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**HOUSE BILL NO. 2854**

Offered January 19, 2001

*A BILL to amend and reenact §§ 45.1-361.11, 45.1-361.12, 45.1-361.21 and 45.1-361.29 of the Code of Virginia and amend the Code of Virginia by adding in Chapter 22.1 of Title 45.1 an article numbered 3.1, consisting of sections numbered 45.1-361.42:1, 45.1-361.42:2 and 45.1-361.42:3, relating to the Virginia Gas and Oil Act; coalbed methane gas wells.*

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 Patron—Stump
 

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Referred to Committee on Mining and Mineral Resources

**Be it enacted by the General Assembly of Virginia:**

**1. That §§ 45.1-361.11, 45.1-361.12, 45.1-361.21 and 45.1-361.29 of the Code of Virginia is amended and reenacted, and that the Code of Virginia is amended by adding in Chapter 22.1 of Title 45.1 an article numbered 3.1, consisting of sections numbered 45.1-361.42:1, 45.1-361.42:2 and 45.1-361.42:3, as follows:**

§ 45.1-361.11. Objections by coal owner.

A. In deciding on objections by a coal owner to a proposed permit modification or drilling unit modification, only the following questions shall be considered:

1. Whether the work can be done safely with respect to persons engaged in coal mining at or near the well site; and

2. Whether the well work is an unreasonable or arbitrary exercise of the well operator's right to explore for, market and produce oil and gas.

B. In deciding on objections by a coal owner to the establishment of a drilling unit, a permit for a new well, or the stimulation of a coalbed methane gas well, the following safety aspects shall first be considered, and no order or permit shall be issued where the evidence indicates that the proposed activities will be unsafe:

1. Whether the drilling unit or drilling location is above or in close proximity to any mine opening or shaft, entry, travelway, airway, haulageway, drainageway or passageway, or to any proposed extension thereof, in any operated or abandoned or operating coal mine, or in any coal mine already surveyed and platted but not yet being operated;

2. Whether the proposed drilling can reasonably be done through an existing or planned pillar of coal, or in close proximity to an existing well or such pillar of coal, taking into consideration the surface topography;

3. Whether the proposed well can be drilled safely or the proposed coalbed methane gas well can be stimulated safely, taking into consideration the dangers from creeps, squeezes or other disturbances due to the extraction of coal; and

4. The extent to which the proposed drilling unit or drilling location or stimulation of the coalbed methane gas well unreasonably interferes with the safe recovery of coal, oil and gas.

C. The following questions with respect to the drilling unit or drilling location of a new well or stimulation of a new coalbed methane gas well shall also be considered:

1. The extent to which the proposed drilling unit or drilling location or coalbed methane gas well stimulation will unreasonably interfere with present or future coal mining operations;

2. The feasibility of moving the proposed drilling unit or drilling location to a mined-out area, below the coal outcrop or to some other area;

3. The feasibility of a drilling moratorium for not more than two years in order to permit the completion of coal mining operations;

4. The method proposed for the recovery of coal and gas;

5. The practicality of locating the unit or the well on a uniform pattern with other units or wells;

6. The surface topography and use; and

7. Whether the decision will substantially affect the right of the gas operator to explore for and produce the gas.

The factors in *this* subsection ~~€ of this section~~ are not intended to and shall not be construed to authorize the Director, or the Board under § 45.1-361.36, to supersede, impair, abridge or affect any contractual rights or obligations now or hereafter existing between the respective owners of coal and gas or any interest therein.

D. In addition to raising the objections set forth in this section and § 45.1-361.12, a coal operator may require a coalbed methane gas well operator to relocate a coalbed methane gas well to an alternate location within the same drilling unit and leasehold interest of the coalbed methane gas well

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HB2854

59 operator. If another affected coal owner objects to the alternate location, such objection shall be filed  
60 with the Board in accordance the provisions of § 45.1-361.35.

61 § 45.1-361.12. Distance limitations of certain wells.

62 A. If the well operator and the objecting coal owners present or represented at the hearing to  
63 consider the objections to the proposed drilling unit or location are unable to agree upon a new drilling  
64 unit or location for a new well within 2,500 linear feet of the location of an existing well or a well for  
65 which a permit application is on file, then the permit or drilling unit shall be refused unless the Board  
66 determines after a hearing held pursuant to § 45.1-361.35 that the alternate location proposed by the  
67 coal operator pursuant to subsection D of § 45.1-361.11 does not unreasonably interfere with the safe  
68 recovery of coal, oil and gas.

69 B. The minimum distance limitations established by this section shall not apply if the proposed well  
70 will be drilled through an existing or planned pillar of coal required for protection of a preexisting well  
71 drilled to any depth, and the proposed well will neither require enlargement of the pillar nor otherwise  
72 have an adverse effect on existing or planned coal mining operations.

73 § 45.1-361.21. Pooling of interests in drilling units.

74 A. The Board, upon application from any gas or oil owner, shall enter an order pooling all interests  
75 in the drilling unit for the development and operation thereof when:

76 1. Two or more separately owned tracts are embraced in a drilling unit;

77 2. There are separately owned interests in all or part of any such drilling unit and those having  
78 interests have not agreed to pool their interests; or

79 3. There are separately owned tracts embraced within the minimum statewide spacing requirements  
80 prescribed in § 45.1-361.17.

81 However, no pooling order shall be entered until the notice and hearing requirements of this article  
82 have been satisfied.

83 B. Subject to any contrary provision contained in a gas or oil lease respecting the property, gas or oil  
84 operations incident to the drilling of a well on any portion of a unit covered by a pooling order shall be  
85 deemed to be the conduct of such operations on each tract in the unit. The portion of production  
86 allocated to any tract covered by a pooling order shall be in the same proportion as the acreage of that  
87 tract bears to the total acreage of the unit.

88 C. All pooling orders entered by the Board pursuant to the provisions of this section shall:

89 1. Authorize the drilling and operation of a well, including the stimulation of all coal seams in the  
90 case of a coalbed methane well when authorized pursuant to clause (iii) of subdivision 2. b. of  
91 subsection F of § 45.1-361.29 or § 45.1-361.42:1, subject to the permit provisions contained in Article 3  
92 (§ 45.1-361.27 et seq.) of this chapter;

93 2. Include the time and date when such order expires;

94 3. Designate the gas or oil owner who is authorized to drill and operate the well; provided, however,  
95 that except in the case of coalbed methane gas wells, the designated operators must have the right to  
96 conduct operations or have the written consent of owners with the right to conduct operations on at least  
97 twenty-five percent of the acreage included in the unit;

98 4. Prescribe the conditions under which gas or oil owners may become participating operators or  
99 exercise their rights of election under subdivision 7 of this subsection;

100 5. Establish the sharing of all reasonable costs, including a reasonable supervision fee, between  
101 participating operators so that each participating operator pays the same percentage of such costs as his  
102 acreage bears to the total unit acreage;

103 6. Require that nonleasing gas or oil owners be provided with reasonable access to unit records  
104 submitted to the Director or Inspector;

105 7. Establish a procedure for a gas or oil owner who received notice of the hearing and who does not  
106 decide to become a participating operator may elect either to (i) sell or lease his gas or oil ownership to  
107 a participating operator, (ii) enter into a voluntary agreement to share in the operation of the well at a  
108 rate of payment mutually agreed to by the gas or oil owner and the gas or oil operator authorized to  
109 drill the well, or (iii) share in the operation of the well as a nonparticipating operator on a carried basis  
110 after the proceeds allocable to his share equal the following:

111 a. In the case of a leased tract, 300 percent of the share of such costs allocable to his interest; or

112 b. In the case of an unleased tract, 200 percent of the share of such costs allocable to his interest.

113 D. Any gas or oil owner whose identity and location remain unknown at the conclusion of a hearing  
114 concerning the establishment of a pooling order for which public notice was given shall be deemed to  
115 have elected to lease his interest to the gas or oil operator at a rate to be established by the Board. The  
116 Board shall cause to be established an escrow account into which the unknown lessor's share of  
117 proceeds shall be paid and held for his benefit. Such escrowed proceeds shall be deemed to be  
118 unclaimed property and shall be disposed of pursuant to the provisions of the Uniform Disposition of  
119 Unclaimed Property Act (§ 55-210.1 et seq.).

120 E. Any person who does not make an election under the pooling order shall be deemed to have

leased his gas or oil interest to the gas or oil well operator as the pooling order may provide.

F. Should a gas or oil owner be a person under a disability, the applicant for a pooling order may petition the appropriate circuit court to appoint a guardian ad litem pursuant to the provisions of § 8.01-261 for purposes of making the election provided for by this section.

G. Any royalty or overriding royalty reserved in any lease which is deducted from a nonparticipating operator's share of production shall not be subject to charges for operating costs but shall be separately calculated and paid to the royalty owner.

H. The Board shall resolve all disputes arising among gas or oil operators regarding the amount and reasonableness of well operation costs. The Board shall, by regulation, establish allowable types of costs ~~which~~*that* may be shared in pooled gas or oil operations.

§ 45.1-361.29. Permit required; gas, oil, or geophysical operations; coalbed methane gas wells; environmental assessment.

A. No person shall commence any ground disturbing activity for a well, gathering pipeline, geophysical exploration or associated activity, facilities or structures without first having obtained from the Director a permit to conduct such activity. Every permit application or permit modification application filed with the Director shall be verified by the permit applicant and shall contain all data, maps, plats, plans and other information as required by regulation or the Director.

B. For permits issued on July 1, 1996, or thereafter, new permits issued by the Director shall be issued only for the following activities: geophysical operations, drilling, casing, equipping, stimulating, producing, reworking initially productive zones and plugging a well, or gathering pipeline construction and operation. Applications for new permits to conduct geophysical operations shall be accompanied by an application fee of \$100. Applications for all other new permits shall be accompanied by an application fee of \$200.

C. For permits issued prior to July 1, 1996, prior to commencing any reworking, deepening or plugging of the well, or other activity not previously approved on the permitted site, a permittee shall first obtain a permit modification from the Director. All applications for permit modifications shall be accompanied by a permit modification fee of \$100. For permits issued on July 1, 1996, or thereafter, prior to commencing any new zone completions a permittee shall first obtain a permit modification from the Director.

D. All permits and operations provided for under this section shall conform to the rules, regulations and orders of the Director and the Board. When permit terms or conditions required or provided for under Article 3 (§ 45.1-361.27 et seq.) of this chapter are in conflict with any provision of a conservation order issued pursuant to the provisions of Article 2 (§ 45.1-361.13 et seq.) of this chapter, the terms of the permit shall control. In this event, the operator shall return to the Board for reconsideration of a conservation order in light of the conflicting permit. Every permittee shall be responsible for all operations, activity or disturbances associated with the permitted site.

E. No permit or permit modification shall be issued by the Director until he has received from the applicant a written certification that (i) all notice requirements of this article have been complied with, together with proof thereof, and (ii) the applicant has the right to conduct the operations as set forth in the application and operations plan.

F. A permit shall be required to drill any coalbed methane gas well or to convert any methane drainage borehole into a coalbed methane gas well. In addition to the other requirements of this section, every permit application for a coalbed methane gas well shall include:

1. The method that the coalbed methane gas well operator will use to stimulate the well.

2. a. A signed consent from the coal operator of each coal seam ~~which~~*that* is located within 750 horizontal feet of the proposed well location (i) ~~which~~*that* the applicant proposes to stimulate or (ii) ~~which~~*that* is within 100 vertical feet above or below a coal bearing stratum which the applicant proposes to stimulate.

b. The consent required by this section may be (i) contained in a lease or other such agreement; (ii) contained in an instrument of title; or (iii) in any case where a coal operator cannot be located or identified and the operator has complied with § 45.1-361.19, provided by a pooling order entered pursuant to § 45.1-361.21 or § 45.1-361.22 and provided such order contains a finding that the operator has exercised due diligence in attempting to identify and locate the coal operator. The consent required by this section shall be deemed to be granted (a) for any tract where title to the coal is held by multiple owners if the applicant has obtained consent to stimulate from the co-tenants holding majority interest in the tract and none of the coal co-tenants has leased the tract for coal development, or (b) *when the requirements of subsection C of § 45.1-361.42:1 have been satisfied*. The requirement of signed consent contained in this section shall in no way be considered to impair, abridge or affect any contractual rights or objections arising out of a coalbed methane gas contract or coalbed methane gas lease entered into prior to January 1, 1990, between the applicant and any coal operator, and any extensions or renewals thereto, and the existence of such lease or contractual arrangement and any extensions or renewals

thereto shall constitute a waiver of the requirement for the applicant to file an additional signed consent.

3. The unit map, if any, approved by the Board.

G. No permit required by this chapter for activities to be conducted within an area of Tidewater Virginia where drilling is authorized under subsection B of § 62.1-195.1 shall be granted until the environmental impact assessment required by § 62.1-195.1 has been conducted and the assessment has been reviewed by the Department.

H. The operator of any coalbed methane well drilled within 250 feet of a cemetery shall comply with a written request of any person owning an interest in a private cemetery or the authorized agent of a public cemetery that the operator of such well suspend operations for a period from two hours before to two hours after any burial service that takes place on the surface area of such cemetery. However, if the well operator or a mine operator determines that suspension of such operations will have an adverse effect on the safety of the well operations or mining operations, the operator shall be under no obligation to comply with the request, and operation of the well shall continue.

#### *Article 3.1.*

##### *Coalbed Methane Gas Wells.*

###### *§ 45.1-361.42:1. Stimulation of coal seams.*

A. The provisions of this article shall supersede conflicting provisions of this chapter relating to the issuance of permits for the operation of coalbed methane gas wells.

B. If the coal owner and the coalbed methane gas well operator agree on the posting of cash or a bond as a condition of the stimulation of a coal seam, the coalbed methane gas well operator shall post cash or a surety bond prior to the operation of a coalbed methane gas well in an amount agreed to by the coalbed methane gas well operator and the coal owner for any damage from stimulation of the coal seam. Such bond shall be held by the Department and shall be made payable to the coal owner. The terms of the bond shall include the mechanism by which the bond is to be released and shall become part of the bonding instrument for permitting purposes. No permit shall be issued before the posting of such cash or bond.

C. If the coalbed methane gas well operator and the coal owners do not agree on the stimulation of a coal seam, the coalbed methane gas well operator may apply for a permit to stimulate the coal seam if the coalbed methane gas well operator provides to the Department certification that (i) its leasehold interest includes at least seventy-five percent of the coalbed methane gas interest leased or (ii) the coalbed methane gas well operator has obtained the consent from a coal owner owning a majority of the coal interest in the tract or, if title to the coal in the tract is held by multiple owners, the coalbed methane gas well operator has obtained consent to stimulate from the coal owners holding a majority interest in the tract.

D. In seeking the coal owners' consent for the purposes of this section, a coalbed methane gas well operator shall provide the coal owner with necessary information about such stimulation, including relevant information to ensure compliance with coal mine safety laws and regulations.

E. The provisions of this article shall not apply to any coalbed methane gas well for which an application has been filed prior to July 1, 2001.

###### *§ 45.1-361.42:2. Dispute resolution.*

A. If the coalbed methane gas well operator and the coal owners are unable to agree on any matter provided for in this article including, but not limited to, an appropriate amount of cash or surety bond to be posted by the coalbed methane gas well operator, the matter shall be submitted to a panel of three arbitrators. Within fifteen days from the time the matter is submitted to arbitration, the coalbed methane gas well operator and the coal owners shall each select one arbitrator and the Department shall appoint a third arbitrator who shall be a certified arbitrator. The coalbed methane gas well operator and the coal owners shall provide all information related to their claim to the panel. The decision of the arbitrators shall be rendered within sixty days from the time the matter is submitted to arbitration unless the Department, for good cause shown, allows for an extension of time not to exceed fifteen days, or unless the parties agree to an extension of time. All of the costs of the arbitration shall be paid one-half by the coalbed methane gas well operator and one-half by the coal owners.

B. The complete record of the arbitration proceedings shall become the property of the Department and shall be held confidential until the release of the bond.

C. The decision of the arbitration panel shall be final and binding on all parties.

###### *§ 45.1-361.42:3. Information to be supplied to the Department.*

In addition to the information required to be submitted pursuant to the provisions of § 45.1-361.42:2, coal owners and coalbed methane gas well operators who agree on the posting of a bond pursuant to § 45.1-361.42:1 or submit a dispute to the arbitration panel pursuant to § 45.1-361.42:2 shall provide the following information to the Department:

1. Engineering details of the stimulation, including, but not limited to, the design of the stimulation, the length of the fracturing, the amount of pressure and stimulants used, and copies of any logs run;

2. The name, location and depth of coal seams impacted by the stimulation;

- 244       3. *Production information on gas and water at the coalbed methane gas well;*  
245       4. *Notice of fracturing time and the time when the coal company will be mining through so that the*  
246       *Department may monitor the fracturing; and*  
247       5. *Any other information the Department may request.*  
248       **2. That the provisions of this act shall expire on July 1, 2003.**  
249       **3. That the Department of Mines, Minerals and Energy shall evaluate the effectiveness of the**  
250       **provisions of this act and shall submit a written report of its findings by December 1, 2002, to the**  
251       **chairmen of House Committee on Mining and Mineral Resources and the Senate Committee on**  
252       **Agriculture, Conservation and Natural Resources.**

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