

# VIRGINIA ACTS OF ASSEMBLY -- 1997 SESSION

## CHAPTER 759

*An Act to amend and reenact §§ 45.1-361.9, 45.1-361.17, 45.1-361.19, 45.1-361.23, and 45.1-361.29 of the Code of Virginia, relating to the Virginia Gas and Oil Act.*

[S 1108]

Approved March 24, 1997

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

**1. That §§ 45.1-361.9, 45.1-361.17, 45.1-361.19, 45.1-361.23, and 45.1-361.29 of the Code of Virginia are amended and reenacted as follows:**

§ 45.1-361.9. Appeals; venue; standing.

A. Any order or decision of the Board may be appealed to the appropriate circuit court. Whenever a coal owner ~~or~~, coal operator, *gas owner, gas operator, or operator of a gas storage field certificated by the State Corporation Commission* is a party in such action, the court shall hear such appeal de novo. The court shall have the power to enter interlocutory orders as may be necessary to protect the rights of all interested parties pending a final decision.

B. Unless the parties otherwise agree, the venue for court review shall be the county or city wherein lies the gas, oil, or geophysical operation which is the subject of such order or decision.

C. The Director and all parties required to be given notice of hearings of the Board pursuant to the provisions of § 45.1-361.19 shall have standing to appeal any order or decision of the Board which directly affects them. The permittee or permit applicant, the Director, and those parties with standing to object, pursuant to the provisions of § 45.1-361.30, shall have standing to appeal any order or decision of the Board which directly affects them; provided, however, with the exception of an aggrieved permit applicant or the Director, no person shall have standing to appeal a decision of the Board concerning a permit application unless such person has previously filed an objection with the Director pursuant to the provisions of § 45.1-361.35. The filing of any petition for appeal concerning the issuance of a new permit which was objected to pursuant to the provisions of § 45.1-361.11 ~~or~~, § 45.1-361.12 *or by a gas storage field operator who asserts that the proposed well work will adversely affect the operation of a State Corporation Commission certificated gas storage field* shall automatically stay the permit until such stay is dissolved or the appeal is decided by the circuit court. *However, in an appeal by a gas storage field operator such automatic stay shall not apply to oil, gas or coalbed methane wells completed more than one hundred feet above the cap rock above the storage stratum.*

§ 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~~ 1,250 feet to any well completed in the same pool; *however, this spacing requirement is subject to § 45.1-361.12;*

2. Wells drilled in search of gas shall not be located closer than 2,500 feet to any other well completed in the same pool, *or closer than 2,500 feet to any storage well within the boundary of a gas storage field certificated by the State Corporation Commission prior to January 1, 1997, if the well to be drilled is to be completed within the same horizon as the certificated gas storage field;* 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 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.

§ 45.1-361.19. Notice of hearing; standing; form of hearing.

A. Any person who applies for a hearing in front of the Board pursuant to the provisions of §§ 45.1-361.20, 45.1-361.21 or § 45.1-361.22 shall simultaneously with the filing of such application, provide notice by certified mail, return receipt requested, to each gas or oil owner, coal owner, or mineral owner having an interest underlying the tract which is the subject of the hearing, *and to the*

*operator of any gas storage field certificated by the State Corporation Commission as a public utility facility whose certificated area includes the tract which is the subject of the hearing.* Whenever a hearing applicant is unable to provide such written notice because the identity or location of a person to whom notice is required to be given is unknown, the hearing applicant shall promptly notify the Board of such inability.

B. Upon receipt of an application for a hearing, the Board shall cause a notice of the hearing to be published in a newspaper of general circulation in the county or city where the land or major portion thereof which is the subject of the hearing is located. Such notice shall be published at least twenty days in advance of the hearing date and shall include, at a minimum, the name of the applicant, a description of the location of the land which is the subject of the hearing, the purpose of the hearing, and the date, time and location thereof.

C. The Board shall conduct all hearings on applications made to it pursuant to the formal litigated issues hearing provisions of the Administrative Process Act (§ 9-6.14:1 et seq.). The applicant and any person to whom notice is required to be given pursuant to the provisions of subsection A of this section shall have standing to be heard at the hearing. The Board shall render its decision on such applications within thirty days of the hearing's closing date and shall provide notification of its decision to all parties to the hearing pursuant to the provisions of the Administrative Process Act.

§ 45.1-361.23. Appeals of the Director's decisions; notices; hearings and orders.

A. With the exception of an aggrieved permit applicant, no person shall have standing to appeal a decision of the Director to the Board concerning a new permit application unless such person has previously filed an objection with the Director pursuant to the provisions of § 45.1-361.35.

B. When a person applies for a hearing to appeal a decision of the Director to the Board, the Board shall, at least twenty days prior to the hearing, give notice by certified mail, return receipt requested, to the person making the appeal and, if different, to the gas or operator subject to the appeal.

C. Upon submittal of the petition for appeal of a decision of the Director to the Board, the Director shall forward to the Board (i) the permit application or order and associated documents, (ii) all required notices, and (iii) the written objections, proposals and claims recorded during the informal fact finding hearing.

D. In any appeal involving a permit of a new well which was objected to pursuant to the provisions of § 45.1-361.11 ~~or~~, § 45.1-361.12, *or by a gas storage field operator who asserts that the proposed well work will adversely affect the operation of a State Corporation Commission certificated gas storage field*, the filing of a petition for appeal shall stay any permit until the case is decided by the Board or the stay is dissolved by a court of record. *However, in an appeal by a gas storage field operator, such automatic stay shall not apply to oil, gas or coalbed methane wells completed more than one hundred feet above the cap rock above the storage stratum.* In all other appeals, the Director may order the permit or other decision stayed for good cause shown until the case is decided by the Board or the stay is dissolved by a court of record. An appeal based on an alleged risk of danger to any person not engaged in the oil and gas operations shall be prima facie proof of good cause for a stay.

E. The Board shall conduct all hearings under this section in accordance with the formal litigated issues hearing provisions of the Administrative Process Act (§ 9-6.14:12 et seq.). However, all persons to whom notice is required to be given pursuant to subsection B of this section shall have standing to be heard at the hearing. The Board shall render its decision on such appeals within thirty days of the hearing's closing date and shall provide notification of its decision to all parties pursuant to the provisions of the Administrative Process Act (§ 9-6.14:1 et seq.).

§ 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 \$100. Applications for all other new permits shall be accompanied by an application fee of \$200.

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 \$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 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.

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.