



## **West Virginia Surface Owners' Rights Organization**

1500 Dixie Street, Charleston, WV 25311  
(304) 346-5891 - [www.wvsoro.org](http://www.wvsoro.org)

### **Text of S.B. 694 The 2022 Oil and Gas Forced Mineral Tract Unitization Legislation**

*NOTE:*

The official "enrolled" (not "engrossed") version of the S.B. 694 bill is the new official Code language as it will be signed by the Governor and appear in the Code books and on websites. It will be available on the Legislature's website. However, that version does not show changes from current law! This version does that by showing deleted language as ~~struck through~~, and new language as underlined. (Exception: Some definitions were reordered to be alphabetical, so even though those definitions appear struck through and later underlined, they were moved and not necessarily changed.) The enrolled version will only have changes from this version if technical, grammatical, or provision numbering changes etc. were made by the Clerk. Other versions of the bill will have different page and line numbers, so it is suggested to refer to the section, subsection, subdivision etc. numbers when referencing the bill.

After the Senate passed its committee substitute to this Senate bill and sent it to the House, the House Energy Committee did a "strike and insert" amendment to the bill that made some changes, and then the House passed that version and sent that "SB694 H ENG AM #1" back to the Senate. The Senate did not amend that version and passed the same language making it the law of the land (once signed by the Governor). So this version is the House Energy Committee strike and insert amendment that will become the law, effective 90 days from passage which would be June 4, 2022.

The most important provision that benefits surface owners in this legislation is in section §22C-9-7a, subsection (h), which states that unitization orders using this new law cannot grant or otherwise affect surface use rights! Surface owners should go to our website for information and advice about negotiating or denying surface use rights! Also, subsections (o) and (n) give royalties due to underlying unknown and unlocatable mineral owners to surface owners above those tracts, plus title to those mineral interests, if the mineral owners do not show up after 5 years! There does have to be a court proceeding brought by the surface owner. Information on that will be added to our website before the bill takes effect. If the surface owner also owns an interest in the minerals under their surface, the rest of this legislation applies to those minerals.

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SB694 H ENG AM #1

Akers 3254

The Committee on Energy and Manufacturing moves to amend the committee substitute bill after the enacting clause by striking out the remainder of the bill in its entirety and inserting in lieu thereof the following:

## **CHAPTER 22C. ENVIRONMENTAL RESOURCES; BOARDS, AUTHORITIES, COMMISSIONS AND COMPACTS.**

### **ARTICLE 9. OIL AND GAS CONSERVATION.**

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

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

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

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

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

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

(5) Safeguard, protect, and enforce the property rights and interests of surface owners and the owners and agricultural users of other interests in the land.

(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 100 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 unconventional reservoirs;

and that in order to encourage the maximum recovery of oil and gas from all productive formations in this state, it is not in the public interest, with the exception of shallow wells utilized in a secondary recovery program, to enact statutory provisions relating to the exploration for or production from of oil and gas from vertical shallow wells, ~~as defined in section two of this article~~ but that it is in the public interest to enact statutory provisions establishing regulatory procedures and principles to be applied to the exploration for or production of oil and gas from deep wells, as defined in ~~said~~ section two and oil and gas produced from horizontal wells.

### **§22C-9-2. Definitions.**

*[Note: The definitions struck through in old (a) below are reinserted in alphabetical order and underlined in new (a) below. Only one old definition,, "'Drilling unit' or 'unit'" is indicated to be modified during the movement. The following new definitions were added to new (a): Horizontal drilling, Horizontal well, Natural gas liquids, Unconventional well, and Vertical well.]*

(a) ~~As used in this article:~~

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

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

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

(4) ~~"Operator" means any owner of the right to develop, operate and produce oil and gas from a pool and to appropriate the oil and gas produced therefrom, either for that person or for that person and others; in the event that there is no oil and gas lease in existence with respect to the tract in question, the owner of the oil and gas rights therein is the "operator" to the extent of seven-eighths of the oil and gas in that portion of the pool underlying the tract owned by such owner, and as "royalty owner" as to one-eighth interest in such oil and gas; and in the event the~~

~~oil is owned separately from the gas, the owner of the substance being produced or sought to be produced from the pool is the "operator" as to that pool;~~

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

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

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

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

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

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

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

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

~~(13) "Drilling unit" means the acreage on which one well may be drilled;~~

~~(14) "Waste" means and includes:~~

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

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

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

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

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

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

*[See note at beginning of this section.]*

(a) As used in this article:

"Commission" means the Oil and Gas Conservation Commission and "commissioner" means the Oil and Gas Conservation Commissioner as provided for in §22C-9-4 of this code;

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

"Deep well" means any well, other than a shallow well, deep horizontal well, or a coalbed methane well, drilled to a formation below the top of the uppermost member of the "Onondaga Group";

“Director” means the Secretary of the Department of Environmental Protection and “chief” means the Chief of the Office of Oil and Gas;

“Drilling unit” or “unit” means the acreage on which one well or more wells may be drilled;

“Gas” means all natural gas and all other fluid hydrocarbons not defined as oil as that term is defined in this section;

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

“Horizontal well” means an oil and gas well, other than a coalbed methane well, where the wellbore is initially drilled using a horizontal drilling method. A horizontal well may include multiple horizontal side laterals drilled into the same formation. A horizontal well may have completions into multiple formations from the same well. Multiple horizontal wells may be drilled from the same well pad. A horizontal well may be either a shallow well or a deep well so long as it is initially drilled using a horizontal drilling method;

“Independent producer” means a producer of crude oil or natural gas whose allowance for depletion is determined under Section 613A of the federal Internal Revenue Code in effect on July 1, 1997;

“Just and equitable share of production” means, as to each person, an amount of oil or gas or both substantially equal to the amount of recoverable oil and gas in that part of a pool, unit, or unconventional reservoir in the person’s tract or tracts within a unit.

“Natural gas liquids” means the liquid hydrocarbons removed from the natural gas through the process of fractionation or condensation.

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

“Operator” means any owner of the right to develop, operate, and produce oil and gas from a pool and to appropriate the oil and gas produced therefrom, either for that person or for

that person and others; in the event that there is no oil and gas lease in existence with respect to the tract in question, for all sections in this article other than section 7a, the owner of the oil and gas rights therein is the “operator” to the extent of seven eighths of the oil and gas in that portion of the pool underlying the tract owned by such the owner, and as “royalty owner” as to one-eighth interest in such the oil and gas; and in the event the oil is owned separately from the gas, the owner of the substance being produced or sought to be produced from the pool or the unit is the “operator” as to that pool or acreage included in a unit; the term operator includes owners of working interests in a lease but does not include owners whose interest is limited to working interests in a wellbore only, overriding royalties, or net profits interests;

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

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

“Royalty owner” means any owner of oil and gas in place, or oil and gas rights, to the extent that the owner is not an operator as that term is defined in this section;

“Shallow well” means any well other than a shallow horizontal well or a coalbed methane well, drilled no deeper than 100 feet below the top of the “Onondaga Group”: *Provided*, That in no event may the “Onondaga Group” formation or any formation below the “Onondaga Group” be produced, perforated or stimulated in any manner;

“Unconventional reservoir” means any geologic formation that contains or is otherwise productive of oil or natural gas that generally cannot be produced at economic flow rates or in economic volumes except by wells stimulated by multiple hydraulic fracture treatments, a



horizontal wellbore, or by using multilateral wellbores or some other technique to expose more of the formation to the wellbore;

“Vertical well” means an oil and gas well that does not utilize horizontal drilling methods. A vertical well may be either a shallow well or a deep well so long as it is initially drilled not using a horizontal drilling method;

“Waste” means and includes:

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

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

(3) The drilling of more horizontal wells or deep wells than are reasonably required to recover efficiently and economically the maximum amount of oil and gas from a pool, unit, or an unconventional reservoir. Waste does not include gas vented or released from any mine areas as defined in §22A-1-2 of this code or from adjacent coal seams which are the subject of a current permit issued under §22A-2-1 *et seq.* of this code: *Provided*, That this exclusion does not address ownership of the gas;

“Well” means any shaft or hole sunk, drilled, bored or dug into the earth or underground strata for the extraction of oil or gas;

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

(c) A person with an interest in oil and gas in a unit formed under this article who does not consent to the unit shall have no liability in connection with well site preparation, drilling, completion, maintenance, reclamation, plugging, and other operations with respect to wells drilled in the unit: *Provided*, That this subsection shall not apply to any operator in a horizontal well unit, including but not limited to any nonconsenting party who elects to participate in the horizontal well unit on a carried basis pursuant to §22C-9-7a of this code.

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

(a) Except as provided in subsection (b) of this section, the provisions of this article shall apply to all lands located in this state, however owned, including any lands owned or administered by any government or any agency or subdivision thereof, over which the state has jurisdiction under its police power. The provisions of this article are in addition to and not in derogation of or substitution for the provisions of §22-6-1 *et seq.* of this code.

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

(1) Shallow wells other than shallow horizontal wells and those utilized in secondary recovery programs as set forth in in §22C-9-8 of this code and those provided for in §22C-9-4 of this code;

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

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

(B) Involved in secondary recovery operations for oil under an order of the commission entered pursuant to §22C-9-8 of this code; or

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

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

(4) Free gas rights; or

(5) Coalbed methane wells.

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

(1) Limit production or output, or prorate production of any oil or gas well, except as provided in §22C-9-7(a)(6) of this code; or

(2) Fix prices of oil or gas.

(d) Nothing contained in either this chapter or §22-1-1 *et seq.* of this code may be construed so as to require, prior to commencement of plugging operations, a lessee under a lease covering a well to give or sell the well to any person owning an interest in the well,

including, but not limited to, a respective lessor, or agent of the lessor, nor shall the lessee be required to grant to a person owning an interest in the well, including, but not limited to, a respective lessor, or agent of a lessor, an opportunity to qualify under §22-6-26 of this code to continue operation of the well.

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

(a) The “oil and gas conservation commission” ~~shall be~~ is composed of ~~five~~ seven members. The director of the Department of Environmental Protection, and the Chief of the Office of Oil and Gas ~~shall be~~ are members of the commission ex officio. The remaining ~~three~~ five members of the commission shall be appointed by the Governor, by and with the advice and consent of the Senate, and may not be employees of the Department of Environmental Protection. Of the ~~three~~ five members appointed by the Governor, one shall be an independent producer and at least one shall be a public member not engaged in an activity under the jurisdiction of the Public Service Commission or the Federal Energy Regulatory Commission. ~~and at least one shall be a public member not engaged in an activity under the jurisdiction of the Public Service Commission or the federal energy regulatory commission~~ The third appointee shall possess a degree from an accredited college or university in engineering or geology and must be a registered professional engineer with particular knowledge and experience in the oil and gas industry and shall serve as commissioner and as chair of the commission. The fourth appointee shall be an individual who has substantial experience in the agricultural industry, who is engaged in the business of farming in this state, and who is not and never has been, either himself or herself nor through a member of his or her immediate family, engaged in the business of oil and gas other than as a royalty recipient. When this member is to be appointed, the Governor shall request from the primary organization representing the

agriculture industry in this state a list of three nominees for the member to be appointed. The fifth appointee shall be a resident owner of minerals in this state who is not and never has been affiliated with an operator of oil or gas wells. The term "affiliated", as used in the immediately preceding sentence, means someone who directly, or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with an operator of oil and gas wells by virtue of the power to direct or cause the direction of the management and policies of that operator, whether through the ownership of voting shares, by contract or otherwise.

(b) The members of the commission appointed by the Governor shall be appointed for overlapping terms of six years each, ~~except that the original appointments shall be for terms of two, four, and six years, respectively~~ except that any initial appointments shall be for terms of two, four, or six years to achieve staggered ends of terms. Each member appointed by the Governor shall serve until the members successor has been appointed and qualified. Members may be appointed by the Governor to serve any number of terms. The members of the commission appointed by the Governor, before performing any duty hereunder, shall take and subscribe to the oath required by section 5, article IV of the Constitution of West Virginia. Vacancies in the membership appointed by the Governor shall be filled by appointment by the Governor for the unexpired term of the member whose office is vacant and ~~such~~ the appointment shall be made by the Governor within 60 days of the occurrence of such vacancy. Any member appointed by the Governor may be removed by the Governor in case of incompetency, neglect of duty, gross immorality, or malfeasance in office. A commission member's appointment ~~shall be~~ is terminated as a matter of law if that member fails to attend three consecutive meetings. The Governor shall appoint a replacement within 30 days of the termination.

(c) The commission shall meet at such times and places as ~~shall be~~ are designated by the chair. The chair may call a meeting of the commission at any time, and shall call a meeting of the commission upon the written request of two members or upon the written request of the oil and gas conservation commissioner or the Chief of the Office of Oil and Gas. Notification of each meeting shall be given in writing to each member by the chair at least 14 calendar days in

advance of the meeting. ~~Three~~ Four members of the commission, at least two of whom are appointed members, ~~shall~~ constitute a quorum for the transaction of any business.

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

(e) The commission is hereby empowered and it is the commission's duty to execute and carry out, administer and enforce the provisions of this article in the manner provided herein. Subject to the provisions of §22C-9-3 of this code, the commission has jurisdiction and authority over all persons and property necessary therefor. The commission is authorized to make such investigation of records and facilities as the commission ~~deems~~ considers proper. In the event of a conflict between the duty to prevent waste and the duty to protect correlative rights, the commission's duty to prevent waste ~~shall be~~ is paramount.

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

(1) Regulate the spacing of deep wells;

(2) Issue horizontal well unit orders;

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

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

~~(4)~~(5) Serve as technical advisor regarding oil and gas to the Legislature, its members and committees, to the Chief of Office of Oil and Gas, to the Department of Environmental

Protection and to any other agency of state government having responsibility related to the oil and gas industry.

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

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

(2) No request for hearing has been received.

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

(1) Propose legislative rules;

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

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

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

(j) The commission is hereby empowered and it is the commission's duty to execute and carry out, administer, and enforce the relevant provisions of §37B-1-1 *et seq.* of this code concerning mineral development by cotenants for all wells at all depths and §22-11B-1 *et seq.* of this code concerning underground carbon dioxide sequestration storage facilities at all depths. The commission has jurisdiction and authority over all persons and property necessary therefor. The commission is authorized to make such investigation of records and facilities as the commission deems proper.

#### **§22C-9-5. Rules; notice requirements.**

(a) The commission may propose rules for legislative approval in accordance with the provisions of §29A-3-1 *et seq.* of this code, to implement and make effective the provisions of this article and the powers and authority conferred and the duties imposed upon the commission under the provisions of this article.

(b) Notwithstanding the provisions of §29A-7-2 of this code, any notice required under the provisions of this article shall be given at the direction of the commission by personal or substituted service or by certified United States mail, addressed, postage prepaid, to the last-known mailing address, if any, of the person being served, with the direction that the same be delivered to addressee only, return receipt requested. In the case of providing notice upon the filing of an application with the commission, the commission ~~shall cause~~ shall, within 14 days of the filing of an application, submit for publication notice of the application notice to be published as a Class II legal advertisement in compliance with the provisions of §59-3-1 *et seq.* of this code, and the publication area for ~~such the~~ publication shall be the county or counties wherein any land which may be affected by ~~such the~~ order is situate.

In addition, the commission shall mail a copy of ~~such the~~ notice to all other persons who have specified to the commission an address to which all such notices may be mailed. The notice shall issue in the name of the state, shall be signed by the one of the commission members, shall specify the style and number of the proceeding, the time and place of any hearing and shall briefly state the purpose of the proceeding. Each notice of a hearing must be provided no fewer than 20 days preceding the hearing date. Personal or substituted service and proof thereof may be made by an officer authorized to serve process or by an agent of the commission in the same manner as is now provided by the ~~“West Virginia Rules of Civil Procedure for Trial Courts of Record”~~ West Virginia Rules of Civil Procedure for service of process in civil actions in the various courts of this state.

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

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

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

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

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

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

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

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

(5) Safeguard, protect, and enforce the property rights and interests of surface owners and the owners and agricultural users of other interests in the land.

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

“Bonded operator” means a person that has posted a bond under §22-6-1 et seq. or §22-6A-1 et seq. of this code; is registered as an oil and gas well operator with the West Virginia Department of Environmental Protection, Office of Oil and Gas; and operates eight or more oil and gas wells, as defined in §22-6-1 et seq. or §22-6A-1 et seq. of this code, in West Virginia that are active, producing oil and gas wells;

“Executive interest” and “executory interest” means the interest entitling the owner to lease the oil and gas estate or amend an existing oil and gas lease. For purposes of this section, the owner of the executive interest is considered to be the royalty owner and interested



party for purposes of notice and participation in proceedings here in this article, and all horizontal well unit orders are binding on the owners of executive interests and nonexecutive interests in a horizontal well unit. The owners of the executive interest and the associated nonexecutive interest owners are considered to be the same interest for purposes of computing percentages pursuant to §22C-9-7a(c)(2)(A) and §22C-9-7a(c)(2)(B) of this code;

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

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

“Overriding royalty” means an interest carved out of the leasehold or out of the working interest and is not included within the meaning of royalty;

“Royalty owner” means any owner of oil and gas in place, or oil and gas rights, to the extent that the owner is not an operator as defined in §22C-9-2(a) of this code. A royalty owner does not include a person whose interest is limited to: (A) A working interest in a wellbore only; (B) overriding royalties; (C) nonparticipating royalty interests; (D) nonexecutive mineral interests; or (E) net profits interests;

“Target formation” means the primary geologic formation from which oil or gas is intended to be produced from a horizontal drilling operation and, where completions can

reasonably be expected to produce from formations above or below the target formation, includes the formations from which production can reasonably be expected;

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

“Unitization consideration” means consideration provided as set forth in subsection (f) of this section. Unitization consideration relates to the net acreage of the nonconsenting royalty owner included in a horizontal well unit;

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

(A) A reasonable review of the records of the clerk of the county commission for the county or counties where the oil and gas is located and any immediately adjacent counties within this state;

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

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

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

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

“Weighted average sales price” means a weighted average sales price obtained each month for amounts received at the applicant’s various delivery points to unaffiliated, third-party purchasers accessible by the owner’s production, without deduction of post-production, third-party costs and expenses charged to or incurred by applicant and/or its affiliates other than costs and expenses charged to or incurred by applicant and/or its affiliates after the first liquid

trading point or, if the production does not undergo processing, after delivery to the first interstate pipeline.

(c) Applicability. —

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

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

(A) With respect to the royalty interest, for shallow horizontal wells and deep horizontal wells, obtained by ownership, lease, lease amendment, assignment, farmout, compliance with §37B-1-1, et seq. of this code with respect to unknown or unlocatable interest owners defined in §37B-1-3 of this code only, contract or other agreement the right, consent or agreement to pool or unitize the acreage to be included in the horizontal well unit from executory interest royalty owners of 75 percent or more of the net acreage in the target formation proposed to be included in the horizontal well unit, as provided and determined in subdivision (3) of this subsection; and

(B) With respect to the operator interest:

(i) For shallow horizontal wells, obtained by ownership, lease, lease amendment, assignment, farmout, contract, or other agreement, the right, consent or agreement to pool or unitize as to 55 percent or more of the net acreage in the target formation proposed to be included in the horizontal well unit owned, leased, or operated by operators and the applicant, collectively, by ownership, lease, farmout, assignment, contract or other agreement, as provided and determined in subdivision (3) of this subsection; or

(ii) For deep horizontal wells, obtained by ownership, lease, lease amendment, assignment, farmout, compliance with §37B-1-1, et seq. of this code with respect to unknown or unlocatable interest owners defined in §37B-1-3 of this code only, contract or other agreement the right, consent or agreement to develop the acreage to be included in the horizontal well unit

from executory interest royalty owners of 55 percent or more of the net acreage in the target formation proposed to be included in the horizontal well unit, as provided and determined in subdivision (3) of this subsection;

(C) (i) Made good faith offers to consent or agree to pool or unitize, and has negotiated in good faith with, all known and locatable royalty owners having executory interests in the oil and gas in the target formation within the acreage to be included in the proposed horizontal well unit who have not previously consented or agreed to the pooling or unitization of the interests and whose interests are not subject to development under §37B-1-1, et seq. of this code; and

(ii) Made good faith offers to participate or consent or agree to the proposed horizontal well unit, and has negotiated in good faith with, all known and locatable operators who have not previously agreed to participate or consent or agree to pool or unitize the acreage to be included in a proposed horizontal well unit.

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

(3) For purposes of determining whether a person has obtained the requisite control of the proposed horizontal well unit, the commission may not include overriding royalty owners, nonexecutive interest royalty owners or acreage owned or otherwise held by unleased unknown and unlocatable interest owners whose acreage is not subject to development pursuant to §37B-1-1, et seq. of this code, or acreage owned or otherwise held by operators who are not bonded operators, unless such operators have consented or otherwise agreed to develop their operator interest in the net acreage in the target formation proposed to be included in the horizontal well unit. Furthermore, for purposes of determining whether a person has the requisite control of the proposed horizontal well unit, the identity and rights of royalty owners and operators shall be determined as of the date on which the application for a horizontal well unit is filed.

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

(5) If the applicant meets all of the provisions of this subsection, the commission shall authorize unitization of tracts, or portions of the tracts, as to all interests in oil and gas in the

target formation acreage proposed to be unitized for horizontal drilling, including interests of unknown and unlocatable interest owners, for production of oil and gas from the target formation as a horizontal well unit, and shall issue a horizontal well unit order in accordance with this section.

(d) Application requirements. —

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

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

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

(C) A plat that depicts the boundaries and acreage of the proposed horizontal well unit, the tracts in the horizontal well unit, the surface tax map and parcel numbers of the surface tracts above the tracts to be included in the horizontal well unit in accordance with county assessor's records, and the district(s) and county or counties where the proposed horizontal well unit is located. The plat shall show the surface location of the vertical borehole of the horizontal well(s) to be included in the proposed horizontal well unit determined by survey, the courses and distances of the surface location from two permanent points or landmarks on those tracts, the deviation from vertical, and also the proposed horizontal lateral portion of each proposed horizontal well to be included in the proposed horizontal well unit. The plat shall show the proposed horizontal well unit name, the proposed horizontal well names, and if known, the well number of each horizontal well to be drilled in the horizontal well unit. The plat shall also show the location of each permitted, active oil and gas well located in the horizontal well unit, and the name of the operator of the well as shown by the records of the Department of Environmental Protection, Office of Oil and Gas: *Provided*, That the applicant is not required to depict or identify any abandoned or plugged well that is not required to be depicted or identified on the plat required by §22-6A-5(a)(6) of this code;

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

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

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

(ii) Which of them hold executive rights; and

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

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

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

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

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

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

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

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

(K) A certification that the applicant meets the requirements of subsection (c) of this section with respect to the proposed horizontal well unit, a list of the instruments granting the control and a certification that the applicant has mailed a copy of the application to all known

and locatable interested parties by United States certified mail, return receipt requested, to their last known address and to the most current address filed with the West Virginia Department of Environmental Protection, Office of Oil and Gas, if any;

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

(M) A proposed joint operating agreement that will govern the contractual relationship between the applicant and any unleased royalty owners following an election by the executive interest owners to participate in the drilling in the horizontal well unit on a carried basis under §22C-9-7a(f)(9) of this code.

(2) Upon the filing of an application for a horizontal well unit order, the commission shall provide notice of a hearing to all interested parties, as defined in this section, in accordance with §22C-9-5 of this code and subsection (g) of this section.

(e) Standard of review. —

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

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

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

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

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

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

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

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

(H) Correlative rights;

(I) The extent to which the application will prevent waste including the stranding of acreage of oil and gas formations between units that would be uneconomical to produce;

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

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

(L) Whether the applicant demonstrates the intent and ability to drill all the wells proposed in the unit.

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

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

(f) Horizontal well unit orders. —

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

(A) The size and boundaries of the horizontal well unit giving due regard for maximization of the amount of oil and gas produced to prevent waste and protect correlative rights: *Provided*, That a horizontal well unit's size may not exceed 640 acres: *Provided, however*, That the commission may exceed the acreage limitation if the applicant demonstrates that the proposed horizontal well unit area would be drained efficiently and economically by a



larger horizontal well unit: *Provided further*, That a horizontal well unit containing one or more horizontal wells may not contain more than 128 net acres controlled by nonconsenting royalty owners determined as of the date that the application for the horizontal well unit application is filed.

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

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

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

(E) Any unitization consideration due.

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

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

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

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

(6) With respect to royalty owners of leased tracts who have not consented to pooling or unitization, the commission shall require that unitization consideration be paid to executive interest royalty owners in an amount equal to 25 percent of the weighted average monetary bonus amount on a net mineral acre basis and a production royalty percentage equal to 80

percent of the weighted average production royalty percentage rounded to the nearest one tenth of one percent paid to other executive interest owners of leased tracts in the unit in the same target formation: *Provided*, That the weighted average calculation shall not include any fixed amounts paid to royalty owners or payments made on any basis other than a net mineral acre basis. Further, the royalty percentage cannot be less than the production royalty percentage in the existing lease or twelve and one-half percent for a flat rate lease. The applicant, all royalty owners, and owners of leasehold, working interest, overriding royalty interest and other interests in the oil and gas are bound by the order and the remaining lease terms, including other terms related to the payment of royalties. Unitization consideration shall be paid by the participating operators, including the applicant, to the extent of their interest in the horizontal well unit.

(7) With respect to interests in oil and gas as to which there is no lease in existence:

(A) Executive interest owners may elect to surrender the oil and gas underlying the tract to the participating operators, including the applicant, to the extent of their interest in the horizontal well unit for consideration, which if not agreed upon, shall be an amount equal to the weighted average amount paid, per net mineral acre, by the applicant to executive interest owners in bona fide, third-party transactions for the acquisition of the oil and gas mineral estate in the same target formation underlying the horizontal well unit: *Provided*, That the weighted average calculation shall not include any fixed amounts paid to royalty owners or payments made on any basis other than a net mineral acre basis; or

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

(i) A bonus payment per net mineral acre equal to the weighted average monetary bonus paid, per net mineral acre, to executive interest owners by the applicant in connection with other leases in the same target formation controlled by the applicant within the horizontal well unit: *Provided*, That the weighted average calculation shall not include any fixed amounts paid

as bonus payments to executive interest owners or payments made on any basis other than a net mineral acre basis; and

(ii) A production royalty for the natural gas, oil and natural gas liquids produced and sold equal to the highest production royalty percentage in connection with other leases in the same target formation controlled by the applicant within the horizontal well unit and dated within the twenty four months preceding the application date. Executive interest owners may make a one-time election prior to the issuance of a horizontal well unit order by the commission to be paid production royalties for natural gas based on either: (a) An index price in effect at the beginning of each calendar month, as published in an independent, third-party publication reflecting arm's-length, market-based sales, for natural gas applicable to the first interstate pipeline into which the natural gas is delivered, and shall not be reduced by post-production expenses; or (b) the weighted average sales price.

Production royalties for natural gas liquids will be calculated using the sum of the proceeds received at the tailgate of the processing facility for each natural gas liquid product during each month divided by the volume of such natural gas liquid product that was sold during such month and shall not be reduced by post-production expenses. If an executive interest owner does not make the one-time election regarding the price on which royalties for natural gas shall be paid prior to the issuance of a horizontal well unit order by the commission, the applicant shall determine whether it will pay royalties to the executive interest owner and the associated nonexecutive interest owners based on either the index price described in this subparagraph or the weighted average sales price, and such determination shall be binding on the applicant, operators, executive interest owners and the associated nonexecutive interest owners for the term of the lease. The applicant and all royalty owners and owners of leasehold, working interest, overriding royalty interest and other interests in the associated unleased oil and gas shall be bound by the order. Nothing contained in paragraph (B) applies to any lease in this state now in existence or entered into in the future, or to any award of unitization consideration made by the commission other than unitization consideration awarded to an executive interest owner of an unleased tract who elects to be considered leased pursuant to this paragraph; or

(C) Executive interest owners may make an election to participate in a horizontal well unit consistent with §22C-9-7a(f)(9) and §22C-9-7a(f)(10) of this code.

(D) Owners of oil and gas interests as to which there is no lease in existence who do not elect (A), (B) or (C) of this subdivision shall be considered to have made an election to receive unitization consideration and lease their interest in the oil and gas mineral estate in the target formation to the applicant pursuant to §22C-9-7a(f)(7)(B) of this code.

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

(9) An operator may elect to consent to and participate in a horizontal well unit after an application is filed. Subject to subdivision (7) of this subsection, when the commission issues a horizontal well unit order pursuant to this section, the commission shall consider each nonconsenting operator, who does not elect to participate in the risk and cost of drilling in the horizontal well unit through a voluntary agreement with the applicant, to participate in the drilling in the horizontal well unit on a carried basis on terms and conditions which, if not agreed upon, shall be consistent with the terms and conditions contained in the proposed joint operating agreement submitted by the applicant in accordance with §22C-9-7a(d)(1)(M) of this code: *Provided*, That the commission determines that the proposed terms and conditions of the joint operating agreement are consistent with terms typically found in other similarly situated, arm's-length joint operating agreements within the horizontal well unit that were entered into by the applicant for the same target formation prior to the filing of the application for the horizontal well unit.

(10) If a nonconsenting operator participates in the drilling in the horizontal well unit on a carried basis under the horizontal well unit order and an owner of any operating interest in any portion of the horizontal well unit drills and operates, or pays the costs of drilling, completing, equipping and operating a horizontal well for the benefit of a nonconsenting operator as provided in the horizontal well unit order, then the operating owner is entitled to the share of production from the tracts or portions thereof subject to the horizontal well unit order accruing to the interest of the nonconsenting operator, exclusive of any unitization consideration, and

royalty and overriding royalty reserved in any leases, assignments thereof or agreements relating thereto, of the tracts or portions of the tracts, until the net revenue from the nonconsenting operator's share of the production, exclusive of the unitization consideration, royalty and overriding royalty, equals double the share of the costs payable by or charged to the interest of the nonconsenting operator, as set forth in the accounting procedures included within the joint operating agreement submitted by the applicant in accordance with §22C-9-7a(d)(1)(M) of this code.

(11) If all wells proposed in a horizontal well unit approved by the commission are not drilled and completed as approved in the horizontal well unit order, the applicant shall file a request to modify the horizontal well unit with the commission within 60 days from the later of: Completion of all drilling activities within the horizontal well unit; or the date that is five years after the most recent drilling activity in the horizontal well unit occurs.

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

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

(14) If an operator has not drilled and completed a well in a horizontal well unit formed by the commission within three years after the latter of either the drilling and completion of the initial horizontal well in the horizontal well unit or the drilling and completion of the most recent horizontal well within the horizontal well unit, as the case may be, an interested party may file a request to modify the horizontal well unit, and the commission may modify the horizontal well unit. Upon the modification of the horizontal well unit, the commission shall recalculate the allocation of production from the tracts in the modified horizontal well unit from and after the modification order date and the modification order shall be binding on the property subject to the horizontal well unit order, and all owners thereof, their heirs, representatives, successors and assigns for so long as the horizontal well unit order remains in effect. Following the entry of a modified horizontal well unit order containing the commission's recalculation of the allocation of production from the tracts in the modified horizontal well unit order, the applicant and all other operators shall have no liability whatsoever to pay royalty in any manner other than that set forth in the modified horizontal well unit order.

(15) All operations, including, but not limited to, the commencement, drilling, or operation of a horizontal well upon any portion of a horizontal well unit for which a unit order has been entered pursuant to this section, shall be considered for all purposes the conduct of the operations upon each separate tract or portion of the tract in the horizontal well unit. That portion of the production allocated to each tract or portion of the tract included in a horizontal well unit shall, when produced, be considered for all purposes to have been actually produced from the tract by an oil and gas well drilled, completed, and producing on the tract.

(16) Subject to the provisions of subsection (o) of this section, where the commission finds that the interest of one or more unknown and unlocatable interest owners are included in the horizontal well unit, the horizontal well unit operator shall deposit the moneys payable to unknown

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and unlocatable interest owners into an escrow account bearing a market rate of interest to be held, administered and disbursed in accordance with an order of the commission and this section.

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

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

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

(1)(A) For purposes of this section and the West Virginia Administrative Procedures Act, “interested parties” and “parties” mean owners of the executive interest in the oil and gas in the target formation within the horizontal well unit, including the unknown and unlocatable interest

owner of the executive interest in the tracts, or portions of the tracts, to be included in the horizontal well unit subject to an application for a horizontal well unit order; owners of unleased oil and gas to be included in the horizontal well unit; operators of all target formation acreage in the horizontal well unit; and operators of all oil and gas wells located in the unit that have been drilled to or through the target formation.

(B) Bonded operators of wells drilled to or through the target formation that are not within the horizontal well unit but are located within 500 feet of a proposed horizontal well unit boundary and executive interest owners owning an interest in the target formation that is not located within the horizontal well unit but is located within 500 feet of a proposed horizontal well unit boundary may submit written comments regarding the horizontal well unit application at any time before the start of any hearing regarding the application, but are not interested parties and may not participate in the hearing nor have the right to appeal the commission's decision regarding the application.

(2) Each notice issued in accordance with this section shall describe the area for which a horizontal well unit order is proposed in recognizable, narrative terms and contain such other information as is essential to the giving of proper notice, including the time and date and place of a hearing. As soon as practicable the commission shall establish a website. Within three business days of the filing of an application under this section, the commission shall publish on its website a copy of: (i) The horizontal well unit application notice required to be published pursuant to this section and section five of this article; and (ii) the proposed horizontal well unit plat filed with the application, both identified as a horizontal well unit application and indexed by county and district where the majority of the acreage to be included in the proposed horizontal well unit is located, so that the plat and notice of the application are readily accessible. Timely publication on the website for a period of 10 business days shall be notice to all operators.

(3) Upon request of any interested party or the commission, the commission shall conduct a hearing and receive evidence regarding the application. All interested parties may participate in any hearing. If a hearing has been held regarding an application, the order shall be a final order. If no hearing has been requested by the commission or an interested party within 15 days after notice of the application is posted on the commission website in accordance

with subdivision (2) of this subsection, the commission may issue a proposed order and provide a copy of the proposed order, together with notice of the right to appeal to the commission and request a hearing, to all interested parties. Any interested party aggrieved by the proposed order may appeal the proposed order to the commission and request a hearing. Notice of appeal and request for hearing shall be made within 15 days of entry of the proposed order. If no appeal and request for hearing have been received within 15 days, the proposed order shall become final. If a hearing is requested, the hearing shall commence within 45 days of issuance of the initial notice. The commission may, upon written request, extend the date for the hearing: *Provided*, That the hearing must be convened within 45 days of the initial notice issued by the commission. The commission shall, within 20 days of the hearing, enter an order authorizing the unit, dismiss the application, or for good cause continue the process.

(4) At least 10 days prior to a hearing to consider an application for a horizontal well unit order, the applicant shall file with an independent, third-party attorney, or accountant selected by the chair of the commission a summary of:

(A) The prevailing economic terms of the leases within the proposed horizontal well unit relating to the target formation where the applicant is the operator, including the bonus payment per net mineral acre and production royalty rate, including whether the production royalty is subject to reduction for post-production expenses; and

(B) The prevailing amounts paid to the executive interest royalty owners, per net mineral acre, for the modification of leases relating to the target formation within the proposed unit where the applicant is the operator to allow the lessee to unitize the leased tract with other tracts for purposes of drilling horizontal wells.

(C) The independent, third-party selected by the chair of the commission shall review the economic information filed by the applicant to determine its accuracy and, upon completion of his or her review, shall submit a report to the commission specifying the following information for inclusion by the commission in the horizontal well unit order:

(i) The weighted average monetary bonus paid, per net mineral acre, to executive interest owners by the applicant in connection with other leases in the same target formation



controlled by the applicant within the horizontal well unit, as provided in §22C-9-7a(f)(6) and §22C-9-7a(f)(7)(B)(ii) of this code;

(ii) The weighted average production and highest royalty percentage, calculated on a net mineral acre basis, of the leases in the same target formation controlled by the applicant within the horizontal well unit, as provided in §22C-9-7a(f)(6) of this code; and

(iii) The highest production royalty percentage in the unit in connection with other leases in the same target formation controlled by the applicant within the horizontal well until and dated within the 24 months preceding the application date, as provided in §22C-9-7a(f)(7)(B)(ii) of this code.

(D) The reasonable fees and expenses of the independent, third-party selected by the chair of the commission to review the information filed by the applicant and render his or her report to the commission pursuant to this subsection shall be paid by the applicant.

(E) When filing information with the independent third-party selected by the chair of the commission, the applicant may mark the summary of the prevailing economic terms of leases and amounts paid for lease modifications, and any associated documents or information, as "CONFIDENTIAL" to the extent that the documents contain confidential, commercial information. Any information marked "CONFIDENTIAL" may only be used by the independent third-party selected by the chair of the commission for the purpose of performing his or her review and preparation and submission of his or her report to the commission, and by the court for the purpose of any appeal pursuant to §22C-9-7a(g)(5) of this code. All information marked "CONFIDENTIAL" pursuant to this subdivision shall retain that character in any court of competent jurisdiction on appeal, and the applicant may file a motion with the court seeking to have the documents sealed and withheld from the public record throughout the appeal from a final order of the commission pertaining to a horizontal well unit order. Furthermore, any information marked "CONFIDENTIAL" pursuant to this subdivision is exempt from disclosure under §29B-1-1 *et seq.* of this code.

(5) An order establishing a horizontal well drilling unit or dismissing an application shall be a final order. Any interested party aggrieved by the order may seek judicial review pursuant to section eleven of this article. Notice of appeal shall be made in accordance with §22C-9-11 of

this code within 15 days of entry of the order. If no appeal has been received within 15 days, the order shall become final.

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

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

(j) Contemporaneous permit applications authorized.— Notwithstanding anything to the contrary in §22-6A-1 *et seq.* of this code, upon the filing of an application for a horizontal well unit order pursuant to this section, an applicant may file an application for a well work permit under §22-6A-1 *et seq.* of this code for any proposed development within the horizontal well unit for which the unit order is sought.

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

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

(m) Conflict resolution. — After the effective date of this section, all applications requesting unitization for horizontal wells shall be filed pursuant to this section. Deep well horizontal unit applications filed before the effective date of this section shall continue to proceed under and be governed by the provisions of section seven of this article. With respect

to horizontal well unit applications filed after the effective date of this section, if this section conflicts with section seven of this article, the provisions of this section shall prevail. When considering an application pursuant to this section, rules regarding deep wells promulgated before the effective date of this section shall not apply.

(n) *Unknown and unlocatable interest owners.* — Notwithstanding the existence of unknown and unlocatable interest owners, a horizontal well unit order may be entered and development, drilling and production may occur in the horizontal well unit. Unknown and unlocatable interest owners of oil and gas in place not subject to lease shall be considered to have made an election to receive unitization consideration and lease their interest in the oil and gas mineral estate in the target formation to the applicant pursuant to §22C-9-7a(f)(7)(B) of this code. Unknown and unlocatable interest owners of working interest in property subject to lease before an application for a horizontal well unit is filed pursuant to this section shall be considered to have elected to participate in the drilling in the horizontal well unit on a carried basis pursuant to §22C-9-7a(f)(9) and §22c-9-7a(f)(10) of this code.

(o) *Opportunity of surface owners to acquire interests of unknown and unlocatable interest owners in oil and gas underlying horizontal well unit.* —

(1) When the interests of unknown and unlocatable interest owners' property is included in a horizontal well unit, if the applicant has not filed a proceeding pursuant to §55-12A-1 et seq. of this code (entitled Lease and Conveyance of Mineral Interests Owned by Missing or Unknown Owners or Abandoning Owners) with respect to the interest of an unknown and unlocatable interest owner in the horizontal well unit, and taxes on the unknown and unlocatable interest owners' property are not delinquent, then, after a horizontal well unit order is entered by the commission, the applicant shall inform the parties paying taxes on the surface overlying that portion of the oil and gas included in the horizontal well unit that the surface owner(s) (TSO) may acquire the underlying interest of the unknown and unlocatable interest owners in the horizontal well unit in a proceeding pursuant to this subsection and that information about the interest may be obtained from the applicant. Upon written request to the applicant by any TSO,

the applicant shall, to the extent practicable under the circumstances, furnish the requesting TSO the following information: *Provided*, That applicant is not required to provide confidential, trade secret, attorney client communications or attorney work product:

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

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

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

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

(E) The acreage of the tract and the net acreage of the unknown or unlocatable mineral owner or owners in the tract.

(F) The amount of money at any point to which the surface owners would be entitled upon written request.

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

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

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

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

(6) The court may appoint a special commissioner at any time to deliver a deed to the petitioners in the form provided herein five years after first production reported to the state occurs or one year after the first publication service of a petition under this subsection is made, whichever is later. The special commissioner shall be an attorney duly admitted to practice before the West Virginia Supreme Court of Appeals and in good standing, but may not be required to give bond. If the petitioners do not agree as to the interest each is to acquire by the

deed contemplated herein, or the division of any moneys associated therewith, the court shall equitably determine the interests of the petitioners.

(7) In any action under this subsection, if personal service of process is possible, it shall be made as provided by the West Virginia Rules of Civil Procedure. In addition, immediately upon the filing of the petition, the petitioner shall: (1) Publish a Class II legal advertisement in compliance with the provisions of §59-3-1 et seq. of this code, and in the county wherein any part of the oil and gas mineral estate described in the petition lies and any immediately adjacent counties; and (2) no later than the first day of publication, file a lis pendens notice in the county clerk's office of the county where the petition is filed and the county wherein the larger part of the oil and gas mineral estate described in the petition lies. Both the advertisement and the lis pendens notice shall set forth: (1) The names of the petitioner and the defendants, as they are known to be by the exercise of reasonable diligence by the petitioner, and their last known addresses; (2) the date and record data of the instrument or other conveyance which immediately created the oil and gas mineral interest; (3) an adequate description of the land as contained therein; (4) the source of title of the last known owners of the oil and gas mineral interests; and (5) a statement that the action is brought for the purpose of authorizing payments from a horizontal well unit, and thereafter, in the case of any defendant or heir, successor or assign of any defendant who does not appear to claim ownership of the defendant's interest within five years after the date of the court ordering a conveyance of the defendant's oil and gas mineral interest under this subsection, subject to the lease terms determined by the commission and horizontal well unit order, to the owners of the surface overlying the oil and gas mineral interest. In addition, the petitioner shall send notice by certified mail, return receipt requested, to the last known address, if there is one, of all named defendants. In addition, the court may order advertisement elsewhere or by additional means if there is reason to believe that additional advertisement might result in identifying and locating the unknown and unlocatable interest owners.

(8) Upon a finding by the court of the present ownership of the petitioners of the surface estate, the court shall order the special commissioner to convey to the proven surface owners, subject to the horizontal well unit order and lease terms approved by the commission, the

mineral interest specified in the petition authorized herein, by a deed substantially in the form as follows:

This deed, made the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, between \_\_\_\_\_, special commissioner, grantor and \_\_\_\_\_, grantee,

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

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

Witness the following signature.

\_\_\_\_\_  
Special Commissioner

(9) Prior to the delivery of the special commissioner's deed, no deed from owners of the surface to another party shall sever any benefits from this subsection from ownership of the surface. A deed doing so is void and unenforceable.

(10) After the date of the special commissioner's deed authorized herein, the surface owner grantee is entitled to receive all proceeds due and payable under a horizontal well unit order attributable to the mineral interests specified in the special commissioner's deed accruing before and after the date of the special commissioner's deed.

(11) The applicant may not be joined as a party, but shall be served with copies of all pleadings and other papers filed in the proceeding, and may intervene at any time. A surface owner must provide a copy of the recorded Special Commissioner deed to the applicant and

any other necessary information reasonably requested by the applicant before the applicant or any other operator has an obligation to provide payment to the surface owner.

(12) Payment by the applicant shall relieve the participating operators of all liability whatsoever that the participating operators may have had to any unknown and unlocatable interest owners, their heirs, successors and assigns with respect to the payment and all operations in the horizontal well unit, all operations therein and all production from the operations.

(13) If a surface owner does not file a petition pursuant to this subsection within six years of the date notice is given to a TSO as provided herein, amounts payable with respect to the unknown and unlocatable interest owners' interests included in a horizontal well unit shall be paid to the Oil and Gas Reclamation Fund established pursuant to §22-6-29 of this code, and the payment shall relieve the participating operators of all liability of the participating operators with respect to the horizontal well unit and all operations therein and production therefrom to any unknown and unlocatable interest owners, their heirs, successors and assigns and to any owners of surface overlying the unknown and unlocatable interest owners' interest, their heirs, successors and assigns, with respect to the payment.

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

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



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

Prepared by David McMahon, JD | [wvdauid@wvdauid.net](mailto:wvdauid@wvdauid.net) | 304-415-4288