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SENATE BILL NO. 48

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the Senate Committee on Agriculture, Conservation and Natural Resources
on January 30, 2014)

(Patron Prior to Substitute—Senator Stuart)

A BILL to amend and reenact §§ 45.1-361.29 and 62.1-195.1 of the Code of Virginia, relating to drilling for oil and gas in the Eastern Virginia Ground Water Management Area.

Be it enacted by the General Assembly of Virginia:

1. That §§ 45.1-361.29 and 62.1-195.1 of the Code of Virginia is amended and reenacted as follows:

§ 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 \$130. Applications for all other new permits shall be accompanied by an application fee of \$260.

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 \$130. 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 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.

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 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

60 extensions or renewals thereto shall constitute a waiver of the requirement for the applicant to file an
61 additional signed consent.

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

63 G. No permit required by this chapter for activities to be conducted within an area of Tidewater
64 Virginia *or in the Eastern Virginia Ground Water Management Area established pursuant to the Ground*
65 *Water Management Act (§ 62.1-44.254 et seq.)* where drilling is authorized under subsection B of
66 § 62.1-195.1 shall be granted ~~until the environmental impact assessment required by § 62.1-195.1 has~~
67 ~~been conducted and the assessment has been reviewed by the Department, except in accordance with the~~
68 ~~provisions of § 62.1-195.1.~~

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

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

79 **§ 62.1-195.1. Chesapeake Bay; drilling for oil or gas prohibited.**

80 A. Notwithstanding any other law, a person shall not drill for oil or gas in the waters of the
81 Chesapeake Bay or any of its tributaries. In Tidewater Virginia, as defined in § 62.1-44.15:68, a person
82 shall not drill for oil or gas in, whichever is the greater distance, as measured landward of the shoreline:

83 1. Those Chesapeake Bay Preservation Areas, as defined in § 62.1-44.15:68, which a local
84 government designates as "Resource Protection Areas" and incorporates into its local comprehensive
85 plan. "Resource Protection Areas" shall be defined according to the criteria developed by the State
86 Water Control Board pursuant to § 62.1-44.15:72; or

87 2. Five hundred feet from the shoreline of the waters of the Chesapeake Bay or any of its tributaries.

88 B. In the event that any person desires to drill for oil or gas in any area of Tidewater Virginia where
89 drilling is not prohibited by the provisions of subsection A *or in the Eastern Virginia Ground Water*
90 *Management Area established pursuant to the Ground Water Management Act (§ 62.1-44.254 et seq.)*,
91 he shall submit to the Department of Mines, Minerals and Energy as part of his application for permit to
92 drill an environmental impact assessment. The environmental impact assessment shall include:

93 1. The probabilities and consequences of accidental discharge of oil or gas into the environment
94 during drilling, production, and transportation on:

- 95 a. Finfish, shellfish, and other marine or freshwater organisms;
- 96 b. Birds and other wildlife that use the air and water resources;
- 97 c. Air ~~and water~~ quality; ~~and~~
- 98 d. Land and water resources;
- 99 e. *Surface water quality and ground water quality; and*
- 100 f. *Surface water and ground water supplies;*

101 2. *The results of pre-drilling sampling of ambient ground water quality and the drinking water well*
102 *quality, within 4,000 feet of any proposed exploratory or production well;*

103 3. Recommendations for minimizing any adverse economic, fiscal, or environmental impacts; and

104 ~~3-~~ 4. An examination of the secondary environmental effects of induced economic development due
105 to the drilling and production.

106 C. Upon receipt of an environmental impact assessment, the Department of Mines, Minerals and
107 Energy shall notify the Department of Environmental Quality to coordinate a review of the
108 environmental impact assessment. The Department of Environmental Quality shall:

109 1. Publish in the Virginia Register of Regulations a notice sufficient to identify the environmental
110 impact assessment and providing an opportunity for public review of and comment on the assessment.
111 The period for public review and comment shall not be less than 30 days from the date of publication;

112 2. Submit the environmental impact assessment to all appropriate state agencies to review the
113 assessment and submit their comments to the Department of Environmental Quality; and

114 3. Based upon the review by all appropriate state agencies and the public comments received, submit
115 findings and recommendations to the Department of Mines, Minerals and Energy, within 90 days after
116 notification and receipt of the environmental impact assessment from the Department.

117 D. The Department of Mines, Minerals and Energy may ~~not~~ grant a permit under § 45.1-361.29 ~~until~~
118 ~~it has considered~~ *for activities in Tidewater Virginia or in the Eastern Virginia Ground Water*
119 *Management Area established pursuant to the Ground Water Management Act (§ 62.1-44.254 et seq.)*
120 *only if such permit incorporates* the findings and recommendations of the Department of Environmental
121 Quality.

E. The Department of Environmental Quality shall, in conjunction with other state agencies and in conformance with the Administrative Process Act (§ 2.2-4000 et seq.), develop *regulations setting forth* criteria and procedures to assure the orderly preparation and evaluation of environmental impact assessments required by this section.

F. A person may drill an exploratory well or a gas well in any area of Tidewater Virginia where drilling is not prohibited by the provisions of subsection A *or in the Eastern Virginia Ground Water Management area established pursuant to the Ground Water Management Act (§ 62.1-44.254 et seq.)* only if:

1. For directional drilling, the person has the permission of the owners of all lands to be directionally drilled into;

2. The person files an oil discharge contingency plan and proof of financial responsibility to implement the plan, both of which have been filed with and approved by the State Water Control Board. For purposes of this section, the oil discharge contingency plan shall comply with the requirements set forth in § 62.1-44.34:15. The Board's regulations governing the amount of any financial responsibility required shall take into account the type of operation, location of the well, the risk of discharge or accidental release, the potential damage or injury to state waters or sensitive natural resource features or the impairment of their beneficial use that may result from discharge or release, the potential cost of containment and cleanup, and the nature and degree of injury or interference with general health, welfare and property that may result from discharge or accidental release;

3. All land-disturbing activities resulting from the construction and operation of the permanent facilities necessary to implement the contingency plan and the area within the berm will be located outside of those areas described in subsection A;

4. The drilling site is stabilized with boards or gravel or other materials which will result in minimal amounts of runoff;

5. Persons certified in blowout prevention are present at all times during drilling;

6. Conductor pipe is set as necessary from the surface;

7. Casing is set and pressure grouted from the surface to a point at least 2500 feet below the surface or 300 feet below the deepest known ground water, as defined in § 62.1-255, for a beneficial use, as defined in § 62.1-10, whichever is deeper;

8. Freshwater-based drilling mud is used during drilling;

9. There is no onsite disposal of drilling muds, produced contaminated fluids, waste contaminated fluids or other contaminated fluids;

10. Multiple blow-out preventers are employed; and

11. The person complies with all requirements of Chapter 22.1 (§ 45.1-361.1 et seq.) of Title 45.1 and regulations promulgated thereunder.

G. The provisions of subsection A and subdivisions F 1 and 4 through 9 shall be enforced consistent with the requirements of Chapter 22.1 (§ 45.1-361.1 et seq.) of Title 45.1.

H. In the event that exploration activities in Tidewater Virginia *or in the Eastern Virginia Ground Water Management Area established pursuant to the Ground Water Management Act (§ 62.1-44.254 et seq.)* result in a finding by the Director of the Department of Mines, Minerals and Energy that production of commercially recoverable quantities of oil is likely and imminent, the Director of the Department of Mines, Minerals and Energy shall notify the Secretary of Commerce and Trade and the Secretary of Natural Resources. At that time, the Secretaries shall develop a joint report to the Governor and the General Assembly assessing the environmental risks and safeguards; transportation issues; state-of-the-art oil production well technology; economic impacts; regulatory initiatives; operational standards; and other matters related to the production of oil in the region. No permits for oil production wells shall be issued until (i) the Governor has had an opportunity to review the report and make recommendations, in the public interest, for legislative and regulatory changes, (ii) the General Assembly, during the next upcoming regular session, has acted on the Governor's recommendations or on its own initiatives, and (iii) any resulting legislation has become effective. The report by the Secretaries and the Governor's recommendations shall be completed within 18 months of the findings of the Director of the Department of Mines, Minerals and Energy.

2. That no application for a permit for drilling for oil or gas in Tidewater Virginia and the Eastern Virginia Ground Water Management Area established pursuant to the Ground Water Management Act (§ 62.1-44.254 et seq.) under § 45.1-361.29 of the Code of Virginia where drilling is not prohibited by § 62.1-195.1 of the Code of Virginia shall be considered complete until the Department of Environmental Quality notifies the Department of Mines, Minerals and Energy that State Water Control Board regulations governing surface water and groundwater quality and surface water and groundwater quantity in Tidewater Virginia and the Eastern Virginia Ground Water management Area have been reviewed and amendments deemed necessary to protect state waters have become effective. The specific regulations to be reviewed include, but are not limited

183 to, Water Quality Standards (9VAC25-260, surface water), Ground Water Standards
184 (9VAC25-280), Virginia Pollutant Discharge Elimination System Permit Program (9VAC25-31,
185 point source discharges), Virginia Pollution Abatement Permit Program (9VAC25-32, other
186 pollutant management activities), Virginia Water Protection Permit Program Regulation
187 (9VAC25-210, surface water withdrawals) and Ground Water Withdrawal Regulations
188 (9VAC25-610). The review of the State Water Control Board regulations shall be completed no
189 later than December 1, 2014 and the Department of Environmental Quality shall notify the
190 Department of Mines, Minerals and Energy of the results of the review. The State Water Control
191 Board shall use best efforts to adopt any necessary amendments to the regulations identified
192 herein by July 1, 2016, and the Department of Environmental Quality shall use best efforts to
193 adopt any necessary regulations or amendments thereto relating to the criteria and procedures for
194 preparation and evaluation of the environmental impact assessments required by subsection E of
195 § 62.1-195.1 of the Code of Virginia, as amended by this act, by October 1, 2015.