

1997 SESSION

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SENATE BILL NO. 1108

Senate Amendments in [] — January 29, 1997

A BILL 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.

Patrons—Wampler; Delegate: Cranwell

Referred to the Committee on Agriculture, Conservation and Natural Resources

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 is 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, as certificated by the State Corporation Commission [, 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

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60 §§ 45.1-361.20, 45.1-361.21 or § 45.1-361.22 shall simultaneously with the filing of such application,
61 provide notice by certified mail, return receipt requested, to each gas or oil owner, coal owner, or
62 mineral owner having an interest underlying the tract which is the subject of the hearing, *and to the*
63 *operator of any gas storage field certificated by the State Corporation Commission as a public utility*
64 *facility whose certificated area includes the tract which is the subject of the hearing.* Whenever a
65 hearing applicant is unable to provide such written notice because the identity or location of a person to
66 whom notice is required to be given is unknown, the hearing applicant shall promptly notify the Board
67 of such inability.

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

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

80 § 45.1-361.23. Appeals of the Director's decisions; notices; hearings and orders.

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

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

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

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

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

107 § 45.1-361.29. Permit required; gas, oil, or geophysical operations; coalbed methane gas wells;
108 environmental assessment.

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

114 B. For permits issued on July 1, 1996, or thereafter, new permits issued by the Director shall be
115 issued only for the following activities: geophysical operations, drilling, casing, equipping, stimulating,
116 producing, reworking initially productive zones and plugging a well, or gathering pipeline construction
117 and operation. Applications for new permits to conduct geophysical operations shall be accompanied by
118 an application fee of \$100. Applications for all other new permits shall be accompanied by an
119 application fee of \$200.

120 C. For permits issued prior to July 1, 1996, prior to commencing any reworking, deepening or
121 plugging of the well, or other activity not previously approved on the permitted site, a permittee shall

122 first obtain a permit modification from the Director. All applications for permit modifications shall be
 123 accompanied by a permit modification fee of \$100. For permits issued on July 1, 1996, or thereafter,
 124 prior to commencing any new zone completions a permittee shall first obtain a permit modification from
 125 the Director.

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

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

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

140 1. The method that the coalbed methane gas well operator will use to stimulate the well.

141 2. a. A signed consent from the coal operator of each coal seam which is located within 750
 142 horizontal feet of the proposed well location (i) which the applicant proposes to stimulate or (ii) which
 143 is within 100 vertical feet above or below a coal bearing stratum which the applicant proposes to
 144 stimulate.

145 b. The consent required by this section may be (i) contained in a lease or other such agreement; (ii)
 146 contained in an instrument of title; or (iii) in any case where a coal operator cannot be located or
 147 identified and the operator has complied with § 45.1-361.19, provided by a pooling order entered
 148 pursuant to § 45.1-361.21 or § 45.1-361.22 and provided such order contains a finding that the operator
 149 has exercised due diligence in attempting to identify and locate the coal operator. *The consent required*
 150 *by this section shall be deemed to be granted for any tract where title to the coal is held by multiple*
 151 *owners if the applicant has obtained consent to stimulate from the co-tenants holding majority interest*
 152 *in the tract and none of the coal co-tenants has leased the tract for coal development.* The requirement
 153 of signed consent contained in this section shall in no way be considered to impair, abridge or affect
 154 any contractual rights or objections arising out of a coalbed methane gas contract or coalbed methane
 155 gas lease entered into prior to January 1, 1990, between the applicant and any coal operator, and any
 156 extensions or renewals thereto, and the existence of such lease or contractual arrangement and any
 157 extensions or renewals thereto shall constitute a waiver of the requirement for the applicant to file an
 158 additional signed consent.

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

160 G. No permit required by this chapter for activities to be conducted within an area of Tidewater
 161 Virginia where drilling is authorized under subsection B of § 62.1-195.1 shall be granted until the
 162 environmental impact assessment required by § 62.1-195.1 has been conducted and the assessment has
 163 been reviewed by the Department.

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