

IN THE CIRCUIT COURT OF KANAWHA COUNTY, WEST VIRGINIA

WEST VIRGINIA SURFACE OWNERS' RIGHTS ORGANIZATION,

Petitioner,

vs.

No.

08-AA-85
Judge Study

WEST VIRGINIA OIL AND GAS CONSERVATION COMMISSION,
EASTERN AMERICAN ENERGY CORPORATION,
CHESAPEAKE APPALACHIA, L.L.C.,
PETROEDGE RESOURCES (WV) L.L.C.,
BLUE EAGLE LAND, L.L.C.,
COALQUEST DEVELOPMENT, L.L.C.,
CONSOLIDATED COAL COMPANY,
HORSE CREEK LAND AND MINING COMPANY,
NATIONAL COUNCIL OF COAL LESSORS, INC.,
PENN VIRGINIA OPERATING COMPANY, LLC,
POCAHONTAS LAND CORPORATION,
WPP L.L.C.,
WOLF RUN MINING COMPANY, and
THE WEST VIRGINIA COAL ASSOCIATION.

Respondents.

PETITION FOR JUDICIAL REVIEW OF A CONTESTED CASE
BEFORE THE WEST VIRGINIA OIL AND GAS CONSERVATION COMMISSION
PURSUANT TO THE STATE ADMINISTRATIVE PROCEDURES ACT.

Comes now the West Virginia Surface Owners' Rights Organization seeking judicial review of an agency decision that will allow gas wells to be spaced more closely together when they are drilled than is justifiable, and therefore will allow gas wells to be more numerous and disruptive of surface uses on surface owners' land and will in addition result in waste to all other interests involved in gas well drilling by leaving otherwise recoverable gas in the ground, and says:

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CATHY S. GOSWAMI
CLERK
KANAWHA COUNTY CIRCUIT COURT

Background.

1. Generally the “rule of capture” applies to oil and gas wells drilled in West Virginia. Any gas that comes out of a conventional, vertically drilled gas well belongs to the owner of the gas well and to the owner of the land where the gas well is located. This is true even if it is known with scientific certainty that the gas coming out of the well is draining into the gas well bore from the lands of adjoining mineral owners. There are only a few exceptions.
2. One exception is that by statute, statutory “deep wells” are subject to “forced” well spacing and royalty sharing, which the statute confusingly calls, “unitization and pooling”.
3. “Forced” pooling (where the parties do not agree to do so) for statutory “deep wells” is governed by the Oil and Gas Conservation Commission (the “Commission”).
4. The parties drilling the statutory “deep well”, or neighboring mineral owners or operators, can apply to the Commission for an order requiring that the mineral land that will be drained by one statutory “deep well” to be declared a “unit”. W.Va. Code §22C-9-7(a)(1) and (b)(1).
5. The number of acres in the unit should depend on the characteristics of the gas bearing formation. The number of acres in the unit determines, by the application of simple algebra, the distance or “spacing” between wells.
6. All of the parties owning minerals inside the boundaries of the unit are then entitled to a share of the royalties depending on how many acres they own of the minerals in the unit they own. They can also participate in the financing of the drilling of the well and receive a proportion of the profits in addition to royalties.

7. In a large gas field, where many wells are expected, it would be cumbersome for each well to be determined this way, so a Rule of the Commission allows for the commission to set “special field rules” that set a presumptive spacing of all wells in a field. 39 C.S.R. 1-2.19. Parties interested in a particular well can then move for an exception. 39 C.S.R. 1-4.3.

8. This petition is an appeal of 4 orders of the Commission setting spacing for 489,000 acres in 7 counties!

Issues

9. The issue raised by this appeal is whether there was substantial evidence to support the Commission’s orders granting special field rules in several contested cases. The Commission’s orders required only 1000 foot well spacing, instead of 3000 or 1500 foot well spacing.

10. No doubt other parties will intervene to raise the issue whether the wells drilled to the Marcellus Shale formation are statutory “deep wells” as defined by in W.Va. Code 22C-9-2(a)(11) and (12) and are therefore wells subject to the Commission’s jurisdiction to order well spacing and royalty sharing (“unitization and pooling”) and special field rules, and subject to surface owner consent as provided in W.Va. Code 22C-9-7(b)(4).

Timeliness

11. The West Virginia Supreme Court of Appeals has given parties thirty days to file an appeal in Circuit Court in these cases; the thirty days runs from the date of the mandate issued in *State ex rel. Blue Eagle Land Company et al. vs. West Virginia Oil & Gas Conservation Commission, et al.* No 33705, Opinion filed May 27, 2008 (See attached Exhibit #1). The

Mandate was filed June 26, 2008, (See attached Exhibit #2) making this appeal timely through July 26, 2008.

Parties Petitioner

12. The Petitioner was granted standing by the West Virginia Supreme Court in *Blue Eagle Land Company*. *Ibid.* at footnote 1. See also *Snyder vs. Callahan*, 284 S.E.2d 241 (W.Va., 1981).

13. The Petitioner, formerly an unincorporated association, is now West Virginia Citizen Action Group d.b.a West Virginia Surface Owner's Rights Organization, an application for tradename having been filed with and approved by the Secretary of State on June 18, 2008.

14. The West Virginia Surface Owner's Rights Organization ("WVSORO") will represent the owners of small tracts of surface land in West Virginia. Generally these small surface owners have title to only the surface and not the oil and gas or other minerals under the surface, or if they own the minerals they are already subject to long standing leases to oil and gas operators. About 30% of WVSORO's members do also own small mineral/royalty interests.

15. It is these surface owners represented by WVSORO upon whom gas and oil wells are drilled. Attached as Exhibit #3 is an aerial photograph showing the impact on the surface of a typical Marcellus Shale well being recently drilled in Upshur County, West Virginia. Not included in the picture is an additional pond to the left (note the

16. Generally mineral owners have the right pursuant to their severance deeds to do what is "reasonably necessary" to the surface owner to develop the oil and gas. *See*,

"Disturbing Surface Rights: What does 'Reasonably Necessary' mean in West Virginia?"
85 West Virginia Law Review, 817.

17. WVSORO began organizing itself in August 2007, and already has hundreds of dues paying members in 50 West Virginia counties, 20 states, and 3 countries. Its web site can be found at www.wvsoro.net.

18. The issues before this Court will be whether well spacing and royalty sharing will be applied to more than 1,800 Marcellus Shale gas wells that are planned to be drilled on more than one-half million surface acres of West Virginia, and if so, what spacing between these gas wells will be established resulting in what total number of well sites and access roads.

19. Surface owners will be greatly affected by the determination of these issues.

20. If well spacing and royalty sharing applies because these are statutory "deep wells", then wells will be rationally spaced (and all mineral owners will share proportionately in the royalties from each well).

21. If the Rule of Capture applies as the anticipated intervenors will assert, then after a mineral owner/operator drills a successful initial gas well, other operators/mineral owners can drill extra "offset" gas wells, closer to the initial gas well than geologically justified. These extra wells will be drilled because neighboring mineral owners/operators cannot "force" well spacing and royalty sharing, and so instead will try to protect their mineral tracts from being drained by the initial wells drilled. The result will be the drilling of more wells than are necessary on surface owners' land.

22. The only occurrence that could prevent this would be if either or both of two other statutorily enacted exceptions to the rule of capture apply. If there is also coal on the tract and if the coal owner/operator objects they can force pooling and unitization pursuant to W.Va. Code §22C-8-1 et seq. Only coal owners/operators can force well spacing and royalty sharing for statutory shallow wells. If proposed wells are “coal bed methane” wells then pooling and unitization can be forced by the more recently enacted statutes regarding coal bed methane pursuant to W.Va. Code 22-21-17 (1994).)

23. In addition, if the Marcellus wells are found to be statutory “deep wells”, the consent of the well site surface owner may be required for some of those wells, although the agency’s interpretation of the Code provisions pursuant to a Circuit Court decision and dicta in a Supreme Court case results in very few wells being subject to this provision.

24. Other public interests and the interests of other citizens will also be affected by this case. These other public and citizen interests are not likely to appear or to have representation in this case. But they are important. WVSORO’s brief will also identify and state the interests of other public and private interests because the ruling in this case that will benefit surface owners will also benefit these other unrepresented interests. These other public and private interests are summarized in the following paragraphs.

25. Un-spaced, unnecessary, extra wells will cause more surface disturbance on the tracts of land where they are drilled and will cause additional erosion and sediment down streams and rivers. They will cause more risks of harm to groundwater as each unnecessary well penetrates groundwater strata on its way to the oil and gas bearing strata.

26. In addition if unnecessary, extra gas wells are drilled, the larger number of gas wells will deplete the gas reservoir pressure more quickly. As a result there will be less total gas produced from the pool of gas being developed! The significance of this geologic and engineer fact cannot be overstated!

27. Less total gas produced as a result of the drilling of unnecessary, extra wells means less gas produced sold, and at greater cost, which adversely affects a number of other interested parties:

- a. Royalty owners will receive less money.
- b. Investors in well drilling will receive less money.
- c. If one ascribes to the economic theory that all costs will be passed on to consumers, then the extra costs of drilling extra wells will be passed on to individual and business consumers.
- d. Even operators as a class will probably benefit if well spacing and royalty sharing applies to the Marcellus wells, though some individual operators may be adversely affected if they make their profit “on the push” charging investors for drilling the extra wells, or if they additionally profit by beating other operators to pools where offset wells are not economical thereby draining gas from neighboring mineral owners.

Parties Respondent

28. The West Virginia Oil and Gas Conservation Commission is the state agency whose decision is being appealed.

29. Named Respondents include the named parties in four orders made by the Commission.

30. Named Respondents include other parties who sought a Writ of Prohibition before the West Virginia Supreme Court of Appeals in this matter and a subsequent related appeal in the Circuit Court of McDowell County, Case No. 08-CAP-171.

31. Numerous other proceedings are pending below with even perhaps even more parties. They have been held in abeyance by the Commission until a determination of the legal issues can be made by the Courts. To provide notice to these parties, the following entities have been served with notice of this proceeding but not made named parties.

32. The West Virginia Coal Association represents the coal industry.

33. The West Virginia Oil and Natural Gas Association generally represents larger producers of oil and natural gas and their associates and allies.

34. The Independent Oil and Gas Association represents other companies engaged in the extraction and production of natural gas and oil in West Virginia, and the companies and individuals which support extraction activities.

35. The West Virginia Land and Mineral Owners Council advances the interests of major land and mineral owners.

Titles before Agency

36. In the matter of the request by Eastern American Energy Corporation for an order from the Commission establishing special field rules [for 30,000 acres] in Boone, Lincoln, and Logan Counties, West Virginia covering the Logan, Amherstdale, Henlawson, Clotheir, Madison

and Mud Quadrangles, Docket 175, Cause 160, Order #1. Order granted December 21, 2006. See Exhibit #4 attached.

37. In the matter of the request by Chesapeake Appalachia, L.L.C., for an order from the Commission establishing special field rules [for 427,000 acres] in Boone, Kanawha, Lincoln, Logan and Mingo Counties, West Virginia covering the Nestlow, Branchland, Hager, Julian, Griffithsville, Radnot, Kiahsville, Ranger, Big Creek, Mud, Webb, Wilsondale, Trace, Chapmanville, Kermit, Naugatuck, Myrtle, Holder, Williamson, Delbarton and Barnabus Quadrangles, Docket 179, Cause 164, Order #1. Order granted July, 2007. See Exhibit #5 attached.

38. In the matter of the request by Chesapeake Appalachia, L.L.C. for an order from the Commission establishing special field rules [for 17,000 acres] in Boone, Lincoln, and Logan Counties, West Virginia covering the Logan, Amherstdale, Henlawson, Clothier, Madison and Mud Quadrangles, Docket 180, Cause 165, Order #1. Order granted July 10, 2007. See Exhibit #6 attached.

39. In the matter of the request by Chesapeake Appalachia, L.L.C. for an order from the Commission establishing special field rules [for 15,000 acres] in McDowell, Mingo, and Wyoming Counties, West Virginia covering the Man, Mallory, Wharncliffe, Gilbert, Jaeger and Davy Quadrangles, Docket 181, Cause 166, Order #1. Order granted July, 2007. See Exhibit #7 attached.

Kind of Proceeding and Nature of the Ruling by the State Agency

Granting of an application to the Oil and Gas Conservation Commission for special field rules for 489,000 acres in 7 counties order requiring only 1000 foot spacing of Marcellus Shale formation wells.

40. This would allow the drilling of up to 9 wells on a surface owner's single 100 acre tract!

Statement of the Facts

41. In all of the above cases the party making the application to the Commission proposes to drill up to 75 feet into the Onondaga limestone to enable the logging and completion of the entire Marcellus Shale formation. The applicants state that they will not perforate the well casing in, 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 Limestone, they will be considered statutory "deep wells". The applicant therefore requested the Commission to set spacing for any proposed wells drilling under the requested special field rules to conform to the following: 1000' between wells and 100' from a lease line or unit boundary.

42. The Oil and Gas Conservation Commission ordered the special field rules on the terms for which the applicants applied.

Assignments of Error

43. The decision below is clearly wrong in view of the reliable, probative and substantial evidence on the whole record, or more specifically, the lack thereof.

44. The decision below is arbitrary and capricious.

**Points and Authorities Relied Upon
and
Discussion of Law.**

45. Generally statutory deep wells must be drilled at least 3000 feet apart in order to prevent “waste”. “Waste” results with the drilling of unnecessary gas wells, resulting in the production of less gas at more cost, as explained in the Background section of this Petition. 39 C.S.R. 1-4.2

46. “Special field rules” can grant an exception to this spacing, again as explained the Background section of this Petition. Ibid.

47. The required evidence to allow the Oil and Gas Conservation Commission to grant this exception includes, “Reservoir data anticipated for an average proposed drilling unit within the spaced area; and . . . A comparative economic evaluation of spacing patterns, based on estimated production and rate of production of oil and/or gas of the average proposed drilling unit within the spaced area.” 39 C.S.R. 1-6.2.d and e.

48. The required evidence to support spacing at less than 3000 feet was not presented below. There were no reservoir studies done. Page 49, Transcript of May 17, 2007, hearing on Docket No. 179. No comparative economic evaluation or estimated production rates were submitted.

49. The applicants had no documentation or reports that they could not effectively produce the Marcellus at 2000 foot spacing. Tr. 50

50. Chesapeake said that their plans were for 1700 wells on 427,000 acres based on 1500 foot spacing. That was what they were intending. This 1500 foot spacing was not based

on the required studies etc., It was arrived at by the applicant only because it was their current practice. Tr. 47 and 48.

51. The only engineering or scientific evidence is that they have been drilling wells every 1500 feet so far and have not seen any “communication” between those wells so far. Tr. 49.

52. This does not meet the evidential standard to allow less than 3000 feet.

53. In the alternative, there was no substantial evidence to allow spacing of less than 1500 feet – the distance Chesapeake actually planned, based on their weak evidence that there had been no communication between 1500 foot spaced wells.

54. The Chesapeake witness himself said that asking for 1000 feet was “arbitrary”! Tr. 48.

55. Chesapeake only wanted 1000 foot spacing if they wanted to get closer together than 1500 feet because of topography, existing wells, coal issues, etc. Tr. 50

56. Based on the testimony and other evidence before it, the Commission, if it did not grant only 3000 foot spacing, should only have granted 1500 foot spacing, and that should only be on a temporary bases as allowed by W. Va. Code 22C-9-7(a)(5). Then if there was a need for 1000 foot spacing for a particular well, an exception could have been sought.

Relief Prayed For

WHEREFORE the Petitioner prays that the Circuit Court:

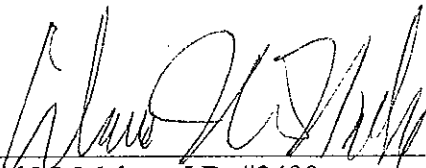
A. Modify the orders below to require 3000 foot spacing, or

B. In the alternative, modify the orders below to allow 1500 foot spacing only on a temporary basis, or

C. In the alternative, modify the orders below to allow only 1500 foot spacing in its orders, and

D. Grant such other and further relief as to the Court may seem just and proper.

West Virginia Surface Owner Rights Organization
Petitioner,
By Counsel

A handwritten signature in black ink, appearing to read 'David McMahon', is written over a horizontal line.

David McMahon, J.D. #2490

Counsel for Petitioner.

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IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA

January 2008 Term

No. 33705

FILED

May 27, 2008

released at 3:00 p.m.
RORY L. PERRY II, CLERK
SUPREME COURT OF APPEALS
OF WEST VIRGINIA

STATE OF WEST VIRGINIA EX REL. 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

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

EXHIBIT

tabbies

WRIT OF PROHIBITION

WRIT GRANTED AS MOULDED

Submitted: March 12, 2008

Filed: May 27, 2008

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The Opinion of the Court was delivered PER CURIAM.

JUSTICE BENJAMIN, deeming himself disqualified, did not participate in the decision of this case.

JUDGE JOHN W. HATCHER, JR., sitting by temporary assignment.

SYLLABUS

“In determining whether to entertain and issue the writ of prohibition for cases not involving an absence of jurisdiction but only where it is claimed that the lower tribunal exceeded its legitimate powers, this Court will examine five factors: (1) whether the party seeking the writ has no other adequate means, such as direct appeal, to obtain the desired relief; (2) whether the petitioner will be damaged or prejudiced in a way that is not correctable on appeal; (3) whether the lower tribunal’s order is clearly erroneous as a matter of law; (4) whether the lower tribunal’s order is an oft repeated error or manifests persistent disregard for either procedural or substantive law; and (5) whether the lower tribunal’s order raises new and important problems or issues of law of first impression. These factors are general guidelines that serve as a useful starting point for determining whether a discretionary writ of prohibition should issue. Although all five factors need not be satisfied, it is clear that the third factor, the existence of clear error as a matter of law, should be given substantial weight.” Syllabus Point 4, *State ex rel. Hoover v. Berger*, 199 W.Va. 12, 483 S.E.2d 12 (1996).

Per Curiam:

In the instant case we find that a writ of prohibition is not an appropriate vehicle to address jurisdictional questions raised regarding certain oil and gas wells. We grant leave for the case to be re-filed as an appeal in circuit court.

I.

The petitioners are coal-owning and coal-mining companies that object to certain orders issued by the respondent, the West Virginia Oil & Gas Conservation Commission (“the Commission”), a governmental agency established pursuant to *W.Va. Code*, 22C-9-1, *et seq.*, to regulate the drilling of “deep” wells for oil and gas. (More on the distinction between a “deep” and a “shallow” well, *infra*.)

The Commission orders to which the petitioners object involve drilling permit applications that were filed with the Commission by the other respondents in the instant case. These respondents are companies that want to produce gas and oil from the “Marcellus Shale” geological formation. For the wells in question, the Marcellus Shale lies directly above the “Onondaga” formation. And, as will be further seen *infra*, the top of the Onondaga formation is the dividing line between “deep” and “shallow” wells.

The petitioners claim, via a writ of prohibition invoking this Court’s original jurisdiction, that the Commission has no jurisdiction to issue orders relating to the proposed

wells, because the wells are “shallow wells” that are required to be regulated by the Shallow Well Gas Review Board, established by *W.Va. Code*, 22C-8-1, *et seq.*

The respondents claim that the orders in question were properly issued by the Commission, because the proposed wells in question do not meet the definition of “shallow wells” and do not lie within the Shallow Well Gas Review Board’s jurisdiction.¹

Although we do not have a record in this original jurisdiction proceeding other than the pleadings, it appears that the proposed wells would be drilled entirely through the Marcellus Shale and would penetrate approximately eighty feet into the Onondaga formation. The penetration into the Onondaga, it appears, is to accommodate tools that are used for preparing the well for production.

The applicable statutory language is found at *W.Va. Code*, 22C-9-2 [1998], which states in pertinent part:

(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

¹The Commission and the Shallow Well Gas Review Board have somewhat different procedures and standards in the areas of notice to mineral owners and well spacing, and the petitioners apparently believe that their interests will be better served if the Shallow Well Gas Review Board exercises jurisdiction over the proposed wells. In an *amicus curiae* brief, the West Virginia Surface Owners’ Rights Association asserts that oil and gas royalties from deep wells must be “pooled” and distributed among the owners of the gas – as opposed to paying royalties only to the owner of the property where the well is located, if a well is classified as a shallow well. If the instant case is re-filed as an appeal, the West Virginia Surface Owners’ Rights Association should be given an opportunity to assert its interests and views.

for logging and completion operations, but in no event may the “Onondaga Group” formation be otherwise produced, perforated or stimulated in any manner;²

(12) “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”[.]

The petitioners argue that the foregoing definitional language for a “shallow well” includes wells that are “drilled and completed” – that is, established to produce gas from – “above the top of the Onondaga,” which is where the Marcellus Shale is located. The petitioners argue that the statute’s twenty-feet limit on a shallow well’s penetration of the Onondaga is not jurisdictional.

The respondents reply by saying that the twenty-feet statutory limitation on the penetration of a shallow well into the Onondaga is definitional and jurisdictional. The respondents also argue that a “deep well,” under the statute, can be a well that is completed “at . . . the top of” the Onondaga – and that in fact, the Marcellus Shale wells in question will be so completed. (Emphasis added.)

II.

In determining whether to entertain and issue the writ of prohibition for cases not involving an absence of jurisdiction but only where it is claimed that the lower tribunal exceeded its legitimate powers, this Court will examine five factors: (1) whether the party seeking the writ has no other adequate means, such as direct appeal, to obtain the desired relief; (2) whether the

²This language is repeated at *W.Va. Code*, 22C-8-2(21) [1994].

petitioner will be damaged or prejudiced in a way that is not correctable on appeal; (3) whether the lower tribunal's order is clearly erroneous as a matter of law; (4) whether the lower tribunal's order is an oft repeated error or manifests persistent disregard for either procedural or substantive law; and (5) whether the lower tribunal's order raises new and important problems or issues of law of first impression. These factors are general guidelines that serve as a useful starting point for determining whether a discretionary writ of prohibition should issue. Although all five factors need not be satisfied, it is clear that the third factor, the existence of clear error as a matter of law, should be given substantial weight.

Syllabus Point 4, *State ex rel. Hoover v. Berger*, 199 W.Va. 12, 483 S.E.2d 12 (1996).

We do not have a factual record in the instant case upon which we may adequately evaluate the contentions of the parties, particularly regarding the details of the wells in question. Under the applicable statutory language, it cannot be said, from the limited record before this Court, that the Commission's exercise of its jurisdiction is clearly erroneous.³ Additionally, the petitioners are not without a remedy other than prohibition, because the orders of the Commission that are complained of in the instant case may be appealed to circuit court pursuant to *W.Va. Code*, 22C-9-11 [1998]. All relevant issues may

³That the statutes do not clearly and without dispute entitle the petitioners to relief is illustrated by a bill that was introduced in the 2008 Legislature. Senate Bill 716, introduced on February 18, 2008, was described in its introductory language as "modifying the definitions of 'shallow' and 'deep' wells to allow a shallow well to be drilled deeper; . . .". Senate Bill 716 would have changed the definition of a "shallow well" to mean "any gas well, other than a coal bed methane well, drilled no deeper than *one hundred feet* below the top of the 'Onondaga Group . . .'"(emphasis added), and would have removed the language in the current statute that permitted a shallow well to penetrate the Onondaga Group no more than twenty feet. The drafter's note to Senate Bill 716 stated that the purpose of the bill "is to modify the definitions of 'shallow' and 'deep' wells to allow a shallow well to be drilled deeper and to provide clarity to both definitions." Senate Bill 716 was not enacted.

be raised in that forum, including the Commission's jurisdiction. All of these factors militate against this Court addressing the issues raised by the petitioners in the instant original jurisdiction proceeding.

III.

Based on the foregoing, we grant a writ of prohibition as moulded, and direct that the instant case be dismissed from this Court's docket, with leave for the petitioners to file an appeal of the Commission's orders in circuit court within thirty days of the issuance of the mandate in the instant case, which shall be deemed to be a timely appeal.

Writ Granted as Moulded.

STATE OF WEST VIRGINIA

At a Regular Term of the Supreme Court of Appeals continued and held at Charleston, Kanawha County, on the 26th day of June, 2008, the following order was made and entered:

State of West Virginia ex rel. 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, Pen 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

vs.) No. 33705

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

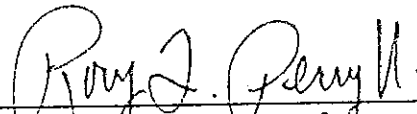
The Court, having maturely considered the petition for a writ of prohibition, the rule awarded, the brief Amicus Curiae tendered on behalf of the West Virginia Surface Owners' Rights Organization, and the oral argument and briefs of counsel thereon, is of opinion for reasons stated in writing and filed with the record that the petitioners are entitled to a writ of prohibition, as moulded. It is therefore considered and ordered by the Court that the rule heretofore issued by this Court on 7th day of November, 2007 be, and

it hereby is, moulded to the extent indicated by the written opinion aforesaid, and, as moulded, should issue, consistent with the written opinion aforesaid.

The syllabus of points adjudicated, prefixed to the written opinion aforesaid prepared Per Curiam, was concurred in by Chief Justice Maynard and Justices Davis, Starcher, Albright and Judge Hatcher, sitting by temporary assignment. Justice Benjamin deemed himself disqualified and did not participate in the consideration or decision of this case.

A True Copy

Attest:


Clerk, Supreme Court of Appeals





west virginia department of environmental protection

Oil and Gas Conservation Commission
601 57th Street, SE
Charleston, West Virginia 25301

Joe Manchin III, Governor
www.wvdep.org

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

IN THE MATTER OF THE REQUEST BY EASTERN
AMERICAN ENERGY CORPORATION 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. 175

CAUSE NO. 160

ORDER NO. 1

REPORT OF THE COMMISSION

Eastern American Energy Corporation has requested a hearing before the Commission for the establishment of special field rules covering approximately 30,000 acres in Boone, Lincoln and Logan Counties. Eastern wishes to drill wells in the designated area in order to produce from the Marcellus Shale formation and other shallower formations. Although the Marcellus is a "shallow" formation, Eastern proposes to drill up to 75 feet into the Onondaga Limestone to enable the logging and completion of the entire Marcellus Shale section. Eastern 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 Limestone, they will be considered deep wells. Therefore, Eastern is requesting the Commission set spacing for any proposed wells drilled under these special field rules to conform to the following: 1000' between wells and 100' from a lease line or unit boundary.

FINDINGS OF FACT

1. Applicant, Eastern, is an operator within the meaning of paragraph (4) subsection (a) of West Virginia Code §22C-9-2.
2. Eastern owns approximately 30,000 acres of leasehold interests in Boone, Lincoln, and Logan Counties of West Virginia. Eastern has drilled approximately 135 wells on these leaseholds. One of the target formations is the Marcellus Shale, which lies directly above the Onondaga Limestone. Eastern wishes to drill additional wells in the field utilizing up to 75 feet of rat hole in the Onondaga Limestone. Applicants' witness testified that 75 feet of rat hole is necessary to effectively complete the wells in the Marcellus formation. The 75 feet of rat hole will allow the applicant 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.

ORDER

Now therefore, based on the Findings of Fact and Conclusions of Law, the request of Eastern for the establishment of special field rules is granted.

The special field rules shall allow Eastern to drill wells in the designated area to a depth not to exceed 75 feet into the Onondaga Limestone or to the base of the Onondaga Limestone, whichever is shallower. Each well drilled under the special field rules shall be located a minimum of 1000 feet from each well covered by this order and 100 feet from a lease line or unit boundary. For each well covered by these special field rules, Eastern shall submit deep well permit application. Upon completion of any well drilled under these special field rules, Eastern 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 limestone has been completed or stimulated in any manner. Thereafter Eastern shall not, perforate, frac or otherwise stimulate the Onondaga Limestone, unless it subsequently files for, and receives a permit to rework, deepen or complete the Onondaga Limestone.

Furthermore the Commission waives the requirement that Eastern must submit a site safety plan and hold a pre-spud meeting for the drilling of wells covered by this order.

The designated area covered by these special field rules is a parallelogram bounded by lines of latitude and longitude as follows:

The Northeast corner is defined as the intersection of $38^{\circ} 05' 00''$ latitude and $81^{\circ} 45' 00''$ longitude.

The Southeast corner is defined as the intersection of $37^{\circ} 50' 00''$ latitude and $81^{\circ} 45' 00''$ longitude.

The Southwest corner is defined as the intersection of $37^{\circ} 50' 00''$ latitude and $82^{\circ} 00' 00''$ longitude.

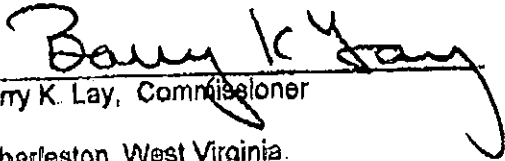
The Northwest corner is defined as the intersection of $38^{\circ} 05' 00''$ latitude and $82^{\circ} 00' 00''$ longitude.

Furthermore, Eastern shall submit to the Commission a Mylar copy of the quadrangle maps in a scale of 1:24000 (1 inch equals 2000 feet) for the following quadrangles - Logan, Henlawson, Mud, Madison, Clothier, and Amherstdale. The outer boundary of the designated special field rule area shall be shown on the applicable quadrangle maps.

THE NAME OF THE STATE OF WEST VIRGINIA:

OIL AND GAS CONSERVATION COMMISSION
OF THE STATE OF WEST VIRGINIA

By:


Barry K. Lay, Commissioner

Dated this 21st day of December, 2006, 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, 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

EXHIBIT

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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 H₂S 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

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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 H₂S 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,

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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 H₂S 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.

IN THE CIRCUIT COURT OF KANAWHA COUNTY, WEST VIRGINIA

WEST VIRGINIA SURFACE OWNERS' RIGHTS ORGANIZATION,

Petitioner,

vs.

No. 08-AA-85

WEST VIRGINIA OIL AND GAS CONSERVATION COMMISSION,
EASTERN AMERICAN ENERGY CORPORATION,
CHESAPEAKE APPALACHIA, L.L.C.,
PETROEDGE RESOURCES (WV) L.L.C.,
BLUE EAGLE LAND, L.L.C.,
COALQUEST DEVELOPMENT, L.L.C.,
CONSOLIDATED COAL COMPANY,
HORSE CREEK LAND AND MINING COMPANY,
NATIONAL COUNCIL OF COAL LESSORS, INC.,
PENN VIRGINIA OPERATING COMPANY, LLC,
POCAHONTAS LAND CORPORATION,
WPP L.L.C.,
WOLF RUN MINING COMPANY, and
THE WEST VIRGINIA COAL ASSOCIATION.

Respondents.

Respondents.

DESIGNATION OF RECORD

Pursuant to Rule 4 of the West Virginia Rules for Administrative Appeals, the Petitioner designates the full record in the proceedings identified below as material to the questions presented in this appeal:

1. In the matter of the request by Eastern American Energy Corporation for an order from the Commission establishing special field rules [for 30,000 acres] in Boone, Lincoln, and Logan Counties, West Virginia covering the Logan, Amherstdale, Henlawson, Clotheir,

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2008 JUL 23 AM 9:32
CATHY PATSON, CLERK
KANAWHA CO. CIRCUIT COURT

Madison and Mud Quadrangles, Docket 175, Cause 160, Order #1. Order granted December 21, 2006. See Exhibit #3 attached.

2. In the matter of the request by Chesapeake Appalachia, L.L.C., for an order from the Commission establishing special field rules [for 427,000 acres] in Boone, Kanawha, Lincoln, Logan and Mingo Counties, West Virginia covering the Nestlow, Branchland, Hager, Julian, Griffithsville, Radnot, Kiahsville, Ranger, Big Creek, Mud, Webb, Wilsondale, Trace, Chapmanville, Kermit, Naugatuck, Myrtle, holder, Williamson Delbarton and Barnabus Quadrangles, Docket 179, Cause 164, Order #1. Order granted July, 2007. See Exhibit #4 attached.
3. In the matter of the request by Chesapeake Appalachia, L.L.C. for an order from the Commission establishing special field rules [for 17,000 acres] in Boone, Lincoln, and Logan Counties, West Virginia covering the Logan, Amherstdale, Henlawson, Clothier, Madison and Mud Quadrangles, Docket 180, Cause 165, Order #1. Order granted July 10, 2007.
4. In the matter of the request by Chesapeake Appalachia, L.L.C. for an order from the Commission establishing special field rules [for 15,000 acres] in McDowell, Mingo, and Wyoming Counties, West Virginia covering the Man, Mallory, Wharncliffe, Gilbert, Iaeger and Davy Quadrangles, Docket 181, Cause 166, Order #1. Order granted July, 2007. See Exhibit #5 attached.



David B. McMahon, JD #2490
Counsel for Petitioner.
1624 Kenwood Rd.
Charleston, WV 25314
304-415-4288
wvdavid@wvdavid.net

West Virginia Surface Owner Rights Organization
Petitioner,
By Counsel

IN THE CIRCUIT COURT OF KANAWHA COUNTY, WEST VIRGINIA

WEST VIRGINIA SURFACE OWNERS' RIGHTS ORGANIZATION,

Petitioner,

vs.

No. 08-AA-85

WEST VIRGINIA OIL AND GAS CONSERVATION COMMISSION,
EASTERN AMERICAN ENERGY CORPORATION,
CHESAPEAKE APPALACHIA, L.L.C.,
PETROEDGE RESOURCES (WV) L.L.C.,
BLUE EAGLE LAND, L.L.C.,
COALQUEST DEVELOPMENT, L.L.C.,
CONSOLIDATED COAL COMPANY,
HORSE CREEK LAND AND MINING COMPANY,
NATIONAL COUNCIL OF COAL LESSORS, INC.,
PENN VIRGINIA OPERATING COMPANY, LLC,
POCAHONTAS LAND CORPORATION,
WPP L.L.C.,
WOLF RUN MINING COMPANY, and
THE WEST VIRGINIA COAL ASSOCIATION.

Respondents.

CERTIFICATE OF SERVICE

I, David McMahon, do hereby certify that I have served a true and exact copy of the foregoing **Petition for Judicial Review of a Contested Case Before the West Virginia Oil and Gas Conservation Commission Pursuant to the State Administrative Procedures Act** upon all counsel of record by certified mail on the 21 day of July, 2008, addressed as follows:

West Virginia Oil & Gas Conservation Commission

Christie S. Utt, Esq.
WV Office of the Attorney General
Capitol Complex, Bldg. 1, Room E-26
Charleston, WV 25305

and

FILED
2008 JUL 23 AM 9:32
DAVID S. GOSCH, CLERK
KANAWHA CO. CIRCUIT COURT

c/o Office of Oil and Gas
W. Va. Department of Environmental Protection
601 57th Street, SE
Charleston, WV 25304-2345

Chesapeake Appalachia, LLC

Timothy Miller, Esq.
Robinson & McElwee, PLLC
Post Office Box 1791
Charleston, WV 25326

Eastern American Energy Corporation

Suzanne Trowbridge, Esq.
Goodwin & Goodwin LLP
Post Office Box 2107
Charleston, WV 25328

PetroEdge Resources (WV), LLC

Kenneth E. Tawney, Esq.
Jackson Kelly PLLC
P.O. Box 553
Charleston, WV 25322-0553

Blue Eagle Land, L.L.C.
Coalquest Development, L.L.C.
Consolidated Coal Company
Horse Creek Land and Mining Company
National Council of Coal Lessors, Inc.
Penn Virginia Operating Company, LLC
Pocahontas Land Corporation
WPP L.L.C.
Wolf Run Mining Company
The West Virginia Coal Association

Nicholas G. Preservati
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and

E. Forrest Jones
Jones & Associates, PLLC
Post Office Box 1989
Charleston, WV 25327

Independent Oil and Gas Association of West Virginia

405 Capitol Street, Suite 808
Charleston, WV 25301

West Virginia Oil and Natural Gas Association.

P.O. Box 3231
Charleston, WV 25332

West Virginia Land and Mineral Owners Council

PO Box 761
Charleston, WV 25323-0761



David McMahon, J.D. #2490
Counsel for Petitioner.
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**MEMORANDUM TO CLERK
FOR INSTITUTING CIVIL ACTION**

To the Clerk of the Circuit
Court of Kanawha County, West Virginia

WEST VIRGINIA SURFACE OWNERS RIGHTS ORGANIZATION,

Petitioner,

v.

CIVIL ACTION NO. 08-AA-85

WEST VIRGINIA OIL AND GAS CONSERVATION COMMISSION,
EASTERN AMERICAN ENERGY CORPORATION,
CHESAPEAKE APPALACHIA, L.L.C.,
PETROEDGE RESOURCES (WV) L.L.C.,
BLUE EAGLE LAND, L.L.C.,
COALQUEST DEVELOPMENT, L.L.C.,
CONSOLIDATED COAL COMPANY,
HORSE CREEK LAND AND MINING COMPANY,
NATIONAL COUNCIL OF COAL LESSORS, INC.,
PENN VIRGINIA OPERATING COMPANY, LLC,
POCAHONTAS LAND CORPORATION,
WPP L.L.C.,
WOLF RUN MINING COMPANY,
THE WEST VIRGINIA COAL ASSOCIATION,
THE WEST VIRGINIA OIL AND NATURAL GAS ASSOCIATION,
THE INDEPENDENT OIL AND GAS ASSOCIATION, and
THE WEST VIRGINIA LAND AND MINERAL OWNERS COUNCIL,

Respondents.



David B. McMahon (WV Bar ID #2490)
1624 Kenwood Road
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wvdauid@wvdauid.net

CATHY S. GATSON, CLERK
KANAWHA CO. CIRCUIT COURT

2008 JUL 23 AM 9:33

FILED

PLAINTIFF: West Virginia Surface Owners' Rights Organization	CASE NUMBER:
DEFENDANTS: West Virginia Oil and Gas Conservation Commission, et al.	

II. TYPE OF CASE:

TORTS	OTHER	CIVIL
<input type="checkbox"/> Asbestos	<input type="checkbox"/> Adoption	<input type="checkbox"/> Appeal from Magistrate Court
<input type="checkbox"/> Professional Malpractice	<input type="checkbox"/> Contract	<input type="checkbox"/> Petition for Modification of Magistrate Sentence
<input type="checkbox"/> Personal Injury	<input type="checkbox"/> Real Property	<input type="checkbox"/> Miscellaneous Civil
<input type="checkbox"/> Product Liability	<input type="checkbox"/> Mental Health	<input type="checkbox"/> Other
<input type="checkbox"/> Other Tort	<input checked="" type="checkbox"/> Appeal of Administrative Agency	

III. JURY DEMAND: ☐ Yes ☒ No

CASE WILL BE READY FOR TRIAL BY _____

IV. DO YOU OR ANY OF YOUR CLIENTS OR WITNESSES IN THIS CASE REQUIRE SPECIAL ACCOMMODATIONS DUE TO A DISABILITY OR AGE? ☐ YES ☒ NO
IF YES, PLEASE SPECIFY:

- ☐ Wheelchair accessible hearing room and other facilities
- ☐ Interpreter or other auxiliary aid for the hearing impaired
- ☐ Reader or other auxiliary aid for the visually impaired
- ☐ Spokesperson or other auxiliary aid for the speech impaired
- ☐ Other: _____

Attorney Name: David B. McMahon

Firm:

Address: 1624 Kenwood Road
Charleston, WV 25314

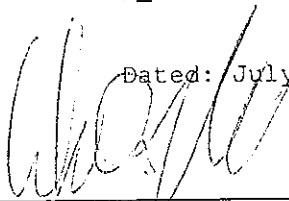
Telephone: 304/415-4288

Representing:

☒ Plaintiff ☐ Defendant

☐ Cross-Complainant ☐ Cross-Defendant

Dated: July 23, 2008



Signature

☐ Pro Se

08-AA-85

FILED

In the Circuit Court of KANAWHA County

2008 JUL 23 AM 9:37

ADMINISTRATIVE APPEALS DOCKETING STATEMENT

Style of case (use from agency final order including case number):

Am Copy
CATHY S. GATSON, CLERK
KANAWHA CO. CIRCUIT COURT

Agency: West Virginia Oil and Gas Conservation Commission

TIMELINESS OF APPEAL

Date of entry of order appealed from: June 26, 2008, Mandate from West Virginia Supreme Court of Appeals

Date of filing of petition for appeal: (Last day is Monday July 28, 2008) 7/23/08

VENUE: If appeal is not filed in Kanawha County, do you reside in or do business in this County?

☐ Yes

☐ No

If so, provide the street address and telephone number for your residence or business in this County.

If not, explain your reason(s) for filing this appeal outside of Kanawha County.

FINALITY OF ADMINISTRATIVE ORDER

Is the order appealed from a final decision on the merits as to all issues and parties?

☒ Yes

☐ No

If not, what type of order are you appealing?

CASE INFORMATION

State briefly the nature of the case, the relief sought and the outcome at the agency. (Attach an additional sheet if necessary). Agency ordered "special field rules" finding that gas wells drilled to the Marcellus Shale formation were deep wells, but then only required 1000 foot spacing. Petitioners want 3000' or 1500' spacing. Does the agency decision contain factual (evidentiary errors)?

☐ Yes

☒ No

If so, please list the evidentiary errors briefly. (Attach an additional sheet if necessary).

Does the agency order contain legal errors (errors of law)?

☒ Yes

☐ No

If so, please list the errors of law briefly. (Attach an additional sheet if necessary).
No substantial evidence to make its order.

CASE MANAGEMENT INFORMATION

Name of Party filing this appeal (Petitioner): W.Va. Surface Owner's Rights Organization

Do you wish to make an oral presentation to the court?

☒ Yes ☐ No

List counsel for each party to the case at the agency. If a party is not represented by counsel, provide the requested information for that party. Include name, firm name, address and telephone number. (Attach an additional sheet if necessary).

Too numerous for here. See below for petitioner. See certificate of service for Respondents and others.

Name of attorney or individual filing this Administrative Appeals Docketing Statement:

David McMahon

☒ Attorney ☐ Non-Attorney
(self represented)

Will you be handling the appeal?

☒ Yes ☐ No

If yes, provide name, firm name address and telephone number.

David McMahon, 1624 Kenwood Rd., Charleston, WV 25314

If there are multiple Petitioners add their names on an additional sheet, accompanied by a certification that all Petitioners concur in this filing.

Signature: _____

WV Bar Number. _____

Date: _____

Remember to attach:

1. Additional pages, if any, containing extended answers to questions on this form.
2. A copy of the agency final order or decision from which the appeal is taken.
3. A certificate of service, verifying that you have served this Administrative Appeals Docketing Statement upon all of the parties to the agency proceeding, the agency itself and the Attorney General's Office.