

# VIRGINIA ACTS OF ASSEMBLY -- 2006 SESSION

## CHAPTER 498

*An Act to amend and reenact §§ 45.1-361.21 and 45.1-361.22 of the Code of Virginia, relating to interests of conflicting claimants in coalbed methane well-pooling orders.*

[S 513]

Approved March 31, 2006

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

**1. That §§ 45.1-361.21 and 45.1-361.22 of the Code of Virginia are amended and reenacted as follows:**

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

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

1. Two or more separately owned tracts are embraced in a drilling unit;
2. There are separately owned interests in all or part of any such drilling unit and those having interests have not agreed to pool their interests; or
3. There are separately owned tracts embraced within the minimum statewide spacing requirements prescribed in § 45.1-361.17.

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

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

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

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

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

3. Designate the gas or oil owner who is authorized to drill and operate the well; provided, however, that except in the case of coalbed methane gas wells, the designated operators must have the right to conduct operations or have the written consent of owners with the right to conduct operations on at least ~~twenty five percent~~ 25% of the acreage included in the unit;

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

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

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

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

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

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

D. Any gas or oil owner whose identity and location remain unknown at the conclusion of a hearing concerning the establishment of a pooling order for which public notice was given shall be deemed to have elected to lease his interest to the gas or oil operator at a rate to be established by the Board. The Board shall cause to be established an escrow account into which the unknown lessor's share of proceeds shall be paid and held for his benefit. Such escrowed proceeds shall be deemed to be unclaimed property and shall be disposed of pursuant to the provisions of the Uniform Disposition of Unclaimed Property Act (§ 55-210.1 et seq.). *Upon discovery of the identity and location of any unknown owner subject to escrow under the provisions of this subsection and not subject to conflicting claims of ownership, the designated operator shall, within 30 days, file with the Board a petition for disbursement of funds to be considered at the next available hearing. The petition shall include a*

*detailed accounting of all funds deposited in escrow that are subject to the proposed disbursement.*

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 may be shared in pooled gas or oil operations.

§ 45.1-361.22. Pooling of interests for coalbed methane gas wells; conflicting claims to ownership.

When there are conflicting claims to the ownership of coalbed methane gas, the Board, upon application from any claimant, shall enter an order pooling all interests or estates in the coalbed methane gas drilling unit for the development and operation thereof. In addition to the provisions of § 45.1-361.21, the following provisions shall apply:

1. Simultaneously with the filing of such application, the gas or oil owner applying for the order shall provide notice pursuant to the provisions of § 45.1-361.19 to each person identified by the applicant as a potential owner of an interest in the coalbed methane gas underlying the tract which is the subject of the hearing.

2. The Board shall cause to be established an escrow account into which the payment for costs or proceeds attributable to the conflicting interests shall be deposited and held for the interest of the claimants.

3. The coalbed methane gas well operator shall deposit into the escrow account any money paid by a person claiming a contested ownership interest as a participating operator's share of costs pursuant to the provisions of § 45.1-361.21 and the order of the Board.

4. The coalbed methane gas well operator shall deposit into the escrow account one-eighth of all proceeds attributable to the conflicting interests plus all proceeds in excess of ongoing operational expenses as provided for under § 45.1-361.21 and the order of the Board attributable to a participating or nonparticipating operator.

5. The Board shall order payment of principal and accrued interest, less escrow account fees, from the escrow account to conflicting claimants ~~within thirty days of receipt of notification of~~ *only after* (i) a final decision of a court of competent jurisdiction adjudicating the ownership of coalbed methane gas as between them or (ii) an agreement among all claimants owning conflicting estates in the tract in question or any undivided interest therein. *Upon receipt of an affidavit from conflicting claimants affirming such decision or agreement, the designated operator shall, within 30 days, file with the Board a petition for disbursement of funds on behalf of the conflicting claimants. The petition shall include a detailed accounting of all funds deposited in escrow that are subject to the proposed disbursement.* The amount to be paid to the conflicting claimants shall be determined based on the percentage of ownership interest of the conflicting claimants as shown in the operator's supplemental filing made part of the pooling order that established the escrow account, the operator's records of deposits attributable to those tracts for which funds are being requested, and the records of the escrow account for the coalbed methane gas drilling unit. *The petition for disbursement shall be placed on the first available Board docket. Funds shall be disbursed within 30 days after the Board decision and receipt by the Department of all documentation required by the Board.* The interests of any cotenants ~~who have not entered into an agreement~~ *that have not been resolved by the agreement or by judicial decision* shall remain in the escrow account.

6. Any person who does not make an election under the pooling order shall be deemed, subject to a final legal determination of ownership, to have leased his gas or oil interest to the coalbed methane gas well operator as the pooling order may provide.