IN CIRCUIT COURT OF MCDOWELL COUNTY, WEST VIRGINIA

BLUE EAGLE LAND, LLC, a West Virginia limited liability company, **COALQUEST DEVELOPMENT, LLC**, a foreign limited liability company, **CONSOLIDATION COAL COMPANY**, a foreign corporation, **HORSE CREEK LAND AND MINING COMPANY**, a West Virginia corporation, **NATIONAL COUNCIL OF COAL LESSORS, INC.**, a West Virginia corporation, **PENN VIRGINIA OPERATING COMPANY, LLC**, a foreign limited liability company, **POCAHONTAS LAND CORPORATION**, a foreign corporation, **WEST VIRGINIA COAL ASSOCIATION**, a West Virginia non-profit corporation, **WPP LLC**, a foreign limited liability company, and **WOLF RUN MINING COMPANY**, a West Virginia corporation,

Petitioners,

and

WEST VIRGINIA SURFACE OWNER'S RIGHTS ORGANIZATION,

Intervenor/Petitioner **CASE NO. 08-CAP-171**

V.

WEST VIRGINIA OIL & GAS CONSERVATION COMMISSION, a state agency, **CHESAPEAKE APPALACHIA, LLC**, a foreign limited liability company, **EASTERN AMERICAN ENERGY CORPORATION**, a West Virginia corporation, and **PETROEDGE RESOURCES (WV), LLC**, a foreign limited liability company,

Respondents.

RESPONSE OF CHESAPEAKE APPALACHIA, L.L.C., TO THE INITIAL APPEAL BRIEFS OF PETITIONER AND INTERVENOR

NOW COMES the Respondent, Chesapeake Appalachia, L.L.C. ("Chesapeake"), and responds to the Initial Appeal Briefs filed on or about June 15, 2009, by Petitioners and the Intervenor.

I. STATEMENT OF THE CASE

This case is an appeal of the rulings by an administrative agency ruling pursuant to W. Va. Code § 22C-9-11. Petitioners seek review of various orders issued in 2007 by the West Virginia Oil & Gas Conservation Commission ("Commission"). The Commission is charged with the jurisdiction pursuant to W. Va. Code § 22C-9-1, et seq., to regulate certain matters related to the permitting of "deep" gas wells. A separate administrative tribunal, the Shallow Gas Well Review Board ("SGWRB") is granted statutory jurisdiction to regulate certain matters related to the permitting of "shallow" gas wells. See W. Va. Code § 22-C-8-1, et seq. Generally, the West Virginia Department of Environmental Protection, Office of Oil and Gas, otherwise has regulatory jurisdiction over permitting and operation of gas wells pursuant to W. Va. Code § 22-6-1, et seq.

The dispute in this case arises from a claim by the Petitioners that the Commission has exceeded its lawful jurisdiction and asserted jurisdiction over applications for various well work permits submitted by the Respondents which are considered by the Commission to be "deep" wells. Petitioners assert that the wells in question should be classified as "shallow" wells subject to the jurisdiction of the SGWRB.

Petitioner initially sought to challenge the rulings of the Commission by filing a Petition for Writ of Prohibition with the West Virginia Supreme Court of Appeals on September 28, 2007, rather than by filing an appeal pursuant to W. Va. Code § 22C-9-11. The matter was briefed and argued and the Supreme Court of Appeals issued a per curiam opinion on May 27, 2008, holding that an inadequate factual record existed and that petitioner's remedy was an appeal pursuant to W. Va. Code § 22C-9-1.

This appeal was filed on June 26, 2008, and the Court thereafter granted intervenor status to the West Virginia Surface Owners Organization, and consolidated an appeal filed by the Intervenor

in Kanawha County, with this appeal. Petitioners and the Intervenor filed their initial brief on or about June 15, 2009, to which Respondent now responds.

II. STANDARD OF REVIEW

W. Va. Code § 22C-9-11 states that:

> (a) Any party adversely affected by an order of the commission shall be entitled to judicial review thereof. All of the pertinent provisions of section four, article five, chapter twenty-nine-a of this code, shall apply to and govern such judicial review with like effect as if the provisions of said section four were set forth in this section.

The West Virginia Administrative Procedures Act (APA), *W.Va. Code* §29A-1-2(b), provides the appropriate standard of review:

> The court may affirm the order or decision of the agency or remand the case for further proceedings. It shall reverse, vacate or modify the order or decision of the agency if the substantial rights of the petitioner or petitioners have been prejudiced because the administrative findings, inferences, conclusions, decision or order are:
>
> (1) In violation of constitutional or statutory provisions; or
>
> (2) In excess of the statutory authority or jurisdiction of the agency; or
>
> (3) Made upon unlawful procedures; or
>
> (4) Affected by other error of law; or
>
> (5) Clearly wrong in view of the reliable, probative and substantial evidence on the whole record; or
>
> (6) Arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion.

W.Va. Code §29A-5-4(g). On appeals of agency action it is clear that questions of law are subject to *de novo* standard of review. *Martin v. Randolph County Bd. Of Edu.*, 465 S.E.2d 399 (W.Va. 1995); *C&H Taxi Co. v. Richardson*, 461 S.E.2d 442 (W.Va. 1995). Evidentiary findings of fact may be reversed only where clearly wrong or not supported by substantial evidence. *Id., Rayle Coal Co. v. Chief, Div. of Water Resources*, 401 S.E.2d 682 (W.Va. 1990); *Stewart v. West Virginia Bd. Of Examiners for Registered Professional Nurses*, 475 S.E.2d 478 (W.Va. 1996).

III. COUNTER STATEMENT OF FACTS

The Petitioners' and Intervenors' Appeal Brief (hereinafter "Pet. Mem. at ___" or "Int. Mem. at ___") sets forth a Statements of Facts and cites various statutory provisions believed to be in issue. Many of the "facts" are not in the record before the agency and are offered on appeal as issues considered by the Commission, which is incorrect.

Chesapeake also disagrees in several respects with the Statements of Facts and the applicability of certain of the statutes cited, in the following respects:

1. Petitioners' Statement of Facts, Paragraph No. 4, states that a gas operator may apply for special field rules which allow the operator to ignore the spacing requirements for deep wells within a designated field. Pet. Mem. at 6. This statement is incorrect. By definition, special field rules dictate spacing requirements based on reservoir characteristics and the protection of correlative rights between producers of gas. The spacing required in a special field rule order is not based upon an arbitrary distance limitation. Rather, it is based upon the particular conditions in a field as established by sworn testimony and evidence presented at a public hearing before the Commission.

2. Petitioners' Statement of Facts, Paragraph No. 6, states that the SGWRB has jurisdiction over the drilling and spacing of shallow wells in West Virginia. Pet. Mem. At 6. This is incorrect. The SGWRB only has jurisdiction to decide whether a permit for a new shallow well should be issued where an objection to the well location is filed by a coal owner or operator. W. Va. Code § 22C-8-3(b), specifically states that the jurisdiction of the SGWRB shall not apply to or effect "any shallow well as to which no objection is made under... W. Va. Code § 22-6-17."

3. Petitioners' Statement of Facts, Paragraph No. 13 states that Chesapeake asked the Commission for special field rules to allow it to drill over 1,800 wells within 1,000 feet of each other or that the Commission has granted a blanket authorization for 1,000 foot spacing. Pet. Mem.

At 8. This statement is incorrect. Chesapeake requested the special field rules be applied to a specific area. At no time did Chesapeake ask for an order to allow it to drill a specific number of wells, but merely responded to inquiries from the Commission during an administrative hearing regarding the potential number of wells that could be drilled in an area. In addition, Chesapeake expressly agreed to abide by the 1,500 foot spacing limitations which would apply even if these wells were considered shallow wells, in the event a coal owner or operator filed an objection to Chesapeake's drilling permit application for a particular well. The Commission noted that Petitioner Pocahontas Land Corporation through its counsel withdrew its objection at the hearing based on this stipulation, but only insofar as it related to the particular hearings at issue, based upon the agreement with Chesapeake that in the event a coal seam owner or operator objected to the proposed drilling or deepening of a well to the Marcellus Shale, the terms and provisions of W. Va. Code § 22C-8-8 would apply, i.e., the 1,500 foot spacing limitations. See Commission Orders Docket No. 179, Cause No. 1; Docket No. 180, Cause No. 165; Docket No. 181, Cause No. 166; Findings of Fact ¶ 6; Order ¶ 6, collectively attached hereto as Exhibit A. Accordingly, Petitioners' representation that the underlying orders which are challenged by the Petition if not overturned would result in Chesapeake being allowed to drill 1,800 wells within 1,000 feet of each other, is not supported by the record or the orders of the Commission. The Respondent agreed to abide by 1,500 foot spacing limitations, so the Petitioners charts and calculations of potential impact on the coal estate if wells are spaced at 1,000 foot intervals is not an issue in dispute and is purely hypothetical.

4. Petitioners' Statement of Facts, Paragraph No. 24, alleges that the Commission's orders have deprived the Petitioners of their statutory right to object to the spacing of shallow wells pursuant to W. Va. Code § 22C-8-8. Pet. Mem. At 9. This is incorrect. The right to object to a shallow well permit is not found in W. Va. Code § 22C-8-8. A gas operator applying for a well work permit is required to give notice of such to every coal owner or operator pursuant to W. Va.

Code §§ 22-6-12, 22-6-13. The coal owner is allowed 15 days to file any objections they may have to the proposed well location, for either a deep or shallow well. Any objections to a shallow gas well permit are referred to the SGWRB, and any objection to a deep well permit to the Chief, pursuant to W. Va. Code §§ 22-6-15, 22-6-17. Either way, an affected coal owner or operator receives a notice of the gas well permit and has the full opportunity to object and be heard regardless of the special field rules. Petitioner's Due Process argument is therefore not ripe for review as they did appear in the proceedings below and would be given actual notice an and opportunity to object to any well permit application filed.

IV. ARGUMENTS AND AUTHORITIES RELIED UPON

The Appeal should be refused for the following reasons:

A. THE OIL AND GAS CONSERVATION COMMISSION DID NOT EXCEED ITS LAWFUL JURISDICTION

1. The Statutory Definition Of A "Deep Well" Does Not Require That The Well Be Drilled And Completed Below The Top Of The Onondaga Formation.

The crux of the Petitioners' argument relies upon the definitions of "shallow wells" and "deep wells" as requiring both the drilling and the completion[1] of a well below the top of the Onondaga Group before it fits the statutory definition of a "deep well". The Petitioners' analysis of the statutory definitions is flawed.

This case challenges the jurisdiction of the Commission whose authority is derived pursuant to W. Va. Code § 22C-9-1, et seq., and in particular, the definition section, W. Va. Code § 22C-9-2. Therein, a shallow well and deep well are defined as follows:

> "Shallow well" means any well drilled and completed in a formation above the top of the uppermost member of the "Onondaga Group":

[1] A well can be drilled to various potentially gas bearing formations, but a well is "completed" when a particular formation or depth is fractured or "stimulated." "Stimulate" means any action taken by a well operator to increase inherent productivity of an oil or gas well, including, but not limited to, fracturing, shooting or acidizing, but excluding cleaning out, bailing or workover operations. W. Va. Code § 22-6-1(s).

> Provided, that in drilling a shallow well the operator may penetrate into the "Onondaga Group" to a reasonable depth, not in excess of 20 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;
>
> "Deep well" means any well, other than a shallow well, drilled and completed in a formation at or below the top of the uppermost member of the "Onondaga Group."

W. Va. Code § 22C-9-2(a)(11), (12).

Petitioners allege that since the definitions use the conjunctive "and," that unless both drilling and completion are below the top of the Onondaga Group, that the definition of a deep well cannot be satisfied. What Petitioners have failed to point out to the Court, however, is that within the very same definition section of Chapter 22C, Article 9, the Legislature declared that:

> Unless the context clearly indicates otherwise, the use of the word "and" and the word "or" shall be interchangeable, as, for example, "oil and gas" shall mean oil or gas or both.

W. Va. Code § 22C-9-2(b).

The Legislature clearly stated that "and" and "or" were interchangeable, and there is nothing in this case to support a claim that "the context clearly indicates otherwise" that the definition of a "deep well" requires that a well be drilled and completed below the uppermost portion of the Onondaga. Accordingly, the definition of deep well, within the express terms of the statute, can be read to be any well, other than a shallow well, drilled and/or completed in a formation at/or below the top of the uppermost member of the "Onondaga Group." If this definition is an accepted interpretation of the statute, then the Petitioners' argument fails and the Commission has acted completely within its lawful jurisdiction.

2. The Commission's Exercise Of Jurisdiction Is Consistent With The Legislative Intent.

It is a longstanding axiom of statutory construction, that wherever possible a court will interpret same in order to comply with legislative intent. *Copier Word Processing v. Westbanco Bank, Inc.*, 220 W.Va. 39, 640 S.E.2d 102, 110 (2006). In this case, the Legislature has provided in a series of articles within the West Virginia Code, for the creation and administration of various duties and responsibilities of the Chief of the Office of Oil and Gas within the Department of Environmental Protection, and has established certain commissions and boards, including the SGWRB to deal with objections to permits requested for shallow wells, and the Commission, to deal with regulation of deep wells. With respect to deep wells, the Legislature has declared the public policy of the state and made specific legislative findings which are embodied within W. Va. Code § 22C-9-1:

> (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 just and equitable share of production from such pool 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 oil and gas from 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.

As can be gleaned from the above passage, the Legislature was primarily concerned with the prevention of waste, and special concerns associated with drilling to deeper formations. In this case, the Commission has chosen to exercise jurisdiction because it believes that it is clear and unambiguous that any wells drilled more than 20 feet below the top of the Onondaga clearly falls within the definition of a deep well. Moreover, the reasoning behind allowing the Commission to exercise jurisdiction in this case is consistent with the declared legislative intent.

As explained at the administrative hearings before the Commission, the reason that Chesapeake, and other operators, wishes to penetrate more than 20 feet below the top of the Onondaga is a matter of technology and prevention of waste. Whenever a gas well is drilled through a potentially gas bearing formation, tests are run which are referred to as "logging" a well. In this case, Chesapeake, and the other operators, are interested in evaluating the gas bearing potential of the "Marcellus Shale," a formation that lies directly on top of the Onondaga formation. As explained by the engineers and geologists at the administrative hearing before the Commission on May 17, 2007, the length of the tool that must be used for purposes of logging the Marcellus Shale formation is 66 feet in length, and another is 34 feet long. In other words, in order to log the Marcellus Shale, the tools must penetrate in excess of 20 feet below the top of the Onondaga in order that the operator can properly log and evaluate the complete portion of the Marcellus Shale. See May 17, 2007 Hearing Transcript (hereinafter "Transcript"), pgs. 17-23; 27; 30-32; 39-44. If Chesapeake or the gas driller is not able to drill more than 20 feet below the top of the Onondaga they will either (a) not be able to completely log the Marcellus Shale in which case they will be "shooting in the blind" and not have the necessary technological information to determine whether the Marcellus Shale is a potentially economical and gas bearing formation, and (b) otherwise will engage in extreme expense in breaking down the tool and otherwise attempting to log the Marcellus Shale in an inefficient fashion. *Id.* Moreover, contrary to the assertions of the Intervenor (Int.

Mem. at 10), the reference to the 1,000 foot spacing as an "arbitrary" limit is taken out of context. The testimony of a geologist and engineer before the Commission was clear that Chesapeake intended and agreed to drill on 1,500 foot spacing; had found that drilling at 3,000 foot spacing and even 2,000 foot spacing, resulted in loss of recoverable gas reserves (waste); and that the 1,000 minimum was requested and "arbitrarily" selected, only as an alternative to allow some flexibility if some special field problem was encountered which prohibited the 1,500 foot spacing limit with respect to a particular well. See Transcript at 32-33; 44-47; 47-50 Thus, the record below established that the reason for granting a permit to drill more than 20 feet below the top of Onondaga is to prevent waste, i.e., to completely log the Marcellus Shale formation, which is a relatively "new play" for Chesapeake in West Virginia. *Id.* The only entity with the authority to issue a permit for any well drilled more than 20 feet below the top of the Onondaga is the Commission. The Commission's exercise of jurisdiction, therefore, is in accordance with the legislatively declared public policy and findings to prevent waste, and to allow a Commission comprised of experts in the geology and operation of gas wells to deal with and consider the distinctive problems and issues which arise with the drilling of deep wells as opposed to shallow wells.

If Petitioners' argument were accepted that the Commission only has jurisdiction when a well is drilled more than 20 feet below the top of the Onondaga and the well is completed, i.e., stimulated, fractured or produced, within the Onondaga group or below, then it would be possible for a driller to drill thousands of feet below the top of the Onondaga, but only complete the well above the top of the Onondaga, and never have a permit or receive the permission of the Commission for same. The Legislature clearly created a commission which would specifically focus on issues arising from those drilling through and more than 20 feet below the top of the Onondaga. In this case, such a distinctive and special problem has arisen, i.e., the technology has

developed which will allow the logging of the Marcellus Shale, but to efficiently do so, a gas operator must drill more than 20 feet below the top of the Onondaga. The Commission has determined that they do have jurisdiction under the statutory definition over such a well, and therefore may consider special field rules and other issues which are distinctive to "deep wells."

Moreover, the legislatively declared intent to have the Commission deal with issues specific to deep wells, particularly applies with respect to certain safety concerns. As noted at the administrative hearing, for purposes of the drilling of a deep well, in the absence of a variance from the Commission, a site safety plan is required, and there are special concerns related to the potential release of hydrogen sulfide gas when drilling into the Onondaga and below. See Transcript at 37; 43-44. In fact, the Petitioners' counsel argued at the administrative hearing that if the Commission was in fact going to grant the special field rules, that the Petition would insist on the placement of hydrogen sulfide monitors as part of the special field rules. See Transcript at 60. The Commission in issuing its orders granting the special field rules recognized particular safety hazards associated with the drilling of deep wells, by requiring that hydrogen sulfide monitors be present at any of the permitted deep wells drilled by Chesapeake. See Commission Order, Paragraph No. 6, attached hereto as Exhibit A.

Petitioners seems to recognize that if its interpretation of the statute were accepted, then the Respondent and other gas operators would not be able to drill more than 20 feet below the top of the Onondaga without violating findings of the Commission and potentially avoiding the opportunity to produce gas from the Marcellus Shale.

B. PETITIONERS' ARGUMENTS SHOULD BE ADDRESSED TO THE LEGISLATURE, NOT THE COURT.

It is apparent that the underlying concern throughout the Petitioners' memorandum is not whether the Commission has jurisdiction, but a question or concern that the Commission could under its statutory authority and pursuant to its legislative rules, grant spacing of wells at a

minimum of 1,000 feet apart within a special field, whereas under the authority granted to the SGWRB, that agency can only grant spacing at a minimum of 1,500 feet from an existing well. This discrepancy between distance limitations is a function of the different production capabilities of shallow versus deep wells, and is part and parcel of the legislature's declared findings to create distinctions between the regulation of shallow wells and deep wells. Accordingly, should Petitioners believe that there is potential danger to the recoverable coal reserves if deep well permits are granted and if the Commission exercises its statutorily granted authority to allow spacing at 1,000 foot intervals, their argument should be addressed to the legislature which is the body which has created these different administrative bodies, and different statutory schemes and spacing limitations to deal with the differences between shallow wells and deep wells.

C. PETITIONERS' FAILED TO TIMELY APPEAL THE ADVERSE RULINGS

Petitioners allege they are aggrieved by orders issued by the Commission which have granted special field rules to Chesapeake, among others. Orders of the Commission are appealable to the circuit courts pursuant to the provisions of W. Va. Code § 22C-9-11, which in turn provides that any such appeals are governed by W. Va. Code § 29A-5-4. W. Va. Code § 29A-5-4(b) expressly provides that appeals must be filed within thirty days of the date the party received notice of the decision of the agency. No such appeals were timely filed, and Petitioner sought review by way of a petition for writ of prohibition filed with the Supreme Court of Appeals on September 28, 2007. The Orders granting Chesapeake special field rules that is attached hereto as Exhibit A is dated July 10, 2007. Thus even if the Petition for Writ of Prohibition were considered an appeal, it was not timely. Although the Supreme Court declined to exercise its jurisdiction on application for an extraordinary writ and remanded the case, the fact remains that the Petitioner did not file any appeal within the statutory deadline. Petitioners and Intervenors missed the deadline by several years.

While the Supreme Court's per curiam opinion declined review and indicated the Petitioners' may seek relief via an appeal, the issue of the timeliness of the appeal was not decided and this court is therefore free to deny the appeals as untimely.

D. PETITIONERS' CLAIMS OF "STERILIZATION" OF COAL ARE SPECULATIVE AND UNSUPPORTED BY THE RECORD.

Again, it is apparent that the underlying concern in this case is not a question of the lawful interpretation of the jurisdictional authority granted to the Commission, in this case, but a speculative concern that the Commission might allow through the granting of special field rules, spacing limitations at a minimum of 1,000 feet, as opposed to the 1,500 foot limitation which could be granted if these wells were declared to be "shallow wells" subject to the exclusive jurisdiction of the SGWRB. These claims are unfounded in this case. Petitioners and Intervenor assert in their memorandum that it is Chesapeake's plan with the approval of the Commission to grant 1,000 foot spacing on all wells to be drilled within the special field. This is not the case. As made clear in the record before the Commission, this 1,000 foot spacing limitation was requested only as to be available in the field if special field conditions were encountered which would require a spacing at less than 1,500 feet with respect to a particular well. The Respondents stipulated in the hearing proceedings, that if a coal owner or operator had an objection to the location of a well less than 1,500 feet from an existing well that Chesapeake would abide by the 1,500 foot spacing limitations. See Transcript at 44-51; Commission Order Finding of Fact ¶ 6; pgs. 3-4, Commission Order ¶¶ 3 and 4. The Commission accepted this proposal and specifically found in Paragraph No. 4 of its Order granting the special field rules that:

> In the event that a coal seam owner or operator objects to the drilling or deepening of a well to the Marcellus Shale under these special field rules, then the terms and provisions of W. Va. Code § 22C-8-8 will apply.

That code provision states that for any well with the depth of 3,000 feet or more, there shall be a minimum distance of 1,500 feet from the drilling location to the nearest existing well. See W. Va. Code § 22C-8-8(a)(2). Petitioners' arguments regarding potential "sterilization" or impact upon coal, therefore, is a matter of gross speculation and conjecture at this point and is not a claim or controversy in dispute in the underlying matter, no factual record establishing the specific claims or coal reserve ownership of any of the Petitioners was made a part of the record below, and Petitioner withdrew its objection below based on this agreement.

V. CONCLUSION

Wherefore, for all of the foregoing reasons, the Respondent respectfully requests that the Court deny the appeal.

CHESAPEAKE APPALACHIA, L.L.C.

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Exhibit A

BEFORE THE OIL AND GAS CONSERVATION COMMISSION
OF THE STATE OF WEST VIRGINIA

IN THE MATTER OF THE REQUEST BY CHESAPEAKE APPALACHIA, L.L.C., FOR AN ORDER FROM THE COMMISSION ESTABLISHING SPECIAL FIELD RULES IN BOONE, KANAWHA, LINCOLN, LOGAN AND MINGO COUNTIES, WEST VIRGINIA, COVERING NESTLOW, BRANCHLAND, HAGER, JULIAN, GRIFFITHSVILLE, RADNOR, KIAHSVILLE, RANGER, BIG CREEK, MUD, WEBB, WILSONDALE, TRACE, CHAPMANVILLE, KERMIT NAUGATUCK, MYRTLE, HOLDEN WILLIAMSON, DELBARTON AND BARNABUS QUADRANGLES.

DOCKET NO. 179

CAUSE NO. 164

ORDER NO. 1

REPORT OF THE COMMISSION

Chesapeake Appalachia, L.L.C. ("Chesapeake") requested a hearing before the Commission for the establishment of special field rules covering all acreage it now owns or controls or may acquire in the future within the area shown on the map attached hereto as Exhibit "A" and incorporated herein by reference, which designated area is located in Boone, Kanawha, Lincoln, Logan and Mingo Counties, West Virginia. Chesapeake wishes to drill wells in the special field rule area in order to produce from the Marcellus Shale formation and other shallower formations. Although the Marcellus Shale is a "shallow" formation, Chesapeake proposes to drill up to 75 feet into the Onondaga Group to enable the logging and completion of the entire Marcellus Shale section. Chesapeake will not perforate or complete any formation below the base of the Marcellus Shale formation; however, by definition, since the proposed wells will be drilled in excess of twenty feet into the Onondaga Group, they will be considered deep wells. Therefore, Chesapeake requested that the Commission set spacing for any proposed wells drilled by Chesapeake under these special field rules to conform to the following: 1,000' between wells and 50' from a lease line or unit boundary.

FINDINGS OF FACT

1. Applicant, Chesapeake, is an operator within the meaning of paragraph (4) subsection (a) of West Virginia Code §22C-9-2.

2. Chesapeake currently owns or controls approximately 427,000 acres of leasehold or oil and gas interests in the area for which special field rules have been requested as shown on Exhibit "A", which area is located in Boone, Kanawha, Lincoln, Logan and Mingo Counties of West Virginia. Chesapeake may acquire additional acreage within this area in the future. One of the target formations in this area is the Marcellus Shale, which lies directly above the Onondaga Group. Chesapeake wishes to drill wells in the special field rule area utilizing up to 75 feet of rat hole in

the Onondaga Group. Chesapeake's witnesses testified that 75 feet of rat hole is necessary to effectively log, complete, and produce the wells in the Marcellus formation. The 75 feet of rat hole will allow Chesapeake to get cementing tools, logging tools, casing and tubing, and perforating tools to a sufficient depth below the Marcellus formation to effectively develop the natural gas reserves from the Marcellus formation in a safe and efficient manner. Without the additional rat hole, the Marcellus Shale cannot be completed through its entire interval and reserves of natural gas may not be produced.

3. Chesapeake's witnesses stated that the Onondaga Group would not be produced or completed in any wells without additional approval from the Commission.

4. It would not be prudent to develop the Marcellus Shale reserves under the spacing requirements imposed on deep wells because recoverable reserves would be left in place. In order to avoid leaving recoverable reserves in place and to provide flexibility in spotting well locations, exceptions to Operational Rule §39-1-4.2 or the establishment of special field rules is necessary. Chesapeake's witness testified that Chesapeake has approximately 1700 future locations in the special field rule area. Chesapeake is requesting special field rules from the Commission as it is the most cost effective and administratively efficient manner in which to address the issues faced in drilling, logging, completing and producing Marcellus Shale wells, rather than requesting spacing exceptions on case-by-case or a well-by-well basis.

5. Chesapeake asked the Commission to set spacing for wells drilled under the special field rules at a minimum distance of 1,000' between wells and 50' from a lease line or unit boundary. The Commission, however, believed it was more appropriate to space these wells at a minimum distance of 1,000' between wells and 100' from a lease or unit boundary in order to maintain uniformity with existing special field rules obtained by Eastern American Energy Corporation covering Marcellus Shale wells, subject to paragraph 6 below.

6. Pocahontas Land Corporation by letter dated May 16, 2007, filed a written objection to Chesapeake's request for special field rules. Pocahontas, through counsel, withdrew its objection but only insofar as it related to this particular hearing based upon agreement with Chesapeake that in the event a coal seam owner or operator objected to the proposed drilling or deepening of a well to the Marcellus Shale, then the terms and provisions of West Virginia Code §22C-8-8 would apply.

7. Chesapeake's witness testified that the Onondaga Group is between 110 feet and 180 feet thick in the area subject to the request for special field rules.

8. Chesapeake has complied with the requirements of the statute and Operational Rule §39-1-6.

CONCLUSIONS OF LAW

1. That due notice of the time, place and purpose of the hearing has been given in all respects as required by law.

2. Definitions found in §22C-9-2(11-12) state that 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, and deep well means any well, other than a shallow well, drilled and completed in a formation at or below the top of the uppermost member of the "Onondaga Group".

3. That Marcellus Shale wells drilled more than twenty feet into the Onondaga Group are deep wells.

4. That Operational Rule §39-1-4.2 requires that all deep wells drilled shall be not less than 3,000 feet from a permitted deep well location or from a deep well drilling to or capable of producing hydrocarbons from the objective pool of the deep well and no deep well shall be less than 400 feet from a lease or unit boundary. Operational Rule §39-1-4.3 allows for an exception to Operational Rule §39-1-4.2 or for the establishment of special field rules.

5. That pursuant to Chapter §22C, Article 9, Code of West Virginia of 1931, as amended, the Commission has jurisdiction over the subject matter embraced in said notice, and the persons interested therein, and jurisdiction to promulgate the hereinafter prescribed Order.

ORDER

Now, therefore, based on the Findings of Fact and Conclusions of Law, the request by Chesapeake for the establishment of special field rules is granted upon the following grounds:

1. The designated area covered by these special field rules is shown on the map attached hereto as Exhibit "A" and incorporated herein by reference, containing approximately 570,000 acres.

2. The special field rules apply only to leases or property owned or controlled, now or hereinafter, by Chesapeake.

3. The special field rules shall allow Chesapeake to drill wells in the designated area to a depth not to exceed 75 feet into the Onondaga Group or to the base of the Onondaga Group, whichever is shallower. Each well drilled under the special field

rules shall be located a minimum distance of 1,000 feet from each well covered by this Order and 100 feet from a lease line or unit boundary.

4. In the event that a coal seam owner or operator objects to the drilling or deepening of a well to the Marcellus Shale under these special field rules, then the terms and provisions of West Virginia Code §22C-8-8 will apply.

5. For each well covered by these special field rules, Chesapeake shall submit a deep well permit application. Upon completion of any well drilled under these special field rules, Chesapeake shall submit a copy of the open hole log, perforating log and an affidavit signed by a principal of the company stating that no formation below the top of the Onondaga Group has been perforated or produced in any manner. Thereafter, Chesapeake shall not, perforate, frac or otherwise stimulate the Onondaga Group, unless it subsequently files for, and receives a permit to rework, deepen or complete the Onondaga Group.

6. The Commission waives the requirement that Chesapeake must submit a site safety plan and hold a pre-spud meeting for the drilling of wells covered by this Order. However, Chesapeake is required to maintain H_2S monitoring equipment on site for use, if needed.

IN THE NAME OF THE STATE OF WEST VIRGINIA:

OIL AND GAS CONSERVATION COMMISSION
OF THE STATE OF WEST VIRGINIA

By: Barry K. Lay
Barry K. Lay, Commissioner

Dated this ____ day of July, 2007, at Charleston, West Virginia.

BEFORE THE OIL AND GAS CONSERVATION COMMISSION
OF THE STATE OF WEST VIRGINIA

IN THE MATTER OF THE REQUEST BY CHESAPEAKE APPALACHIA, L.L.C., FOR AN ORDER FROM THE COMMISSION ESTABLISHING SPECIAL FIELD RULES IN BOONE, LINCOLN AND LOGAN COUNTIES, WEST VIRGINIA, COVERING THE LOGAN, AMHERSTDALE, HENLAWSON, CLOTHIER, MADISON AND MUD QUADRANGLES.

DOCKET NO. 180

CAUSE NO. 165

ORDER NO. 1

REPORT OF THE COMMISSION

Chesapeake Appalachia, L.L.C. ("Chesapeake") requested a hearing before the Commission for the establishment of special field rules covering all acreage it now owns or controls or may acquire in the future within the area shown on the map attached hereto as Exhibit "A" and incorporated herein by reference, which designated area is located in Boone, Lincoln and Logan Counties, West Virginia. Chesapeake wishes to drill wells in the special field rule area in order to produce from the Marcellus Shale formation and other shallower formations. Although the Marcellus Shale is a "shallow" formation, Chesapeake proposes to drill up to 75 feet into the Onondaga Group to enable the logging and completion of the entire Marcellus Shale section. Chesapeake will not perforate or complete any formation below the base of the Marcellus Shale formation; however, by definition, since the proposed wells will be drilled in excess of twenty feet into the Onondaga Group, they will be considered deep wells. Therefore, Chesapeake requested that the Commission set spacing for any proposed wells drilled by Chesapeake under these special field rules to conform to the following: 1,000' between wells and 50' from a lease line or unit boundary.

FINDINGS OF FACT

1. Applicant, Chesapeake, is an operator within the meaning of paragraph (4) subsection (a) of West Virginia Code §22C-9-2.

2. Chesapeake currently owns or controls approximately 17,000 acres of leasehold interests in the area for which special field rules have been requested as shown on Exhibit "A", which area is located in Boone, Lincoln, and Logan Counties of West Virginia. Chesapeake may acquire additional acreage within this area in the future. One of the target formations in this area is the Marcellus Shale, which lies directly above the Onondaga Group. Chesapeake wishes to drill wells in the special field rule area utilizing up to 75 feet of rat hole in the Onondaga Group. Chesapeake's witnesses testified that 75 feet of rat hole is necessary to effectively log, complete, and produce the wells in the Marcellus formation. The 75 feet of rat hole will allow Chesapeake to get cementing tools, logging tools, casing and tubing, and

perforating tools to a sufficient depth below the Marcellus formation to effectively develop the natural gas reserves from the Marcellus formation in a safe and efficient manner. Without the additional rat hole, the Marcellus Shale cannot be completed through its entire interval and reserves of natural gas may not be produced.

3. Chesapeake's witnesses stated that the Onondaga Group would not be produced or completed in any wells without additional approval from the Commission.

4. It would not be prudent to develop the Marcellus Shale reserves under the spacing requirements imposed on deep wells because recoverable reserves would be left in place. In order to avoid leaving recoverable reserves in place and to provide flexibility in spotting well locations, exceptions to Operational Rule §39-1-4.2 or the establishment of special field rules is necessary. Chesapeake's witness testified that Chesapeake has approximately 125 future locations in the special field rule area. Chesapeake is requesting special field rules from the Commission as it is the most cost effective and administratively efficient manner in which to address the issues faced in drilling, logging, completing and producing Marcellus Shale wells, rather than requesting spacing exceptions on case-by-case or a well-by-well basis.

5. Chesapeake asked the Commission to set spacing for wells drilled under the special field rules at a minimum distance of 1,000' between wells and 50' from a lease line or unit boundary. The Commission, however, believed it was more appropriate to space these wells at a minimum distance of 1,000' between wells and 100' from a lease or unit boundary in order to maintain uniformity with existing special field rules obtained by Eastern American Energy Corporation covering Marcellus Shale wells, subject to paragraph 6 below.

6. Pocahontas Land Corporation by letter dated May 29, 2007, filed a written objection to Chesapeake's request for special field rules. Pocahontas, through counsel, withdrew its objection but only insofar as it related to this particular hearing based upon agreement with Chesapeake that in the event a coal seam owner or operator objected to the proposed drilling or deepening of a well to the Marcellus Shale, then the terms and provisions of West Virginia Code §22C-8-8 would apply.

7. Chesapeake's witness testified that the Onondaga Group is between 130 feet and 190 feet thick in the area subject to the request for special field rules.

8. Chesapeake has complied with the requirements of the statute and Operational Rule §39-1-6.

CONCLUSIONS OF LAW

1. That due notice of the time, place and purpose of the hearing has been given in all respects as required by law.

2. Definitions found in §22C-9-2(11-12) state that 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, and deep well means any well, other than a shallow well, drilled and completed in a formation at or below the top of the uppermost member of the "Onondaga Group".

3. That Marcellus Shale wells drilled more than twenty feet into the Onondaga Group are deep wells.

4. That Operational Rule §39-1-4.2 requires that all deep wells drilled shall be not less than 3,000 feet from a permitted deep well location or from a deep well drilling to or capable of producing hydrocarbons from the objective pool of the deep well and no deep well shall be less than 400 feet from a lease or unit boundary. Operational Rule §39-1-4.3 allows for an exception to Operational Rule §39-1-4.2 or for the establishment of special field rules.

5. That pursuant to Chapter §22C, Article 9, Code of West Virginia of 1931, as amended, the Commission has jurisdiction over the subject matter embraced in said notice, and the persons interested therein, and jurisdiction to promulgate the hereinafter prescribed Order.

ORDER

Now, therefore, based on the Findings of Fact and Conclusions of Law, the request by Chesapeake for the establishment of special field rules is granted upon the following grounds:

1. The designated area covered by these special field rules is shown on the map attached hereto as Exhibit "A" and incorporated herein by reference, containing approximately 167,000 acres.

2. The special field rules apply only to leases or property owned or controlled, now or hereinafter, by Chesapeake.

3. The special field rules shall allow Chesapeake to drill wells in the designated area to a depth not to exceed 75 feet into the Onondaga Group or to the base of the Onondaga Group, whichever is shallower. Each well drilled under the special field

rules shall be located a minimum distance of 1,000 feet from each well covered by this Order and 100 feet from a lease line or unit boundary.

4. In the event that a coal seam owner or operator objects to the drilling or deepening of a well to the Marcellus Shale under these special field rules, then the terms and provisions of West Virginia Code §22C-8-8 will apply.

5. For each well covered by these special field rules, Chesapeake shall submit a deep well permit application. Upon completion of any well drilled under these special field rules, Chesapeake shall submit a copy of the open hole log, perforating log and an affidavit signed by a principal of the company stating that no formation below the top of the Onondaga Group has been perforated or produced in any manner. Thereafter, Chesapeake shall not, perforate, frac or otherwise stimulate the Onondaga Group, unless it subsequently files for, and receives a permit to rework, deepen or complete the Onondaga Group.

6. The Commission waives the requirement that Chesapeake must submit a site safety plan and hold a pre-spud meeting for the drilling of wells covered by this Order. However, Chesapeake is required to maintain H_2S monitoring equipment on site for use, if needed.

IN THE NAME OF THE STATE OF WEST VIRGINIA:

OIL AND GAS CONSERVATION COMMISSION
OF THE STATE OF WEST VIRGINIA

By: Barry K. Lay
Barry K. Lay, Commissioner

Dated this 10th day of July, 2007, at Charleston, West Virginia.

BEFORE THE OIL AND GAS CONSERVATION COMMISSION
OF THE STATE OF WEST VIRGINIA

IN THE MATTER OF THE REQUEST BY CHESAPEAKE APPALACHIA, L.L.C., FOR AN ORDER FROM THE COMMISSION ESTABLISHING SPECIAL FIELD RULES IN MCDOWELL, MINGO AND WYOMING COUNTIES, WEST VIRGINIA, COVERING MAN, MALLORY, WHARNCLIFFE, GILBERT, IAEGER AND DAVY QUADRANGLES.	**DOCKET NO. 181** **CAUSE NO. 166** **ORDER NO. 1**

REPORT OF THE COMMISSION

Chesapeake Appalachia, L.L.C. ("Chesapeake") requested a hearing before the Commission for the establishment of special field rules covering all acreage it now owns or controls or may acquire in the future within the area shown on the map attached hereto as Exhibit "A" and incorporated herein by reference, which designated area is located in Mingo, McDowell and Wyoming Counties, West Virginia. Chesapeake wishes to drill wells in the special field rule area in order to produce from the Marcellus Shale formation and other shallower formations. Although the Marcellus Shale is a "shallow" formation, Chesapeake proposes to drill up to 75 feet into the Onondaga Group to enable the logging and completion of the entire Marcellus Shale section. Chesapeake will not perforate or complete any formation below the base of the Marcellus Shale formation; however, by definition, since the proposed wells will be drilled in excess of twenty feet into the Onondaga Group, they will be considered deep wells. Therefore, Chesapeake requested that the Commission set spacing for any proposed wells drilled by Chesapeake under these special field rules to conform to the following: 1,000' between wells and 50' from a lease line or unit boundary.

FINDINGS OF FACT

1. Applicant, Chesapeake, is an operator within the meaning of paragraph (4) subsection (a) of West Virginia Code §22C-9-2.

2. Chesapeake currently owns or controls approximately 15,000 acres of leasehold interests in the area for which special field rules have been requested as shown on Exhibit "A", which area is located in Mingo, McDowell and Wyoming Counties of West Virginia. Chesapeake may acquire additional acreage within this area in the future. One of the target formations in this area is the Marcellus Shale, which lies directly above the Onondaga Group. Chesapeake wishes to drill wells in the special field rule area utilizing up to 75 feet of rat hole in the Onondaga Group. Chesapeake's witnesses testified that 75 feet of rat hole is necessary to effectively log, complete, and produce the wells in the Marcellus formation. The 75 feet of rat hole will allow Chesapeake to get cementing tools, logging tools, casing and tubing,

and perforating tools to a sufficient depth below the Marcellus formation to effectively develop the natural gas reserves from the Marcellus formation in a safe and efficient manner. Without the additional rat hole, the Marcellus Shale cannot be completed through its entire interval and reserves of natural gas may not be produced.

3. Chesapeake's witnesses stated that the Onondaga Group would not be produced or completed in any wells without additional approval from the Commission.

4. It would not be prudent to develop the Marcellus Shale reserves under the spacing requirements imposed on deep wells because recoverable reserves would be left in place. In order to avoid leaving recoverable reserves in place and to provide flexibility in spotting well locations, exceptions to Operational Rule §39-1-4.2 or the establishment of special field rules is necessary. Chesapeake's witness testified that Chesapeake has approximately 57 future locations in the special field rule area. Chesapeake is requesting special field rules from the Commission as it is the most cost effective and administratively efficient manner in which to address the issues faced in drilling, logging, completing and producing Marcellus Shale wells, rather than requesting spacing exceptions on case-by-case or a well-by-well basis.

5. Chesapeake asked the Commission to set spacing for wells drilled under the special field rules at a minimum distance of 1,000' between wells and 50' from a lease line or unit boundary. The Commission, however, believed it was more appropriate to space these wells at a minimum distance of 1,000' between wells and 100' from a lease or unit boundary in order to maintain uniformity with existing special field rules obtained by Eastern American Energy Corporation covering Marcellus Shale wells, subject to paragraph 6 below.

6. Pocahontas Land Corporation by letter dated May 29, 2007, filed a written objection to Chesapeake's request for special field rules. Pocahontas, through counsel, withdrew its objection but only insofar as it related to this particular hearing based upon agreement with Chesapeake that in the event a coal seam owner or operator objected to the proposed drilling or deepening of a well to the Marcellus Shale, then the terms and provisions of West Virginia Code §22C-8-8 would apply.

7. Chesapeake's witness testified that the Onondaga Group is between 130 feet and 180 feet thick in the area subject to the request for special field rules.

8. Chesapeake has complied with the requirements of the statute and Operational Rule §39-1-6.

CONCLUSIONS OF LAW

1. That due notice of the time, place and purpose of the hearing has been given in all respects as required by law.

2. Definitions found in §22C-9-2(11-12) state that 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, and deep well means any well, other than a shallow well, drilled and completed in a formation at or below the top of the uppermost member of the "Onondaga Group".

3. That Marcellus Shale wells drilled more than twenty feet into the Onondaga Group are deep wells.

4. That Operational Rule §39-1-4.2 requires that all deep wells drilled shall be not less than 3,000 feet from a permitted deep well location or from a deep well drilling to or capable of producing hydrocarbons from the objective pool of the deep well and no deep well shall be less than 400 feet from a lease or unit boundary. Operational Rule §39-1-4.3 allows for an exception to Operational Rule §39-1-4.2 or for the establishment of special field rules.

5. That pursuant to Chapter §22C, Article 9, Code of West Virginia of 1931, as amended, the Commission has jurisdiction over the subject matter embraced in said notice, and the persons interested therein, and jurisdiction to promulgate the hereinafter prescribed Order.

ORDER

Now, therefore, based on the Findings of Fact and Conclusions of Law, the request by Chesapeake for the establishment of special field rules is granted upon the following grounds:

1. The designated area covered by these special field rules is shown on the map attached hereto as Exhibit "A" and incorporated herein by reference, containing approximately 66,000 acres.

2. The special field rules apply only to leases or property owned or controlled, now or hereinafter, by Chesapeake.

3. The special field rules shall allow Chesapeake to drill wells in the designated area to a depth not to exceed 75 feet into the Onondaga Group or to the base of the Onondaga Group, whichever is shallower. Each well drilled under the special field

rules shall be located a minimum distance of 1,000 feet from each well covered by this Order and 100 feet from a lease line or unit boundary.

4. In the event that a coal seam owner or operator objects to the drilling or deepening of a well to the Marcellus Shale under these special field rules, then the terms and provisions of West Virginia Code §22C-8-8 will apply.

5. For each well covered by these special field rules, Chesapeake shall submit a deep well permit application. Upon completion of any well drilled under these special field rules, Chesapeake shall submit a copy of the open hole log, perforating log and an affidavit signed by a principal of the company stating that no formation below the top of the Onondaga Group has been perforated or produced in any manner. Thereafter, Chesapeake shall not, perforate, frac or otherwise stimulate the Onondaga Group, unless it subsequently files for, and receives a permit to rework, deepen or complete the Onondaga Group.

6. The Commission waives the requirement that Chesapeake must submit a site safety plan and hold a pre-spud meeting for the drilling of wells covered by this Order. However, Chesapeake is required to maintain H_2S monitoring equipment on site for use, if needed.

IN THE NAME OF THE STATE OF WEST VIRGINIA:

OIL AND GAS CONSERVATION COMMISSION
OF THE STATE OF WEST VIRGINIA

By: Barry K. Lay
Barry K. Lay, Commissioner

Dated this 10th day of July, 2007, at Charleston, West Virginia.

CERTIFICATE OF SERVICE

I, Timothy M. Miller, counsel for Chesapeake Appalachia, L.L.C., do hereby certify that a true and exact copy of the foregoing **RESPONSE OF CHESAPEAKE APPALACHIA, L.L.C., TO THE INITIAL APPEAL BRIEFS OF PETITIONER AND INTERVENOR** has this 14th day of July, 2009, been served upon the following parties, via U.S. mail, addressed as follows:

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