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**HOUSE BILL NO. 1840**

Offered January 14, 2009

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*A BILL to amend and reenact §§ 45.1-361.12, 45.1-361.21, and 45.1-361.29 of the Code of Virginia, relating to the Virginia Gas and Oil Act.*

Patrons—Griffith and Wright

Referred to Committee on Agriculture, Chesapeake and Natural Resources

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

**1. That §§ 45.1-361.12, 45.1-361.21, and 45.1-361.29 of the Code of Virginia are amended and reenacted as follows:**

§ 45.1-361.12. Distance limitations of certain wells.

A. If the well operator and the objecting coal owners present or represented at the hearing to consider the objections to the proposed drilling unit or location are unable to agree upon a drilling unit or location for a new well within 2,500 linear feet of the location of an existing well or a well for which a permit application is on file, then the permit or drilling unit shall be refused.

B. The minimum distance limitations established by this section shall not apply if (i) the proposed well will be drilled through an existing or planned pillar of coal required for protection of a preexisting well drilled to any depth, and the proposed well will neither require enlargement of the pillar nor otherwise have an adverse effect on existing or planned coal mining operations, or (ii) *the proposed drilling application includes a plan for plugging the well in advance of mining that would allow for the mine-through of the well. The provisions of this subsection shall not abrogate any objection a coal owner may otherwise have under this article.*

§ 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 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

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59 a participating operator, (ii) enter into a voluntary agreement to share in the operation of the well at a  
60 rate of payment mutually agreed to by the gas or oil owner and the gas or oil operator authorized to  
61 drill the well, or (iii) share in the operation of the well as a nonparticipating operator on a carried basis  
62 after the proceeds allocable to his share equal the following:

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

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

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

76 E. Any person who does not make an election under the pooling order shall be deemed to have  
77 leased his gas or oil interest to the gas or oil well operator as the pooling order may provide.

78 F. Should a gas or oil owner be a person under a disability, the applicant for a pooling order may  
79 petition the appropriate circuit court to appoint a guardian ad litem pursuant to the provisions of  
80 § 8.01-261 for purposes of making the election provided for by this section.

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

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

87 § 45.1-361.29. Permit required; gas, oil, or geophysical operations; coalbed methane gas wells;  
88 environmental assessment.

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

94 B. For permits issued on July 1, 1996, or thereafter, new permits issued by the Director shall be  
95 issued only for the following activities: geophysical operations, drilling, casing, equipping, stimulating,  
96 producing, reworking initially productive zones and plugging a well, or gathering pipeline construction  
97 and operation. Applications for new permits to conduct geophysical operations shall be accompanied by  
98 an application fee of \$130. Applications for all other new permits shall be accompanied by an  
99 application fee of \$260.

100 C. For permits issued prior to July 1, 1996, prior to commencing any reworking, deepening or  
101 plugging of the well, or other activity not previously approved on the permitted site, a permittee shall  
102 first obtain a permit modification from the Director. All applications for permit modifications shall be  
103 accompanied by a permit modification fee of \$130. For permits issued on July 1, 1996, or thereafter,  
104 prior to commencing any new zone completions a permittee shall first obtain a permit modification from  
105 the Director.

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

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

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

120 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~~ For each coal seam which is located within 750 horizontal feet of the proposed well location (i) which the applicant proposes to stimulate or (ii) which is within 100 vertical feet above or below a coal bearing stratum which the applicant proposes to stimulate *and when the proposed method of stimulation of the coal seam requires an amount of proppant greater than 10,000 pounds per foot of coal in the coal seam, the permit application shall include a notice of stimulation to the coal operator and request that the coal operator execute a signed consent for stimulation. If the coal operator does not grant consent to the stimulation, then the coal operator may object to the application for the reasons listed in subsections B and C of § 45.1-361.11.*

b. *For each coal seam located within 750 horizontal feet of the proposed well location that (i) the applicant proposed to stimulate, or (ii) is within 100 vertical feet above or below a coal bearing stratum that the applicant proposes to stimulate and the proposed method of stimulation of the coal seam requires an amount of proppant equal to or less than 10,000 pounds per foot of coal in the coal seam, then no consent shall be required of the coal operator.*

c. 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 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. 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.

d. *For the purposes of this subsection, "coal operator" means any person who has the right to operate or does operate a coal mine and has applied for all mining and other required permits and licenses required to engage in coal mining within 750 horizontal feet of the proposed well location where the applicant proposes to stimulate.*

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 applicant for a permit for a gathering pipeline, oil or gas well, or coal bed methane well shall identify in the permit application any cemetery, as identified on a U.S.G.S. topographic map or located by routine field review, within 100 feet of the permitted activity.

I. 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.