or an attorney for the applicant, certifying that, "The foregoing application to the best of my knowledge, information, and belief is true and correct."

3. Exhibits shall be identified by the docket number and an exhibit number and may be introduced as part of a person's presentation.

4. Persons shall submit 10 sets of each application and exhibit. Each person offering exhibits into evidence shall also have available a reasonably sufficient number of exhibits for other persons who are subject to the provisions of §§ 45.1-361.19 and 45.1-361.23 of the Code of Virginia and are expected to be in attendance at the hearing.

F. Applications for the establishment of units, spacing or pooling shall be accompanied by a \$100 non-refundable fee, payable to the Treasurer of Virginia.

G. All parties in any proceedings before the Board are entitled to appear in person or by counsel or other qualified representative, as provided for in the Administrative Process Act, § 9-6.14:1 et seq. of the Code of Virginia.

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§ 4. Notice of Hearings.

A. Each applicant for a hearing to establish field rules, drilling units or who seeks to pool interests in a drilling unit under §§ 45.1-361.20, 45.1-361.21 or 45.1-361.22 of the Code of Virginia shall provide notice in accordance with § 45.1-361.19 of the Code of Virginia.

B. Each applicant for a hearing to establish an exception to statewide spacing under § 45.1-361.17 of the Code of Virginia shall provide notice by certified mail, return receipt requested, to all gas, oil, coal or mineral owners having an interest underlying any tract located within the distances provided in § 45.1-361.17 of the Code of Virginia or the distance to the nearest well completed in the same pool, whichever is less. Each applicant for a hearing to establish an exception to well location provided for in a drilling unit established by an order of the Board shall provide notice by certified mail, return receipt requested, to all gas, oil, coal or mineral owners having an interest underlying the unit where the exception is requested.

C. Each applicant shall include, with the mailed notice of the hearing, a copy of his application or petition to the Board.

D. When the identity or location of any person to whom notice is required to be given in accordance with subsections A or B of this section is unknown at the time the applicant applies for a hearing before the Board, the applicant for the hearing shall cause a notice to be published in a newspaper of general circulation in the county, counties, city, or cities where the land or the major portion thereof which is the subject of the application is located. The notice shall include:

1. the name and address of the applicant;

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2. a description of the action to be considered by the Board;

3. a map showing the general location of the area which would be affected by the proposed action or a description which clearly describes the location or boundaries of the area which would be affected by the proposed action sufficient to enable local residents to identify the area;

4. the date, time and location of the hearing at which the application is scheduled to be heard; and

5. where interested persons may obtain additional information.

E. Notice of a hearing made in accordance with § 45.1-361.19 of the Code of Virginia or this section shall be sufficient, and no additional notice is required to be made by the applicant upon a postponement or continuance of the hearing.

F. Each applicant for a hearing to modify an order established under § 45.1-361.20 of the Code of Virginia shall provide notice in accordance with § 45.1-361.19 of the Code of Virginia to each person having an interest underlying the tract or tracts in the area to be affected by the proposed modification.

G. An applicant filing a petition to modify a forced pooling order established under §§ 45.1-361.21 or 45.1-361.22 of the Code of Virginia to change the unit operator based on change of the corporate name of the unit operator, change of corporate structure of the unit operator or transfer of the unit operator's interests to any single subsidiary, parent or successor by merger or consolidation is not required to provide notice. Each other applicant for a hearing to modify a forced pooling order shall provide notice in accordance with § 45.1-361.19 of the Code of Virginia to each

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person whose interest has been pooled under the order establishing the unit, or the successor or successors in interest to any such person having an interest in the unit which interest may be affected by the proposed modification.

§ 5. Applications for Field Rules.

A. Each application filed under § 45.1-361.20 of the Code of Virginia to establish or modify a field rule, a drilling unit or drilling units shall contain:

1. the name and address of the applicant and the applicant's counsel, if any;
2. in the case of an application to vacate or amend an order, identification of the order to be vacated or amended;
3. a statement of the relief sought and the proposed provisions of the order or a proposed order;
4. citations of statutes, rules, orders, and decided cases supporting the relief sought;
5. in the case where a field rule is proposed to be established or modified:
 - a. a statement of the type of field (gas, oil or coalbed methane gas);
 - b. a description of the proposed formation or formations subject to the petition; and
 - c. a description of the pool or pools included in the field, based on geological and technical data, including a meter and bounds description of the boundaries of the pool or pools and field, referenced to and located on a United States Geological

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Survey, 7.5-minute topographic map or maps. Effective October 1, 1992, the Virginia Coordinate System of 1927 as defined in Chapter 17 (§ 55-287 et seq.) of Title 55 of the Code of Virginia, also known as the State Plane Coordinate System, shall be used to describe and locate the boundaries of the pool or pools. Applicants are encouraged to use the State Plane Coordinate System prior to October 1, 1992;

6. in the case where a drilling unit or units are proposed to be established or modified;

a. a statement of the acreage to be embraced within each drilling unit;

b. a description of the formation or formations to be produced by the well or wells in the unit or units; and

c. a metes and bounds description of the boundaries of the drilling unit or units, referenced to and located on a United States Geological Survey, 7.5-minute topographic map or maps in accordance with the standards for use of the State Plane Coordinate System of subdivision A.5.c. of this section;

7. a statement of the amount of acreage to be included in the order;

8. a statement of the proposed allowable production rate or rates and supporting documentation, if applicable;

9. evidence that any proposal to establish or modify a unit or units for coalbed methane gas will meet the requirements of § 45.1-361.20.C of the Code of Virginia;

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10. an affidavit demonstrating that due diligence was used to locate and serve persons in accordance with § 45.1-361.19 of the Code of Virginia and § 4 of this regulation;

11. when required, proof of notice by publication in accordance with § 4.D of this regulation; and

12. copies of proposed exhibits.

§ 6. Applications for Exceptions to Minimum Well Spacing Requirements.

A. Applications for an exception to statewide spacing under § 45.1-361.17 of the Code of Virginia or under a field rule issued by the Board shall contain the following:

1. the name and address of the applicant and the applicant's counsel, if any;
2. in the case of an application for an exception to spacing established in a field rule, identification of the order governing spacing in the field;
3. a statement of the proposed location of the well in relation to permitted wells within the distances prescribed in § 45.1-361.17 of the Code of Virginia;
4. a description of the formation or formations to be produced by the well proposed for alternative spacing and the formation or formations produced by neighboring wells;
5. a description of the spacing of other wells producing from the formation or formations to be produced by the well;
6. a description of the conditions justifying the alternative spacing;
7. an affidavit demonstrating that due diligence was used to locate and serve persons in accordance with § 4 of this regulation;

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tract to the total acreage of the unit, certified by a licensed land surveyor or a licensed professional engineer and attested by the applicant as to its conformity to existing orders issued by the Board;

9. a description of the status of interests to be pooled in the unit at the time the application is filed;

10. for an application to pool a coalbed methane gas unit, a statement of the percentage of the total interest held by the applicant in the proposed unit at the time the application for the hearing is filed;

11. a statement of the names of owners and the percentage of interests to be encroved under § 45.1-361.21.D. of the Code of Virginia for each owner whose [idennity-ew] location is unknown at the time the application for the hearing is filed;

12. a description of the formation or formations to be produced;

13. an estimate of production over the life of well or wells;

14. an estimate of the amount of reserves of the unit;

15. an estimate of the allowable costs in accordance with § 10 of this regulation;

16. an affidavit demonstrating that due diligence was used to locate and serve persons in accordance with § 45.1-361.19 of the Code of Virginia and § 4 of this regulation;

17. when required, proof of notice by publication in accordance with § 4.D of this regulation; and

18. copies of proposed exhibits.

B. Applications to amend an order pooling interests in a drilling unit may be filed by written stipulation of all persons affected. The application is not required to contain the information specified in

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subsection A of this section, but shall contain the proposed amended language to the order, shown by interlineation.

C. After the time for election provided in any pooling order has expired, the unit operator shall file an affidavit with the Board stating whether or not any elections were made. If any elections were made, the affidavit shall name each respondent making an election and describe the election made. If no elections were made or if any response was untimely, the affidavit shall so state. The affidavit shall be accompanied by a proposed supplemental order to be made and recorded to complete the record regarding elections. The affidavit and proposed supplemental order shall be filed by the unit operator within 20 days after the last day on which a timely election could have been delivered or mailed, or within 20 days after the last date for payment set forth in the pooling order, whichever occurs last. [Applicant shall mail a true and correct copy of any supplemental order to all persons identified in said supplemental order.]

8. Applications to Pool Interests in a Drilling Unit: Conflicting Claims to Coalbed Methane Gas Ownership.

In addition to the information required in # 7 of this regulation, applications filed under # 45.1-361.22 of the Code of Virginia to pool interests in a drilling unit for coalbed methane gas where there are conflicting claims to ownership of the coalbed methane gas shall contain a description of the conflicting ownership claims and the percentage of interests to be escrowed for the conflicting claims, and a plan for escrowing the costs of drilling and operating the well or wells and the proceeds from the well or wells attributable to the conflicting interests.

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§ 9. Standards for Escrow Accounts.

Payment of funds into escrow accounts shall be made in accordance with the standards established in each order of the Board requiring such payment. [In addition, the unit operator of a drilling unit subject to a voluntary pooling agreement may petition the Board under § 10 of this regulation for an order authorizing the escrow of funds subject to conflicting claims in accordance with Board standards and or regulations regarding escrow of such funds in units subject to a compulsory pooling order.]

§ 10. Allowable Cost Which May Be Shared in Pooled Gas or Oil Operations.

A. The unit operator of a pooled unit may share all reasonable costs of operating the unit, including a reasonable supervision fee, with other participating and nonparticipating operators, as provided for in § 45.1-361.21 of the Code of Virginia, which may include:

1. Direct Costs:

- a. ecological and environmental;
- b. rentals and royalties;
- c. labor;
- d. employee benefits;
- e. materials;
- f. transportation;
- g. services;
- h. equipment and facilities furnished by the unit operator;
- i. damages and losses to joint property;
- j. legal expenses;
- k. taxes;
- l. insurance;

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- m. abandonment and reclamation;
- n. communications; and
- o. other expenditures.

2. Indirect Charges:

- a. drilling and production operations;
- b. major construction; and
- c. catastrophe.

B. Where there are conflicting royalty claims to coalbed methane gas, the unit operator of a forced pooled coalbed methane gas unit shall deposit proceeds in accordance with § 45.1-361.22 of the Code of Virginia, to be determined at the wellhead.

C. Where there are conflicting claims and one or more persons have elected to become participating or nonparticipating operators, the unit operator of a forced pooled coalbed methane gas unit shall escrow net proceeds after deduction for royalty and other costs consistent with the terms of this regulation and the Board's order regarding the unit.

D. In any dispute which may arise regarding a unit operator's costs, the unit operator shall be entitled to the benefit of a presumption of reasonableness where it is shown that the types of costs being disputed are, by custom and practice, customary and usual within the industry. The unit operator shall not be entitled to a presumption of reasonableness of the amount of the costs being disputed.

§ 11. Recordkeeping.

A. Each unit operator shall maintain records of production, income, payments made to lessors and other information prescribed by the Board, until the later of:

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1. when the permits for all wells in the unit have been released by the Department;

2. 24 months after all encrowed funds for competing claims to ownership of coalbed methane gas in the unit have been paid out under order of the Board; or

3. when so ordered by the Board.

B. Each unit operator shall maintain records of all costs charged to participating or nonparticipating operators until the later of:

1. 24 months after all costs attributable to participating or nonparticipating operators have been settled and paid; or

2. when so ordered by the Board.

C. Upon transfer of the right to conduct operations in a pooled drilling unit to a new unit operator, the old unit operator shall transfer all records required to be maintained in accordance with this section to the new unit operator. The old unit operator will not be released from responsibility as the unit operator until he has submitted, to the Board, evidence that the records have been received by the new unit operator.

D. In the event a unit operator wishes to terminate its legal existence and the unit is not transferred to a new unit operator, or when the permit for any well in the unit has been revoked and the bond forfeited by the Department, the unit operator shall transfer, to the Board, all records required to be maintained in accordance with this section.

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§ 12. Applications To Change the Unit Operator For A Unit Established by Order of the Board.

A. The approval of the Board is not required to sell, assign or otherwise convey an operator's ownership interest in a unit or group of units unless the operator was appointed by Board order as the unit operator.

B. Voluntary transfer of the right to operate a unit established by the Board may be requested upon transfer of unit operations to a new operator. For a voluntary transfer, the proposed new unit operator shall file written notification of the transfer of operations and request the Board to amend the order to reflect the transfer. The notification shall include, but not be limited to:

1. the name and address of the existing unit operator;
2. the name and address of the proposed new unit operator;
3. written approval from the existing unit operator;
4. identification of the order to be amended;
5. a description of any changes in the percentage of interests in each tract pooled in the unit, including a statement of the percentage of interest held by the proposed new unit operator if the unit is for coalbed methane gas;
6. a description of any other changes to unit operations to be implemented by the proposed new unit operator;
7. an affidavit demonstrating that due diligence was used to locate and serve persons in accordance with § 4 of this regulation; and
8. copies of proposed exhibits.

C. Involuntary transfer of the right to operate a unit established by Board order may be requested if the unit operator has not continued gas or

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oil operations of the unit with due diligence, or the permit for any well in the unit has been revoked by the Department. For an involuntary transfer, the proposed new unit operator shall file a written application to transfer the operations, including, but not limited to:

1. the name and address of the existing unit operator;
2. the name and address of the proposed new unit operator;
3. identification of the order which is sought to be amended;
4. a detailed statement of the facts supporting the removal of the existing operator;
5. a description of any changes in the percentage of interests in each tract pooled in the unit, including a statement of the percentage of interest held by the proposed new unit operator if the unit is for coalbed methane gas;
6. a description of any other changes to unit operations to be implemented by the proposed new unit operator;
7. an affidavit demonstrating that due diligence was used to locate and serve persons in accordance with § 4 of this regulation; and
8. copies of proposed exhibits.

§ 13. Appeals of the Director's Decisions.

A. Appeals of the Director's decisions shall be filed in writing, at the office of the Division, in accordance with §§ 45.1-361.23 and 45.1-36.36 of the Code of Virginia.

B. A petition to appeal a decision of the Director shall contain:

1. the name and address of the petitioner and the petitioner's counsel, if any;

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2. identification of the decision being appealed, and the date the decision was issued;
 3. a statement identifying the standing of the petitioner to appeal;
 4. a statement setting forth the reasons for the appeal, including errors alleged in the Director's decision and the reasons why the decision is deemed contrary to law or regulation;
 5. a statement that the issues on appeal were in fact raised as required by § 45.1-361.36.B of the Code of Virginia;
 6. a statement setting forth the specific relief requested;
 7. when a stay to any proposed activity allowed as a result of the Director's decision is desired, a request for the stay and the basis for granting the stay; and
 8. other information, relevant to the petition, the petitioner wishes to provide.
9. Upon receipt of an appeal containing a request for a stay, the Director shall decide on the request in accordance with § 45.1-361.23.D of the Code of Virginia.
- § 14. Miscellaneous Petitions to the Board.
- A. Any petition to the Board not otherwise provided for in this regulation shall be made in writing, and shall contain:
 1. the name and address of the petitioner and the petitioner's counsel, if any;
 2. the names and addresses of any persons who are named as respondents in the petition;
 3. an affidavit that notice has been given to each respondent, if any, named in the petition;

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4. a statement of the issues of the petition;
5. a statement setting forth the specific relief requested; and
6. other information, relevant to the petition, the petitioner wishes to provide.

(B. If a petitioner for a unit under §§ 45.1-361.21 or 22 fails to provide notification to an owner of interest of any part of a unit subject to a petition before the Board, then such party may file a written objection to the proceedings in the form of a petition as set out in A of this section. Such petition does not require the submission of an application fee as required in § 3.F of this Regulation.)

§ 13. Effective Dates for Board Orders.

A. All orders issued by the Board under § 45.1-361.20 of the Code of Virginia shall remain in effect until vacated or amended by the Board on its own motion or on application from an owner or operator in the field or unit subject to the order.

B. All orders issued by the Board under §§ 45.1-361.21 and 45.1-361.22 of the Code of Virginia shall remain in effect:

1. for a period of one year from the date of issuance, if gas or oil operations have not commenced on the well or wells in the unit or units established by the order;
2. until the permit or permits have been released on the well or wells, if gas or oil operations have commenced on the well or wells within the unit or units established by the order; or
3. until vacated or amended by the Board on its own motion or on application from a gas or oil owner or the unit operator in the unit subject to the order.

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C. Conditional orders issued by the Board under §§ 45.1-361.21 and 45.1-361.22 of the Code of Virginia shall remain in effect in accordance with the terms and conditions of the order, unless vacated or amended by an order of the Board.

§ 16. Enforcement.

A. The Director shall enforce the provisions of the Act, this regulation or order of the Board, and may use the following methods:

1. notices of violation in accordance with § 17 of this regulation;
2. closure orders in accordance with § 18 of this regulation;
3. petitions to the Board to revoke any rights granted to operators by the Board;
4. emergency orders in accordance with § 45.1-361.27.D of the Code of Virginia; or
5. any other action in accordance with the Code of Virginia.

B. A notice or order shall be served on the person to whom it is issued promptly after issuance, as follows:

1. by delivering a copy, by hand, to the person to whom the notice or order is issued or other employee or agent of the person; or
2. by sending a copy of the notice or order by certified mail, return receipt requested, to the person to whom the notice or order is issued or his designated agent.

C. Service shall be complete upon delivery of the notice or order, or of the mail, and shall not be deemed incomplete because of refusal to accept.

D. Nothing in this regulation shall prevent the Director from taking any action or from making efforts to obtain voluntary compliance through

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conference, warning or other means prior to issuing any enforcement notice or order.

E. The purpose of taking enforcement actions is to obtain compliance with the provisions of the Act, this regulation or order of the Board.

§ 17. Notices of Violation.

A. The Director may issue a notice of violation if he finds a violation of Chapter 22.1 of Title 45.1 of the Code of Virginia, this regulation, or any order of the Board.

B. A notice of violation shall be in writing, signed, and set forth with reasonable specificity:

1. the nature of the violation;
2. a reasonable description of the activity or condition to which it applies;
3. the remedial action required, which may include interim steps; and
4. a reasonable deadline for abatement, which may include interim deadlines for accomplishment of interim steps.

C. The Director may extend the deadline for abatement or for accomplishment of an interim step if the failure to meet the deadline previously set was not caused by the person's lack of diligence. The total time for abatement under a notice of violation, including all extensions, shall not exceed 20 days from the date of issuance, except upon a showing by the person and acceptance by the Director that it is not feasible to abate the violation within 20 days, or if the deadline is extended during an appeal. An extension of the deadline for abatement may not be granted when the person's failure to abate within 20 days has been caused by a lack of diligence or intentional delay by the person.

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D. The Director shall terminate a notice of violation by written notice when he determines that all violations listed in the notice of violation have been abated.

E. Any person issued a notice of violation may, before the deadline established for abatement for the violation, request, in writing to the Director, an informal fact finding hearing to review the issuance of the notice. The person is relieved of the duty to abate, during an appeal of the notice of violation to the Director or Board, any violation of Article 2 of the Act, this regulation or Board order, except as otherwise provided by regulation.

F. The Director shall conduct an informal fact finding hearing, in accordance with the Administrative Process Act, § 9-6.14.11 of the Code of Virginia, no later than 10 days after receipt of the hearing request. The Director shall affirm, modify, or vacate the notice in writing, to the person who requested the hearing, no later than five days after the date of the hearing.

§ 18. Closure Orders.

A. The Director may immediately order a cessation of operations or of the relevant portion thereof, when:

1. a gas or oil operator continues to produce in excess of an allowable production limit established by the Board after having been ordered by the Director or Board to stop production in excess of the allowable limit; or
2. repeated notices of violations have been issued for the same condition or practice.

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B. A closure order shall be in writing, signed and shall set forth with reasonable specificity:

1. the nature of the condition, practice or violation;
2. a reasonable description of the activity or condition to which it applies;
3. the remedial action required, if any, which may include interim steps; and
4. a reasonable deadline for abatement, which may include interim deadlines for accomplishment of interim steps.

C. A closure order shall require the person to take all steps the Director deems necessary to abate the violations covered by the order in the most expeditious manner possible.

D. The Director shall terminate a closure order by written notice when he determines that all conditions, practices or violations listed in the order have been abated.

E. Any person issued a closure order may request an informal fact finding hearing to review the issuance of the order, in writing to the Director, within 10 days from receipt of the order. The person may request an expedited hearing, in writing to the Director, within three days of receipt of the order.

F. A person is not relieved of the duty to abate any condition under, or comply with, any requirement of a closure order during an appeal of the order.

G. The Director shall conduct an informal fact finding hearing, in accordance with the Administrative Process Act, § 9-6.14:11 of the Code of

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Virginia, no later than 15 days after the order was issued, or in the case of an expedited hearing, no later than five days after the order was issued.

H. The Director shall affirm, modify, or vacate the closure order in writing, to the person who requested the hearing, no later than five days after the date of the hearing.

§ 19. Civil Charges.

A. Civil charges shall be provided for in accordance with § 45.1-361.8.C of the Code of Virginia.

B. The Director, after finding any violation of the Act, a regulation promulgated under the Act, or order of the Director or Board, or upon direction from the Board, may recommend a civil charge against a gas, oil or geophysical operator and shall base the recommendation on the Civil Charge Calculation Procedure established by order of the Board.

§ 20. Surveys and Tests.

A. Deviation Tests.

1. An inclination survey shall be made on all rotary drilled wells located in accordance with a field rule established by the Board. An inclination survey is not required for wells drilled in accordance with the distance limitations of § 45.1-361.17 of the Code of Virginia. The first shot point shall be at a depth not greater than the bottom of the surface casing or, for a well drilled through a coal seam, at a depth not greater than that of the bottom of the coal protection string. Succeeding shot points shall be no more than 1,000 feet apart, or as otherwise ordered by the Director. Inclination surveys conforming to these requirements may be made either during the normal course of drilling or after the well has reached total depth. Survey data shall

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be certified in writing as being true and correct by the designated agent or person in charge of a permittee's Virginia operations, or the drilling contractor, and shall indicate the resultant lateral deviation as the (sum-of-the maximum) calculated lateral displacement determined (between-each at any) inclination survey point (in a horizon approved for production, by an order of the Board or a permit approved by the Director), assuming that all displacement occurs in the direction of the nearest boundary of the unit. The resultant lateral deviation shall be recorded on the drilling or completion report filed by the permittee. However, if a directional survey determining the location of the bottom of the hole is filed upon completion of the well, it shall not be necessary to file the inclination survey data.

2. A directional survey shall be made when:

- a. a well is directionally controlled and is thereby intentionally deflected from vertical;
- b. the resultant lateral deviation of any well, calculated from inclination survey data, is greater than the distance from the center of the surface location of the well bore to the nearest boundary of the area where drilling is allowed in a unit established by the Board; or
- c. a well is drilled as an exception location and a directional survey is ordered by the Board.

3. The Board or the Director, on their own initiative or at the request of a gas or oil owner on a continuous unit or tract, may require the permittee drilling any well to make a directional survey of the well if there is reasonable cause therefor. Whenever a survey is

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required by the Board or the Director at the request of a contiguous owner and the permittee of the well and contiguous owner are unable to agree as to the terms and conditions for making the directional survey, the permittee shall pay for the survey if the bottom hole location is found to be outside of the area approved for drilling, and the contiguous owner shall pay for the survey if the bottom hole location is found to be inside of the area approved for drilling.

4. Directional surveys shall be run from total depth to the base of the surface casing or coal protection string, unless otherwise approved by the Board or the Director. In the event that the proposed or final location of the producing interval or intervals of any well is not in accordance with this section or a Board order, the unit operator shall apply to the Board for an exception to spacing. However, directional surveys to total depth shall not be required in cases where the interval below the latest survey is less than 500 feet, and in such an instance, a projection of the latest survey shall be deemed to satisfy Board requirements.

5. The results of each inclination or directional survey made in accordance with this section shall be filed by the permittee with the first drilling or completion report required by the Department.

B. Flow potential and gas/oil ratio tests: Conventional gas or oil wells.

1. If a gas or oil well appears capable of producing gas or oil, the permittee shall conduct a potential flow test and a gas/oil ratio test within 10 days after the well is completed and capable of producing gas or oil. The permittee shall file the test results, in writing, with

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the Director. The Director shall hold the test results confidential in accordance with § 45.1-361.6 of the Code of Virginia.

2. If a permittee deepens or stimulates a well after the initial potential flow test and gas/oil ratio test have been conducted, when determined to be necessary by the permittee or when requested by the Board, the permittee shall conduct another potential flow test and gas/oil ratio test and, within 30 days after completing the test, file the results, in writing, with the Director.

3. A back-flow method of determining open flow shall be used, such as provided for in the Interstate Oil Compact Commission, "Manual of Back-Pressure Testing of Gas Wells," 1979. However, when a back-flow method is believed not to be feasible, the permittee shall obtain prior approval from the Director, and test the well in accordance with, an alternate method approved by the Director that does not entail excessive physical waste of gas.

G. Testing of coalbed methane gas wells.

1. If a permittee cannot test the potential flow of a coalbed methane gas well by a back-flow method or complete the test within the time period required in subdivision B.1 of this section, the permittee may request approval from the Director to perform a coalbed methane gas production test. Such a test shall only be made when the water production and the gas flow rates are stabilized for a period of not less than 10 days prior to the test. The test shall be conducted for a minimum of 24 hours in the manner approved by the Director. The permittee shall file the test results, in writing, with the Director. The Director shall hold the test results confidential in accordance with § 45.1-361.6 of the Code of Virginia.

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D. The Board may, by order and after notice and hearing, require a permittee to complete other tests on any well.

§ 21. Allowable Production.

A. The Board, on its own motion, on motion from the Director or on motion from any gas or oil owner, and after notice and hearing, may establish the maximum allowable production rate for any well or number of wells in a pool. The setting of maximum allowable production rates shall be only for the purpose of preventing waste and protecting correlative rights, and not for prorationing production between pools or geographic areas of the Commonwealth. However, no maximum allowable production rate shall be set for a coalbed methane gas well.

B. Proration of gas-lift wells.

1. No flowing or gas-lift oil well may produce with an excessive gas/oil ratio except with prior approval of the Board. Oil wells that are gas-lifted with gas from gas wells shall be prorated in the same manner as high-ratio, naturally flowing oil wells. The gas/oil ratio, for oil wells that are gas-lifted with gas from gas wells, is defined as the total gas output less the total gas input divided by the number of barrels of oil produced. The uneconomic or unreasonable use of gas for gas-lift is prohibited.

§ 22. Enhanced Recovery.

The Board may, upon application, notice and hearing, authorize enhanced recovery projects on a case-by-case basis. No enhanced recovery project shall be authorized unless at least 51 percent of all of the gas or oil interests in the area to be covered by the proposed enhanced recovery project consent to the project. The Board may, on a case-by-case basis,

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establish a minimum percentage greater than 51 percent for any area of the Commonwealth.

§ 23. Underground Storage of Natural Gas.

No person may conduct any operation involving storage of natural gas in an underground gas storage field until the Board has adopted an order governing the underground gas storage field.