

VIRGINIA ACTS OF ASSEMBLY -- 1994 SESSION

CHAPTER 957

An Act to amend and reenact §§ 45.1-361.29 and 62.1-195.1 of the Code of Virginia, relating to oil and gas drilling.

[H 444]

Approved May 20, 1994

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 are 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. New permits issued by the Director shall be issued only for the following activities: geophysical operations, drilling, casing, equipping, stimulating and producing 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. 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.

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 signed consent (which may be contained in a lease or other such agreement or instrument of title) 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. 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 *C* 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.

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

A. Notwithstanding any other law, a person shall not drill for oil or gas in the waters of the Chesapeake Bay or any of its tributaries. In Tidewater Virginia, as defined in § 10.1-2101, a person shall not drill for oil or gas in, whichever is the greater distance, as measured landward of the shoreline:

1. Those Chesapeake Bay Preservation Areas, as defined in § 10.1-2101, which a local government

designates as "Resource Protection Areas" and incorporates into its local comprehensive plan. "Resource Protection Areas" shall be defined according to the criteria developed by the Chesapeake Bay Local Assistance Board pursuant to § 10.1-2107; or

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

~~B. Notwithstanding any other law, a person shall not drill an oil well or produce from an oil well in Tidewater Virginia as defined in § 10.1-2101. The provisions of this subsection shall expire on July 1, 1994.~~

~~C. B.~~ In the event that any person desires to drill for *oil or* gas in any area of Tidewater Virginia where drilling is not prohibited by the provisions of subsection A of this section, he shall submit to the Department of Mines, Minerals and Energy as part of his application for permit to drill an environmental impact assessment. The environmental impact assessment shall include:

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

- a. Finfish, shellfish, and other marine or freshwater organisms;
- b. Birds and other wildlife that use the air and water resources;
- c. Air and water quality; and
- d. Land and water resources;

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

3. An examination of the secondary environmental effects of induced economic development due to the drilling and production.

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

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

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

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

~~E. D.~~ The Department of Mines, Minerals and Energy may not grant a permit under § 45.1-361.29 until it has considered the findings and recommendations of the Department of Environmental Quality.

~~F. E.~~ The Department of Environmental Quality shall, in conjunction with other state agencies and in conformance with the Administrative Process Act (§ 9-6.14:1 et seq.), develop criteria and procedures to assure the orderly preparation and evaluation of environmental impact assessments required by this section.

~~G. 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 of this section 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 of this section;

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 groundwater, 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.

~~H.~~ G. The provisions of subsection A and subdivisions 1 and 4 through 9 of subsection ~~G~~ F of this section 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 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 eighteen months of the findings of the Director of the Department of Mines, Minerals and Energy.