

Eng. Com. Sub. for House Bill No. 2688

--A Bill to amend and reenact §11-13A-3a, §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; requiring the Tax Commissioner to study, and propose rules relating to, oil and gas severance taxation on a first purchaser basis; 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; establishing prerequisites to filing of an application for a horizontal well unit order; setting forth application requirements; establishing the standard of review; providing for unit orders and parameters thereof; requiring notice and timeliness; providing for hearings; permitting bonded operators to submit written comments regarding a horizontal well unit application in certain circumstances; addressing oil and gas produced from horizontal wells, vertical wells and unconventional reservoirs; requiring royalties be paid on all substances emitted from the borehole; providing for declaration of public policy and legislative findings; specifying applicability of article; limiting the liability of non-consenting owners in certain circumstances; granting additional authority to the Oil and Gas Conservation Commission; providing for the award of unitization consideration in certain circumstances and generally; providing alternative and deemed elections to non-consenting owners in certain circumstances; providing for dispute resolution; providing for treatment of interests of unknown and unlocatable interest owners, including moneys payable thereto; providing for judicial review of commission orders; permitting the modification of horizontal well unit orders under certain circumstances; providing for the expiration of horizontal well unit orders under certain circumstances; requiring the filing of a summary of the prevailing economic terms of leases and the prevailing consideration paid for modification of leases prior to hearings; establishing procedures where certain information shall be deemed confidential; exempting certain information from disclosure under the Freedom of Information law; addressing additional drilling activity; providing that horizontal well unit orders do not grant or affect surface rights; authorizing contemporaneous permit applications; providing for reunification of interests of unknown and unlocatable interest owners with surface owners in certain circumstances and providing procedures therefor; providing for conflict resolution; providing for severability; adding new definitions; and modifying existing definitions.

Be it enacted by the Legislature of West Virginia:

That §11-13A-3a, §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:

CHAPTER 11. TAXATION.

ARTICLE 13A. SEVERANCE AND BUSINESS PRIVILEGE TAX ACT.

§11-13A-3a. Imposition of tax on privilege of severing natural gas or oil; Tax Commissioner to develop a uniform reporting form.

(a) Imposition of tax. -- For the privilege of engaging or continuing within this state in the business of severing natural gas or oil for sale, profit or commercial use, there is hereby levied and shall be collected from every person exercising such privilege an annual privilege tax: *Provided*, That effective for all taxable periods beginning on or after the first day of January, two thousand, there is an exemption from the imposition of the tax provided in this article on the following: (1) Free natural gas provided to any surface owner; (2) natural gas produced from any well which produced an average of less than five thousand cubic feet of natural gas per day during the calendar year immediately preceding a given taxable period; (3) oil produced from any oil well which produced an average of less than one-half barrel of oil per day during the calendar year immediately preceding a given taxable period; and (4) for a maximum period of ten years, all natural gas or oil produced from any well which has not produced marketable quantities of natural gas or oil for five consecutive years immediately preceding the year in which a well is placed back into production and thereafter produces marketable quantities of natural gas or oil.

(b) Rate and measure of tax. -- The tax imposed in subsection (a) of this section shall be five percent of the gross value of the natural gas or oil produced, as shown by the gross proceeds derived from the sale thereof by the producer, except as otherwise provided in this article.

(c) Tax in addition to other taxes. -- The tax imposed by this section shall apply to all persons severing gas or oil in this state, and shall be in addition to all other taxes imposed by law.

(d)(1) The Legislature finds that in addition to the production reports and financial records which must be filed by oil and gas producers with the State Tax Commissioner in order to comply with this section, oil and gas producers are required to file other production reports with other agencies, including, but not limited to, the office of oil and gas, the Public Service Commission and county assessors. The reports required to be filed are largely duplicative, the compiling of the information in different formats is unnecessarily time consuming and costly, and the filing of one report or the sharing of information by agencies of government would reduce the cost of compliance for oil and gas producers.

(2) On or before the first day of July, two thousand three, the Tax Commissioner shall design a common form that may be used for each of the reports regarding production that are required to be filed by oil and gas producers, which form shall readily permit a filing without financial information when such information is unnecessary. The commissioner shall also design such forms so as to permit filings in different formats, including, but not limited to, electronic formats.

(3) Effective the first day of July, two thousand six, this subsection shall have no force or effect.

(e) First Purchaser Taxation. – On or before November 1, 2015, the Tax Commissioner shall report to the Legislature’s Joint Committee on Government and Finance its recommendations as to a method of assessment and collection of the tax imposed in this section on a first purchaser basis. The Tax Commissioner shall propose legislative rules for promulgation in accordance with article three, chapter twenty-nine-a of this code, for the assessment and collection of the tax imposed in this section on a first purchaser basis to take effect on July 1, 2017. The report and rules shall address matters including, but not limited to, the application of the tax to natural gas liquids, differentiation of coalbed methane with respect to collection, existing tax exemptions and credits, and issues related to products so taxed moving in interstate commerce.

CHAPTER 22C. ENVIRONMENTAL RESOURCES.

ARTICLE 9. OIL AND GAS CONSERVATION.

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

(a) It is hereby declared to be the public policy of this state and in the public interest to:

(1) Foster, encourage and promote exploration for and development, production, utilization and conservation of oil and gas resources;

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

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

(4) Safeguard, protect and enforce the correlative rights of operators and royalty owners in a pool of oil or gas to the end that each such operator and royalty owner may obtain his or her just

and equitable share of production from ~~such~~ that pool, unit or unconventional reservoir of oil or gas.

(b) The Legislature hereby determines and finds that oil and natural gas found in West Virginia in shallow sands or strata have been produced continuously for more than one hundred years; that oil and gas deposits in ~~such~~ shallow sands or strata have geological and other characteristics different than those found in deeper formations; and that in order to encourage the maximum recovery of oil and gas from all productive formations in this state, it is not in the public interest, with the exception of shallow wells utilized in a secondary recovery program, to enact statutory provisions relating to the exploration for or production ~~from~~ of oil and gas from vertical shallow wells, ~~as defined in section two of this article~~, but that it is in the public interest to enact statutory provisions establishing regulatory procedures and principles to be applied to the exploration for or production of oil and gas from deep wells, as defined in ~~said~~ section two and oil and gas produced from horizontal wells.

§22C-9-2. Definitions.

(a) ~~Unless the context in which used clearly requires a different meaning,~~ As used in this article:

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

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

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

(4) "Operator" means any owner of the right to develop, operate and produce oil and gas from a pool and to appropriate the oil and gas produced therefrom, either for ~~such~~ that person or for ~~such~~ that person and others; in the event that there is no oil and gas lease in existence with respect to the tract in question, the owner of the oil and gas rights therein ~~shall be considered as is~~ is ~~the~~ "operator" to the extent of seven-eighths of the oil and gas in that portion of the pool underlying the tract owned by ~~such~~ the owner, and as "royalty owner" as to one-eighth interest in ~~such~~ the oil and gas; and in the event the oil is owned separately from the gas, the owner of the substance being produced or sought to be produced from the pool ~~shall be considered as~~ or unit is the "operator" as to ~~such~~ that pool or acreage included in a unit; the term operator includes owners of working interest in a lease but does not include owners whose interest is limited to working interests in a wellbore only, overriding royalties, or net profits interests;

(5) "Royalty owner" means any owner of oil and gas in place, or oil and gas rights, to the extent that ~~such~~ the owner is not an operator as defined in subdivision (4) of this section;

(6) "Independent producer" means a producer of crude oil or natural gas whose allowance for depletion is determined under Section 613A of the federal Internal Revenue Code in effect ~~on the first day of July, one thousand nine hundred ninety-seven~~ July 1, 1997;

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

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

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

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

(11) ~~"Shallow well" means any well drilled and completed in a formation above the top of the uppermost member of the "Onondaga Group": *Provided*, That in drilling a shallow well the operator may penetrate into the "Onondaga Group" to a reasonable depth, not in excess of twenty feet, in order to allow for logging and completion operations, but in no event may the "Onondaga Group" formation be otherwise produced, perforated or stimulated in any manner;~~ "Shallow well" means any well other than a coalbed methane well, drilled no deeper than one hundred feet below the top of the "Onondaga Group": *Provided*, That in no event may the "Onondaga Group"

formation or any formation below the “Onondaga Group” be produced, perforated or stimulated in any manner;

(12) “Deep well” means any well, other than a shallow well or coalbed methane well, drilled ~~and completed in~~ to a formation ~~at or~~ below the top of the uppermost member of the “Onondaga Group”;

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

(14) “Waste” means and includes:

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

(B) The locating, drilling, equipping, operating or producing of any oil or gas well in a manner that causes, or tends to cause, a reduction in the quantity of oil or gas ultimately recoverable from a pool under prudent and proper operations, or that causes or tends to cause unnecessary or excessive surface loss of oil or gas; or

(C) The drilling of more horizontal wells or deep wells than are reasonably required to recover efficiently and economically the maximum amount of oil and gas from a pool, unit, or an unconventional reservoir. Waste does not include gas vented or released from any mine areas as defined in section two, article one, chapter twenty-two-a of this code or from adjacent coal seams which are the subject of a current permit issued under article two of chapter twenty-two-a of this code: *Provided*, That ~~nothing in this exclusion is intended to~~ does not address ownership of the gas;

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

(16) "Just and equitable share of production" means, as to each person, an amount of oil or gas or both substantially equal to the amount of recoverable oil and gas in that part of a pool, unit or unconventional reservoir underlying ~~such~~ the person's tract or tracts within a unit.

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

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

(19) "Horizontal well" means an oil and gas well, other than a coalbed methane well, where the wellbore is initially drilled using a horizontal drilling method. A horizontal well may include multiple horizontal side laterals drilled into the same formation. A horizontal well may have completions into multiple formations from the same well. Multiple horizontal wells may be drilled from the same well pad.

(b) Unless the context clearly indicates otherwise, the use of the word “and” and the word “or” ~~shall be~~ are interchangeable, as, for example, “oil and gas” ~~shall mean~~ means oil or gas or both.

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

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

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

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

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

(2) Any well commenced or completed prior to ~~the ninth day of March, one thousand nine hundred seventy two~~ March 9, 1972, unless ~~such~~ the well is, after completion (whether ~~such~~ the completion is prior or subsequent to that date):

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

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

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

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

(4) Free gas rights; or

(5) Coalbed methane wells.

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

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

(2) Fix prices of oil or gas.

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

§22C-9-4. Oil and gas conservation commissioner and commission membership; qualifications of members; terms of members; vacancies on

commission; meetings; compensation and expenses; appointment and qualifications of commissioner; general powers and duties.

(a) The "oil and gas conservation commission" ~~shall be~~ is-composed of ~~five~~ seven members. The Director of the ~~Division~~ Department of Environmental Protection, ~~and~~ the chief of the office of oil and gas and the state geologist ~~shall be~~ are members of the commission ex officio. The remaining ~~three~~ four members of the commission shall be appointed by the Governor, by and with the advice and consent of the Senate, and may not be employees of the ~~Division~~ Department of Environmental Protection. Each of the four members appointed by the Governor shall be a resident of this state. Of the ~~three~~ four members appointed by the Governor, ~~one~~ the first shall be an independent producer. ~~and at least one shall be a public member not engaged in an activity under the jurisdiction of the Public Service Commission or the federal energy regulatory commission.~~ The second appointee shall be an individual who has significant experience in the agricultural industry and who is engaged in the business of farming in this state. When this member is to be appointed, the Governor shall request from the primary organization representing the agriculture and forestry industries in this state a list of three nominees for the member to be appointed. The third appointee shall be an owner of minerals in this state who is not affiliated with an operator of oil or gas wells. When this member is to be appointed, the Governor shall request from the major trade association representing mineral owners in this state a list of three nominees for the member to be appointed. The ~~third~~ fourth appointee shall possess a degree from an accredited college or university in petroleum engineering or geology and must be a registered professional engineer with particular knowledge and experience in the oil and gas industry and

shall serve as commissioner and as chair of the commission. The term "affiliated" as used in this subsection means someone who directly, or indirectly through one or more intermediaries, controls or is controlled by or is under common control with an operator of oil and gas wells by virtue of the power to direct or cause the direction of the management and policies of that operator, whether through the ownership of voting shares, by contract or otherwise.

(b) The members of the commission appointed by the Governor shall be appointed for overlapping terms of six years each, except that the original appointments shall be for terms of two, four, five and six years, respectively. Each member appointed by the Governor shall serve until the members successor has been appointed and qualified. Members may be appointed by the Governor to serve any number of terms. The members of the commission appointed by the Governor, before performing any duty hereunder, shall take and subscribe to the oath required by section 5, article IV of the Constitution of West Virginia. Vacancies in the membership appointed by the Governor shall be filled by appointment by the Governor for the unexpired term of the member whose office is vacant and ~~such~~ the appointment shall be made by the Governor within sixty days of the occurrence of such vacancy. Any member appointed by the Governor may be removed by the Governor in case of incompetency, neglect of duty, gross immorality or malfeasance in office. A commission member's appointment ~~shall be~~ is terminated as a matter of law if that member fails to attend three consecutive meetings. The Governor shall appoint a replacement within thirty days of the termination.

(c) The commission shall meet at such times and places as ~~shall be~~ are designated by the chair. The chair may call a meeting of the commission at any time, and shall call a meeting of the

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

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

(e) The commission is hereby empowered and it is the commission's duty to execute and carry out, administer and enforce the provisions of this article in the manner provided herein. Subject to the provisions of section three of this article, the commission has jurisdiction and authority over all persons and property necessary therefor. The commission is authorized to make such investigation of records and facilities as the commission ~~deems~~ considers proper. In the event of a conflict between the duty to prevent waste and the duty to protect correlative rights, the commission's duty to prevent waste ~~shall be~~ is paramount.

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

(1) Regulate the spacing of deep wells;

(2) Issue horizontal well unit orders;

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

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

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

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

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

(2) No request for hearing has been received.

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

(1) Propose legislative rules;

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

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

(i) Any exception to the field rules or the spacing of wells which does not conform to the rules of the commission, and any application for the pooling of interests within a drilling unit, must be presented to and heard before the commission.

§22C-9-5. Rules; notice requirements.

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

(b) Notwithstanding the provisions of section two, article seven, chapter twenty-nine-a of this code, any notice required under the provisions of this article shall be given at the direction of the commission by personal or substituted service or by certified United States mail, addressed, postage prepaid, to the last-known mailing address, if any, of the person being served, with the direction that the same be delivered to addressee only, return receipt requested. In the case of providing notice upon the filing of an application with the commission, the commission shall ~~cause notice~~ within fourteen days of the filing of an application, submit for publication notice of the application to be published as a Class II legal advertisement in compliance with the provisions of article three, chapter fifty-nine of this code, and the publication area for ~~such the~~ the publication shall be the county or counties wherein any land which may be affected by ~~such the~~ the order is situate.

In addition, the commission shall mail a copy of ~~such the~~ the notice to all other persons who have specified to the commission an address to which all such notices may be mailed. The notice shall issue in the name of the state, shall be signed by one of the commission members, shall

specify the style and number of the proceeding, the time and place of any hearing and shall briefly state the purpose of the proceeding. Each notice of a hearing must be provided no fewer than twenty days preceding the hearing date. Personal or substituted service and proof thereof may be made by an officer authorized to serve process or by an agent of the commission in the same manner as is now provided by the ~~“West Virginia Rules of Civil Procedure for Trial Courts of Record”~~ *West Virginia Rules of Civil Procedure* for service of process in civil actions in the various courts of this state.

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

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

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

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

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

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

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

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

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

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

(2) "Executive interest" and "executory interest" means the interest entitling the owner to lease the oil and gas estate or amend an existing oil and gas lease. For purposes of this section, the owner of the executive interest is considered to be the royalty owner and interested party for purposes of notice and participation in proceedings here in this article, and all horizontal well unit orders are binding on the owners of executive interests and nonexecutive interests in a horizontal well unit. The owners of the executive interest and the associated nonexecutive interest owners are

considered to be the same interest for purposes of computing percentages pursuant to paragraph (A), subdivision (2), subsection (c) of this section;

(3) "Horizontal well unit" means an area in which horizontal drilling may occur, and that is designated for the allocation of production from one or more horizontal wells drilled in the unit to all oil and gas tracts, or portions of the tracts, included in the unit for production of oil and gas and payment of royalty and proceeds of production regardless of the tract or tracts in which the horizontal well is drilled or completed, and the corresponding authorization to drill and produce oil and gas from that area as a unit, notwithstanding the lack of adequate consensual rights allowing pooling or unitization of oil and gas or allowing drilling horizontally across tract lines. When a horizontal well unit is formed, that portion of the production allocated to each tract or portion of the unit included in the horizontal well unit shall, when produced, be considered for all purposes to have been actually produced from the tract by an oil and gas well drilled, completed and producing on the tract;

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

(5) "Overriding royalty" means an interest carved out of the leasehold or out of the working interest and is not included within the meaning of royalty;

(6) "Royalty owner" means any owner of oil and gas in place or interest derived from the oil and gas in place. Royalty is not carved out of a leasehold interest. For example, if a fee owner

of oil and gas leases property for oil and gas production and conveys to another the right to receive one half of the oil and gas when produced, both parties are royalty owners;

_____ (7) "Target formation" means the primary geologic formation from which oil or gas is intended to be produced from a horizontal drilling operation and, where completions can reasonably be expected to produce from formations above or below the target formation, includes the formations from which production can reasonably be expected;

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

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

_____ (10) "Unknown and unlocatable interest owner" means a royalty owner, executive interest owner, operator or other person vested with an interest in oil and gas in the target formation to be included in a horizontal well unit, whose present identity or location cannot be determined from:

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

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

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

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

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

(c) *Applicability.*

(1) For all horizontal wells, including shallow and deep horizontal wells, the commission may unitize tracts, or portions of tracts, in a horizontal well unit established under this section upon the filing of an application with the commission by a person that controls the horizontal well unit and upon the issuance of a horizontal well unit order pursuant to this section.

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

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

(B) With respect to the operator interest, obtained by ownership, lease, lease amendment, assignment, farmout, contract, or other agreement, the right, consent or agreement to pool or unitize as to eighty percent or more of the net acreage proposed to be included in the horizontal

well unit owned, leased, or operated by bonded operators and the applicant, collectively, by ownership, lease, farmout, assignment, contract or other agreement; and

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

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

_____ (3) For purposes of determining whether a person has obtained the requisite control of the proposed horizontal well unit, the commission may not include overriding royalty owners, nonexecutive interest royalty owners or acreage owned or otherwise held by unleased unknown and unlocatable interest owners or acreage owned or otherwise held by operators who are not bonded operators. Furthermore, for purposes of determining whether a person has the requisite control of the proposed horizontal well unit, the identity and rights of royalty owners and bonded operators shall be determined as of the date on which the application for a horizontal well unit is filed.

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

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

(d) *Application requirements.*

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

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

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

(C) A plat that depicts the boundaries and acreage of the proposed horizontal well unit, the tracts in the horizontal well unit, the surface tax map and parcel numbers of the tracts to be included in the horizontal well unit in accordance with county assessor's records, and the district(s) and county or counties where the proposed horizontal well unit is located. The plat shall show the surface location of the vertical borehole of the horizontal well(s) to be included in the proposed horizontal well unit determined by survey, the courses and distances of the surface location from

two permanent points or landmarks on those tracts, the deviation from vertical, and also the proposed horizontal lateral portion of each proposed horizontal well to be included in the proposed horizontal well unit. The plat shall show the proposed horizontal well unit name, the proposed horizontal well names, and if known, the well number of each horizontal well to be drilled in the horizontal well unit. The plat shall also show the location of each permitted, active oil and gas well located in the horizontal well unit, and the name of the operator of the well as shown by the records of the Department of Environmental Protection, Office of Oil and Gas: *Provided, That the applicants are not required to depict or identify any abandoned or plugged well;*

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

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

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

(ii) Which of them hold executive rights; and

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

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

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

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

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

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

(I) The percentage of the net acreage in the proposed horizontal well unit held by bonded operators and the applicant, collectively, as to which consent or agreement to pooling or unitization has been granted;

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

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

(L) A statement whether the applicant has submitted, either previously or contemporaneously with the application filed pursuant to this section, an application for a well work permit with the Department of Environmental Protection for one or more horizontal wells to be completed within the boundaries of the proposed horizontal well unit.

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

(e) *Standard of review.*

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

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

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

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

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

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

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

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

(H) Correlative rights;

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

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

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

(2) The commission may not issue a horizontal well unit order pursuant to this section unless it finds that the applicant has before the filing of the application met the requirements of subsection (c) of this section.

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

(f) *Horizontal Well Unit Orders.*

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

(A) The size and boundaries of the horizontal well unit giving due regard for maximization of the amount of oil and gas produced to prevent waste and protect correlative rights: *Provided*, That a horizontal well unit's size may not exceed six hundred forty acres: *Provided, however*, That the commission may exceed the acreage limitation by ten percent

if the applicant demonstrates that the proposed horizontal well unit area would be drained efficiently and economically by a larger horizontal well unit;

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

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

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

_____ (E) Any unitization consideration due.

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

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

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

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

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

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

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

(B) Executive interest owners may make an election for unitization consideration, and if the executive interest owner elects unitization consideration, the interests of the executive interest owner and the associated nonexecutive interest owners shall be considered leased to the participating operators, including the applicant, to the extent of their interest in the horizontal well

unit on terms which, if not agreed upon, shall be just and reasonable as determined by the commission: *Provided*, That, with respect to the deemed one-eighth royalty interest only, any royalty terms determined by the commission shall stipulate that the royalties may not be reduced by production or post-production expenses, and shall stipulate that royalties shall be calculated and paid on all natural gas, natural gas liquids, and other substances emitted from the borehole and marketed off the premises: *Provided, however*, That the commission may consider the net amount payable under leases where post-production expenses are permitted when determining the production royalty rate. Thereafter, the applicant and all royalty owners and owners of leasehold, working interest, overriding royalty interest and other interests in the associated unleased oil and gas shall be bound by the order. Further, following an election by the executive interest owners to receive unitization consideration under this paragraph (B), the participating operators including the applicant, to the extent of their interest in the horizontal well unit, will be the operator of the oil and gas as to the deemed seven-eighths interest and the owner of the unleased oil and gas will be the executive interest royalty owner as to the deemed one-eighth interest. Nothing contained in this paragraph (B) applies to any lease in this state now in existence or entered into in the future, or to any award of unitization consideration made by the commission other than unitization consideration awarded to an executive interest owner of an unleased tract who elects to be considered leased pursuant to this paragraph (B).

(C) Owners of oil and gas interests as to which there is no lease in existence who do not elect (A) or (B) of this subdivision shall be considered to be a royalty owner with respect to one-eighth and an operator with respect to seven- eighths of their ownership interest, and may not

receive unitization consideration. With respect to the seven-eighths, the owner may elect Option 1, Option 2 or Option 3 hereinafter provided.

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

(9) An operator may elect to consent to and participate in a horizontal well unit after an application is filed. Subject to subdivision (7) of this subsection, when the commission issues a horizontal well unit order pursuant to this section, the commission shall allow each nonconsenting operator, who does not elect to participate in the risk and cost of drilling in the horizontal well unit to choose from the following options:

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

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

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

(10) If a nonconsenting operator elects Option 2, and an owner of any operating interest in any portion of the horizontal well unit drills and operates, or pays the costs of drilling, completing, equipping and operating a horizontal well for the benefit of the nonparticipating owner as provided in the horizontal well unit order, then the operating owner is entitled to the share of production from the tracts or portions thereof subject to the horizontal well unit order accruing to the interest of the nonparticipating owner, exclusive of any unitization consideration, and royalty and overriding royalty reserved in any leases, assignments thereof or agreements relating thereto, of the tracts or portions of the tracts, until the market value of the nonparticipating owner's share of the production, exclusive of the unitization consideration, royalty and overriding royalty equals double the share of the costs payable by or charged to the interest of the nonparticipating owner. If an operator is an unknown and unlocatable interest owner, the operator shall be deemed to have elected Option 1.

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

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

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

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

(15) If an operator has not drilled a well in a horizontal well unit formed by the commission within five years after the latter of either the drilling and completion of the initial horizontal well in the horizontal well unit or the drilling and completion of the most recent horizontal well within the horizontal well unit, as the case may be, an interested party may file a request to modify the horizontal well unit, and the commission may modify the horizontal well unit. Upon the modification of the horizontal well unit, the commission shall recalculate the allocation of production from the tracts in the modified horizontal well unit from and after the modification order date and the modification order shall be binding on the property subject to the horizontal well unit order, and all owners thereof, their heirs, representatives, successors and assigns for so long as the horizontal well unit order remains in effect. If the commission determines that any party has been overcompensated, the commission may authorize the applicant to withhold distributions to the overcompensated party and redistribute withheld moneys to the appropriate parties. The operator may set off against any amount overpaid.

(16) All operations, including, but not limited to, the commencement, drilling, or operation of a horizontal well upon any portion of a horizontal well unit for which a unit order has been entered pursuant to this section, shall be considered for all purposes the conduct of the operations upon each separate tract or portion of the tract in the horizontal well unit. That portion of the production allocated to each tract or portion of the tract included in a horizontal well unit shall,

when produced, be considered for all purposes to have been actually produced from the tract by an oil and gas well drilled, completed and producing on the tract.

(17) Subject to the provisions of subsection (o) of this section, where the commission finds that the interest of one or more unknown and unlocatable interest owners are included in the horizontal well unit, the horizontal well unit operator shall deposit the moneys payable to unknown and unlocatable interest owners into an escrow account bearing a market rate of interest to be held, administered and disbursed in accordance with an order of the commission and this section.

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

(19) For purposes of this section, the commission shall determine what is "just and reasonable" based on relevant evidence adduced at a hearing including but not limited to amounts paid or consideration given in arm's length transactions in the vicinity of the horizontal well unit and within a reasonable time prior to the hearing for transactions of the same nature and involving similar geologic conditions as that transaction being considered by the commission.

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

(21) Any royalties payable under this section shall be calculated and paid on all natural gas, natural gas liquids, and all other substances emitted from the borehole and marketed off the premises.

(g) Notice, timelines, hearings and orders.

(1) (A) For purposes of this section and the West Virginia Administrative Procedures Act, "interested parties" and "parties" means owners of the executive interest in the oil and gas in the target formation within the horizontal well unit, including the unknown and unlocatable interest owner of the executive interest in the tracts, or portions of the tracts, to be included in the horizontal well unit subject to an application for a horizontal well unit order; owners of unleased oil and gas to be included in the horizontal well unit; operators of all target formation acreage in the horizontal well unit; and operators of all oil and gas wells located in the unit that have been drilled to or through the target formation.

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

(2) Each notice issued in accordance with this section shall describe the area for which a horizontal well unit order is proposed in recognizable, narrative terms and contain such other information as is essential to the giving of proper notice, including the time and date and place of

a hearing. As soon as practicable the commission shall establish a website. Within three business days of the filing of an application under this section, the commission shall publish on its website a copy of: (i) The horizontal well unit application notice required to be published pursuant to this section and section five of this article; and (ii) the proposed horizontal well unit plat filed with the application, both identified as a horizontal well unit application and indexed by county and district where the majority of the acreage to be included in the proposed horizontal well unit is located, so that the plat and notice of the application are readily accessible. Timely publication on the website for a period of ten business days shall be notice to all operators.

(3) Upon request of any interested party or the commission, the commission shall conduct a hearing and receive evidence regarding the application. All interested parties may participate in any hearing. If a hearing has been held regarding an application, the order shall be a final order. If no hearing has been requested by the commission or an interested party within fifteen days after notice of the application is posted on the commission website in accordance with subdivision (2) of this subsection, the commission may issue a proposed order and provide a copy of the proposed order, together with notice of the right to appeal to the commission and request a hearing, to all interested parties. Any interested party aggrieved by the proposed order may appeal the proposed order to the commission and request a hearing. Notice of appeal and request for hearing shall be made within fifteen days of entry of the proposed order. If no appeal and request for hearing has been received within fifteen days, the proposed order shall become final. If a hearing is requested, the hearing shall commence within forty five days of issuance of the initial notice. The commission may, upon written request, extend the date for the hearing: *Provided*, That the hearing must be

convened within forty five days of the initial notice issued by the commission. The commission shall, within twenty days of the hearing, enter an order authorizing the unit, dismiss the application or for good cause continue the process.

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

(A) The prevailing economic terms of the leases within the proposed horizontal well unit and within any immediately adjacent unit where the applicant is the operator, including the bonus payment per net acre, production royalty rate, whether the production royalty is subject to reduction for post-production expenses and any other common conditions or terms of the leases; and

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

The applicant may mark the summary of the prevailing economic terms of leases and consideration paid for lease modifications filed with the commission, and any associated documents or information, as "CONFIDENTIAL" to the extent that the documents contain confidential, commercial information. Any information marked "CONFIDENTIAL" may only be used by the commission for the purpose of the underlying hearing and may only be reviewed at the offices of the commission for purposes of preparing for the underlying hearing by interested parties who are either executive interest royalty owners of unleased tracts or executive interest

royalty owners of leased tracts within the proposed unit who have not consented or agreed to pooling or unitization, and for no other purpose. Prior to an executive interest royalty owner of an unleased tract or an executive interest royalty owner of a leased tract within the proposed unit who has not consented to pooling or unitization disclosing any document or other material marked as "CONFIDENTIAL," or any information contained therein, to an attorney, expert witness, consultant or other person assisting the owner with a hearing under this section, the party making the disclosure must first inform the person that he or she is bound by the duty of confidentiality established under this subdivision and the person to whom disclosure is to be made shall sign an acknowledgment that the information is and shall remain at all times confidential, and that the person agrees to abide by the duty of confidentiality established by this subdivision and to refrain from using the information for any purpose other than the applicable hearing. All information marked "CONFIDENTIAL" pursuant to this subdivision shall retain that character in any court of competent jurisdiction on appeal, and the applicant may file a motion with the court seeking to have the documents sealed and withheld from the public record throughout the appeal from a final order of the commission pertaining to a horizontal well unit order. Furthermore, any information marked "CONFIDENTIAL" pursuant to this subdivision is exempt from disclosure under article one, chapter twenty-nine-b of this code.

(5) An order establishing a horizontal well drilling unit or dismissing an application shall be a final order. Any interested party aggrieved by the order may seek judicial review pursuant to section eleven of this article. Notice of appeal shall be made in accordance with section eleven of

this article within fifteen days of entry of the order. If no appeal has been received within fifteen days, the order shall become final.

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

(i) *Commission approval required for certain additional drilling.* -- After the filing of an application for a horizontal well unit order, no well may be drilled or completed to or through the target formation of the proposed horizontal well unit unless authorized by the commission.

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

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

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

(m) *Conflict Resolution.* -- After the effective date of this section, all applications requesting unitization for horizontal wells shall be filed pursuant to this section. Deep well horizontal unit

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

(n) *Unknown and Unlocatable Interest Owners.* -- Notwithstanding the existence of unknown and unlocatable interest owners, a horizontal well unit order may be entered and development, drilling and production may occur in the horizontal well unit. Unknown and unlocatable interest owners of oil and gas in place not subject to lease shall be considered to have leased to the participating operators on terms determined by the commission. Unknown and unlocatable interest owners of working interest in property subject to lease before an application is filed shall be considered to have elected Option 1 of this section.

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

(1) When the interests of unknown and unlocatable interest owners' property is included in a horizontal well unit, if the applicant has not filed a proceeding pursuant to article twelve-a, chapter fifty-five of this code (entitled Lease and Conveyance of Mineral Interests Owned by

Missing or Unknown Owners or Abandoning Owners) with respect to the interest of an unknown and unlocatable interest owner in the horizontal well unit, and taxes on the unknown and unlocatable interest owners' property are not delinquent, then, after a horizontal well unit order is entered by the commission, the applicant shall inform the parties paying taxes on the surface overlying that portion of the oil and gas included in the horizontal well unit (the "TSO") that the surface owner(s) may acquire the underlying interest of the unknown and unlocatable interest owners in the horizontal well unit in a proceeding pursuant to this subsection. Upon written request to the applicant by any TSO, the applicant shall, to the extent practicable under the circumstances, furnish the requesting TSO the following information: *Provided*, That applicant is not required to provide confidential, trade secret, attorney client communications or attorney work product:

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

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

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

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

_____ (2) When an unknown and unlocatable interest in oil and gas is included in a horizontal well unit, the owners of the surface overlying the interest may file a verified petition with respect

to all the interests of unknown and unlocatable interest owners included in a horizontal well unit and underlying the surface owner's property. The circuit court in which the majority of the property subject to the petition authorized by this subsection is located has jurisdiction of the proceeding. The petition shall refer to this subsection and identify the oil and gas property subject to the petition. The prayer in any such petition shall be for the court to order, in the case of any defendant or heir, successor or assign of any defendant who does not appear to claim ownership of the defendant's interest for five years after the date the petition is filed, a conveyance of the defendants' oil and gas mineral interest under this subsection, subject to the horizontal well unit order and lease terms approved by the commission, to the petitioners.

(3) In any proceeding authorized in this subsection the circuit court in which the petition is filed shall consider the property subject to the petition leased to the participating operators in the horizontal well unit on the terms determined by the commission.

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

(5) Any owner of the overlying surface tract may join as a petitioner in the proceeding. Any person purporting to be the unknown and unlocatable interest owner, or any heir, successor

or assign of an unknown and unlocatable interest owner, may appear as a matter of right at any time prior to the entry of judgment confirming the deed authorized by this subsection, for the purpose of establishing his or her title to a mineral interest subject to the petition. If the appearing unknown and unlocatable interest owner's claim is established to the satisfaction of the court, the court shall dismiss the action as to the appearing owner's interest without cost, fees or damages: *Provided*, That if the appearance of the formerly unknown and unlocatable interest owner was as a result of the filing of the petition by the surface owner pursuant to this subsection, then the court may order the petitioner's reasonable attorneys fees and costs to be paid to the petitioner out of the amounts payable to the formerly unknown and unlocatable interest owner.

(6) If a petition is filed pursuant to this subsection, the amounts payable to unknown and unlocatable interest owners subject to the petition shall be paid to the Oil and Gas Reclamation Fund established pursuant to section twenty-nine, article six, chapter twenty-two of this code three years after the petition is filed, unless and until an unknown and unlocatable interest owner appears in the proceeding. The court may appoint a special commissioner at any time to deliver a deed to the petitioners in the form provided herein five years after the petition is filed. The special commissioner shall be an attorney duly admitted to practice before the West Virginia Supreme Court of Appeals and in good standing, but may not be required to give bond. If the petitioners do not agree as to the interest each is to acquire by the deed contemplated herein, or the division of any moneys associated therewith, the court shall equitably determine the interests of the petitioners.

(7) In any action under this subsection, if personal service of process is possible, it shall be made as provided by the West Virginia rules of civil procedure. In addition, immediately upon the filing of the petition, the petitioner shall: (1) Publish a Class III legal advertisement in compliance with the provisions of article three, chapter fifty-nine of this code, and in the county wherein the larger part of the oil and gas mineral estate described in the petition lies; and (2) no later than the first day of publication, file a lis pendens notice in the county clerk's office of the county where the petition is filed and the county wherein the larger part of the oil and gas mineral estate described in the petition lies. Both the advertisement and the lis pendens notice shall set forth: (1) The names of the petitioner and the defendants, as they are known to be by the exercise of reasonable diligence by the petitioner, and their last known addresses; (2) the date and record data of the instrument or other conveyance which immediately created the oil and gas mineral interest; (3) an adequate description of the land as contained therein; (4) the source of title of the last known owners of the oil and gas mineral interests; and (5) a statement that the action is brought for the purpose of authorizing payments from a horizontal well unit, and thereafter, in the case of any defendant or heir, successor or assign of any defendant who does not appear to claim ownership of the defendant's interest within five years after the date the petition is filed, for the court to order a conveyance of the defendant's oil and gas mineral interest under this subsection, subject to the lease terms determined by the commission and horizontal well unit order, to the owner of the surface overlying the oil and gas mineral interest. In addition, the petitioner shall send notice by certified mail, return receipt requested, to the last known address, if there is one, of all named defendants. In addition, the court may order advertisement elsewhere or by additional means if

there is reason to believe that additional advertisement might result in identifying and locating the unknown and unlocatable interest owners.

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

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

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

Now, therefore, this deed witnesseth: That grantor grants unto grantee, subject to the provisions of the horizontal well unit order of the Oil and Gas Conservation Commission in _____ and lease terms provided therein, and further subject to all other liens and encumbrances of record, that certain oil and gas mineral interest in _____ county, West Virginia, more particularly described in the cited order of the circuit court as follows: (here insert the description in the order).

Witness the following signature.

Special Commissioner

(9) After the date of the special commissioner's deed authorized herein, the surface owner grantee is entitled to receive all proceeds due and payable under a horizontal well unit order attributable to the mineral interests specified in the special commissioner's deed accruing from and after the date of the special commissioner's deed. Prior to the issuance of the special commissioner's deed pursuant to this subsection, all proceeds due and payable under a horizontal well unit order attributable to the mineral interests specified in the special commissioner's deed accruing prior to the date of the special commissioner's deed shall be paid to the Oil and Gas Reclamation Fund established pursuant to section twenty-nine, article six, chapter twenty-two of this code.

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

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

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

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

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

____ (14) If any unknown and unlocatable interest owner or heir, successor or assign thereof appears in the proceeding in circuit court later than three years after the proceeding is filed, the unknown and unlocatable interest owner, if he or she establishes his or her claim to the satisfaction of the circuit court, shall only be entitled to receive amounts payable in connection with the horizontal well unit or production therefrom after the date of appearance in the proceeding. Further, the participating operators and the petitioning surface owners shall have no liability to the unknown and unlocatable interest owner or their heirs, successors or assigns for any amount paid with respect to the unknown and unlocatable interest or the horizontal well unit or production therefrom paid in accordance with this subsection.

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