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HOUSE BILL NO. 1184

Offered January 13, 2010

Prefiled January 13, 2010

A BILL to amend and reenact §§ 45.1-361.21 and 45.1-361.29 of the Code of Virginia, relating to permit fees for gas and oil wells.

Patron—Phillips

Referred to Committee on Agriculture, Chesapeake and Natural Resources

Be it enacted by the General Assembly of Virginia:

1. That §§ 45.1-361.21 and 45.1-361.29 of the Code of Virginia are amended and reenacted as follows:

§ 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 G 2 b 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 25% 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

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HB1184

59 Unclaimed Property Act (§ 55-210.1 et seq.). Upon discovery of the identity and location of any
60 unknown owner subject to escrow under the provisions of this subsection and not subject to conflicting
61 claims of ownership, the designated operator shall, within 30 days, file with the Board a petition for
62 disbursement of funds to be considered at the next available hearing. The petition shall include a
63 detailed accounting of all funds deposited in escrow that are subject to the proposed disbursement.

64 E. Any person who does not make an election under the pooling order shall be deemed to have
65 leased his gas or oil interest to the gas or oil well operator as the pooling order may provide.

66 F. Should a gas or oil owner be a person under a disability, the applicant for a pooling order may
67 petition the appropriate circuit court to appoint a guardian ad litem pursuant to the provisions of
68 § 8.01-261 for purposes of making the election provided for by this section.

69 G. Any royalty or overriding royalty reserved in any lease which is deducted from a nonparticipating
70 operator's share of production shall not be subject to charges for operating costs but shall be separately
71 calculated and paid to the royalty owner.

72 H. The Board shall resolve all disputes arising among gas or oil operators regarding the amount and
73 reasonableness of well operation costs. The Board shall, by regulation, establish allowable types of costs
74 which may be shared in pooled gas or oil operations.

75 § 45.1-361.29. Permit required; gas, oil, or geophysical operations; coalbed methane gas wells;
76 environmental assessment.

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

82 B. For permits issued on July 1, 1996, or thereafter, new permits issued by the Director shall be
83 issued only for the following activities: geophysical operations, drilling, casing, equipping, stimulating,
84 producing, reworking initially productive zones and plugging a well, or gathering pipeline construction
85 and operation. Applications for new permits to conduct geophysical operations shall be accompanied by
86 an application fee of \$130. Applications for all other new permits shall be accompanied by an
87 application fee of \$260.

88 C. For permits issued prior to July 1, 1996, prior to commencing any reworking, deepening or
89 plugging of the well, or other activity not previously approved on the permitted site, a permittee shall
90 first obtain a permit modification from the Director. All applications for permit modifications shall be
91 accompanied by a permit modification fee of \$130. For permits issued on July 1, 1996, or thereafter,
92 prior to commencing any new zone completions a permittee shall first obtain a permit modification from
93 the Director.

94 D. *For any well producing gas or oil during the 12-month period prior to the anniversary date of its*
95 *permit, the permittee shall submit to the Director an annual permit renewal fee of \$50, due and payable*
96 *on the anniversary of the issuance of the initial permit.*

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

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

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

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

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

116 b. The consent required by this section may be (i) contained in a lease or other such agreement; (ii)
117 contained in an instrument of title; or (iii) in any case where a coal operator cannot be located or
118 identified and the operator has complied with § 45.1-361.19, provided by a pooling order entered
119 pursuant to § 45.1-361.21 or 45.1-361.22 and provided such order contains a finding that the operator
120 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.

GH. 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.

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

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