

COMMITTEE SUBSTITUTE

FOR

H. B. 2688

(BY DELEGATE(S) IRELAND, ANDERSON,
AMBLER AND D. EVANS)

[Introduced February 11, 2015; referred to the
Committee on Energy; then to the Committee on the Judiciary.]

A BILL to amend and reenact §22C-9-1, §22C-9-2, §22C-9-3, §22C-9-4 and §22C-9-5 of the Code of West Virginia, 1931, as amended; and to amend said code by adding thereto a new section, designated §22C-9-7a, all relating to oil and gas conservation; reconstituting the membership of the Oil and Gas Conservation Commission; providing for the unitization of interests in drilling units in connection with horizontal oil or gas wells generally;

setting forth application requirements; establishing the standard of review; providing for unit orders; requiring notice and timeliness; providing for hearings; addressing oil and gas produced from horizontal wells, vertical wells and unconventional reservoirs; providing for reunification of interests of unknown and unlocatable interest owners with surface owners in certain circumstances and providing procedures therefor; adding new definitions; and modifying existing definitions.

Be it enacted by the Legislature of West Virginia:

That §22C-9-1, §22C-9-2, §22C-9-3, §22C-9-4 and §22C-9-5 of the Code of West Virginia, 1931, as amended, be amended and reenacted; and that said code be amended by adding thereto a new section, designated §22C-9-7a, all to read as follows:

ARTICLE 9. OIL AND GAS CONSERVATION.

§22C-9-1. Declaration of public policy; legislative findings.

- 1 (a) It is hereby declared to be the public policy of this state
- 2 and in the public interest to:
- 3 (1) Foster, encourage and promote exploration for and
- 4 development, production, utilization and conservation of oil and
- 5 gas resources;

6 (2) Prohibit waste of oil and gas resources and unnecessary
7 surface loss of oil and gas and their constituents;

8 (3) Encourage the maximum recovery of oil and gas; and

9 (4) Safeguard, protect and enforce the correlative rights of
10 operators and royalty owners in a pool of oil or gas to the end
11 that each such operator and royalty owner may obtain his or her
12 just and equitable share of production from ~~such~~ that pool, unit
13 or unconventional reservoir of oil or gas.

14 (b) The Legislature hereby determines and finds that oil and
15 natural gas found in West Virginia in shallow sands or strata
16 have been produced continuously for more than one hundred
17 years; that oil and gas deposits in ~~such~~ shallow sands or strata
18 have geological and other characteristics different than those
19 found in deeper formations; and that in order to encourage the
20 maximum recovery of oil and gas from all productive formations
21 in this state, it is not in the public interest, with the exception of
22 shallow wells utilized in a secondary recovery program and oil
23 and gas produced from horizontal wells, to enact statutory
24 provisions relating to the exploration for or production ~~from~~ of
25 oil and gas from vertical shallow wells, ~~as defined in section two~~

26 ~~of this article~~, but that it is in the public interest to enact
27 statutory provisions establishing regulatory procedures and
28 principles to be applied to the exploration for or production of oil
29 and gas from deep wells, as defined in ~~said~~ section two.

§22C-9-2. Definitions.

1 (a) As used in this article:

2 (1) “Commission” means the Oil and Gas Conservation
3 Commission and “commissioner” means the Oil and Gas
4 Conservation Commissioner as provided for in section four of
5 this article;

6 (2) “Director” means the Secretary of the Department of
7 Environmental Protection and “chief” means the Chief of the
8 Office of Oil and Gas;

9 (3) “Person” means any natural person, corporation, limited
10 liability company, partnership, receiver, trustee, executor,
11 administrator, guardian, fiduciary or other representative of any
12 kind, and includes any government or any political subdivision
13 or any agency thereof;

14 (4) “Operator” means any owner of the right to develop,
15 operate and produce oil and gas from a pool and to appropriate

16 the oil and gas produced therefrom, either for that person or for
 17 that person and others; in the event that there is no oil and gas
 18 lease in existence with respect to the tract in question, the owner
 19 of the oil and gas rights therein is the “operator” to the extent of
 20 seven-eighths of the oil and gas in that portion of the pool
 21 underlying the tract owned by ~~such~~ the owner, and as “royalty
 22 owner” as to one-eighth interest in ~~such~~ the oil and gas; and in
 23 the event the oil is owned separately from the gas, the owner of
 24 the substance being produced or sought to be produced from the
 25 pool or unit is the “operator” as to that pool or acreage included
 26 in a unit; the term operator includes owners of working interest
 27 in a lease but does not include owners whose interest is limited
 28 to working interests in a wellbore only, overriding royalties, or
 29 net profits interests;

30 (5) “Royalty owner” means any owner of oil and gas in
 31 place, or oil and gas rights, to the extent that the owner is not an
 32 operator as defined in subdivision (4) of this section;

33 (6) “Independent producer” means a producer of crude oil or
 34 natural gas whose allowance for depletion is determined under

35 Section 613A of the federal Internal Revenue Code in effect on
36 July 1, 1997;

37 (7) "Oil" means natural crude oil or petroleum and other
38 hydrocarbons, regardless of gravity, which are produced at the
39 well in liquid form by ordinary production methods and which
40 are not the result of condensation of gas after it leaves the
41 underground reservoir;

42 (8) "Gas" means all natural gas and all other fluid
43 hydrocarbons not defined as oil in subdivision (7) of this section;

44 (9) "Pool" means an underground accumulation of petroleum
45 or gas in a single and separate reservoir (ordinarily a porous
46 sandstone or limestone). It is characterized by a single natural-
47 pressure system so that production of petroleum or gas from one
48 part of the pool affects the reservoir pressure throughout its
49 extent. A pool is bounded by geologic barriers in all directions,
50 such as geologic structural conditions, impermeable strata, and
51 water in the formations, so that it is effectively separated from
52 any other pools that may be presented in the same district or on
53 the same geologic structure;

54 (10) "Well" means any shaft or hole sunk, drilled, bored or
55 dug into the earth or underground strata for the extraction of oil
56 or gas;

57 (11) "Shallow well" means any well other than a coalbed
58 methane well, drilled no deeper than one hundred feet below the
59 top of the "Onondaga Group": *Provided*, That in no event may
60 the "Onondaga Group" formation or any formation below the
61 "Onondaga Group" be produced, perforated or stimulated in any
62 manner;

63 (12) "Deep well" means any well, other than a shallow well
64 or coalbed methane well, drilled to a formation below the top of
65 the uppermost member of the "Onondaga Group";

66 (13) "Drilling unit" or "unit" means the acreage on which
67 one ~~well~~ or more wells may be drilled;

68 (14) "Waste" means and includes:

69 (A) Physical waste, as that term is generally understood in
70 the oil and gas industry;

71 (B) The locating, drilling, equipping, operating or producing
72 of any oil or gas well in a manner that causes, or tends to cause,
73 a reduction in the quantity of oil or gas ultimately recoverable

74 from a pool under prudent and proper operations, or that causes
75 or tends to cause unnecessary or excessive surface loss of oil or
76 gas; or

77 (C) The drilling of more horizontal wells or deep wells than
78 are reasonably required to recover efficiently and economically
79 the maximum amount of oil and gas from a pool, unit, or an
80 unconventional reservoir. Waste does not include gas vented or
81 released from any mine areas as defined in section two, article
82 one, chapter twenty-two-a of this code or from adjacent coal
83 seams which are the subject of a current permit issued under
84 article two of chapter twenty-two-a of this code: *Provided*, That
85 this exclusion does not address ownership of the gas;

86 (15) “Correlative rights” means the reasonable opportunity
87 of each person entitled thereto to recover and receive without
88 waste the oil and gas in and under his or her tract or tracts, or the
89 equivalent thereof; and

90 (16) “Just and equitable share of production” means, as to
91 each person, an amount of oil or gas or both substantially equal
92 to the amount of recoverable oil and gas in that part of a pool,

93 unit or unconventional reservoir underlying the person's tract or
94 tracts within a unit.

95 (17) "Unconventional reservoir" means any geologic
96 formation that contains or is otherwise productive of oil or
97 natural gas that generally cannot be produced at economic flow
98 rates or in economic volumes except by wells stimulated by
99 multiple hydraulic fracture treatments, a horizontal wellbore, or
100 by using multilateral wellbores or some other technique to
101 expose more of the formation to the wellbore;

102 (18) "Horizontal drilling" means a method of drilling a well
103 for the production of oil and gas that is intended to maximize the
104 length of wellbore that is exposed to the formation and in which
105 the wellbore is initially vertical but is eventually curved to
106 become horizontal, or nearly horizontal, to parallel a particular
107 geologic formation; and

108 (19) "Horizontal well" means an oil and gas well, other than
109 a coalbed methane well, where the wellbore is initially drilled
110 using a horizontal drilling method. A horizontal well may
111 include multiple horizontal side laterals drilled into the same
112 formation. A horizontal well may have completions into multiple

113 formations from the same well. Multiple horizontal wells may be
114 drilled from the same well pad.

115 (b) Unless the context clearly indicates otherwise, the use of
116 the word “and” and the word “or” are interchangeable, as, for
117 example, “oil and gas” means oil or gas or both.

118 (c) A person with an interest in oil and gas in a unit formed
119 under this article who does not consent to the unit shall have no
120 liability in connection with well site preparation, drilling,
121 completion, maintenance, reclamation, plugging, and other
122 operations with respect to wells drilled in the unit.

§22C-9-3. Application of article; exclusions.

1 (a) Except as provided in subsection (b) of this section, the
2 provisions of this article shall apply to all lands located in this
3 state, however owned, including any lands owned or
4 administered by any government or any agency or subdivision
5 thereof, over which the state has jurisdiction under its police
6 power. The provisions of this article are in addition to and not in
7 derogation of or substitution for the provisions of article six,
8 chapter twenty-two of this code.

9 (b) This article shall not apply to or affect:

10 (1) Shallow wells other than shallow horizontal wells and
11 those utilized in secondary recovery programs as set forth in
12 section eight of this article;

13 (2) Any well commenced or completed prior to March 9,
14 1972, unless ~~such~~ the well is, after completion (whether ~~such~~ the
15 completion is prior or subsequent to that date):

16 (A) Deepened or drilled laterally subsequent to that date to
17 a formation at or below the top of the uppermost member of the
18 “Onondaga Group”; or

19 (B) Involved in secondary recovery operations for oil under
20 an order of the commission entered pursuant to section eight of
21 this article; or

22 (C) Drilled laterally as a horizontal well at any depth;

23 (3) Gas storage operations or any well employed to inject
24 gas into or withdraw gas from a gas storage reservoir or any well
25 employed for storage observation; ~~or~~

26 (4) Free gas rights; or

27 (5) Coalbed methane wells.

28 (c) The provisions of this article shall not be construed to
29 grant to the commissioner or the commission authority or power
30 to:

31 (1) Limit production or output, or prorate production of any
32 oil or gas well, except as provided in subdivision (6), subsection
33 (a), section seven of this article; or

34 (2) Fix prices of oil or gas.

35 (d) Nothing contained in either this chapter or chapter
36 twenty-two of this code may be construed so as to require, prior
37 to commencement of plugging operations, a lessee under a lease
38 covering a well to give or sell the well to any person owning an
39 interest in the well, including, but not limited to, a respective
40 lessor, or agent of the lessor, nor shall the lessee be required to
41 grant to a person owning an interest in the well, including, but
42 not limited to, a respective lessor, or agent of a lessor, an
43 opportunity to qualify under section twenty-six, article six,
44 chapter twenty-two of this code to continue operation of the
45 well.

**§22C-9-4. Oil and gas conservation commissioner and commission;
commission membership; qualifications of members;
terms of members; vacancies on commission;
meetings; compensation and expenses; appointment
and qualifications of commissioner; general powers
and duties.**

1 (a) The “oil and gas conservation commission” ~~shall be~~ is
2 composed of ~~five~~ seven members. The director of the Division

3 of Environmental Protection, ~~and~~ the chief of the office of oil
4 and gas and the state geologist ~~shall be~~ are members of the
5 commission ex officio. The remaining ~~three~~ four members of the
6 commission shall be appointed by the Governor, by and with the
7 advice and consent of the Senate, and may not be employees of
8 the Division of Environmental Protection. Each of the four
9 members appointed by the Governor shall be a resident of this
10 state. Of the ~~three~~ four members appointed by the Governor, ~~one~~
11 the first shall be an independent producer ~~and at least one shall~~
12 ~~be a public member not engaged in an activity under the~~
13 ~~jurisdiction of the Public Service Commission or the federal~~
14 ~~energy regulatory commission.~~ The second appointee shall be an
15 individual who has significant experience in the agricultural
16 industry and who is engaged in the business of farming in this
17 state. When this member is to be appointed, the Governor shall
18 request from the primary organization representing the
19 agriculture and forestry industries in this state a list of three
20 nominees for the member to be appointed. The third appointee
21 shall be an owner of minerals in this state who is not affiliated
22 with an operator of oil or gas wells. When this member is to be

23 appointed, the Governor shall request from the major trade
24 association representing mineral royalty owners in this state a
25 list of three nominees for the member to be appointed. The ~~third~~
26 fourth appointee shall possess a degree from an accredited
27 college or university in petroleum engineering or geology and
28 must be a registered professional engineer with particular
29 knowledge and experience in the oil and gas industry and shall
30 serve as commissioner and as chair of the commission. The term
31 “affiliated” as used in the immediately preceding sentence in this
32 subsection (a) means someone who directly, or indirectly
33 through one or more intermediaries, controls or is controlled by
34 or is under common control with an operator of oil and gas wells
35 by virtue of the power to direct or cause the direction of the
36 management and policies of that operator, whether through the
37 ownership of voting shares, by contract or otherwise.

38 (b) The members of the commission appointed by the
39 Governor shall be appointed for overlapping terms of six years
40 each, except that the original appointments shall be for terms of
41 two, four and six years, respectively. Each member appointed by
42 the Governor shall serve until the members successor has been

43 appointed and qualified. Members may be appointed by the
44 Governor to serve any number of terms. The members of the
45 commission appointed by the Governor, before performing any
46 duty hereunder, shall take and subscribe to the oath required by
47 section 5, article IV of the Constitution of West Virginia.
48 Vacancies in the membership appointed by the Governor shall be
49 filled by appointment by the Governor for the unexpired term of
50 the member whose office is vacant and ~~such~~ the appointment
51 shall be made by the Governor within sixty days of the
52 occurrence of such vacancy. Any member appointed by the
53 Governor may be removed by the Governor in case of
54 incompetency, neglect of duty, gross immorality or malfeasance
55 in office. A commission member's appointment ~~shall be~~ is
56 terminated as a matter of law if that member fails to attend three
57 consecutive meetings. The Governor shall appoint a replacement
58 within thirty days of the termination.

59 (c) The commission shall meet at such times and places as
60 ~~shall be~~ are designated by the chair. The chair may call a
61 meeting of the commission at any time, and shall call a meeting
62 of the commission upon the written request of two members or

63 upon the written request of the oil and gas conservation
64 commissioner or the chief of the office of oil and gas.
65 Notification of each meeting shall be given in writing to each
66 member by the chair at least fourteen calendar days in advance
67 of the meeting. ~~Three~~ Four members of the commission, at least
68 two of whom are appointed members, ~~shall~~ constitute a quorum
69 for the transaction of any business.

70 (d) The commission shall pay each member the same
71 compensation as is paid to members of the Legislature for their
72 interim duties as recommended by the citizens legislative
73 compensation commission and authorized by law for each day or
74 portion thereof engaged in the discharge of official duties and
75 shall reimburse each member for actual and necessary expenses
76 incurred in the discharge of official duties.

77 (e) The commission is hereby empowered and it is the
78 commission's duty to execute and carry out, administer and
79 enforce the provisions of this article in the manner provided
80 herein. Subject to the provisions of section three of this article,
81 the commission has jurisdiction and authority over all persons
82 and property necessary therefor. The commission is authorized

83 to make such investigation of records and facilities as the
 84 commission ~~deems~~ considers proper. In the event of a conflict
 85 between the duty to prevent waste and the duty to protect
 86 correlative rights, the commission's duty to prevent waste ~~shall~~
 87 ~~be~~ is paramount.

88 (f) Without limiting the commission's general authority, the
 89 commission ~~shall have~~ has specific authority to:

90 (1) Regulate the spacing of deep wells;

91 (2) Issue horizontal well unit orders;

92 ~~(2)~~ (3) Make and enforce reasonable rules and orders
 93 reasonably necessary to prevent waste, protect correlative rights,
 94 govern the practice and procedure before the commission and
 95 otherwise administer the provisions of this article;

96 ~~(3)~~ (4) Issue subpoenas for the attendance of witnesses and
 97 subpoenas duces tecum for the production of any books, records,
 98 maps, charts, diagrams and other pertinent documents, and
 99 administer oaths and affirmations to ~~such~~ the witnesses,
 100 whenever, in the judgment of the commission, it is necessary to
 101 do so for the effective discharge of the commission's duties
 102 under the provisions of this article; and

103 ~~(4)~~ (5) Serve as technical advisor regarding oil and gas to the
104 Legislature, its members and committees, to the chief of office
105 of oil and gas, to the Division of Environmental Protection and
106 to any other agency of state government having responsibility
107 related to the oil and gas industry.

108 (g) The commission may delegate to the commission staff
109 the authority to approve or deny an application for new well
110 permits, to establish drilling units or special field rules if:

111 (1) The application conforms to the rules of the commission;
112 and

113 (2) No request for hearing has been received.

114 (h) The commission may not delegate its authority to:

115 (1) Propose legislative rules;

116 (2) Approve or deny an application for new well permits, to
117 establish drilling units or special field rules if the conditions set
118 forth in subsection (g) of this section are not met; or

119 (3) Approve or deny an application for the pooling of
120 interests within a drilling unit.

121 (i) Any exception to the field rules or the spacing of wells
122 which does not conform to the rules of the commission, and any

123 application for the pooling of interests within a drilling unit,
124 must be presented to and heard before the commission.

§22C-9-5. Rules; notice requirements.

1 (a) The commission may propose rules for legislative
2 approval in accordance with the provisions of article three,
3 chapter twenty-nine-a of this code, to implement and make
4 effective the provisions of this article and the powers and
5 authority conferred and the duties imposed upon the commission
6 under the provisions of this article.

7 (b) Notwithstanding the provisions of section two, article
8 seven, chapter twenty-nine-a of this code, any notice required
9 under the provisions of this article shall be given at the direction
10 of the commission by personal or substituted service or by
11 certified United States mail, addressed, postage prepaid, to the
12 last-known mailing address, if any, of the person being served,
13 with the direction that the same be delivered to addressee only,
14 return receipt requested. In the case of providing notice upon the
15 filing of an application with the commission, the commission
16 shall ~~cause notice~~ within fourteen days of the filing of an
17 application, submit for publication notice of the application to be

18 published as a Class II legal advertisement in compliance with
19 the provisions of article three, chapter fifty-nine of this code, and
20 the publication area for ~~such~~ the publication shall be the county
21 or counties wherein any land which may be affected by ~~such~~ the
22 order is situate.

23 In addition, the commission shall mail a copy of ~~such~~ the
24 notice to all other persons who have specified to the commission
25 an address to which all such notices may be mailed. The notice
26 shall issue in the name of the state, shall be signed by one of the
27 commission members, shall specify the style and number of the
28 proceeding, the time and place of any hearing and shall briefly
29 state the purpose of the proceeding. Each notice of a hearing
30 must be provided no fewer than twenty days preceding the
31 hearing date. Personal or substituted service and proof thereof
32 may be made by an officer authorized to serve process or by an
33 agent of the commission in the same manner as is now provided
34 by the “West Virginia Rules of Civil Procedure for Trial Courts
35 of Record” for service of process in civil actions in the various
36 courts of this state.

37 A certified copy of any pooling or unit order entered under
 38 the provisions of this article shall be presented by the
 39 commission to the clerk of the county commission of each
 40 county wherein all or any portion of the pooled or unit tract is
 41 located, for recordation in the record book of ~~such~~ the county in
 42 which oil and gas leases are normally recorded. The recording of
 43 the order from the time noted thereon by ~~such~~ the clerk shall be
 44 notice of the order to all persons.

§22C-9-7a. Unitization of interests in horizontal well drilling units.

1 (a) Declaration of public policy; legislative findings
 2 regarding unitization for all horizontal wells.

3 The Legislature finds that horizontal drilling is a technique
 4 that effectively and efficiently recovers natural resources and
 5 should be encouraged as a means of production of oil and gas
 6 and it is hereby declared to be the public policy of this state and
 7 in the public interest to:

8 (1) Foster, encourage and promote exploration for and
 9 development, production, utilization and conservation of oil and
 10 gas resources by horizontal drilling in deep and shallow
 11 formations;

12 (2) Prohibit waste of oil and gas resources and unnecessary
13 surface loss of oil and gas and their constituents;

14 (3) Encourage the maximum recovery of oil and gas; and

15 (4) Safeguard, protect and enforce the correlative rights of
16 operators and royalty owners of oil and gas in a horizontal well
17 unit to the end that each such operator and royalty owner may
18 obtain his or her just and equitable share of production from that
19 pool, horizontal well unit or unconventional reservoir of oil or
20 gas.

21 (b) Definitions. – Unless the context in which used clearly
22 requires a different meaning, as used in this section:

23 (1) “Bonded operator” means a person that has posted a bond
24 under article six or six-a, chapter twenty-two of this code; is
25 registered as an oil and gas well operator with the West Virginia
26 Department of Environmental Protection, Office of Oil and Gas;
27 and operates eight or more oil and gas wells, as defined in
28 articles six and six-a of chapter twenty-two of this code, in West
29 Virginia that are active, producing oil and gas wells;

30 (2) “Executive interest” and “executory interest” means the
31 interest entitling the owner to lease the oil and gas estate or

32 amend an existing oil and gas lease. For purposes of this section,
33 the owner of the executive interest is considered to be the royalty
34 owner and interested party for purposes of notice and
35 participation in proceedings here in this article, and all horizontal
36 well unit orders are binding on the owners of executive interests
37 and nonexecutive interests in a horizontal well unit. The owners
38 of the executive interest and the associated nonexecutive interest
39 owners are considered to be the same interest for purposes of
40 computing percentages pursuant to subparagraph (A),
41 subdivision (2), subsection (c) of this section;

42 (3) “Horizontal well unit” means an area in which horizontal
43 drilling may occur, and that is designated for the allocation of
44 production from one or more horizontal wells drilled in the unit
45 to all oil and gas tracts, or portions of the tracts, included in the
46 unit for production of oil and gas and payment of royalty and
47 proceeds of production regardless of the tract or tracts in which
48 the horizontal well is drilled or completed, and the
49 corresponding authorization to drill and produce oil and gas from
50 that area as a unit, notwithstanding the lack of adequate
51 consensual rights allowing pooling or unitization of oil and gas

52 or allowing drilling horizontally across tract lines. When a
53 horizontal well unit is formed, that portion of the production
54 allocated to each tract or portion of the unit included in the
55 horizontal well unit shall, when produced, be considered for all
56 purposes to have been actually produced from the tract by an oil
57 and gas well drilled, completed and producing on the tract;

58 (4) “Lateral” means the portion of a well bore that deviates
59 from approximate vertical orientation to approximate horizontal
60 orientation and all wellbore beyond the initial deviation to total
61 depth or terminus of the wellbore;

62 (5) “Overriding royalty” means an interest carved out of the
63 leasehold or out of the working interest and is not included
64 within the meaning of royalty;

65 (6) “Royalty owner” means any owner of oil and gas in place
66 or interest derived from the oil and gas in place. Royalty is not
67 carved out of a leasehold interest. For example, if a fee owner of
68 oil and gas leases property for oil and gas production and
69 conveys to another the right to receive one half of the oil and gas
70 when produced, both parties are royalty owners;

71 (7) “Target formation” means the primary geologic
72 formation from which oil or gas is intended to be produced from
73 a horizontal drilling operation and, where completions can
74 reasonably be expected to produce from formations above or
75 below the target formation, includes the formations from which
76 production can reasonably be expected;

77 (8) “Unitization” means the combination of two or more
78 tracts of oil and gas or portions thereof or leases, for drilling of
79 horizontal wells and production of oil and gas from the unit with
80 allocation of production to the net acreage of each tract included
81 in the unit to operate as a consolidated horizontal well unit;

82 (9) “Unitization consideration” means consideration
83 provided as set forth in subsection (f) of this section. Unitization
84 consideration relates to the net acreage of the nonconsenting
85 royalty owner included in a horizontal well unit and is as
86 determined to be just and reasonable by the commission; and

87 (10) “Unknown and unlocatable interest owner” means a
88 royalty owner, operator or other person vested with an interest
89 in oil and gas in the target formation to be included in a

90 horizontal well unit, whose present identity or location cannot be
91 determined from:

92 (A) A reasonable review of the records of the clerk of the
93 county commission for the county or counties where the oil and
94 gas is located;

95 (B) Diligent inquiry to known interest owners in the same
96 tract;

97 (C) Inquiry to the sheriff's and assessor's offices of the
98 county or counties in which the oil and gas interest is located;

99 (D) A reasonable inquiry utilizing available Internet
100 resources that could reasonably lead to the identification of the
101 person; and

102 (E) A mailing to the last known address, if available, of the
103 person as reflected in the records of the sheriff's or assessor's
104 office, and includes the unknown heirs, representatives,
105 successors and assigns of the person.

106 (c) Applicability.

107 (1) For all horizontal wells, including shallow and deep
108 horizontal wells, the commission may unitize tracts, or portions
109 of tracts, in a horizontal well unit established under this section

110 upon the filing of an application with the commission by a
111 person that controls the horizontal well unit and upon the
112 issuance of a horizontal well unit order pursuant to this section.

113 (2) Before filing an application under this section, an
114 applicant must have:

115 (A) With respect to the royalty interest, obtained by
116 ownership, lease, lease amendment, assignment, farmout,
117 contract or other agreement the right, consent or agreement to
118 pool or unitize the acreage to be included in the horizontal well
119 unit from executory interest royalty owners of eighty percent or
120 more of the net acreage proposed to be included in the horizontal
121 well unit, as provided and determined in subdivision (3) of this
122 subsection; and

123 (B) With respect to the operator interest, obtained by
124 ownership, lease, lease amendment, assignment, farmout,
125 contract, or other agreement, the right, consent or agreement to
126 pool or unitize as to eighty percent or more of the net acreage
127 proposed to be included in the horizontal well unit owned,
128 leased, or operated by bonded operators and the applicant,

129 collectively, by ownership, lease, farmout, assignment, contract
130 or other agreement; and

131 (C) (i) Made good faith offers to consent or agree to
132 unitization to, and has negotiated in good faith with, all known
133 and locatable royalty owners having executory interests in the oil
134 and gas in the target formation within the acreage to be included
135 in the proposed horizontal well unit who have not previously
136 consented or agreed to the pooling or unitization of the interests,
137 and (ii) made good faith offers to participate or consent or agree
138 to the proposed horizontal well unit to, and has negotiated in
139 good faith with, all known and locatable operators who have not
140 previously agreed to participate or consent or agree to pooling
141 and unitization of the acreage to be included in a proposed
142 horizontal well unit.

143 A person who satisfies the conditions of subparagraphs (A)
144 through (C) of this subdivision is referred to in this section as a
145 person that controls the horizontal well unit.

146 (3) For purposes of determining whether a person has
147 obtained the requisite control of the proposed horizontal well
148 unit, the commission may not include overriding royalty owners,

149 nonexecutive interest royalty owners or acreage owned or
 150 otherwise held by unknown and unlocatable interest owners or
 151 acreage owned or otherwise held by operators who are not
 152 bonded operators. Furthermore, for purposes of determining
 153 whether a person has the requisite control of the proposed
 154 horizontal well unit, the identity and rights of royalty owners and
 155 bonded operators shall be determined as of the date on which the
 156 application for a horizontal well unit is filed.

157 (4) If the applicant has not met all the provisions of this
 158 subsection, the application shall be dismissed without prejudice.

159 (5) If the applicant meets all of the provisions of this
 160 subsection, the commission shall authorize unitization of tracts,
 161 or portions of the tracts, as to all interests in oil and gas in the
 162 target formation acreage proposed to be unitized for horizontal
 163 drilling, including interests of unknown and unlocatable interest
 164 owners, for production of oil and gas from the target formation
 165 as a horizontal well unit, and shall issue a horizontal well unit
 166 order in accordance with this section.

167 (d) Application requirements.

168 (1) An applicant who is a person that controls the horizontal
169 well unit proposed for a horizontal well unit order and has drilled
170 or plans to drill one or more horizontal wells in the proposed
171 horizontal well unit may file an application with the commission
172 for a horizontal well unit order. The application shall contain:

173 (A) A description of the proposed horizontal well unit and
174 identification of the target formation or formations;

175 (B) A statement of the nature of the operations
176 contemplated;

177 (C) A plat that depicts the boundaries and acreage of the
178 proposed horizontal well unit, the tracts in the horizontal well
179 unit, the surface tax map and parcel numbers of the tracts to be
180 included in the horizontal well unit in accordance with county
181 assessor's records, and the district(s) and county or counties
182 where the proposed horizontal well unit is located. The plat shall
183 show the surface location of the vertical borehole of the
184 horizontal well(s) to be included in the proposed horizontal well
185 unit determined by survey, the courses and distances of the
186 surface location from two permanent points or landmarks on
187 those tracts, the deviation from vertical, and also the proposed

188 horizontal lateral portion of each proposed horizontal well to be
 189 included in the proposed horizontal well unit. The plat shall
 190 show the proposed horizontal well unit name, the proposed
 191 horizontal well names, and if known, the well number of each
 192 horizontal well to be drilled in the horizontal well unit. The plat
 193 shall also show the location of each permitted, active oil and gas
 194 well located in the horizontal well unit, and the name of the
 195 operator of the well as shown by the records of the Department
 196 of Environmental Protection, Office of Oil and Gas: *Provided,*
 197 That the applicants are not required to depict or identify any
 198 abandoned or plugged well;

199 (D) A listing of all oil and gas tracts, or portions thereof,
 200 within the proposed horizontal well unit, the size of each tract,
 201 and the extent to which each tract is leased;

202 (E) The names and last known addresses of royalty owners
 203 of the target formation of each tract within the proposed
 204 horizontal well unit, specifying:

205 (i) Which, if any, of them are unknown and unlocatable;

206 (ii) Which of them hold executive rights; and

207 (iii) With respect to owners of an executory interest, whether
208 they have consented to pooling or unitization of the acreage
209 proposed to be included in the horizontal well unit;

210 (F) The names and last known addresses of operators of
211 proposed horizontal well unit target formation acreage whose
212 interest is of record in the county where the property is located,
213 specifying:

214 (i) Which, if any, of them are unknown and unlocatable; and

215 (ii) Which, if any of them, are bonded operators, and if a
216 bonded operator, whether he or she has consented to pooling or
217 unitization as to the acreage proposed to be included in the
218 horizontal well unit;

219 (G) Information regarding the applicant's actions to identify
220 and locate unknown and unlocatable interest owners of target
221 formation acreage to be included in the horizontal well unit;

222 (H) The percentage of the net acreage in the proposed
223 horizontal well unit owned by executory interest target formation
224 royalty owners who have consented to pooling or unitization;

225 (I) The percentage of the net acreage in the proposed
226 horizontal well unit held by bonded operators and the applicant,

227 collectively, as to which consent or agreement to pooling or
 228 unitization has been granted;

229 (J) A percentage allocation to the separately owned tracts, or
 230 portions thereof, in the proposed horizontal well unit of the oil
 231 and gas that will be produced from the horizontal well unit as
 232 determined by the proportion that each tract's net acreage within
 233 the horizontal well unit bears to the total net acreage in the
 234 horizontal well unit;

235 (K) A certification that the applicant meets the requirements
 236 of subsection (c) of this section with respect to the proposed
 237 horizontal well unit, a list of the instruments granting the control
 238 and a certification that the applicant has mailed a copy of the
 239 application to all known and locatable interested parties by
 240 United States certified mail, return receipt requested, to their last
 241 known address and to the most current address filed with the
 242 West Virginia Department of Environmental Protection, Office
 243 of Oil and Gas, if any; and

244 (L) A statement whether the applicant has submitted, either
 245 previously or contemporaneously with the application filed
 246 pursuant to this section, an application for a well work permit

247 with the Department of Environmental Protection for one or
248 more horizontal wells to be completed within the boundaries of
249 the proposed horizontal well unit.

250 (2) Upon the filing of an application for a horizontal well
251 unit order, the commission shall provide notice of a hearing to
252 all interested parties, as defined in this section, in accordance
253 with section five of this article and subsection (c) of this section.

254 (e) Standard of review.

255 (1) The commission shall evaluate the application and shall
256 consider:

257 (A) The ownership and control of the tracts, or portions of
258 the tracts, in the proposed horizontal well unit;

259 (B) Whether the tracts, or portions of the tracts, proposed to
260 be made subject to a horizontal well unit order are owned, in
261 whole or in part, by unknown or unlocatable interest owners;

262 (C) Information regarding the applicant's actions to locate
263 unknown and unlocatable interest owners for the tracts, or
264 portions of the tracts, sought to be included in the horizontal well
265 unit;

266 (D) The percentage of executory interest royalty owner
267 target formation acreage to be included in the horizontal well
268 unit as to which consent or agreement for pooling or unitization
269 has been granted;

270 (E) The percentage of proposed horizontal well unit target
271 formation acreage held, collectively, by the applicant and
272 bonded operators who have consented or agreed to the unit in
273 accordance with subsection (c) of this section;

274 (F) Whether the applicant is a person that controls the
275 horizontal well unit proposed for unitization;

276 (G) The area to be drained by well(s) completed or to be
277 completed in the horizontal well unit;

278 (H) Correlative rights;

279 (I) The extent to which the application will prevent waste;

280 (J) Whether the applicant has complied with subsection (c)
281 of this section; and

282 (K) Whether notice has been provided in accordance with
283 this section.

284 (2) The commission may not issue a horizontal well unit
285 order pursuant to this section unless it finds that the applicant

286 has before the filing of the application met the requirements of
287 subsection (c) of this section.

288 (3) The commission may not change the operator of an
289 existing well drilled in the proposed horizontal well unit, or a
290 well actually being drilled within the proposed horizontal well
291 unit as of the date the application is filed under this section, and
292 shall consider and protect the interests of owners of the well
293 when issuing a horizontal well unit order.

294 (f) Horizontal Well Unit Orders.

295 (1) A horizontal well unit order under this section shall
296 specify:

297 (A) The size and boundaries of the horizontal well unit
298 giving due regard for maximization of the amount of oil and gas
299 produced to prevent waste and protect correlative rights:
300 *Provided*, That a horizontal well unit's size may not exceed six
301 hundred forty acres: *Provided, however*, That the commission
302 may exceed the acreage limitation by ten percent if the applicant
303 demonstrates that the proposed horizontal well unit area would
304 be drained efficiently and economically by a larger horizontal
305 well unit;

306 (B) The horizontal wells which may be drilled in the
307 horizontal well unit, and whether the horizontal wells to be
308 drilled are shallow or deep;

309 (C) If there are vertical wells completed in the target
310 formation in the horizontal well unit, the area where a horizontal
311 well may not be completed;

312 (D) The target formation or target formations to which the
313 horizontal well unit applies; and

314 (E) Any unitization consideration due.

315 (2) An order authorizing unitization of tracts with unknown
316 or unlocatable interest owners shall contain a finding that
317 identifies the persons as unknown or unlocatable.

318 (3) An order shall specify that the allocation of the
319 percentage of production of the horizontal wells drilled in the
320 horizontal well unit to the separately owned tracts, or portions of
321 the tracts, included within the horizontal well unit shall be in the
322 proportion that each tract's net acreage within the horizontal well
323 unit bears to the total net acreage within the horizontal well unit.

324 (4) A horizontal well unit order shall authorize and perfect
325 unitization of all interests in the target formation as to the tracts,
326 or portions of the tracts, included in the horizontal well unit.

327 (5) If the applicant is a person that controls the horizontal
328 well unit proposed for a horizontal well unit order under this
329 section, the commission shall form a horizontal well unit
330 pursuant to this section and authorize the drilling and operation
331 of one or more horizontal wells in the unit for the production of
332 oil or gas from the target formation from any tract within the
333 horizontal well unit.

334 (6) With respect to royalty owners of leased tracts who have
335 not consented to pooling or unitization, the commission may
336 require that unitization consideration be provided to executive
337 interest royalty owners equivalent to just and reasonable
338 consideration for the modification of rights under a lease.
339 Further, if an award of unitization consideration differs from the
340 rights under a lease or other contract, the applicant, all royalty
341 owners, and owners of leasehold, working interest, overriding
342 royalty interest and other interests in the oil and gas are bound
343 by the order: *Provided*, That the terms of any unitization
344 consideration shall be no less favorable than the economic terms
345 contained in the applicable lease on the date the application for
346 the unit order was filed with the commission. Unitization

347 consideration shall be provided by the participating operators,
 348 including the applicant, to the extent of their interest in the
 349 horizontal well unit.

350 (7) With respect to interests in oil and gas as to which there
 351 is no lease in existence, the owner thereof is considered a royalty
 352 owner to the extent of one-eighth and operator to the extent of
 353 seven-eighths by virtue of subdivision (4), subsection (a), section
 354 two of this article and:

355 (A) Any such owner may elect to surrender the oil and gas
 356 underlying the tract to the participating operators, including the
 357 applicant, to the extent of their interest in the horizontal well unit
 358 for consideration, which if not agreed upon, shall be just and
 359 reasonable as determined by the commission; or

360 (B) Executive interest owners may make an election for
 361 unitization consideration, and if the executive interest owner
 362 elects unitization consideration, the interests of the executive
 363 interest owner and the associated nonexecutive interest owners
 364 shall be considered leased to the participating operators,
 365 including the applicant, to the extent of their interest in the
 366 horizontal well unit on terms which, if not agreed upon, shall be

367 just and reasonable as determined by the commission: *Provided,*
368 That, with respect to the deemed 1/8 royalty interest only, any
369 royalty terms determined by the commission shall stipulate that
370 the royalties may not be reduced by production or post-
371 production expenses: *Provided, however,* That the commission
372 may consider the net amount payable under leases where post-
373 production expenses are permitted when determining the
374 production royalty rate. Thereafter, the applicant and all royalty
375 owners and owners of leasehold, working interest, overriding
376 royalty interest and other interests in the associated unleased oil
377 and gas shall be bound by the order. Further, following an
378 election by the executive interest owners to receive unitization
379 consideration under this subparagraph (B), the participating
380 operators including the applicant, to the extent of their interest
381 in the horizontal well unit, will be the operator of the oil and gas
382 as to the determined seven-eighths interest and the owner of the
383 unleased oil and gas will be the executive interest royalty owner
384 as to the determined one-eighth interest. Nothing contained in
385 this subparagraph (B) applies to any lease in this state now in
386 existence or entered into in the future, or to any award of

387 unitization consideration made by the commission other than
 388 unitization consideration awarded to an executive interest owner
 389 of an unleased tract who elects to be considered leased pursuant
 390 to this subparagraph (B).

391 (C) Owners of oil and gas interests as to which there is no
 392 lease in existence who do not elect (A) or (B) of this subsection
 393 shall be considered to be a royalty owner with respect to one-
 394 eighth and an operator with respect to seven- eighths of their
 395 ownership interest, and may not receive unitization
 396 consideration. With respect to the seven-eighths, the owner may
 397 elect Option 1, Option 2, or Option 3 hereinafter provided.

398 (8) No unitization consideration may be required to be paid
 399 to any royalty owner who has consented or agreed to pooling or
 400 unitization by virtue of the terms contained in an oil and gas
 401 lease, pooling or unitization agreement, or other agreement
 402 which permits pooling or unitization.

403 (9) An operator may elect to consent to and participate in a
 404 horizontal well unit after an application is filed. Subject to
 405 subdivision (7) of this subsection, when the commission issues
 406 a horizontal well unit order pursuant to this section, the

407 commission shall allow each nonconsenting operator, who does
408 not elect to participate in the risk and cost of drilling in the
409 horizontal well unit to choose from the following options:

410 (A) Option 1. To surrender the interest or a portion thereof
411 to the participating owners on a reasonable basis and for a just
412 and reasonable consideration, which, if not agreed upon, shall be
413 determined by the commission;

414 (B) Option 2. To participate in the drilling in the horizontal
415 well unit on a limited or carried basis on terms and conditions
416 which, if not agreed upon, shall be determined by the
417 commission to be just and reasonable; or

418 (C) Option 3. To enter into a farm out agreement, sublease,
419 or other contract to permit drilling, operation and unitization
420 with respect to the interest for the consideration and on terms
421 and conditions which, if not agreed upon, shall be determined by
422 the commission to be just and reasonable.

423 (10) If a nonconsenting operator elects Option 2, and an
424 owner of any operating interest in any portion of the horizontal
425 well unit drills and operates, or pays the costs of drilling,
426 completing, equipping and operating a horizontal well for the

427 benefit of the nonparticipating owner as provided in the
 428 horizontal well unit order, then the operating owner is entitled to
 429 the share of production from the tracts or portions thereof subject
 430 to the horizontal well unit order accruing to the interest of the
 431 nonparticipating owner, exclusive of any unitization
 432 consideration, and royalty and overriding royalty reserved in any
 433 leases, assignments thereof or agreements relating thereto, of the
 434 tracts or portions of the tracts, until the market value of the
 435 nonparticipating owner's share of the production, exclusive of
 436 the unitization consideration, royalty and overriding royalty
 437 equals double the share of the costs payable by or charged to the
 438 interest of the nonparticipating owner. If an operator is an
 439 unknown or unlocatable interest owner, the operator shall be
 440 deemed to have elected Option 1.

441 (11) If a dispute arises as to the costs of drilling, completing,
 442 equipping and operating a horizontal well in a horizontal well
 443 unit formed pursuant to this section, the commission shall
 444 determine and apportion the costs, within ninety days from the
 445 date of written notification to the commission of the existence of
 446 the dispute.

447 (12) If the horizontal well unit approved by the commission
448 is not fully developed as approved in the order, the applicant
449 shall file a request to modify the horizontal well unit with the
450 commission within sixty days from the later of: Completion of
451 all drilling activities within the horizontal well unit; or the date
452 that is five years after the most recent drilling activity in the
453 horizontal well unit occurs.

454 (13) Any interested party may file an application to correct
455 a clerical error in a horizontal well unit order at any time.

456 (14) The applicant may file a request to modify a horizontal
457 well unit order at any time.

458 (15) If an operator has not drilled a well in a horizontal well
459 unit formed by the commission within five years after the latter
460 of either the drilling and completion of the initial horizontal well
461 in the horizontal well unit or the drilling and completion of the
462 most recent horizontal well within the horizontal well unit, as the
463 case may be, an interested party may file a request to modify the
464 horizontal well unit, and the commission may modify the
465 horizontal well unit. Upon the modification of the horizontal
466 well unit, the commission shall recalculate the allocation of

467 production from the tracts in the modified horizontal well unit
468 from and after the modification order date and the modification
469 order shall be binding on the property subject to the horizontal
470 well unit order, and all owners thereof, their heirs,
471 representatives, successors and assigns for so long as the
472 horizontal well unit order remains in effect. If the commission
473 determines that any party has been overcompensated, the
474 commission may authorize the applicant to withhold
475 distributions to the overcompensated party and redistribute
476 withheld moneys to the appropriate parties. The operator may set
477 off against any amount overpaid.

478 (16) All operations, including, but not limited to, the
479 commencement, drilling, or operation of a horizontal well upon
480 any portion of a horizontal well unit for which a unit order has
481 been entered pursuant to this section, shall be considered for all
482 purposes the conduct of the operations upon each separate tract
483 or portion of the tract in the horizontal well unit. That portion of
484 the production allocated to each tract or portion of the tract
485 included in a horizontal well unit shall, when produced, be
486 considered for all purposes to have been actually produced from

487 the tract by an oil and gas well drilled, completed and producing
488 on the tract.

489 (17) Subject to the provisions of subsection (m) of this
490 section, where the commission finds that the interest of one or
491 more unknown or unlocatable interest owners are included in the
492 horizontal well unit, the horizontal well unit operator shall hold
493 the moneys payable to the owner in an account for the interest
494 owner.

495 (18) A horizontal well unit order under this section shall
496 expire if a horizontal well has not been drilled in the horizontal
497 well unit within three years of the date the order is final and
498 nonappealable, unless the commission extends the order for good
499 cause, and if a well has been drilled within three years the
500 horizontal well unit shall continue in force and effect until the
501 last producing horizontal well in the horizontal well unit is no
502 longer capable of producing oil and gas.

503 (19) For purposes of this section, the commission shall
504 determine what is “just and reasonable” based on relevant
505 evidence adduced at a hearing including but not limited to
506 amounts paid or consideration given in arm’s length transactions

507 in the vicinity of the horizontal well unit and within a reasonable
 508 time prior to the hearing for transactions of the same nature and
 509 involving similar geologic conditions as that transaction being
 510 considered by the commission.

511 (20) So long as the order remains in effect, a horizontal well
 512 unit order shall be binding on the property subject to the
 513 horizontal well order and all owners of the property and their
 514 heirs, representatives, successors and assigns.

515 (g) Notice, timelines, hearings and orders.

516 (1) (A) For purposes of this section and the West Virginia
 517 Administrative Procedures Act, “interested parties” and “parties”
 518 means owners of the executive interest in the oil and gas in the
 519 target formation within the horizontal well unit, including the
 520 unknown or unlocatable executive interest royalty owners in the
 521 tracts, or portions of the tracts, to be included in the horizontal
 522 well unit subject to an application for a horizontal well unit
 523 order; owners of unleased oil and gas to be included in the
 524 horizontal well unit; operators of all target formation acreage in
 525 the horizontal well unit; and operators of all oil and gas wells

526 located in the unit that have been drilled to or through the target
527 formation.

528 (B) Bonded operators of wells drilled to or through the target
529 formation that are not within the horizontal well unit but are
530 located within five hundred feet of a proposed horizontal well
531 unit boundary may submit written comments regarding the
532 horizontal well unit application at any time before the start of
533 any hearing regarding the application, but are not interested
534 parties and may not participate in the hearing nor have the right
535 to appeal the commission's decision regarding the application.

536 (2) Each notice issued in accordance with this section shall
537 describe the area for which a horizontal well unit order is
538 proposed in recognizable, narrative terms and contain such other
539 information as is essential to the giving of proper notice,
540 including the time and date and place of a hearing. As soon as
541 practicable the commission shall establish a website. Within
542 three business days of the filing of an application under this
543 section, the commission shall publish on its website a copy of
544 :(i) The horizontal well unit application notice required to be
545 published pursuant to this section and section five of this article;

546 and (ii) the proposed horizontal well unit plat filed with the
 547 application, both identified as a horizontal well unit application
 548 and indexed by county and district where the majority of the
 549 acreage to be included in the proposed horizontal well unit is
 550 located, so that the plat and notice of the application are readily
 551 accessible. Timely publication on the website for a period of ten
 552 business days shall be notice to all operators.

553 (3) Upon request of any interested party or the commission,
 554 the commission shall conduct a hearing and receive evidence
 555 regarding the application. All interested parties may participate
 556 in any hearing. If a hearing has been held regarding an
 557 application, the order shall be a final order. If no hearing has
 558 been requested by the commission or an interested party within
 559 fifteen days after notice of the application is posted on the
 560 commission website in accordance with subdivision (2) of this
 561 subsection, the commission may issue a proposed order and
 562 provide a copy of the proposed order, together with notice of the
 563 right to appeal to the commission and request a hearing, to all
 564 interested parties. Any interested party aggrieved by the
 565 proposed order may appeal the proposed order to the

566 commission and request a hearing. Notice of appeal and request
567 for hearing shall be made within fifteen days of entry of the
568 proposed order. If no appeal and request for hearing has been
569 received within fifteen days, the proposed order shall become
570 final. If a hearing is requested, the hearing shall commence
571 within forty five days of issuance of the initial notice. The
572 commission may, upon written request, extend the date for the
573 hearing: *Provided*, That the hearing must be convened within
574 forty five days of the initial notice issued by the commission.
575 The commission shall, within twenty days of the hearing, enter
576 an order authorizing the unit, dismiss the application or for good
577 cause continue the process.

578 (4) At least ten days prior to a hearing to consider an
579 application for a horizontal well unit order, the applicant shall
580 file with the commission a summary of:

581 (A) The prevailing economic terms of the leases within the
582 proposed horizontal well unit and within any immediately
583 adjacent unit where the applicant is the operator, including the
584 bonus payment per net acre, production royalty rate, whether the
585 production royalty is subject to reduction for post-production

586 expenses and any other common conditions or terms of the
587 leases; and

588 (B) The prevailing consideration paid to the executive
589 interest royalty owners for the modification of leases within the
590 proposed unit or within any immediately adjacent unit where the
591 applicant is the operator to allow the lessee to pool or unitize the
592 leased tract with other tracts for purposes of drilling horizontal
593 wells.

594 The applicant may mark the summary of the prevailing
595 economic terms of leases and consideration paid for lease
596 modifications filed with the commission, and any associated
597 documents or information, as “CONFIDENTIAL” to the extent
598 that the documents contain confidential, commercial
599 information. Any information marked “CONFIDENTIAL” may
600 only be used by the commission for the purpose of the
601 underlying hearing and may only be reviewed at the offices of
602 the commission for purposes of preparing for the underlying
603 hearing by interested parties who are either executive interest
604 royalty owners of unleased tracts or executive interest royalty
605 owners of leased tracts within the proposed unit who have not

606 consented or agreed to pooling or unitization, and for no other
607 purpose. Prior to an executive interest royalty owner of an
608 unleased tract or an executive interest royalty owner of a leased
609 tract within the proposed unit who has not consented to pooling
610 or unitization disclosing any document or other material marked
611 as “CONFIDENTIAL,” or any information contained therein, to
612 an attorney, expert witness, consultant or other person assisting
613 the owner with a hearing under this section, the party making the
614 disclosure must first inform the person that he or she is bound by
615 the duty of confidentiality established under this subdivision and
616 the person to whom disclosure is to be made shall sign an
617 acknowledgment that the information is and shall remain at all
618 times confidential, and that the person agrees to abide by the
619 duty of confidentiality established by this subdivision and to
620 refrain from using the information for any purpose other than the
621 applicable hearing. All information marked “CONFIDENTIAL”
622 pursuant to this subdivision shall retain that character in any
623 court of competent jurisdiction on appeal, and the applicant may
624 file a motion with the court seeking to have the documents
625 sealed and withheld from the public record throughout the appeal

626 from a final order of the commission pertaining to a horizontal
627 well unit order. Furthermore, any information marked
628 “CONFIDENTIAL” pursuant to this subdivision is exempt from
629 disclosure under article one, chapter twenty-nine-b of this code.

630 (5) An order establishing a horizontal well drilling unit or
631 dismissing an application shall be a final order. Any interested
632 party aggrieved by the order may seek judicial review pursuant
633 to section eleven of this article. Notice of appeal shall be made
634 in accordance with section eleven of this article within fifteen
635 days of entry of the order. If no appeal has been received within
636 fifteen days, the order shall become final.

637 (h) *Unit order does not grant surface rights.* — A horizontal
638 well unit order under this section does not grant or otherwise
639 affect surface use rights: *Provided*, That without limiting the
640 foregoing, in no event shall drilling be initiated upon, or other
641 surface disturbance occur upon, the surface of or above a tract of
642 minerals that was forced into the unit pursuant to this section
643 without the owner’s consent.

644 (i) *Commission approval required for certain additional*
645 *drilling.* — After the filing of an application for a horizontal well

646 unit order, no well may be drilled or completed to or through the
647 target formation of the proposed horizontal well unit unless
648 authorized by the commission.

649 (j) Contemporaneous permit applications authorized. —
650 Notwithstanding anything to the contrary in article six-a, chapter
651 twenty-two of this code, upon the filing of an application for a
652 horizontal well unit order pursuant to this section, an applicant
653 may file an application for a well work permit under article six-
654 a, chapter twenty-two of this code for any proposed development
655 within the horizontal well unit for which the unit order is sought.

656 (k) A party may appear in person. — At any hearing an
657 interested party may represent themselves or be represented by
658 an attorney-at-law.

659 (l) No provision of this section alters the common law of this
660 state regarding the deduction of post-production expenses for
661 the purpose of calculating royalty.

662 (m) Conflict Resolution. — After the effective date of this
663 section, all applications requesting unitization for horizontal
664 wells shall be filed pursuant to this section. Deep well horizontal
665 unit applications filed before the effective date of this section

666 shall continue to proceed under and be governed by the
667 provisions of section seven of this article. With respect to
668 horizontal well unit applications filed after the effective date of
669 this section, if this section conflicts with section seven of this
670 article, the provisions of this section shall prevail. When
671 considering an application pursuant to this section, rules
672 regarding deep wells promulgated before the effective date of
673 this section shall not apply. The commission may modify any
674 special field rules, spacing orders, and deep well units in
675 connection with horizontal well unit orders under this section to
676 protect correlative rights, prevent waste, or ensure that operators
677 and royalty owners receive their just and equitable share of
678 production.

679 (n) *Unknown and Unlocatable Interest Owners.* —
680 Notwithstanding the existence of unknown or unlocatable
681 interest owners, a horizontal well unit order may be entered and
682 development, drilling and production may occur in the horizontal
683 well unit. Unknown and unlocatable interest owners of oil and
684 gas in place not subject to lease shall be considered to have
685 leased to the participating operators on terms determined by the

686 commission. Unknown or unlocatable interest owners of
687 working interest in property subject to lease before an
688 application is filed shall be considered to have elected Option 1
689 of this section.

690 (o) Opportunity of Surface Owners to Acquire Interests of
691 Unknown and Unlocatable Interest Owners in Oil and Gas
692 Underlying Horizontal Well Unit.

693 (1) When the interests of unknown and unlocatable interest
694 owners' property is included in a horizontal well unit, if the
695 applicant has not filed a proceeding pursuant to article twelve-a,
696 chapter fifty-five of this code (entitled Lease and Conveyance of
697 Mineral Interests Owned by Missing or Unknown Owners or
698 Abandoning Owners) with respect to the interest of an unknown
699 and unlocatable interest owner in the horizontal well unit, and
700 taxes on the unknown or unlocatable interest owners' property
701 are not delinquent, then, after a horizontal well unit order is
702 entered by the commission, the applicant shall inform the parties
703 paying taxes on the surface overlying that portion of the oil and
704 gas included in the horizontal well unit (the "TSO") that the
705 surface owner(s) may acquire the underlying interest of the

706 unknown and unlocatable interest owners in the horizontal well
 707 unit in a proceeding pursuant to this subsection. Upon written
 708 request to the applicant by any TSO, the applicant shall, to the
 709 extent practicable under the circumstances, furnish the
 710 requesting TSO the following information: *Provided, That*
 711 applicant is not required to provide confidential, trade secret,
 712 attorney client communications or attorney work product:

713 (A) An identification of the last known owner, and
 714 information in the possession of the applicant regarding the last
 715 known identity and address of, the interest believed to be held by
 716 unknown and unlocatable interest owners,

717 (B) The efforts to locate unknown and unlocatable interest
 718 owners,

719 (C) Such other information known to the applicant which
 720 might be helpful in identifying or locating the present owners
 721 thereof, and

722 (D) A copy of the most recent recorded instrument
 723 embracing the interest of the unknown and unlocatable interest
 724 owners as necessary to show the vesting of title to the minerals
 725 in the last record owner of the title to the minerals.

726 (2) When an unknown and unlocatable interest in oil and gas
727 is included in a horizontal well unit, the owners of the surface
728 overlying the interest may file a verified petition with respect to
729 all the interests of unknown and unlocatable interest owners
730 included in a horizontal well unit and underlying the surface
731 owner's property. The circuit court in which the majority of the
732 property subject to the petition authorized by this subsection is
733 located has jurisdiction of the proceeding. The petition shall
734 refer to this subsection and identify the oil and gas property
735 subject to the petition. The prayer in any such petition shall be
736 for the court to order, in the case of any defendant or heir,
737 successor or assign of any defendant who does not appear to
738 claim ownership of the defendant's interest for five years after
739 the date the petition is filed, a conveyance of the defendants' oil
740 and gas mineral interest under this subsection, subject to the
741 horizontal well unit order and lease terms approved by the
742 commission, to the petitioners.

743 (3) In any proceeding authorized in this subsection the
744 circuit court in which the petition is filed shall consider the
745 property subject to the petition leased to the participating

746 operators in the horizontal well unit on the terms determined by
 747 the commission.

748 (4) The person filing a petition under this subsection shall
 749 join as defendants to the action of all unknown and unlocatable
 750 interest owners having record title to the particular oil and gas
 751 minerals subject to the petition, and the unknown heirs,
 752 successors and assigns of all such owners not known to be alive.
 753 All persons not in being who might have some contingent or
 754 future interest therein, and all persons whether in being or not in
 755 being, having any interest, present, future or contingent, in the
 756 mineral interests subject to the petition, shall be fully bound by
 757 the proceedings under this subsection.

758 (5) Any owner of the overlying surface tract may join as a
 759 petitioner in the proceeding. Any person purporting to be the
 760 unknown and unlocatable interest owner, or any heir, successor
 761 or assign of an unknown and unlocatable interest owner, may
 762 appear as a matter of right at any time prior to the entry of
 763 judgment confirming the deed authorized by this subsection, for
 764 the purpose of establishing his or her title to a mineral interest
 765 subject to the petition. If the appearing unknown and unlocatable

766 interest owner's claim is established to the satisfaction of the
767 court, the court shall dismiss the action as to the appearing
768 owner's interest without cost, fees or damages: *Provided, That*
769 if the appearance of the formerly unknown or unlocatable
770 interest owner was as a result of the filing of the petition by the
771 surface owner pursuant to this subsection, then the court may
772 order the petitioner's reasonable attorneys fees and costs to be
773 paid to the petitioner out of the amounts payable to the formerly
774 unknown or unlocatable interest owner.

775 (6) If a petition is filed pursuant to this subsection, the
776 amounts payable to unknown and unlocatable interest owners
777 subject to the petition shall be paid to the Oil and Gas
778 Reclamation Fund established pursuant to section twenty-nine,
779 article six, chapter twenty-two of this code three years after the
780 petition is filed, unless and until an unknown and unlocatable
781 interest owner appears in the proceeding. The court may appoint
782 a special commissioner at any time to deliver a deed to the
783 petitioners in the form provided herein five years after the
784 petition is filed. The special commissioner shall be an attorney
785 duly admitted to practice before the West Virginia Supreme

786 Court of Appeals and in good standing, but may not be required
787 to give bond. If the petitioners do not agree as to the interest
788 each is to acquire by the deed contemplated herein, or the
789 division of any moneys associated therewith, the court shall
790 equitably determine the interests of the petitioners.

791 (7) In any action under this subsection, if personal service of
792 process is possible, it shall be made as provided by the West
793 Virginia rules of civil procedure. In addition, immediately upon
794 the filing of the petition, the petitioner shall: (1) Publish a Class
795 III legal advertisement in compliance with the provisions of
796 article three, chapter fifty-nine of this code, and in the county
797 wherein the larger part of the oil and gas mineral estate described
798 in the petition lies; and (2) no later than the first day of
799 publication, file a lis pendens notice in the county clerk's office
800 of the county where the petition is filed and the county wherein
801 the larger part of the oil and gas mineral estate described in the
802 petition lies. Both the advertisement and the lis pendens notice
803 shall set forth: (1) The names of the petitioner and the
804 defendants, as they are known to be by the exercise of reasonable
805 diligence by the petitioner, and their last known addresses; (2)

806 the date and record data of the instrument or other conveyance
807 which immediately created the oil and gas mineral interest; (3)
808 an adequate description of the land as contained therein; (4) the
809 source of title of the last known owners of the oil and gas
810 mineral interests; and (5) a statement that the action is brought
811 for the purpose of authorizing payments from a horizontal well
812 unit, and thereafter, in the case of any defendant or heir,
813 successor or assign of any defendant who does not appear to
814 claim ownership of the defendant's interest within five years
815 after the date the petition is filed, for the court to order a
816 conveyance of the defendant's oil and gas mineral interest under
817 this subsection, subject to the lease terms determined by the
818 commission and horizontal well unit order, to the owner of the
819 surface overlying the oil and gas mineral interest. In addition, the
820 petitioner shall send notice by certified mail, return receipt
821 requested, to the last known address, if there is one, of all named
822 defendants. In addition, the court may order advertisement
823 elsewhere or by additional means if there is reason to believe
824 that additional advertisement might result in identifying and
825 locating the unknown and unlocatable interest owners.

826 (8) Upon a finding by the court of the present ownership of
827 the petitioners of the surface estate, the court shall order the
828 special commissioner to convey to the proven surface owners,
829 subject to the horizontal well unit order and lease terms
830 approved by the commission, the mineral interest specified in the
831 petition authorized herein, by a deed substantially in the form as
832 follows:

833 This deed, made the ____ day of _____,
834 20____, between _____, special
835 commissioner, grantor and _____,
836 grantee,

837 Witnesseth, that whereas, grantor, in pursuance of the
838 authority vested in him or her by an order of the circuit court of
839 _____ county, West Virginia, entered on the ____ day
840 of _____, 20____, in civil action no. _____ therein
841 pending, to convey the mineral interest more particularly
842 described below to the grantee,

843 Now, therefore, this deed witnesseth: That grantor grants
844 unto grantee, subject to the provisions of the horizontal well unit
845 order of the Oil and Gas Conservation Commission in

865 established pursuant to section twenty-nine, article six, chapter
866 twenty-two of this code.

867 (10) The applicant may not be joined as a party, but shall be
868 served with copies of all pleadings and other papers filed in the
869 proceeding, and may intervene at any time.

870 (11) Payment by the applicant to the Oil and Gas
871 Reclamation Fund established pursuant to section twenty-nine,
872 article six, chapter twenty-two of this code or petitioners, as
873 applicable, pursuant to this subsection shall relieve the
874 participating operators of all liability whatsoever that the
875 participating operators may have had to any unknown and
876 unlocatable interest owners, their heirs, successors and assigns
877 with respect to the payment and all operations in the horizontal
878 well unit, all operations therein and all production from the
879 operations.

880 (12) If a surface owner does not file a petition pursuant to
881 this subsection within three years of the date notice is given to a
882 TSO as provided herein, amounts payable with respect to the
883 unknown and unlocatable interest owners' interests included in
884 a horizontal well unit shall be paid to the Oil and Gas

885 Reclamation Fund established pursuant to section twenty-nine,
886 article six, chapter twenty-two of this code, and the payment
887 shall relieve the participating operators of all liability of the
888 participating operators with respect to the horizontal well unit
889 and all operations therein and production therefrom to any
890 unknown and unlocatable interest owners, their heirs, successors
891 and assigns and to any owners of surface overlying the unknown
892 and unlocatable interest owners' interest, their heirs, successors
893 and assigns, with respect to the payment.

894 (13) After the recording of the special commissioner's deed,
895 no action may be brought by any unknown and unlocatable
896 interest owner or any heir, successor or assign thereof either to
897 recover any past or future proceeds accrued or to be accrued
898 from the property subject to the deed, or to recover any right,
899 title or interest in and to the mineral interest subject to the deed.

900 (14) If any unknown and unlocable interest owner or heir,
901 successor or assign thereof appears in the proceeding in circuit
902 court later than three years after the proceeding is filed, the
903 unknown and unlocatable interest owner, if he or she establishes
904 his or her claim to the satisfaction of the circuit court, shall only

905 be entitled to receive amounts payable in connection with the
906 horizontal well unit or production therefrom after the date of
907 appearance in the proceeding. Further, the participating operators
908 and the petitioning surface owners shall have no liability to the
909 unknown and unlocable interest owner or their heirs, successors
910 or assigns for any amount paid with respect to the unknown and
911 unlocable interest or the horizontal well unit or production
912 therefrom paid in accordance with this subsection.

913 (p) If any part of this section is adjudged to be
914 unconstitutional or invalid, the invalidation shall not affect the
915 validity of the remaining parts of this section; and to this end, the
916 provisions of this section are hereby declared to be severable.

NOTE: The purpose of this bill is to provide for the unitization of interests in drilling units in connection with all horizontal oil or gas wells. The bill sets forth application requirements. The bill establishes the standard of review. The bill provides for shallow horizontal well orders. The bill requires notice and timeliness. The bill provides for hearings. The bill addresses oil and gas produced from horizontal wells, vertical shallow wells, existing deep well units, and unconventional reservoirs. The bill adds new definitions. The bill modifies existing definitions.

Section 7a of this bill is a new section; therefore, it has been completely underscored.

In §22C-9-1, 2, 3, 4 and 5 strike-throughs indicate language that would be stricken from present law, and underscoring indicates new language that would be added.

