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SENATE BILL NO. 476

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the House Committee on Mining and Mineral Resources
on February 28, 1996)

(Patron Prior to Substitute—Senator Wampler)

A BILL to amend and reenact §§ 45.1-361.17, 45.1-361.21, 45.1-361.29, 45.1-361.30, 45.1-361.33 and 45.1-361.35 of the Code of Virginia, relating to the Gas and Oil Act.

Be it enacted by the General Assembly of Virginia:

1. That §§ 45.1-361.17, 45.1-361.21, 45.1-361.29, 45.1-361.30, 45.1-361.33 and 45.1-361.35 of the Code of Virginia are amended and reenacted as follows:

§ 45.1-361.17. Statewide spacing of wells.

A. Unless prior approval has been received from the Board or a provision of the field or pool rules so allows:

1. Wells drilled in search of oil shall not be located closer than 1,320 feet to any well completed in the same pool;

2. Wells drilled in search of gas shall not be located closer than ~~2,640~~ 2,500 feet to any other well completed in the same pool; and

3. A well shall not be drilled closer to the boundary of the acreage supporting the well, whether such acreage is a single leasehold or other tract or a contractual or statutory drilling unit, than one-half of the minimum well spacing distances prescribed in this section.

B. Unless prior approval has been received from the Board or a provision of the field or pool rules so allows:

1. Wells drilled in search of coalbed methane gas shall not be located closer than 1,000 feet to any other coalbed methane gas well, or in the case of coalbed methane gas wells located in the gob, such wells shall not be located closer than 500 feet to any other coalbed methane gas wells located in the gob.

2. A coalbed methane gas well shall not be drilled closer than 500 feet, or in the case of such well located in the gob, not closer than 250 feet, from the boundary of the acreage supporting the well, whether such acreage is a single leasehold or other tract or a ~~contractual~~ contractual or statutory drilling unit.

3. The spacing limitations set forth in this subsection are subject to the provisions of §§ 45.1-361.11 and 45.1-361.12.

§ 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 2b 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 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.).

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.

FG. 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.

GH. 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.

§ 45.1-361.29. 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~~ 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 and, 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. ~~Prior~~ 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 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 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.

§ 45.1-361.30. Notice of permit applications and permit modification applications required; content.

A. Within one day of the day on which the application for a permit for a gas or oil operation is filed, the applicant shall provide notice of the application to the following persons:

1. All surface owners, coal owners, and mineral owners on the tract to be drilled;

2. Coal operators who have registered operation plans with the Department for activities located on the tract to be drilled;

3. All surface owners on tracts where the surface is to be disturbed;

4. All gas, oil, or royalty owners within one-half of the distance specified in § 45.1-361.17 for that type of well, or within one-half of the distance to the nearest well completed in the same pool, whichever is less, or within the boundaries of a drilling unit established pursuant to the provisions of this chapter;

5. All coal operators who have applied for or obtained a mining or prospecting permit with respect to tracts located within 500 feet of the proposed well location or in the case of a proposed coalbed methane gas well location, within 750 feet thereof; ~~and~~

6. All coal owners or mineral owners on tracts located within 500 feet of the proposed well location or in the case of a proposed coalbed methane gas well location, within 750 feet thereof; *and*

7. *All operators of gas storage fields certificated by the State Corporation Commission as a public utility facility whose certificated area includes the well location, or whose certificated boundary is within 1,250 feet of the proposed well location.*

B. Within one day of the day on which the application for a permit modification for a gas or oil operation is filed, the applicant requesting such permit modification shall provide notice of the application to all persons listed in subsection A of this section who may be directly affected by the proposed activity.

C. Within one day of the day on which the application for a permit for geophysical operations is submitted, the applicant shall provide notice to those persons listed in subdivisions 1, 2 and 3 of subsection A of this section.

D. All notices required to be given pursuant to subsections A, B and C of this section shall contain a statement of the time within which objections may be made and the name and address of the person to whom objections shall be forwarded. Only those persons entitled to notice under subsections A, B, and C of this section shall have standing to object to the issuance of the proposed permit or permit modification for a gas, oil, or geophysical operation as the use may be. *Upon receipt of notice, any person may waive in writing the time and right to object.*

E. Within one day of the day on which the application for a permit is filed, the applicant shall provide notice to (i) the local governing body or chief executive officer of the county, city, or town in which the well is proposed to be located and (ii) the general public, through publication of a notice in at least one newspaper of general circulation which is published in the county, city or town where the well is proposed to be located.

§ 45.1-361.33. Expiration of permits.

183 All permits issued pursuant to this chapter shall expire twenty-four months from their date of
184 issuance unless the permitted activity has commenced within that time period. *An operator may renew*
185 *the existing permit for an additional twenty-four months by submitting a written request containing the*
186 *coal operator's approval and remitting a \$250 renewal fee no later than the expiration date.*

187 § 45.1-361.35. Objections to permits; hearing.

188 A. Objections to new or modification permits may be filed with the Director by those having
189 standing as set out in § 45.1-361.30. Such objections shall be filed within fifteen days of the objecting
190 party's receipt of the notice required by § 45.1-361.30. Persons objecting to a permit must state the
191 reasons for their objections.

192 B. The only objections to permits or permit modifications which may be raised by surface owners
193 are:

- 194 1. The operations plan for soil erosion and sediment control is not adequate or not effective;
- 195 2. Measures in addition to the requirement for a well's water-protection string are necessary to protect
196 fresh water-bearing strata; and
- 197 3. The permitted work will constitute a hazard to the safety of any person.

198 C. The only objections to permits or permit modifications which may be raised by royalty owners are
199 whether the proposed well work:

- 200 1. Directly impinges upon the royalty owner's gas and oil interest; or
- 201 2. Threatens to violate the objecting royalty owner's property or statutory rights aside from his
202 contractual rights; and
- 203 3. Would not adequately prevent the escape of the Commonwealth's gas and oil resources or provide
204 for the accurate measurement of gas and oil production and delivery to the first point to sale.

205 D. Objections to permits or permit modifications may be raised by coal owners or operators pursuant
206 to the provisions of §§ 45.1-361.11 and 45.1-361.12.

207 E. The only objections to permits or permit modifications which may be raised by mineral owners
208 are those which could be raised by a coal owner under § 45.1-361.11 provided the mineral owner makes
209 the objection and affirmatively proves that it does in fact apply with equal force to the mineral in
210 question.

211 F. *The only objections to permits or permit modifications which may be raised by gas storage field*
212 *operators are those in which the gas storage operator affirmatively proves that the proposed well work*
213 *will adversely affect the operation of his State Corporation Commission certificated gas storage field;*
214 *however, nothing in this subsection shall be construed to preclude the owner of nonstorage strata from*
215 *the drilling of wells for the purpose of producing oil or gas from any stratum above or below the*
216 *storage stratum.*

217 G. The Director shall have no jurisdiction to hear objections with respect to any matter subject to the
218 jurisdiction of the Board as set out in Article 2 (§ 45.1-361.13 et seq.) of this chapter. Such objections
219 shall be referred to the Board in a manner prescribed by the Director.

220 G H. The Director shall fix a time and place for an informal fact-finding hearing concerning such
221 objections. The hearing shall not be scheduled for less than twenty nor more than thirty days after the
222 objection is filed. The Director shall prepare a notice of the hearing, stating all objections and by whom
223 made, and send a copy of such notice by certified mail, return receipt requested, at least ten days prior
224 to the hearing date, to the permit applicant and to every person with standing to object as prescribed by
225 § 45.1-361.30.

226 H I. At the hearing, should the parties fail to come to an agreement, the Director shall proceed to
227 decide the objection pursuant to those provisions of the Administrative Process Act (§ 9-6.14:1 et seq.)
228 relating to informal fact-finding procedures.