SCOMM

96:17

FISCAL NOTE

STATE OF ALASKA — **BILL NO. HB 394**

1996 LEGISLATIVE SESSION

Revision Date:	Original	Dept Affected	Natural Resources
Title:	An Act authorizing a program of natural gas and coal bed methane development licensing and leasing...	BRU:	Resource Development
		Component:	Oil & Gas Development
Sponsor:	Representative(s) Ogan, Rokeberg		
Requestor:	House Oil & Gas	**Component Serial No.**	439

Expenditures/Revenues (Thousands of Dollars)

OPERATING EXPENDITURES	FY97	FY98	FY99	FY00	FY01	FY02
PERSONAL SERVICES	312.0	312.0	312.0	312.0	312.0	312.0
TRAVEL	11.0	11.0	11.0	11.0	11.0	11.0
CONTRACTUAL	15.0	15.0	15.0	15.0	15.0	15.0
SUPPLIES	8.0	8.0	8.0	8.0	8.0	8.0
EQUIPMENT	40.0	6.0	6.0	6.0	6.0	6.0
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	386.0	352.0	352.0	352.0	352.0	352.0
CAPITAL EXPENDITURES	0.0	0.0	0.0	0.0	0.0	0.0
CHANGE IN REVENUES ( )	0.0	0.0	0.0	0.0	0.0	0.0

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF	386.0	352.0	352.0	352.0	352.0	352.0
1005 GF/Program Receipts						
1006 GF/MHTIA						
Other						
TOTAL	386.0	352.0	352.0	352.0	352.0	352.0

Estimate of any current year (FY96) cost: $

POSITIONS

FULL-TIME	6	6	6	6	6	6
PART-TIME	0	0	0	0	0	0
TEMPORARY	0	0	0	0	0	0

ANALYSIS: (Attach a separate page if necessary)

Six new positions within DO&G will be required to implement the gas and coal bed methane licensing and leasing program.

One Geologist II to determine areas for gas/coal bed leasing and licensing, evaluate licensing proposals and the geologic justification for conversions of licenses to leases. Represent DNR before AOGCC in determinations of oil potential for lease/licensing areas.

One Petroleum Economist I to perform the economic analysis required under AS 38.05.180 and AS 38.05.035 for gas/coal bed methane licensing and leasing.

Prepared by:	Ken Boyd, Director	Phone :	269-8800
Division:	Oil & Gas	Date :	6-Feb-96
Approved by Commissioner:	[signature] for John Shively	Date:	6-Feb-96
Agency:	Natural Resources		

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(HB394.XLS Rev 2/6/96)

Analysis continued
HB394

One Cartographer II to prepare maps and graphics for the best interest findings and ACMP analyses, as well as for license offerings.

One Natural Resource Officer II to research, write and regularly revise best interest findings and Alaska Coastal Management Program (ACMP) analyses.

One Natural Resource Officer II to perform the land title and status reviews, assist in determining land ownership boundaries, determine tract acreage.

One Natural Resource Officer II to administer leases and licenses including the awarding and issuing of leases and licenses, adjudicating assignment of ownership, and the enforcement of lease and license terms.

Travel costs include costs for staff to attend public hearings, and public meetings concerning the issuing of leases and licenses.

Contractual costs include office space, printing and publishing of public notices and display ads.

Supplies costs include costs for paper, pens, computer disks and other misc. supplies.

Equipment costs include phones, desks, computers, and other misc. equipment.

** There are uncertainties in the bill which may change the fiscal impact, once clarified with the sponsor.

FISCAL NOTE

STATE OF ALASKA | BILL NO. HB 394

1996 LEGISLATIVE SESSION

Revision Date:
Title: An Act authorizing a program of natural gas and coal bed methane development...
Sponsor: Reps. Ogan and Rokeberg
Requestor:

Department Affected: Environmental Conservation
BRU: Environmental Health
Component: Solid Waste

COMPONENT SERIAL NO. 2067

Expenditures/Revenues: (Thousands of Dollars)

OPERATING EXPENDITURES	FY 97	FY 98	FY 99	FY 00	FY 01	FY 02
PERSONAL SERVICES	0.0	0.0	0.0	0.0	0.0	0.0
TRAVEL	0.0	0.0	0.0	0.0	0.0	0.0
CONTRACTUAL	0.0	0.0	0.0	0.0	0.0	0.0
SUPPLIES	0.0	0.0	0.0	0.0	0.0	0.0
EQUIPMENT	0.0	0.0	0.0	0.0	0.0	0.0
LAND&STRUCTURES	0.0	0.0	0.0	0.0	0.0	0.0
GRANTS,CLAIMS	0.0	0.0	0.0	0.0	0.0	0.0
MISCELLANEOUS	0.0	0.0	0.0	0.0	0.0	0.0
TOTAL OPERATING	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**
CAPITAL EXPENDITURES	0.0	0.0	0.0	0.0	0.0	0.0
CHANGE IN REVENUES ( )	0.0	0.0	0.0	0.0	0.0	0.0

FUND SOURCE	FY 97	FY 98	FY 99	FY 00	FY 01	FY 02
1002 Federal Receipts	0.0	0.0	0.0	0.0	0.0	0.0
1003 GF Match	0.0	0.0	0.0	0.0	0.0	0.0
1004 GF	0.0	0.0	0.0	0.0	0.0	0.0
1005 GF/Program Receipt	0.0	0.0	0.0	0.0	0.0	0.0
1006 GF/MHTIA	0.0	0.0	0.0	0.0	0.0	0.0
Other	0.0	0.0	0.0	0.0	0.0	0.0
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY96) cost: $ 0.0

POSITIONS:						
FULL-TIME	0	0	0	0	0	0
PART-TIME	0	0	0	0	0	0
TEMPORARY	0	0	0	0	0	0

ANALYSIS: (Attach a separate page if necessary.)

The proposed change to AS 46.03.100(f) will not require a change in solid waste program activities, as permits are not now issued for on-site discharge or disposal of waste material from activities associated with coal bed methane exploration drilling.

Prepared by: Larry Jones *Lawrence Jones*
Division: Director, Division of Administrative Services
Phone: 465-5010
Date: 1/18/96

Approved by Commissioner: *Lawrence Jones for*
Agency: Department of Environmental Conservation
Date: *1/18/96*

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(REV 1/96) f:/allshare/fiscalno/hb394sw.xls

FISCAL NOTE

STATE OF ALASKA | BILL NO. HB 394

1996 LEGISLATIVE SESSION

Revision Date:
Title: An Act authorizing a program of natural gas and coal bed methane development...
Sponsor: Reps. Ogan and Rokeberg
Requestor:

Department Affected: Environmental Conservation
BRU: Air and Water Quality
Component: Water Quality

COMPONENT SERIAL NO. 2062

Expenditures/Revenues: (Thousands of Dollars)

OPERATING EXPENDITURES	FY 97	FY 98	FY 99	FY 00	FY 01	FY 02
PERSONAL SERVICES	0.0	0.0	0.0	0.0	0.0	0.0
TRAVEL	0.0	0.0	0.0	0.0	0.0	0.0
CONTRACTUAL	0.0	0.0	0.0	0.0	0.0	0.0
SUPPLIES	0.0	0.0	0.0	0.0	0.0	0.0
EQUIPMENT	0.0	0.0	0.0	0.0	0.0	0.0
LAND&STRUCTURES	0.0	0.0	0.0	0.0	0.0	0.0
GRANTS,CLAIMS	0.0	0.0	0.0	0.0	0.0	0.0
MISCELLANEOUS	0.0	0.0	0.0	0.0	0.0	0.0
TOTAL OPERATING	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**
CAPITAL EXPENDITURES	0.0	0.0	0.0	0.0	0.0	0.0
CHANGE IN REVENUES ( )	0.0	0.0	0.0	0.0	0.0	0.0

FUND SOURCE						
1002 Federal Receipts	0.0	0.0	0.0	0.0	0.0	0.0
1003 GF Match	0.0	0.0	0.0	0.0	0.0	0.0
1004 GF	0.0	0.0	0.0	0.0	0.0	0.0
1005 GF/Program Receipt	0.0	0.0	0.0	0.0	0.0	0.0
1006 GF/MHTIA	0.0	0.0	0.0	0.0	0.0	0.0
Other	0.0	0.0	0.0	0.0	0.0	0.0
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY96) cost: $ 0.0

POSITIONS:						
FULL-TIME	0	0	0	0	0	0
PART-TIME	0	0	0	0	0	0
TEMPORARY	0	0	0	0	0	0

ANALYSIS: (Attach a separate page if necessary.)

This bill exempts from permitting under AS 43.03.100 solid and liquid wastes incidental to activities associated with coal bed methane exploration drilling. This is similar to an exemption in the existing statute. If permits are not required, there is no cost to the department.

Prepared by: Larry Jones Lawrence Jones | Phone: 465-5010
Division: Director, Division of Administrative Services | Date: 1/18/96

Approved by Commissioner: Lawrence Jones for
Agency: Department of Environmental Conservation | Date: 1/18/96

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HOUSE COMMITTEE REPORT

Date Referred to Committee: January 8, 1996 **FURTHER REFERRALS:** **Resources**
Finance

Date of Committee Action: 2/27/96

The HOUSE SPECIAL COMMITTEE ON OIL AND GAS Committee considered: **HB 394**

HOUSE BILL NO. 394 **GAS & COAL METHANE LICENSES & LEASES**

"An Act authorizing a program of natural gas and coal bed methane development licensing and leasing; relating to regulation of certain natural gas exploration facilities and coal bed methane exploration facilities for purposes of preparation of discharge prevention and contingency plans and compliance with financial responsibility requirements; amending the duties of the Alaska Oil and Gas Conservation Commission as they relate to natural gas exploration activities and coal bed methane exploration activities; and amending the exemption from obtaining a waste disposal permit for disposal of waste produced from coal bed methane drilling."

recommends it be replaced with the following committee substitute CSHB 394 (O&G) [ ] the same title [X] a new title

[ ] additional referral to ____________ Committee
[ ] attached amendment(s)

ADOPTS: ____________ Letter of Intent

ATTACHES NEW FISCAL NOTE(s): (Dept) APPROVES PREVIOUS: (Dept/Date)

[X] fiscal note(s) DNR, DEC, [ ] fiscal note(s) ____________

[ ] zero fiscal note(s) ____________ [ ] zero fiscal note(s) ____________

SIGNING WITH RECOMMENDATIONS	DP	DNP	NR	AM
[signature]			✓	
[signature]				X
[signature]			✓	
[signature]			✓	
[signature]	✓			
[signature]			X	
[signature]	✓			

CHAIR'S SIGNATURE [signature] 2/27/96

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130 Seward Street, Suite 409
Juneau, Alaska 99801-2105

MEMORANDUM February 26, 1996

SUBJECT: Draft CSHB 394 ( ), relating to shallow bed natural gas leasing -- sectional analysis (Work Order No. 9-LS1463\M)

TO: Representative Scott Ogan
ATTN: Hans Neidig

FROM: Jack Chenoweth
Legislative Counsel

This is a substantial revision of the bill as originally introduced.

The heart of the bill is its **section 2**, authorizing a shallow bed natural gas leasing program. Among the key features of the leasing program:

-- The program is made applicable to recovery of natural gas, from any source, located within 3000 feet of the surface at the drill site, but is inapplicable to (1) areas that cannot be leased under the oil and gas exploration licensing and leasing program (i.e. North Slope and Cook Inlet), (2) land under an exploration license or lease, or already leased under AS 38.05.180, or part of the state's five-year proposed oil and gas lease program, and (3) land under coal lease under the effective date of the Act;

-- The leases may be awarded to cover areas not less than 640 acres nor more than 23,040 acres, and lease applicants may not be required to pay a fee for the application or its processing;

-- The director is authorized to provide the lease applicant an initial shallow bed gas development lease giving the exclusive right, for a period of not more than two years, to explore for and develop shallow bed natural gas; that right may be extended for one additional two year period on a showing of diligent, albeit unsuccessful effort;

-- The holder of an initial shallow bed gas development lease may convert the lease to one for an indeterminate period upon showing of an ability to produce shallow bed natural gas from the lease in commercial quantity;

-- The shallow bed natural gas lessee is required to pay rent and royalty at the rates set out in AS 38.05.177(f) and (g);

-- There are several conditions and restrictions on the shallow bed gas development lease, including limitations on lease assignment and on insertion of the gas into the in-place transmission system generally serving the population centers of southcentral Alaska; the rights of the state and of the lessee to terminate or surrender the lease are spelled out;

-- The commissioner of natural resources is precluded from adopting regulations to interpret or make specific the provisions of the shallow bed natural gas leasing program.

Bill section 3 exempts from the requirement of a written best interest finding shallow bed gas development leases under AS 38.05.177.

Bill section 4 exempts shallow bed gas development leases from competitive bidding requirements based on the choice of leasing methods specified in that section for oil and gas leases.

Bill section 5 exempts shallow bed gas development leases from minimum work commitments otherwise imposable on oil and gas leases.

Bill section 6 substitutes, in the exemption from obtaining a waste disposal permit for disposal of waste produced from drilling, reference to shallow bed natural gas in place of an existing reference to coal bed methane.

Bill section 7: There is a general requirement in law that pipelines and exploration and production facilities may not be operated unless an oil discharge prevention and contingency plan has been developed and is in place for the pipeline and for the exploration and production facility. The amendment made by this section establishes an exception from that requirement for an onshore well drilling for shallow bed natural gas so long as that facility does not encounter a formation capable for producing oil.

Bill section 8 sets out the steps that the operator of a shallow bed natural gas operator must take if the operation encounters a formation capable of producing oil.

Bill section 9 sets the financial responsibility requirement applicable to an onshore exploration facility exploring for shallow bed natural gas at $25,000.

Bill section 10 requires the operator of a shallow bed natural gas operator to cease operating, with exceptions, when the operator penetrates a formation capable of producing oil while exploring for gas.

Bill section 11: AS 46.04.050 sets out exemptions from the laws establishing oil discharge prevention and contingency plans and financial responsibility requirements. This bill section notes the additional exemption from these provisions for shallow bed natural gas exploration facilities except as may be required when that well penetrates a formation capable of producing oil.

Bill section 12 prohibits use of the oil and hazardous substance release prevention and response fund ("470 fund") as a source of money to clean up a release attributable to a shallow bed natural gas development well.

*

There are three additional uncodified provisions:

Bill section 1 sets out legislative findings, a statement of purpose, and a statement of legislative intent for the measure.

Bill section 13 affirms that persons holding coal leases in effect on the effective date of this Act have the right to develop coal bed methane and related gas held in association with the coal.

Bill section 14 invites the commissioner of natural resources to suggests further legislation to implement the provisions of AS 38.05.177, the shallow bed gas development leasing provision.

JBC:klb
96-129.klb

FEB 13 1996

Alaska Oil and Gas Association

AOGA

121 W. Fireweed Lane, Suite 207
Anchorage, Alaska 99503-2035
Phone: (907)272-1481 Fax: (907)279-8114
Judith M. Brady, Executive Director

February 7, 1996

The Honorable Norman Rokeberg, Chairman
Special Committee on Oil and Gas
Alaska State House of Representatives
State Capitol
Juneau, Alaska

HB 394, Gas and Coal Methane Licenses and Leases

Dear Chairman Rokeberg:

The Alaska Oil and Gas Association (AOGA) is a trade association whose 19 member companies account for the majority of oil and gas exploration, production, transportation, refining and marketing activities in Alaska.

The Association would like to express its concern about provisions in HB 394. Our comments are limited to those provisions in HB 394, which also are embodied in CSSB 176/CSHB334, exempting natural gas exploration facilities from preparation of discharge prevention and contingency plans and from compliance with financial responsibility requirements.

As stated in previous comments on CSSB 176/CSHB 334, AOGA believes that the state law requiring preparation and implementation of discharge prevention and contingency plans and the law requiring compliance with financial responsibility requirements for oil and natural gas exploration facilities should be consistent.

The Association believes it is in the state's best interest to require that consistent, equitable and adequate financial responsibility requirements be met by all persons/companies conducting oil and gas exploration operations in Alaska. The Association is aware of the state's interest to provide opportunities for smaller, independent oil and gas operators, however, the Association believes it is not in the state's best interest to assume financial liability for any operator.

The AOGA Lands, Exploration and Operations Committee is currently reviewing other provisions of the bill and may offer additional comments on the legislation at a later date.

Sincerely,

Judy Brady

JUDITH M. BRADY
Executive Director

Calista Corporation

601 W. 5th Avenue, Suite 200 • Anchorage, AK 99501-2225 • (907) 279-5516 Facsimile (907) 272-5060

Norman Rokeberg
State Representative
Alaska State Legislature
State Capitol (MS 3100)
Juneau, Alaska 99801-1182

February 26, 1996

Dear Representative Rokeberg,

Calista Corporation is writing this letter in support of CS for House Bill No. 394 which you and Representative Ogan have sponsored. We think it is a necessary measure to assist the development of cheap local energy sources for rural Alaska. Since over 20,000 of those rural residents live in the Calista Region we wholeheartedly support this concept.

We like it so much, we wish you would also make portions of the bill apply to more than just state land. Virtually all of the land surrounding our 50 villages is either private ANCSA land or Federal land.

In Section 4 of your bill you have added a new subsection (5) to AS 46.03.100(f) and have removed the language OR COAL BED METHANE DRILLING from subsection (3). The new language would remove any protection that a private landowner would otherwise enjoy under the old version. We would suggest the following language which we think would provide this protection, that you are seeking on state leases, to activities on private and Federal land.

A new Subsection (5) would read:

> (5) the discharge or disposal of waste material or water from activities associated with natural gas exploration drilling from shallow bed gas deposits as defined in AS 38.05.177 (a)(1) [UNDER A LEASE AUTHORIZED BY AS 38.05.177].

While this language may not be the most artful drafting, I do believe it would at least serve both of our purposes. We would be happy to work with you or a member of your staff to address this issue.

Sincerely,

Mike Neimeyer

Mike Neimeyer
VP Land and Natural Resources

c.c. Ivan M. Ivan

AMENDMENT TO CSHB 394 Representative Finkelstein

Page 3, Lines 19-21

Delete all material

AMENDMENT TO CSHB 394 Representative Finkelstein

Page 5, Line 32- Page 6, Line 3

Delete all material

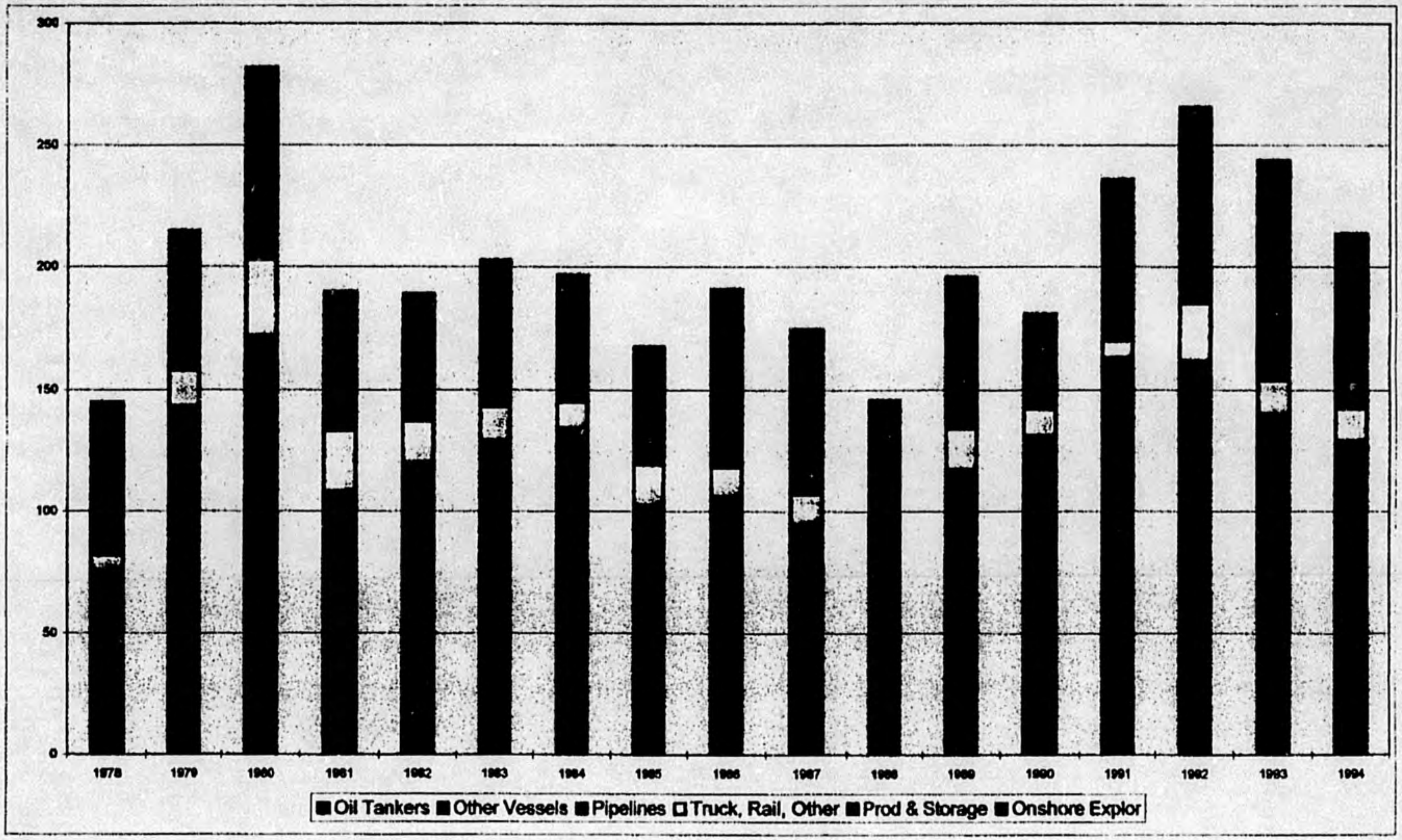
Page 2 Line 20-23
Delete all material

Worldwide Numbers of Oil Spills

Greater than 10,000 gallons

Source: Cutter Information Corp's annual "Oil Spill Intelligence Report"

Year	1978	1979	1980	1981	1982	1983	1984	1985	1986	1987	1988	1989	1990	1991	1992	1993	1994
Oil Tankers	20	51	43	32	24	25	27	28	53	44	18	41	33	20	19	23	24
Other Vessels	33	47	44	36	50	53	37	22	27	32	27	45	45	36	22	21	28
Pipelines	22	45	85	40	46	51	70	52	26	19	26	31	53	107	121	96	77
Truck, Rail, Other	7	15	31	25	17	14	11	17	12	12	4	17	11	7	23	14	13
Prod & Storage	62	57	78	57	51	58	52	48	73	68	71	62	39	66	81	90	72
Onshore Explor	1	0	1	N/A	1	2	0	1	0	0	0	0	0	0	0	0	0
Totals:	145	215	282	190	189	203	197	168	191	175	146	196	181	236	266	244	214



Prepared by David W. Lappi 2/26/96

9-LS1463\G
Chenoweth
2/26/96

CS FOR HOUSE BILL NO. 394( )

IN THE LEGISLATURE OF THE STATE OF ALASKA

NINETEENTH LEGISLATURE - SECOND SESSION

BY

Offered:
Referred:

Sponsor(s): REPRESENTATIVES OGAN AND ROKEBERG, James

A BILL

FOR AN ACT ENTITLED

"An Act authorizing shallow bed natural gas leasing; relating to regulation of natural gas exploration facilities for purposes of preparation of discharge prevention and contingency plans and compliance with financial responsibility requirements; exempting response and prevention activities associated with shallow bed natural gas leasing as a use for which money in the oil and hazardous substance release prevention and response fund is authorized; and substituting in the exemption from obtaining a waste disposal permit for disposal of waste produced from drilling a reference to shallow bed natural gas for a reference to coal bed methane."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

*** Section 1.** LEGISLATIVE FINDINGS, PURPOSE, AND EXPRESSION OF INTENT. (a) The legislature finds that

(1) there exist throughout the state sizeable reserves of coal and small but commercially significant amounts of natural gas located close to the earth's surface that are usually, though not always, associated with and emitted from coal reserves;

(2) the methane derived from these coal reserves and other shallow bed natural gas sources could be tapped to serve as a principal or a chief supplemental energy source of benefit to residents of areas in which they are found;

(3) the methane derived from these coal reserves and other shallow bed natural gas sources that are generally close to the surface could be developed without interfering with the development and transportation of the state's vast gas reserves available for interstate and foreign markets; and

(4) it is in the best interests of the state and its people that this natural gas should be identified and developed, especially to serve as a source of commercial quality natural gas for use in rural communities and remote locations within the state.

(b) In authorizing a program of leasing shallow bed natural gas from state land, it is the legislature's purpose to provide both a means and an incentive by which that gas may be identified and developed at low cost for the direct benefit of residents of remote or sparsely populated areas for which connection to the in-place gas pipeline transmission and distribution system serving population centers in Southcentral Alaska is not economically feasible.

(c) In enacting this Act, it is the intent of the legislature

(1) that the Department of Natural Resources implement this Act promptly and without adoption of administrative regulations to implement, interpret, or make specific this Act or to establish procedures to govern application of provisions of this Act; and

(2) that, to the extent it is necessary for the Department of Natural Resources to adopt constructions that implement, interpret, or make specific this Act or to establish procedures to govern application of provisions of this Act, the commissioner of natural resources may recommend legislation for consideration by the First Session of the Twentieth Alaska State Legislature to amend or add to the provisions of this Act that will adopt those constructions or establish those procedures.

*** Sec. 2.** AS 38.05 is amended by adding a new section to read:

Sec. 38.05.177. SHALLOW BED NATURAL GAS. (a) The provisions of this section

(1) apply to gas, whether methane associated with and derived from coal

reserves or otherwise, developed from a source that is within 3,000 feet of the surface at the drill site; and

(2) do not apply to authorize lease of

(A) land described in AS 38.05.131(b) in which oil and gas exploration licenses and leases may not be issued;

(B) the land

(i) that is or becomes subject to an oil and gas exploration license or lease issued under AS 38.05.131 - 38.05.134;

(ii) that is leased under AS 38.05.180; or

(iii) that is described in and is part of the proposed oil and gas leasing program prepared under AS 38.05.180(b); or

(C) the land that, on the effective date of this Act, is held under a coal lease entered into under AS 38.05.150.

(b) For the purpose of exploring for and developing shallow bed natural gas, upon application, the director may lease to a person land of the state. A person applying for a lease under this subsection

(1) shall specify the area to be leased; the area to be leased may not exceed 23,040 acres and may not be less than 640 acres;

(2) may not be required to pay an application fee or any other form of payment as a condition of submitting or processing the lease application or obtaining the lease.

(c) Unless the lease application is for land described in (a)(2) of this section or unless otherwise prevented by law from entering into a lease for land described in the lease application, promptly after receipt of a lease application, the director shall enter into an initial shallow bed gas development lease. The initial shallow bed gas development lease entered into under this subsection gives the lessee

(1) the exclusive right to explore for, develop, and produce, for a term not to exceed two years, shallow bed natural gas on the state land described in the lease; the right to explore for, develop, and produce is limited to gas derived from shallow bed natural gas within 3,000 feet of the surface at the drill site; and

(2) unless the lease is earlier terminated under (f) or (h)(1) of this section, the option to convert the lease for all or part of the state land into a shallow bed gas

lease of unlimited duration.

(d) Upon application by the lessee, the director

(1) may once extend an initial shallow bed gas development lease issued under (c) of this section for a period of not more than two years if the director determines that during the period described in (c)(1) of this section, the lessee

(A) has conducted reasonably diligent exploration activities in the area covered by the initial shallow bed gas development lease;

(B) has not been able to determine the commercial productivity of the shallow bed natural gas occurring on the lease; and

(C) wishes to continue to conduct exploration activities in the area described in the initial shallow bed gas development lease;

(2) may adjust the boundaries of a lease entered into under this section as may be necessary to ensure development of shallow bed natural gas within a reasonably compact area or as a single unit; a lease as adjusted under this paragraph remains subject to the acreage limitations set out in (b)(1) of this section.

(e) Each lease established by conversion under (c)(2) of this section shall be for an indeterminate period upon condition of diligent development and continued operation for the purpose of producing shallow bed natural gas in commercial quantities. The director shall annually make a determination under this subsection that the lessee has diligently developed and continued to operate under the lease.

(f) For the privilege of exploring for and producing gas from a shallow bed gas development lease, the lessee shall pay rent to the state in the amounts determined in this subsection. The rent is due and payable on the dates determined in the lease. If rent is not paid when due, the director shall mail the lessee written notice of nonpayment at the end of each month, while the rent remains unpaid, for a period of two months. The lessee may cure the failure to pay rent when due within 90 days after the rent payment becomes due and payable by paying to the director the amount of rent due together with a penalty of the greater of $50 or five percent of the amount of rent in default. If the lessee fails to remedy the lessee's failure to pay rent, the director shall terminate the lease. The amount of annual rent payable to the state is

(1) until the initial commercial production of gas from the area within the shallow bed gas development lease, 25 cents per acre; and

(2) after the initial commercial production of gas from the area within the shallow bed gas development lease, 50 cents per acre.

(g) The royalty payable on natural gas produced from a shallow bed gas development lease is 6.25 percent of the value of the production removed or sold from the lease.

(h) A shallow bed gas development lease issued under this section is subject to the following terms and conditions and may be terminated by the director in the event of a breach of a term or condition:

(1) the lessee may surrender or relinquish the lease at any time;

(2) the lease may not be transferred or assigned until after the date of initial commercial production of gas from the area within the lease; however, this paragraph does not prohibit the lessee from entering into a farm out agreement or similar arrangement with a third party under which the third party assists in exploration and development of production from the lease if the agreement or arrangement does not require a payment of consideration by the third party to the lessee, except that the lessee may retain an overriding royalty interest in the lease or may retain a net profit or other production payment;

(3) gas produced from the lease may not be sold or otherwise made available for insertion into the in-place gas pipeline transmission or distribution system serving population centers in Southcentral Alaska, except that the director may waive this limitation to permit the exchange of the gas produced for other gas that may be distributed in rural communities and remote locations within the state.

(i) When a search is required to verify a title to an area described in a shallow bed gas development lease application, the applicant may conduct the title search.

(j) The acreage limitations of AS 38.05.140(c) and 38.05.180(m) do not apply to a shallow bed gas development lease.

(k) A shallow bed gas development lease does not give the lessee the right to produce oil or to produce gas from sources that are not within 3,000 feet of the surface at the drilling site. If the lessee's operation under the lease results in the production of oil or of gas in violation of this subsection, the director shall immediately suspend the lessee's operation under the lease and may terminate the lease.

(l) Notwithstanding AS 38.05.020(b)(1) and AS 44.62.010 - 44.62.300, the commissioner of natural resources may not adopt regulations to adopt constructions that implement, interpret, or make specific the provisions of this section or to establish procedures to govern application of the provisions of this section.

(m) In this section, "lease" means a shallow bed gas development lease authorized by this section.

*** Sec. 3.** AS 38.05.035(e)(6) is amended to read:

(6) before a public hearing, if held, or in any case not less than 21 days before the sale, lease, or other disposal of available land, property, resources, or interests in them other than a sale, lease, or other disposal of available land or an interest in land for oil and gas under (5) of this subsection, the director shall make available to the public a written finding that, in accordance with (1) of this subsection, sets out the material facts and applicable statutes and regulations and any other information required by statute or regulation to be considered upon which the determination that the sale, lease, or other disposal will best serve the interests of the state was based; however, a written finding is not required before the approval of

(A) a contract for a negotiated sale authorized under AS 38.05.115;

(B) a lease of land for a shore fishery site under AS 38.05.082;

(C) a permit or other authorization revocable by the commissioner;

(D) a mineral claim located under AS 38.05.195;

(E) a mineral lease issued under AS 38.05.205;

(F) a production license issued under AS 38.05.207;

(G) an exempt oil and gas sale under AS 38.05.180(d) of acreage offered in a sale that was held within the previous five years if the sale was subject to a written best interest finding, unless the commissioner determines that new information has become available that justifies a revision of the best interest finding; [OR]

(H) a lease sale under AS 38.05.180(w) of acreage offered in a sale that was held within the previous five years if the sale was subject to a best interest finding, unless the commissioner determines that new information has become available that justifies a revision of the best interest finding; <u>or</u>

(I) a shallow bed gas development lease authorized under AS 38.05.177 in an area for which leasing is authorized under AS 38.05.177;

* **Sec. 4.** AS 38.05.180(f) is amended to read:

(f) Except as provided by AS 38.05.131 - 38.05.134 **and 38.05.177**, the commissioner may issue oil and gas leases on state land to the highest responsible qualified bidder determined by competitive bidding under regulations adopted by the commissioner. Bidding may be by sealed bid or according to any other bidding procedure the commissioner determines is in the best interests of the state. Whenever, under any of the leasing methods listed in this subsection, a royalty share is reserved to the state, it shall be delivered in pipeline quality and free of all lease or unit expenses, including but not limited to separation, cleaning, dehydration, gathering, salt water disposal, and preparation for transportation off the lease or unit area. Following a pre-sale analysis, the commissioner may choose at least one of the following leasing methods:

(1) a cash bonus bid with a fixed royalty share reserved to the state of not less than 12.5 percent in amount or value of the production removed or sold from the lease;

(2) a cash bonus bid with a fixed royalty share reserved to the state of not less than 12.5 percent in amount or value of the production removed or sold from the lease and a fixed share of the net profit derived from the lease of not less than 30 percent reserved to the state;

(3) a fixed cash bonus with a royalty share reserved to the state as the bid variable but no less than 12.5 percent in amount or value of the production removed or sold from the lease;

(4) a fixed cash bonus with the share of the net profit derived from the lease reserved to the state as the bid variable;

(5) a fixed cash bonus with a fixed royalty share reserved to the state of not less than 12.5 percent in amount or value of the production removed or sold from the lease with the share of the net profit derived from the lease reserved to the state as the bid variable;

(6) a cash bonus bid with a fixed royalty share reserved to the state based on a sliding scale according to the volume of production or other factor but in no event less than 12.5 percent in amount or value of the production removed or sold from the lease;

(7) a fixed cash bonus with a royalty share reserved to the state based on a sliding scale according to the volume of production or other factor as the bid variable but not less than 12.5 percent in amount or value of the production removed or sold from the lease.

*** Sec. 5.** AS 38.05.180(h) is amended to read:

(h) The commissioner may include terms in any oil and gas lease**, except a shallow bed gas development lease issued under AS 38.05.177,** imposing a minimum work commitment on the lessee. These terms shall be made public before the sale, and may include appropriate penalty provisions to take effect in the event the lessee does not fulfill the minimum work commitment. If it is demonstrated that a lease has been proven unproductive by actions of adjacent lease holders, the commissioner may set aside a work commitment. The commissioner may waive for a period not to exceed one two-year period any term of a minimum work commitment if the commissioner makes a written finding either that conditions preventing drilling or exploration were beyond the lessee's reasonable ability to foresee or control or that the lessee has demonstrated through good faith efforts an intent and ability to drill or develop the lease during the term of the waiver.

*** Sec. 6.** AS 46.03.100(f) is amended to read:

(f) This section does not apply to discharges of solid or liquid waste material or water discharges from the following activities if the discharge is incidental to the activity and the activity does not produce a discharge from a point source, as that term is defined in regulations adopted under this chapter, directly into any surface water of the state:

(1) mineral drilling, trenching, ditching, and similar activities;

(2) landscaping;

(3) water well drilling **or** [,] geophysical drilling [, OR COAL BED METHANE DRILLING]; [OR]

(4) drilling, ditching, trenching, and similar activities associated with facility construction and maintenance or with road or other transportation facility construction and maintenance; however, the exemption provided by this paragraph does not relieve a person from obtaining a permit under (a) of this section if

(A) the drilling, ditching, trenching, or similar activity will involve the removal of the groundwater, stormwater, or wastewater runoff that has accumulated and is present at an excavation site for facility, road, or other transportation construction or maintenance; and

(B) a permit is otherwise required by (a) of this section**; or**

(5) the discharge or disposal of waste material or water from activities associated with gas exploration drilling under a shallow bed gas development lease authorized by AS 38.05.177.

*** Sec. 7.** AS 46.04.030(b) is amended to read:

(b) A person may not cause or permit the operation of a pipeline or [AN EXPLORATION OR] production facility in the state **or, except as provided in AS 46.04.050(c) for a well that has not penetrated a formation capable of producing oil, may not cause or permit the operation of an exploration facility in the state** unless an oil discharge prevention and contingency plan for the pipeline or facility has been approved by the department and the person is in compliance with the plan.

*** Sec. 8.** AS 46.04.030 is amended by adding a new subsection to read:

(s) If an onshore well drilling for gas under a lease authorized by AS 38.05.177 penetrates a formation capable of producing oil, the operator of the facility

(1) shall notify the department and the Alaska Oil and Gas Conservation Commission; and

(2) may not conduct further operations in the drilled well until the facility complies with all applicable laws and regulations relating to oil and gas production; however, this paragraph does not prevent the operator of the facility from conducting activities that may be required by the Alaska Oil and Gas Conservation Commission to plug and abandon a well.

*** Sec. 9.** AS 46.04.040(b) is amended to read:

(b) A person may not cause or permit the operation of a pipeline or an exploration or production facility in the state unless the person has furnished to the department, and the department has approved, proof of financial ability to respond in damages. Proof of financial responsibility required for

(1) a pipeline or an offshore exploration or production facility is $50,000,000 per incident;

(2) an onshore production facility is

(A) $20,000,000 per incident if the facility produces over 10,000 barrels per day of oil;

(B) $10,000,000 per incident if the facility produces over 5,000 barrels per day but not more than 10,000 barrels per day of oil;

(C) $5,000,000 per incident if the facility produces over 2,500 barrels per day but not more than 5,000 barrels per day of oil;

(D) $1,000,000 per incident if the facility produces 2,500 barrels per day or less of oil;

(3) an onshore exploration facility is

<u>(A) $25,000 per incident for a facility used solely to explore for shallow bed natural gas by means of drilling a well when authorized by AS 38.05.177; and</u>

<u>(B) except as provided by (A) of this paragraph,</u> $1,000,000 per incident.

*** Sec. 10.** AS 46.04.040 is amended by adding a new subsection to read:

(n) If an onshore well authorized under AS 38.05.177 to recover shallow bed natural gas penetrates a formation capable of producing oil, the operator of the facility may not conduct further exploration activity. However, this subsection does not prevent the operator of the facility from conducting activities that may be required by the Alaska Oil and Gas Conservation Commission to plug and abandon a well.

*** Sec. 11.** AS 46.04.050 is amended by adding a new subsection to read:

(c) Except as provided in AS 46.04.030(s), the provisions of AS 46.04.030(b) do not apply to an onshore exploration facility used solely to explore for natural gas by means of drilling a well when authorized under AS 38.05.177.

*** Sec. 12.** AS 46.08.040 is amended by adding a new subsection to read:

(e) Money from the fund may not be used to take action under (a) of this section as to the release or threatened release of oil or a hazardous substance from a shallow bed natural gas development well authorized under AS 38.05.177.

*** Sec. 13.** RELATION TO RIGHTS GRANTED UNDER EXISTING COAL LEASES. The provisions of AS 38.05.177, added by sec. 2 of this Act, may not apply to impair or infringe upon the rights of a lessee of a coal lease entered into under AS 38.05.150 on or before the effective date of this Act and that is in effect on the effective date of this Act to recover the coal bed methane and other gas held in association with the coal under the lease unless recovery by the lessee of coal bed methane and other gas in association with the coal is prohibited by the coal lease.

*** Sec. 14.** CORRECTIVE LEGISLATION INVITED. If the commissioner of natural resources believes it is necessary to adopt constructions that implement, interpret, or make specific the provisions of AS 38.05.177 or to establish procedures to govern application of provisions of AS 38.05.177, the commissioner of natural resources may recommend legislation for consideration by the First Session of the Twentieth Alaska State Legislature to amend or add to the provisions of AS 38.05.177 that will adopt those constructions or establish those procedures.

Alaska State Legislature

Resources, Vice Chair
State Affairs, Vice Chair
House Special Committee on Oil & Gas, Vice Chair
House Special Committee on Fisheries

State Capitol
Room 409
Juneau, Alaska 99801-1182
(907) 465-3878
Fax (907 465- 3265

Representative Scott Ogan
House District 27

Sponsor Statement HB 394

The purpose of this bill is to encourage shallow gas development for use within the state. HB 394 succeeds in this task by relieving the tremendous monetary and regulatory burdens that currently plague independent gas developers in Alaska.

HB 394 specifically addresses such issues as high bond requirements, lease issuance, application and processing fees, and royalties. It creates an economic environment where small independent gas companies can thrive, and be allowed to develop a resource that is truly important to the state.

Why is this bill so important to the state? In order to grasp the answer to this question, one must first look at our current situation. In June of 1995, the Department of Community and Regional Affairs presented an initiative known as the *Alaska Rural Energy Intitiative* in which they report on the existing energy problems in the rural communities of Alaska.

The *Alaska Rural Energy Initiative* reports that it will cost $200 million, excluding future inflation, to repair and renovate the fuel storage facilities of rural Alaska. In a report done by the *Rural Bulk Fuel Task Force* (1993), the cost of remediation of contaminated soil and ground water adds another $200 million. The *Alaska Rural Energy Initiative* also states that another $25 million will be needed for upgrading single-village electric utilities. An allowance of $25 million more is needed for additional electric utility upgrades and for inflation. Also, the state currently spends $20 million annually on the power cost equalization program, a program that has cost the state $200 million since its creation. All of these numbers point to one thing, and that is that Alaska has a serious energy problem in its rural communities, and it is going to cost a lot of money to fix.

In these days of budget cuts and reduced oil revenue, it is not reasonable to think that remediation, renovation, and power cost equalization will be easy to pay for in the future. This is why HB 394 is so important.

HB 394 would allow independent gas companies to explore for and develop shallow bed gas without being hindered by unreasonable regulations and requirements. With reasonable regulatory oversite, independent gas companies would be able to develop gas for use in rural communities. Communities with deposits of gas nearby would be able to pipe the gas directly to their converted generators, and they could use it to heat their homes.

Natural gas is a low-cost and environmentally safe form of energy that, in all likelihood, exists in many parts of the state. It could serve as an independent fuel source for many communities, but because of existing stringent regulations and bonding requirements, it is not economically feasible for independents to attempt to develop this valuable resource.

The merits of HB 394 are evident, and the benefits are far reaching. I ask for your support as we attempt to allow shallow natural gas to be used as an economically and environmentally sound alternative fuel source.

ALASKA RURAL ENERGY INITIATIVE

Division of Energy
Department of Community and Regional Affairs
State of Alaska

June 1995

EXECUTIVE SUMMARY

There are over 150 small villages in rural Alaska that are not accessible by road, that are characterized by severe climate and widespread poverty, and that are heavily dependent on fuel oil for power generation and heat. The average population per village is about 250 residents, mostly Alaska Natives.

Bulk Fuel Storage

In most cases, the village fuel supply must be delivered by barge during a brief ice-free shipping season and stored throughout the year. Every village relies on above-ground tank farms for essential fuel storage though few of these facilities presently meet minimum standards of safety or environmental protection. Most lack adequate foundations, dikes, and piping systems as well as basic security fences. Many are rusted, improperly sited, and violate electrical codes.

An increasing number of villages now face the possibility that fuel will not be delivered because of these deficiencies. Fuel carriers are threatened with liability for environmental damage if they fill village tanks that subsequently leak. Most recently, the U.S. Coast Guard, with regulatory jurisdiction over fuel transfer facilities between the delivery barge and the storage tank, has sent letters to the owners of nearly 80 fuel storage facilities threatening to deny fuel deliveries unless deficiencies are corrected.

The estimated cost for repair and renovation of fuel storage facilities in rural Alaska is $200 million, excluding future inflation. This does not include remediation of contaminated soil and groundwater.

Electric Utilities

Approximately 80 communities in rural Alaska are served by small, single-village electric utilities; roughly the same number are served by larger, multi-village utilities. Most of these communities have no transmission link to any other community and are entirely dependent on local diesel generators for their power supply. The cost of power in rural Alaska is high, roughly 4 to 5 times the average elsewhere in the United States.

Particularly in the single-village utilities, power plant and distribution systems often do not meet accepted utility standards for safety, efficiency, reliability, and environmental protection. These villages require adequate electric service, however, for economic advancement and for support of other community facilities. Upgrading the physical plant of the electric utility to meet minimum standards is a pre-condition for utility self-reliance, as well as community self-reliance, in the future.

The estimated cost to upgrade the single-village utilities is $25 million, excluding future inflation. Upgrade costs for the multi-village utilities have not been systematically estimated.

Proposal for Funding

Policies, programs, and expenditures of both the State and Federal governments have contributed over the years to the relative permanence of remote Native villages in Alaska. Resolving the problem of deteriorating fuel tanks and substandard electric utility systems is beyond the means of village residents. A joint State/Federal effort is needed to bring these facilities to the point where they no longer represent a safety or environmental hazard, and can be maintained and replaced as necessary without further long-term government support. To this end, the following is proposed:

1. The State and Federal governments will together make available for expenditure $25 million per year -- $12.5 million each -- until, in combination with local match contributions, a total investment of $250 million is reached. While the number of years required to reach this investment total will not exceed 10, the actual number of years may be less depending on the size of the local match contributions. The $250 million total includes the estimate of $200 million for bulk fuel storage, $25 million for upgrading single-village electric utilities, and an allowance of $25 million for additional electric utility upgrades and for inflation.

   It is proposed that the Federal contribution be appropriated to the Rural Utilities Service in the U. S. Department of Agriculture and, from there, channeled to the Division of Energy in the Alaska Department of Community and Regional Affairs, which will administer the program.

2. The funds will be expended as grants. Cash or in-kind match from participants will be required. The Division of Energy will retain authority to approve project design.

3. For bulk fuel storage facilities, a key objective will be to consolidate existing tank farms into a smaller number of code-compliant fuel storage facilities. The Division of Energy will meet with tank farm owners to develop consolidation agreements which will identify, for each consolidated facility, a single entity to assume ownership and operating responsibility, and which will set out each participant's rights and obligations. Each participant will be assured the right to solicit competitive bids for fuel delivery in the future.

   Grant agreements with the designated facility owners will incorporate the consolidation agreements, will provide assurances with regard to long-term operation and maintenance of the facilities, and will establish requirements for periodic facility inspection and reporting.

4. For electric utility upgrades, project approval will be contingent on local commitment to professional utility management in the future. The Division of Energy will meet with utility boards and managers to define the upgrade projects and to negotiate utility management agreements. In these agreements, utilities may commit to joining a consolidated utility organization or to other arrangements that will ensure capable utility management.

   Grant agreements will incorporate the utility management agreements and will include a utility pledge not to seek additional State or Federal grants for ordinary capital improvements such as normal renewal and replacement of diesel generating plant.

5. For the first year of this initiative, the State is seeking $16 million in federal funds to match a prior commitment of $16 million in State funds: $10 million for bulk fuel storage and $6 million for electric utility upgrades.

3. REMOTE VILLAGE ELECTRIC UTILITIES

3.1 Electric Utilities in Rural Alaska

There are over 150 small communities in rural Alaska with electric utility service provided mostly by local diesel generators, and without any electrical interconnection outside the community. These communities are served by roughly 100 separate electric utility organizations. Some of these utilities have developed sufficient scale economies and expertise to operate with reasonable efficiency, to maintain accepted utility standards, and to be capable of financing their own plant requirements. These utilities typically serve a regional center or serve a number of small communities. In most rural Alaska communities, however, the electric utility operates generation and distribution plant that does not comply with accepted utility standards, and government assistance is required to finance capital improvements as well as on-going operations.

The cost of power provided by these village utilities is exceptionally high: median residential rates are in the range of 40-45 cents per kWh, 4 to 5 times the average elsewhere in the United States. For this reason, since 1981 the State has funded a power cost equalization program under which the State pays a portion of the monthly electric bill for customers of rural electric utilities, and has spent about $200 million on the program to date. While this has enabled residents of remote villages to afford basic electrical service, the current annual program cost of $20 million cannot be sustained by the State indefinitely as oil production from Prudhoe Bay and associated State revenues continue to decline.

Most of these isolated village utilities provide their own management, administrative services, maintenance and operations, constituting a very high burden of fixed costs per unit of electricity sold. Because competent mechanical and electrical expertise is often difficult to maintain in these organizations, generator maintenance is often sporadic and unorganized -- a situation which leads directly to catastrophic and expensive breakdowns. Merger with a larger utility organization offers the opportunity to benefit from sufficient scale economies to overcome some of these disadvantages. However, before such consolidation can be considered, the physical plant of the village utility must be improved to the point that it meets accepted industry standards.

Reliable electric service is needed in the villages not only as a prerequisite for economic advancement but also to support other necessary community infrastructure, including water and sewer systems. For the continuation of electrical service over the long-term in these isolated communities, electric utility plant and operations must be upgraded to the point that government support is no longer needed. Ideally, by bringing the physical plant up to standards either of the Rural Utilities Service (RUS, formerly the Rural Electrification Administration), or of the National Electrical Safety Code (NESC) and the National Electrical Code (NEC), the isolated village utilities can be merged into new or established regional utilities that are self-reliant with respect to operations and capital financing. These regional organizations may be cooperatives, investor-owned utilities, or regional governmental entities.

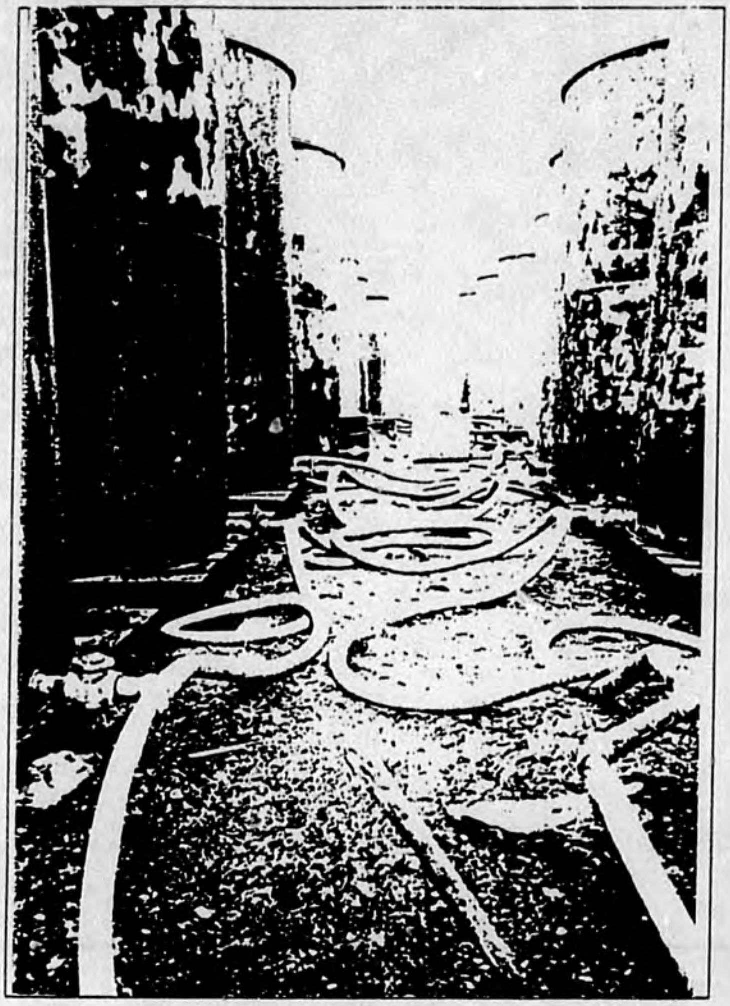
3.2 State Effort to Upgrade Rural Utilities

Since 1990, the State has expended over $10 million for upgrade of electric utility systems in rural communities receiving power cost equalization payments, excluding expenditures for evaluation and construction of alternatives such as rural hydroelectric projects. Included in Attachment 3 is appropriation and expenditure detail for $6 million committed by the State for this purpose in fiscal years 91-93.

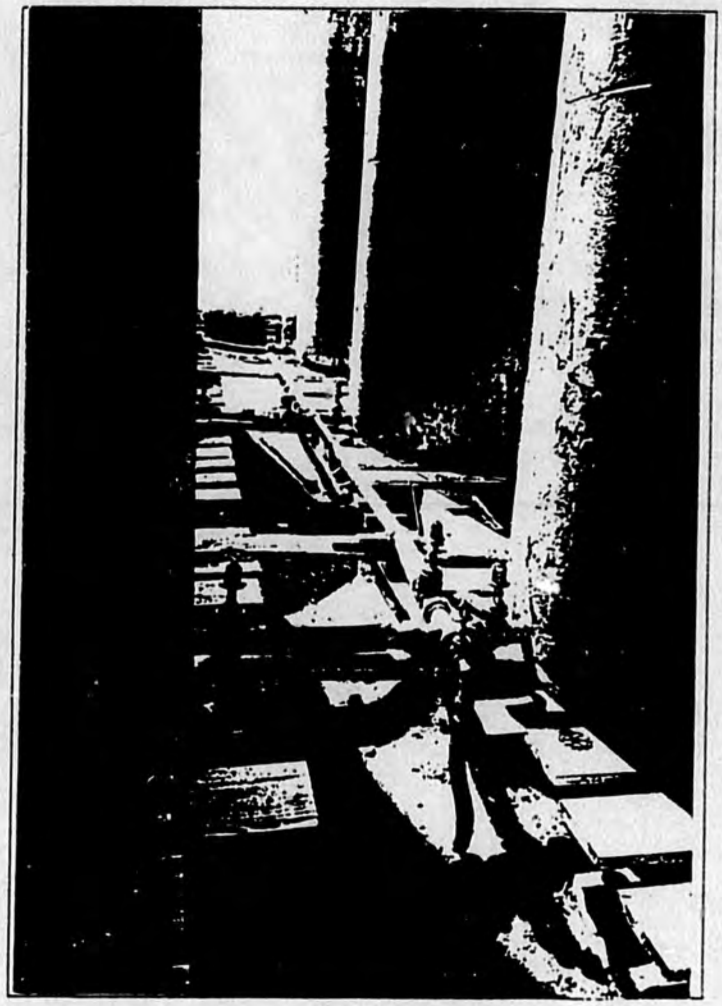
3.3 Estimated Cost to Upgrade Rural Utility Systems to Industry Standards

Approximately 80 rural villages are each served by their own electric utility organization. For 52 of these villages, cost estimates totaling $16.2 million have recently been prepared to upgrade generation and distribution systems in accordance with minimum accepted utility standards. Appendix B includes the system evaluation and cost estimate summaries for each of these 52 village electric utilities. Based on these results, the estimated upgrade cost for the 80 independent, single-village utility systems is approximately $25 million, excluding any adjustment for future inflation. Detailed estimates of required upgrade costs have not been systematically prepared for the additional communities that are served by regional utility organizations, or for the larger communities that serve as regional centers.

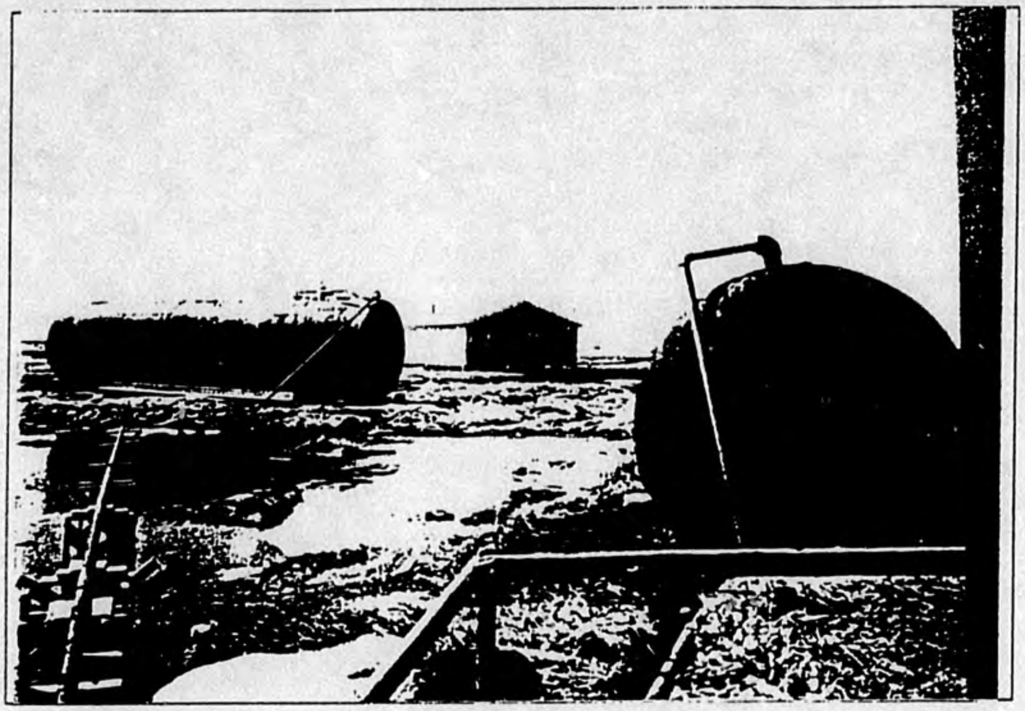
The estimates presented for the 52 single-village utilities in Appendix B provide only for code compliance of diesel dependent remote utilities, and do not include any additional amount for funding alternatives to local diesel generation such as small hydro or wind generation where appropriate resources are available, or transmission lines linking villages where feasible. Implementing these alternatives throughout rural Alaska is estimated to require considerably more capital resources. The State will continue to support such alternatives over the long term, but is seeking in this proposal the more limited objective of meeting basic utility standards as a prerequisite for energy self-reliance.



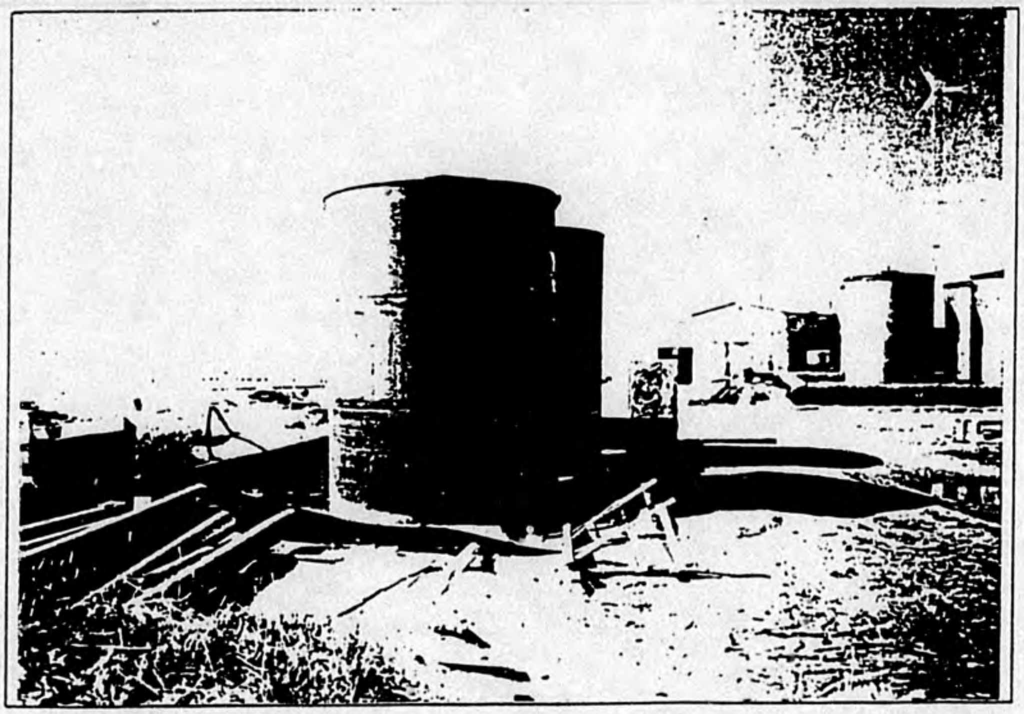
Photograph A.1
Severely corroded tanks connected by rubber hose. Evidence of fuel spillage thoughout area.



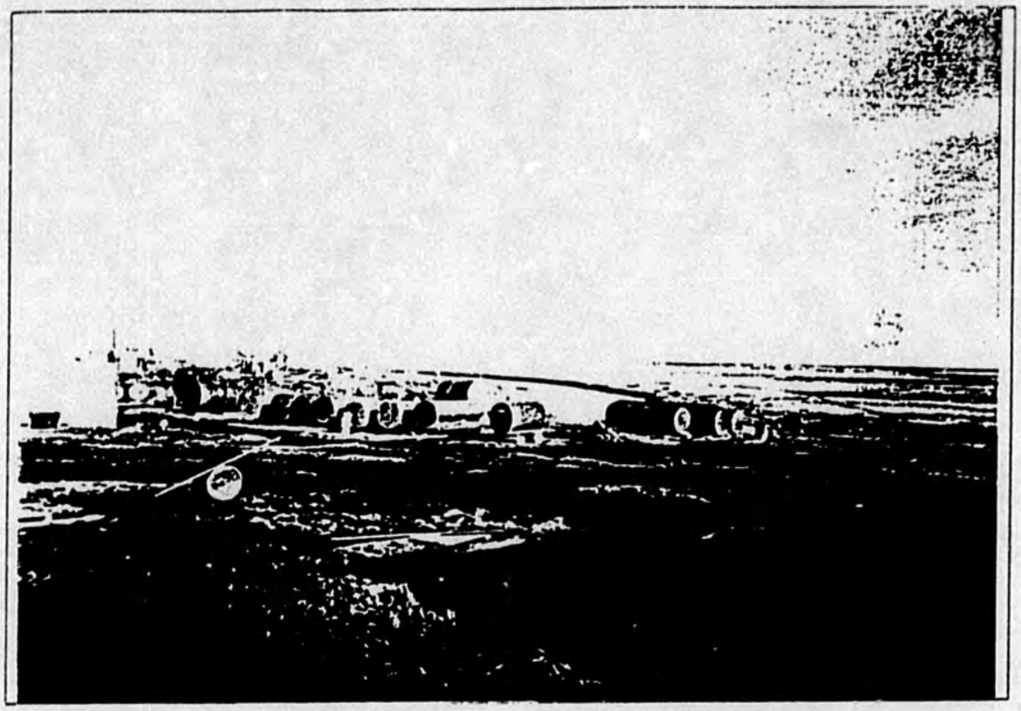
Photograph A.2
Severely corroded tanks on improper foundations (small dimension wood cribbing).



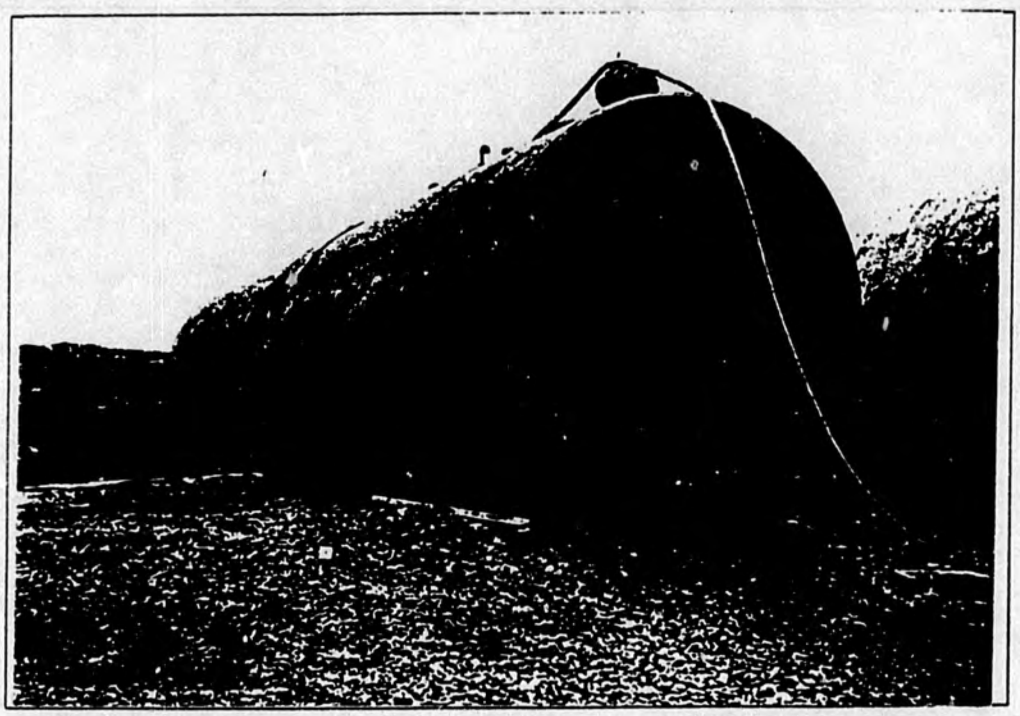
Photograph A.3
Tanks on improper foundations with no means of secondary containment. Facility located in close proximity to a river.



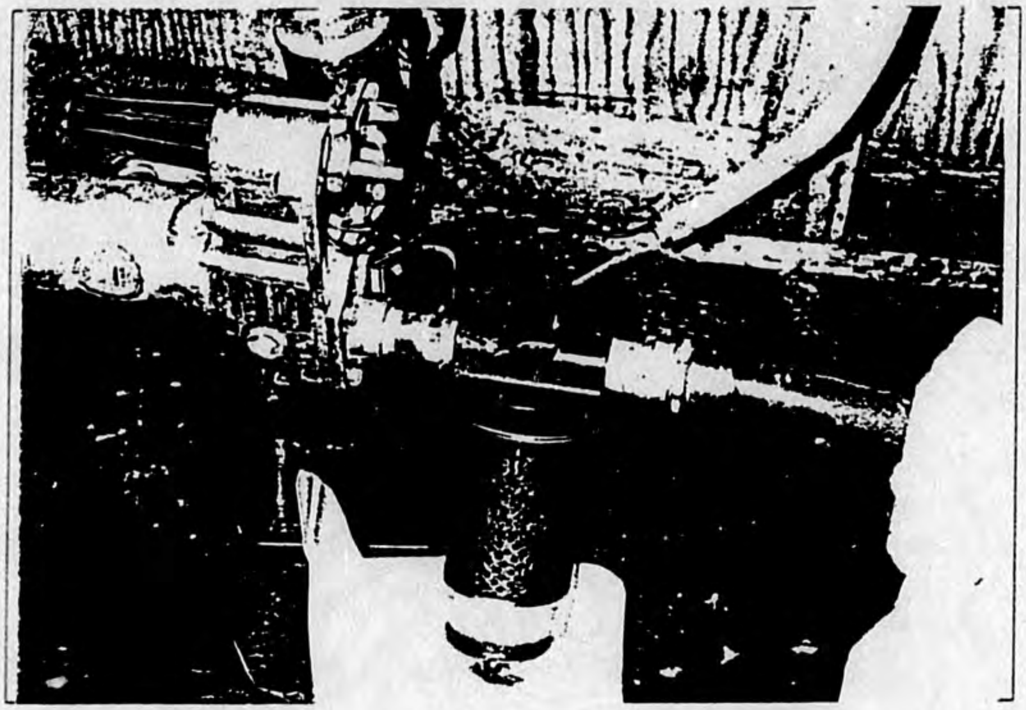
Photograph A.4
Corroded tanks located immediately adjacent to ocean. Steel dike completely rusted out and useless as secondary containment.



Photograph A.5
Tanks scattered along river bank with no dikes, no security, and improper foundations.

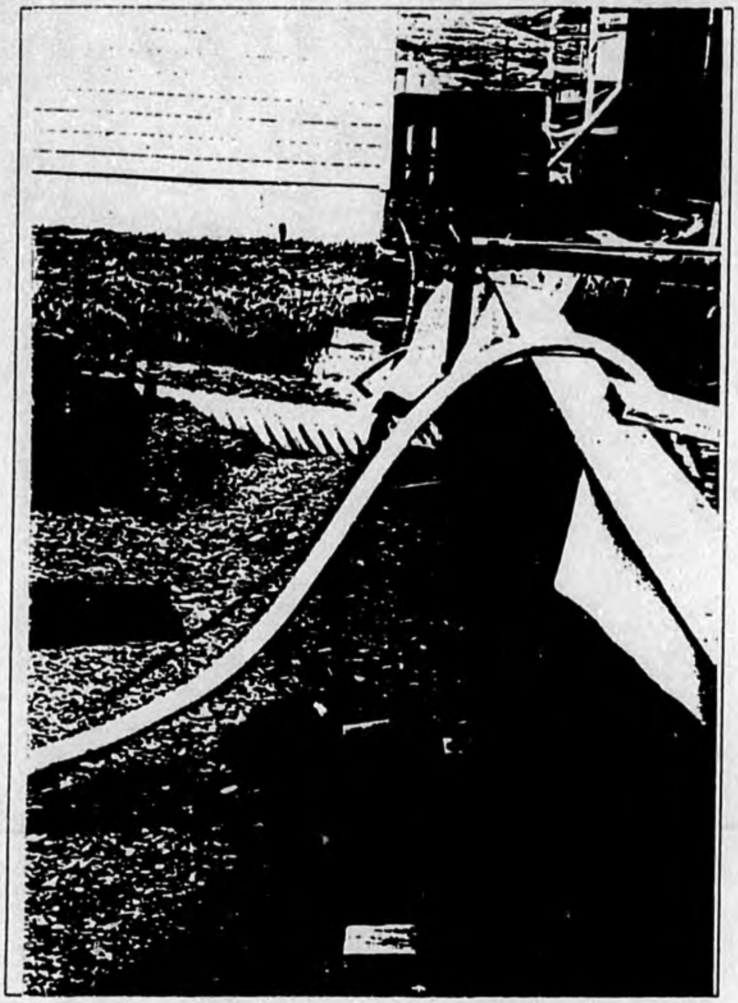


Photograph A.6
Severely dented tank with no foundation. Placed at edge of beach with no dike. Gravity dispensing of fuel. No security.



Photograph A.7
Improper wiring adjacent to leaking gasoline piping.

Photograph A.8
Improper piping system and poor operational procedures resulted in explosion of tank.

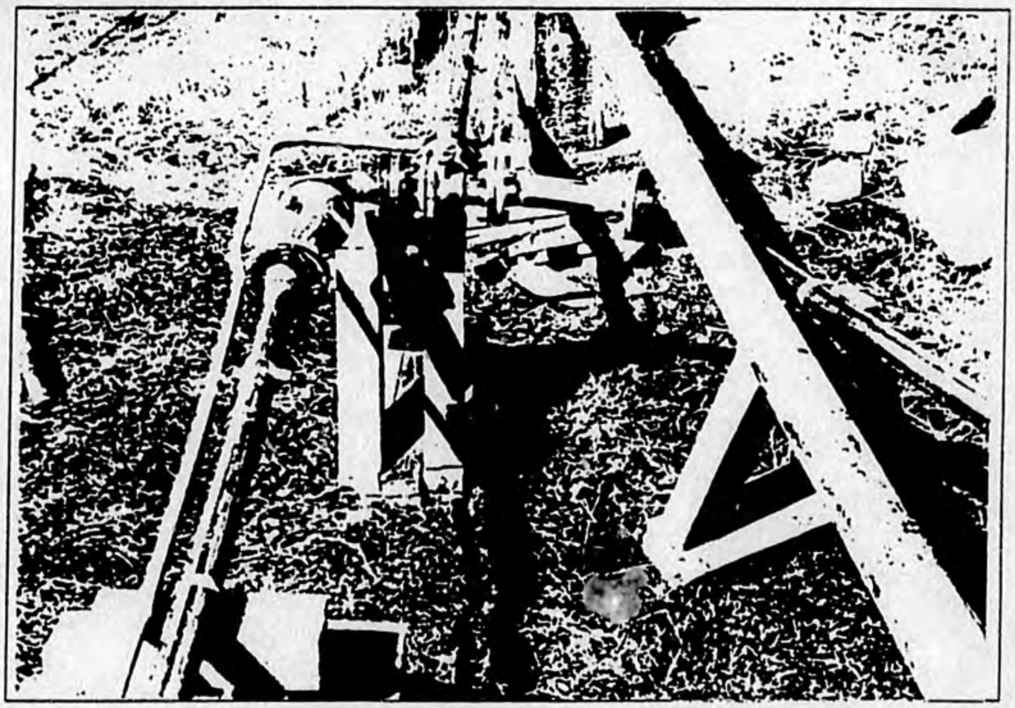


Photograph A.9
Fuel stain on ground caused by leaking piping joints.

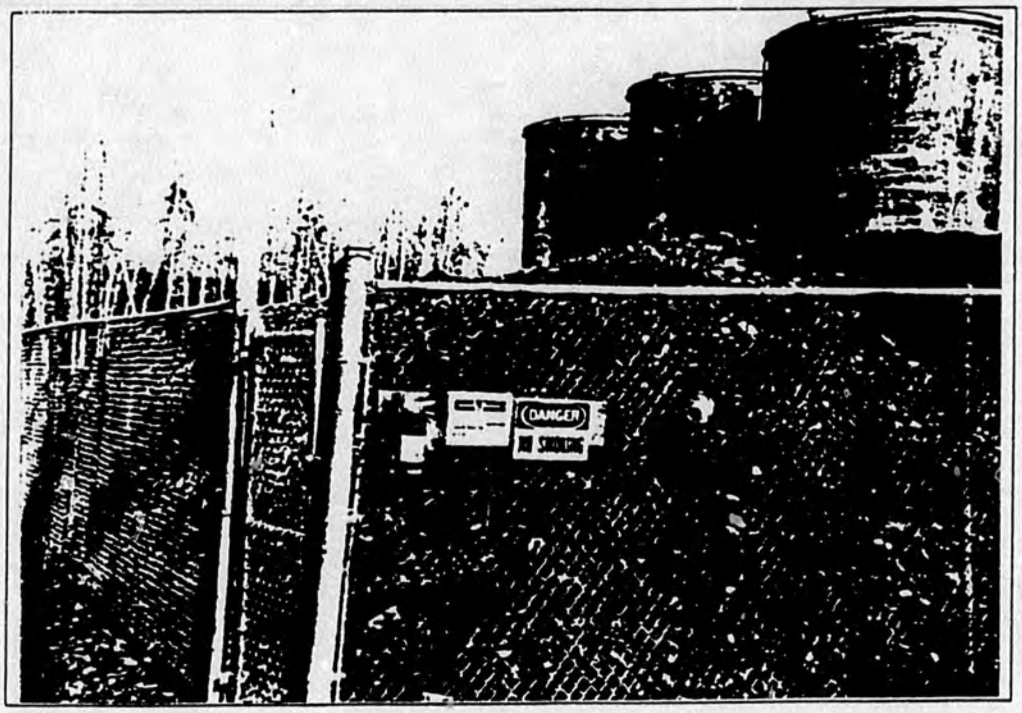
Photograph A.10
Faulty piping system reportedly broke during winter, spilling an estimated 50 gallons of fuel.

Photograph A.11
1200' long hose used to transfer diesel fuel from storage tanks to power plant on a weekly basis.

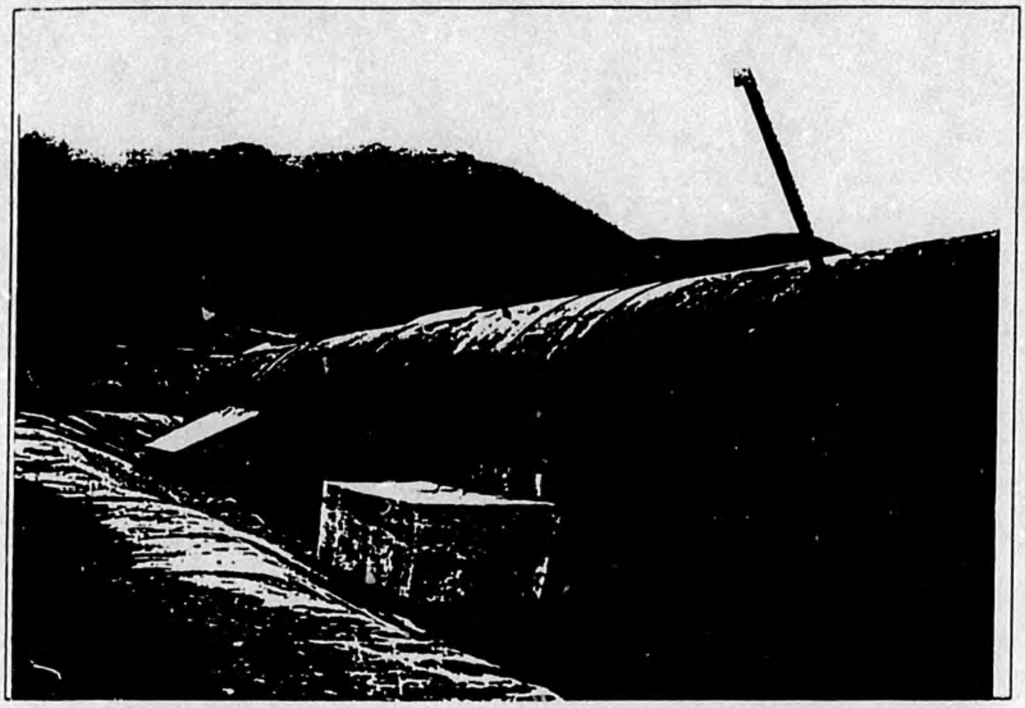
Photograph A.12
Hose replaced with proper welded steel pipeline by AEA with Bulk Fuel Emergency Repair program funds.



Photograph A.13
Tank farm located within a flood plain. Tanks tipped over and facility severely damaged by flood.



Photograph A.14
Tanks placed in new lined dike on gravel pad above flood stage. Facility repaired to meet applicable code and regulation requirements. Construction administered by AEA, supported by State and Federal disaster relief funds.



Photograph A.15
Tank installed in improper dike with no foundation. Due to poor installation, facility was never used.

Photograph A.16
Tank refurbished and installed on proper foundations in new dike. Construction administered by AEA using capital appropriation funds.

RURAL BULK FUEL TASK FORCE

Preliminary
Report to the Governor

Policy Recommendations

November 25, 1993

FINANCE

Issues:

- The *Rural Alaska Bulk Fuel Assessment Program, Summary Report and Recommendations,* March 1992, prepared by the Alaska Energy Authority, the *Noncrude Facility Survey, January 1992, and the Small Noncrude Oil Terminal Report, Task One: Facility Identification and Inventory,* November 1992, prepared for the State of Alaska, Department of Environmental Conservation, are testimony to the extreme costs related to repairs, improvements, new construction and remediation for Alaska's many rural bulk fuel storage facilities. Preliminary estimates range from between $155.O M to $200.0 M for facility improvements and another $200.0 M for remediation!

- Access to funding for communities is extremely limited and practically non-existent for small "for-profit" private sector operators.

- Funding that is available has few conditions attached for ensuring long range commitment by grantee or borrower for proper construction or continued facility maintenance or operator training programs.

- Remediation costs are often extraordinary. Existing funding programs require neither planning nor commitment to necessary facility clean up. Consequently, public health and safety are under continual threat.

- There is little access to federal funding, even when federal agencies acknowledge previous ownership of non-compliant facilities. The state receives no direct federal funding at this time for coordinated resolution of fuel storage problems.

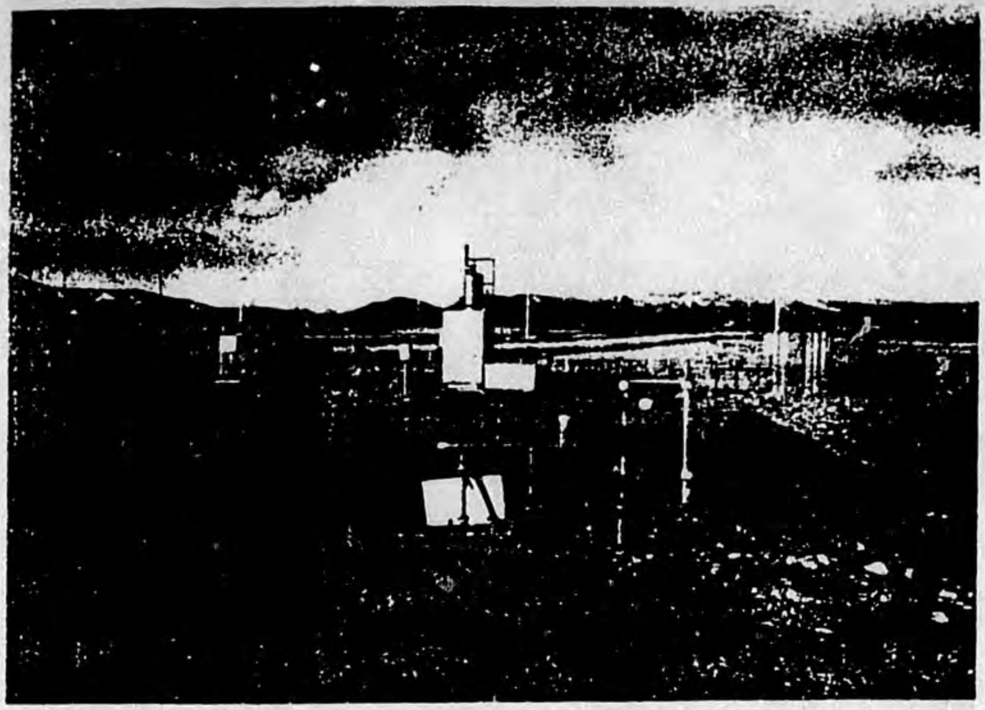


PHOTO #4
-At Left: Solar powered communications to report status.
-At Center: Water/Gas separator with filters.
-At Right: Metering system with separate communications system
-Well head in the foreground.
Near Farmington, New Mexico

PHOTO #5
Coal Bed Methane well head.
Near Farmington, New Mexico

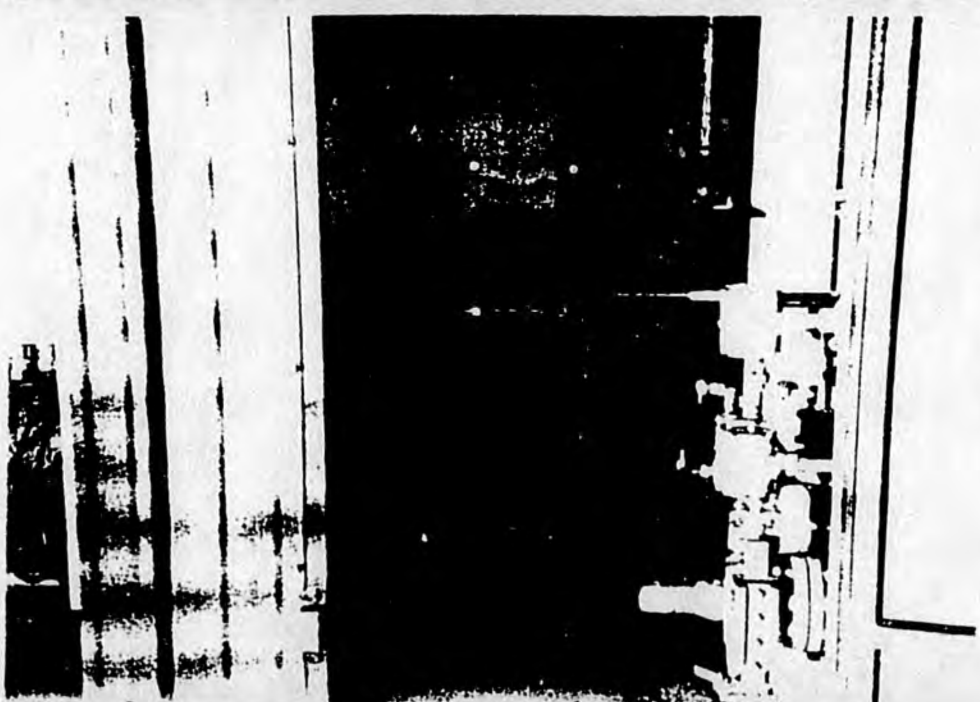


PHOTO #6
Meter Skid; Note the chart in the upper-center of photo, important for well operations.
All equipment is gas or solar cell powered.
Near Farmington, New Mexico

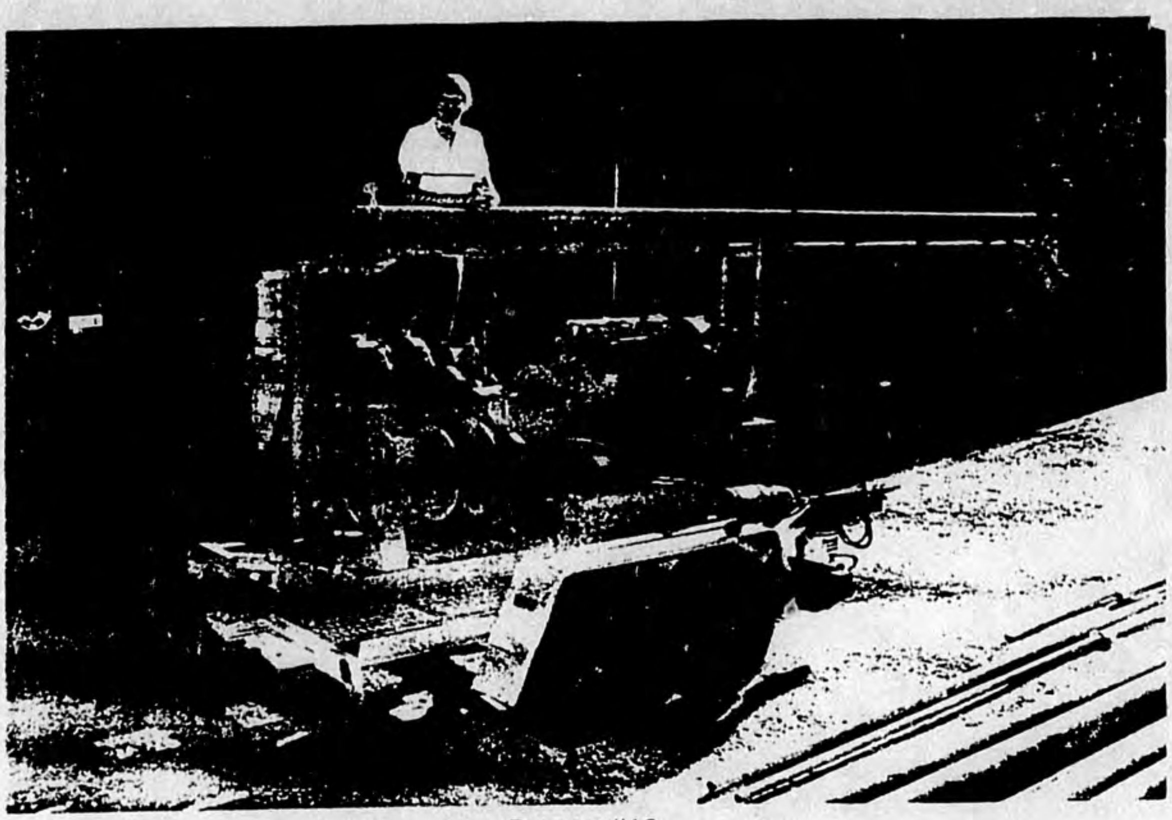


PHOTO #12

Lapp Resources' portable drill rig, used for exporatory drilling for coal bed methane.

courtesy, Lapp Resources, Inc. 1995

PHOTO #13

Ambler Drilling's rotary-hammer drill rig.

courtesy, Ambler Drilling, 1995

Alaska State Legislature

Resources, Vice Chair
State Affairs, Vice Chair
House Special Committee on Oil & Gas, Vice Chair
House Special Committee on Fisheries

State Capitol
Room 409
Juneau, Alaska 99801-1182
(907) 465-3878
Fax (907 465- 3265

Representative Scott Ogan
House District 27

Sponsor Statement HB 394

The purpose of this bill is to encourage coal bed methane development for in state use. Currently, the state spends $ 20 million a year on power cost equalization in rural Alaska. There is also significant economic and environmental liability associated with shipping and storing diesel fuel in rural areas.

HB 394 specifically addresses the problems that small independent gas well developers have with obtaining leases, bonding costs, and handling solid waste. The lease scenario would be over the counter for a two year period. The lease would be for in state use only. The lease area would be for 36 square miles. The bonding for possible environmental damage would be reduced due to the fact that there is very little possibility of an environmental accident. All of the proposed leases would be scrutinized by the Oil and Gas Conservation Commission to conclude with reasonable certainty that the well would not penetrate a formation containing oil.

There are tremendous coal reserves in Alaska. A typical coal bed well will produce gas at a much slower rate than a gas well associated with oil, and it will sustain this level of production for a longer period of time. Electrical generators could be converted to burn methane gas, and people could use the gas to heat their homes.

I ask for your support on this measure for the following reasons: Coal bed methane holds great potential for allowing both rural and urban Alaskan communities to become energy independent. Passage of this legislation would spur economic development by providing jobs, and by allowing small independent companies to enter into the gas market. This measure would help to lower state spending, as it would decrease the dependence upon power cost equalization.

LEGAL SERVICES

DIVISION OF LEGAL AND RESEARCH SERVICES
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MEMORANDUM January 22, 1996

SUBJECT: House Bill 394, relating to natural gas and coal bed methane development licensing and leasing -- sectional analysis (Work Order No. 9-LS1463\C)

TO: Representative Scott Ogan
ATTN: Hans Neidig

FROM: Jack Chenoweth
Legislative Counsel

House Bill 394 concerns itself with natural gas and coal bed methane exploration and development.

Bill section 5: The principal operative provision of the measure is its bill section 5, adding a new subsection, (dd), to AS 38.05.180, part of the Alaska Land Act. Under proposed subsection (dd), the division director would be able to exercise powers substantially the same as those provided under the state's oil and gas exploration licensing provisions added by ch. 35, SLA 1994 to license to explore for natural gas and coal bed methane. A principal difference between this provision and the exploration licensing program is that exploration would be limited to "gas deposits and coal bed methane within 3,000 feet of the surface at the drill site[.]" See proposed AS 38.05.180(dd)(3)(A), at page 6, line 4.

Bill section 2: The provision proposes an amendment to the enumerated powers of the director of the division of lands to permit the director to prescribe application procedures with respect to licenses and leases under the natural gas/coal bed methane licensing and leasing program.

Bill section 3: The bill section amends AS 38.05.035(e)(6) to exempt the natural gas/coal bed methane licensing and leasing program from the requirement of a prior written best interest finding.

Bill section 4: This amendment to AS 38.05.180(b) directs the commissioner of natural resources to notify the legislature of the availability of a proposed gas licensing and leasing and coal bed methane licensing and leasing program. (The obligation imposed on the Department of Natural Resources to prepare that program is set out in the lead-in language of AS 38.05.180(dd).)

Bill section 6: The bill section proposes to expand an existing exemption from obtaining a waste water discharge permit for discharges or disposals of waste material or water from activities associated with coal bed methane exploration drilling.

Bill sections 7 - 11: Collectively, the amendments made in these five bill sections to provisions of AS 46.04 are intended to relieve operators of onshore exploration facilities used to explore for natural gas or coal bed methane from providing proof of financial responsibility as a condition of operating. However, the exemption is dependent on the facility operator's obtaining a certificate from the Alaska Oil and Gas Conservation Commission that the operator's activities will, to a reasonable certainty, not penetrate a formation containing oil. If thereafter the facility operator's activities penetrate an oil formation, the operator must cease exploration activities and comply with the requirements relating to proof of financial liability.

Bill section 1: The provision amends AS 31.05 to add, as an additional duty of the Alaska Oil and Gas Conservation Commission, determination "with reasonable certainty" that a proposed gas or coal bed methane exploration well will not penetrate an oil formation, and the obligation to so certify.

As a drafting technique, usually when a statutory provision that contains materials saying "REPEALED," the provision(s) so marked should be renumbered or reformatted to eliminate those "REPEALED" references. However, to shorten this measure's length, it does not make all those drafting changes. (To have done so would be to set out all the various identified provisions that are affected by the repealed paragraphs, inserting appropriate corrected cross-references.) Instead, **bill section 12** directs the Revisor of Statutes to revise those references.

JBC:lmb:klb
96-026.lmb

WEST VIRGINIA CODE

ANNOTATED

VOLUME 8A

1994 Replacement Volume

(Including Acts through the 1994 Regular and First Extraordinary Sessions)

Prepared by the Editorial Staff of the Publishers

Under the Supervision of

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THE MICHIE COMPANY

Law Publishers

CHARLOTTESVILLE, VIRGINIA

1994

ARTICLE 21.

COALBED METHANE WELLS AND UNITS.

Editor's notes. — Acts 1994, c. 61, which amended and reenacted chapter 22, substituted articles one through twenty for former articles one through thirteen. Article 21, §§ 22-21-1 to 22-21-29, was enacted by Acts 1994, c. 24.

Effective dates. — Acts 1994, c. 24 provided that the act take effect from passage (March 12, 1994).

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§ 22-21-1. Declaration of public policy; legislative findings.

(a) The Legislature hereby declares and finds that the venting of coalbed methane from mine areas and degasification of coal seams has been and continues to be approved by the state for the purpose of ensuring the safe recovery of coal; that the value of coal is far greater than the value of coalbed methane and any development of the coalbed methane should be undertaken in such a way as to protect and preserve coal for future safe mining and maximum recovery of the coal; that subject to the above declarations and findings, commercial recovery and marketing of coalbed methane should in some cases be facilitated because the energy needs of this state and the United States indicate that the fullest practical recovery of both coal and coalbed methane should be encouraged; that the Energy Policy Act of 1992 was enacted in part to encourage coalbed methane development and the state of West Virginia should enact legislation which carries out the purposes of said act; that in order to encourage and ensure the fullest practical recovery of coal and coalbed methane in this state and to further ensure the safe recovery of both natural resources, it is in the public interest to enact this article authorizing coalbed methane well permits, regulating the design of coalbed methane wells and recovery techniques, authorizing coalbed methane well units and pooling of interests therein to provide all coalbed methane operators and coalbed methane owners with an opportunity to recover their just and equitable share of production.

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

(1) Preserve coal seams for future safe mining; facilitate the expeditious, safe evacuation of coalbed methane from the coalbeds of this state, and maintain the ability and absolute right of coal operators at all times to vent coalbed methane from mine areas;

(2) Foster, encourage and promote the commercial development of this state's coalbed methane by establishing procedures for issuing permits and forming drilling units for coalbed methane wells without adversely affecting the safety of mining or the mineability of coal seams;

(3) Safeguard, protect and enforce the correlative rights of coalbed methane well operators and coalbed methane owners in a pool of coalbed methane to the end that each such operator and owner may obtain his or her just and equitable share of production from coalbed methane recovered and marketed under this article;

(4) Safeguard and protect the mineability of coal during the removal of coalbed methane, as permitted under this article;

(5) Create a state permitting procedure and authority to provide for and facilitate coalbed methane development as encouraged by the Energy Policy Act of 1992; and

(6) Seek the deletion of the state of West Virginia from the list of affected states by the secretary of the United States department of the interior as provided for in the Energy Policy Act of 1992. (1994, c. 24.)

§ 22-21-2. Definitions.

Unless the context in which used clearly requires a different meaning, as used in this article:

(a) "Review board" means the West Virginia coalbed methane review board which shall be comprised of the members of the West Virginia shallow gas well review board provided for in article eight [§ 22C-8-1 et seq.], chapter twenty-two-c of this code, the state geologist, a representative of the United Mine Workers of America, an employee of the gas industry, and the director of the office of miners' health, safety and training, and the chairman of the review board shall be the chairman of the West Virginia shallow gas review board;

(b) "Coalbed" or "coal seam" means a seam of coal, whether workable or unworkable, and the noncoal roof and floor of said seam of coal;

(c) "Coalbed methane" means gas which can be produced from a coal seam, the rock or other strata in communication with a coal seam, a mined-out area or a gob well;

(d) "Coalbed methane owner" means any owner of coalbed methane;

(e) "Coalbed methane well" means any hole or well sunk, drilled, bored or dug into the earth for the production of coalbed methane for consumption or sale, including a gob well. The term "well" shall mean a coalbed methane well unless the context indicates otherwise. The term "coalbed methane well" does not include any shaft, hole or well sunk, drilled, bored or dug into the earth for core drilling, production of coal or water, venting gas from a mine area, or degasification of a coal seam;

(f) "Coalbed methane well operator" or "well operator" means any person who has the right to operate or does operate a coalbed methane well;

(g) "Coal operator" means any person who proposes to or does operate a coal mine;

(h) "Coal owner" means any person who owns or leases a coal seam;

(i) "Chief" means the chief of the office of oil and gas of the division of environmental protection provided for in section eight [§ 22-1-8], article one of this chapter;

(j) "Director" means the director of the division of environmental protection;

(k) "Division" means the division of environmental protection;

(*l*) "Gob well" means a well drilled or vent hole converted to a well pursuant to this article which produces or is capable of producing coalbed methane or other natural gas from a destressed zone created above and below a mined-out coal seam by any prior full seam extraction of the coal;

(m) "Mine" or "mine areas," including the sub-definitions under "mine areas," shall have the same definitions as are provided in section two [§ 22A-1-2], article one, chapter twenty-two-a of this code;

(n) "Office" means office of oil and gas provided for in section seven [§ 22-1-7], article one of this chapter;

(o) "Person" means any natural person, corporation, firm, partnership, partnership association, venture, receiver, trustee, executor, administrator, guardian, fiduciary, other representative of any kind, any recognized legal entity, or political subdivision or agency thereof;

(p) "Stimulate" means any action taken to increase the natural flow of coalbed methane or the inherent productivity of a coalbed methane well, including, but not limited to, fracturing, shooting, acidizing or water flooding, but excluding cleaning out, bailing or workover operations;

(q) "Waste" means (i) physical waste as the term is generally understood in the gas industry and as provided for in article six [§ 22-6-1 et seq.] of this chapter, but giving special consideration to coal mining operations and the safe recovery of coal; (ii) the locating, drilling, equipping, operating, producing or transporting coalbed methane in a manner that causes or tends to cause a substantial reduction in the quantity of coalbed methane recoverable from a pool under prudent and proper operations, or that causes or tends to cause a substantial or unnecessary or excessive surface loss of coalbed methane; (iii) the drilling of more wells than are reasonably required to recover efficiently and economically the maximum amount of coalbed methane from a pool; or (iv) substantially inefficient, excessive or improper use, or the substantially unnecessary dissipation of reservoir pressure. Waste does not include coalbed methane vented or released from any mine area, the degasification of a coal seam for the purpose of mining coal, the plugging of coalbed methane wells for the purpose of mining coal, or the conversion of coalbed methane wells to vent holes for the purpose of mining coal;

(r) "Workable coalbed" or "workable coal seam" means any seam of coal twenty inches or more in thickness, or any seam of less thickness which is being commercially mined or can be shown to be capable of being commercially mined. (1994, c. 24.)

§ 22-21-3. Application of article; exclusions; application of chapter twenty-two-b to coalbed methane wells.

(a) The provisions of this article apply to (1) all lands in this state under which a coalbed is located, including any lands owned or administered by the state or any agency or subdivision thereof, and (2) any coalbed methane well.

(b) This article does not apply to or affect (1) any well otherwise permitted, approved or regulated under article six, seven, eight, nine or ten [§ 22-6-1 et seq., § 22-7-1 et seq., § 22-8-1 et seq., § 22-9-1 et seq., or § 22-10-1] of this chapter or article eight [§ 22C-8-1 et seq.], chapter twenty-two-c of this code, (2) any ventilation fan, vent hole, mining apparatus, or other facility utilized solely for the purpose of venting any mine or mine area, or (3) the ventilation of any mine or mine area or degasification of any coal seam for the mining of coal.

(c) This article does not apply to or affect subsurface boreholes drilled from the mine face of an underground mine, except that the provisions of sections fifteen, sixteen, seventeen, eighteen and nineteen [§§ 22-21-15, 22-21-16, 22-21-17, 22-21-18 and 22-21-19] shall apply.

(d) To the extent that coalbed methane wells are similar to wells, as defined in section one [§ 22-6-1], article six of this chapter of this code, and the production of coalbed methane is similar to the production of natural gas, coalbed methane wells shall be treated as wells and coalbed methane treated as natural gas and subject to the following sections of article six of this chapter:

(1) The provisions of section three [§ 22-6-3] pertaining to the findings and orders of inspectors concerning violations, determination of reasonable time for abatement, extensions of time for abatement, special inspections, notice of findings and orders;

(2) The provisions of section four [§ 22-6-4] providing for the review of findings and orders by the chief, special inspection, annulment, revision of order and notice;

(3) The provisions of section five [§ 22-6-5] providing for the requirements of findings, orders and notices; posting of findings and orders; and judicial review of final orders of the chief;

(4) The provisions of section twenty-one [§ 22-6-21] providing for protective devices—installation of freshwater casings;

(5) The provisions of section twenty-two [§ 22-6-22] providing for a well log to be filed, contents, and authority to promulgate regulations. In addition to the requirements of such section, the operator shall certify that the well was drilled and completed as shown on the well plat required for a coalbed methane well, or in the alternative, file a revised well plat showing the actual location of the well and the coal seams in which the well is completed for production. Such log and certificate shall be served on all coal owners and operators who must be named in the permit application under section six [§ 22-21-6] of this article;

(6) The provisions of section twenty-eight [§ 22-6-28] providing for supervision by the chief over drilling and reclamation operations, complaints, hearings and appeals;

(7) The provisions of section twenty-nine [§ 22-6-29] providing for special reclamation funds and fees;

(8) The provisions of section thirty [§ 22-6-30] providing for reclamation requirements;

(9) The provisions of section thirty-one [§ 22-6-31] providing for preventing waste of gas, plan of operation required for wasting gas in process of producing oil and rejection thereof;

(10) The provisions of section thirty-two [§ 22-6-32] providing for the right of adjacent owner or operator to prevent waste of gas and recovery of costs;

(11) The provisions of section thirty-three [§ 22-6-33] providing for restraining waste;

(12) The provisions of section thirty-four [§ 22-6-34] providing for offenses and penalties;

(13) The provisions of section thirty-five [§ 22-6-35] providing for civil action for contamination or deprivation of freshwater source or supply and presumption;

(14) The provisions of section thirty-six [§ 22-6-36] providing for declaration of notice by owners and lessees of coal seams and setting out the form of such declaration; and

(15) The provisions of section thirty-nine [§ 22-6-39] providing for injunctive relief.

In addition to the foregoing and subject to the same qualifications, the provisions of article ten [§ 22-10-1 et seq.] of this chapter shall apply to coalbed methane wells. Any well which is abandoned or presumed to be abandoned under the provisions of this article shall be treated as an abandoned well under said article ten. (1994, c. 24.)

§ 22-21-4. Chief; powers and duties generally.

(a) The chief of the office of oil and gas shall have the duty of issuing permits and otherwise supervising the execution and enforcement of the provisions of this article, all subject to the review and approval of the director.

(b) The chief of the office of oil and gas is authorized to enact rules necessary to effectuate the purposes of this article, subject to the review and approval by the director.

(c) In addition to all other powers and duties conferred upon the chief, the chief shall have the power and duty to:

(1) Perform all duties which are expressly imposed upon him by the provisions of this article, as well as duties assigned to him or her by the director;

(2) Perform all duties as the permit issuing authority for the state in all matters pertaining to the exploration, development, production and recovery of coalbed methane in accordance with the provisions of this article;

(3) Perform such acts as may be necessary or appropriate to secure to this state the benefits of federal legislation by establishing programs relating to the exploration, development, production and recovery of coalbed methane, which programs are assumable by the state;

(4) Visit and inspect any coalbed methane well or well site and call for the assistance of any oil and gas inspectors or other employees of the office of oil and gas in the enforcement of the provisions of this article;

(5) Collect the permit application fee for the drilling of a coalbed methane well;

(6) Collect the permit application fee for a drilling unit. (1994, c. 24.)

§ 22-21-5. Duties of the coalbed methane review board; meetings; notice, powers and duties generally.

(a) The board shall meet and hold conferences and hearings at such times and places as are designated by the chairman. The chairman may call a meeting of the board at any time. The chairman shall call a meeting of the board (1) upon receipt from the chief of a completed application for a permit to establish one or more coalbed methane gas drilling units pursuant to this article, (2) upon receipt from the chief of a request pursuant to section seven [§ 22-21-7] of this article or comments or objections pursuant to sections ten and eleven [§§ 22-21-10 and 22-21-11] of this article, or (3) within twenty days upon the written request by another member of the board. Notice of all meetings shall be given to each member of the board by the chairman at least ten days in advance thereof, unless otherwise agreed by the members.

(b) At least ten days prior to every meeting of the board called pursuant to the provisions of this section, the chairman shall also notify the applicant, all persons to whom copies of the application were required to be mailed pursuant to the provisions of section nine of this article and all persons who filed written protests or objections with the board in accordance with the provisions of section ten or eleven [§ 22-21-10 or § 22-21-11] of this article.

(c) A majority of the members of the board constitute a quorum for the transaction of any business. A majority of the members of the board is required to determine any issue brought before it.

(d) The board shall execute and carry out, administer and enforce the provisions of this article in the manner provided herein. Subject to the provisions of section three [§ 22-21-3] of this article, the board has jurisdiction and authority over all persons and property necessary therefor: Provided, That the provisions of this article do not grant to the board authority or power to fix prices of coalbed methane gas.

(e) Within eighteen months of the effective date of this article, the board shall initiate rule-making proceedings to investigate the feasibility of establishing blanket bonds for financial security in addition to the provisions for bonds for financial security under section thirteen [§ 22-21-13] of this article.

(f) The board may:

(1) Take evidence and issue orders concerning applications for drilling permits and coalbed methane gas drilling units in accordance with the provisions of this article;

(2) Promulgate, pursuant to the provisions of chapter twenty-nine-a [§ 29A-1-1 et seq.] of this code, and enforce reasonable rules necessary to govern the practice and procedure before the board;

(3) Make such relevant investigations of records and facilities as it deems proper; and

(4) Issue subpoenas for the attendance of and sworn testimony by witnesses and subpoenas duces tecum for the production of any books, records, maps, charts, diagrams and other pertinent documents in its own name or at the request of any party pursuant to article five [§ 29A-5-1 et seq.], chapter twenty-nine-a. (1994, c. 24.)

Editor's notes. — Concerning the effective date of this section, Acts 1994, the reference in (e) to c. 24, which enacted this section, provided that the act take effect from passage (March 12, 1994).

§ 22-21-6. Permit required for coalbed methane well; permit fee; application; soil erosion control plan; penalties.

(a) It is unlawful for any person to commence, operate, deepen or stimulate any coalbed methane well, to conduct any horizontal drilling of a well commenced from the surface for the purpose of commercial production of coalbed methane, or to convert any existing well, vent hole or other hole to a coalbed methane well, including in any case site preparation work which involves any disturbance of land, without first securing from the chief a permit pursuant to this article.

(b) Every permit application filed under this section shall be verified and shall contain the following:

(1) The names and addresses of (i) the well operator, (ii) the agent required to be designated under subsection (e) of this section, and (iii) every person or entity whom the applicant must notify under any section of this article;

(2) The name and address of each coal operator and each coal owner of record or providing a record declaration of notice pursuant to section thirty-six [§ 22-6-36], article six of this chapter of any coal seam which is (i) to be penetrated by a proposed well, (ii) within seven hundred fifty horizontal feet of any portion of the proposed well bore; or (iii) within one hundred vertical feet of the designated completion coal seams of the proposed well, except that in the case of an application to convert a ventilation hole to a gob well, the name and address only of such owner or operator of the seams to be penetrated by a proposed well shall be necessary;

(3) The well name or such other identification as the chief may require;

(4) The approximate depth to which the well is to be drilled, deepened or converted, the coal seams (stating the depth and thickness of each seam) in which the well will be completed for production, and any other coal seams (including the depth and thickness of each seam) which will be penetrated by the well;

(5) A description of any means to be used to stimulate the well;

(6) If the proposed well will require casing or tubing to be set, the entire casing program for the well, including the size of each string of pipe, the starting point and depth to which each string is to be set, and the extent to which each such string is to be cemented;

(7) If the proposed operation is to convert an existing well, as defined in section one [§ 22-6-1], article six of this chapter, or to convert a vertical ventilation hole to a coalbed methane well, all information required by this section, all formations from which production is anticipated, and any plans to plug any portion of the well;

(8) Except for a gob well or vent hole proposed to be converted to a well, if the proposed coalbed methane well will be completed in some but not all coal seams for production, a plan and design for the well which will protect all workable coal seams which will be penetrated by the well;

(9) If the proposed operations will include horizontal drilling of a well commenced on the surface, a description of such operations, including both the vertical and horizontal alignment and extent of the well from the surface to total depth;

(10) Any other relevant information which the chief may require by rule.

(c) Each application for a coalbed methane well permit shall be accompanied by the following:

(1) The applicable bond prescribed by section eight [§ 22-21-8] of this article;

(2) A permit application fee of two hundred fifty dollars;

(3) The erosion and sediment control plan required under subsection (d) of this section;

(4) The consent and agreement of the coal owner as required by section seven [§ 22-21-7] and, if applicable, section twenty [§ 22-21-20] of this article;

(5) A plat prepared by a licensed land surveyor or registered engineer showing the district and county in which the drill site is located, the name of the surface owner of the drill site tract, the acreage of the same, the names of the surface owners of adjacent tracts, the names of all coal owners underlying the drill site tract, the proposed or actual location of the well determined by a survey, the courses and distances of such location from two permanent points or landmarks on said tract, the location of any other existing or permitted coalbed methane well or any oil or gas well located within two thousand five hundred feet of the drill site, the number to be given the coalbed methane well, the proposed date for completion of drilling, the proposed date for any stimulation of the well, and if horizontal drilling of a well commenced on the surface is proposed, the vertical and horizontal alignment and extent of the well;

(6) A certificate by the applicant that the notice requirements of section nine [§ 22-21-9] of this article have been satisfied by the applicant. Such certification may be by affidavit of personal service, or the return receipt card, or other postal receipt, for certified mailing.

(d) An erosion and sediment control plan shall accompany each application for a permit. Such plan shall contain methods of stabilization and drainage, including a map of the project area indicating the amount of acreage disturbed. The erosion and sediment control plan shall meet the minimum requirements of the West Virginia erosion and sediment control manual as adopted and from time to time amended by the office of oil and gas in consultation with the several soil conservation districts pursuant to the control program established in this state through section 208 of the federal Water Pollution Control Act Amendments of 1972. The erosion and sediment control plan shall become part of the terms and conditions of a permit and the provisions of the plan shall be carried out where applicable in operations under the permit. The erosion and sediment control plan shall set out the proposed method of reclamation which shall comply with the requirements of section thirty [§ 22-6-30], article six of this chapter.

(e) The well operator named in such application shall designate the name and address of an agent for such operator who shall be the attorney-in-fact for the operator and who shall be a resident of the state of West Virginia, upon whom notices, orders or other communications issued pursuant to this article may be served, and upon whom process may be served. Every well operator required to designate an agent under this section shall within five days after the termination of such designation notify the office of such termination and designate a new agent.

(f) The well owner or operator shall install the permit number as issued by the chief in a legible and permanent manner to the well upon completion of any permitted work. The dimensions, specifications and manner of installation shall be in accordance with the rules of the chief.

(g) The chief shall deny the issuance of a permit if he or she determines that the applicant has committed a substantial violation of a previously issued permit, including the erosion and sediment control plan, or a substantial violation of one or more of the rules promulgated hereunder, and has failed to abate or seek review of the violation. In the event that the chief finds that a substantial violation has occurred with respect to existing operations and that the operator has failed to abate or seek review of the violation in the time prescribed, he or she may suspend the permit on which said violation exists, after which suspension the operator shall forthwith cease all work being conducted under the permit until the chief reinstates the permit, at which time the work may be continued. The chief shall make written findings of any such determination made by him or her and may enforce the same in the circuit courts of this state and the operator may appeal such suspension pursuant to the provisions of section twenty-five [§ 22-21-25] of this article. The chief shall make a written finding of any such determination.

(h) Any person who violates any provision of this section shall be guilty of a misdemeanor, and, upon conviction thereof, shall be fined not more than five thousand dollars, or be imprisoned in the county jail not more than twelve months, or both fined and imprisoned. (1994, c. 24.)

Editor's notes. — The federal Water Pollution Control Act Amendments of 1972 are codified as 33 U.S.C. 1288 et seq.

§ 22-21-7. Consent and agreement of coal owner or operator.

(a) No permit shall be issued for a coalbed methane well unless and until the applicant has obtained and filed with the chief a consent and agreement from each owner and each operator of any workable coal seam twenty-eight inches or more in thickness which is within seven hundred fifty horizontal feet of the proposed well bore and (i) which coal seam the applicant proposes to stimulate or (ii) which coal seam is within one hundred vertical feet above or below a coal seam which the applicant proposes to stimulate. The requirement for consent and agreement contained in this section shall not be considered to impair, abridge or affect any contractual rights or objections arising out of a contract or lease which provides for the development of coalbed methane and stimulation of wells between the applicant and any coal owner or operator and the existence of any such contract or lease shall constitute a waiver of the requirement to file an additional signed consent and agreement. Such consent and agreement must provide: (i) That such coal owner or operator has been provided with a copy of the application for permit as required by section six [§ 22-21-6] of this article and with a copy of all plats and documents which must accompany the application and (ii) that such coal owner or operator consents and agrees to the stimulation of the coal seam as described in such application.

(b) In the absence of the applicant submitting the consent described in subsection (a) above, the applicant may submit a request for hearing before the board accompanied by an affidavit which shall include the following:

(1) A statement that a coal owner or operator as described in subsection (a) of this section has refused to provide written authorization to stimulate the well;

(2) A statement detailing the efforts undertaken to obtain such authorization;

(3) A statement setting out any known reasons for the authorization not being provided;

(4) A statement or other information in addition to that provided pursuant to subdivision (5), subsection (b), section six [§ 22-21-6(b)(5)] of this article necessary to provide prima facie evidence that the proposed method of stimulation will not render the coal seam unworkable, or considering all factors, impair mine safety.

(c) Upon receipt of a request and affidavit as set forth in subsection (b) of this section, the chief shall forward the application to the board to consider the proposed stimulation, or if other objections or notices are filed requiring a hearing before the board, the request hereunder may be included for consideration by the board along with other matters related to the application.

(d) If the authorization of a coal owner or operator has been withheld based upon reasons related to safety, the chief shall, concurrent with submission of the request and affidavit to the board, submit a copy of the application to the director of the office of miners' health, safety and training who shall review the application as to issues of mine safety and within thirty days submit recommendations to the board. (1994, c. 24.)

§ 22-21-8. Performance bonds; corporate surety or other security.

(a) No permit shall be issued pursuant to this article unless a bond is or has been furnished as provided in this section.

(b) A separate bond may be furnished for a particular coalbed methane well in the sum of ten thousand dollars, payable to the state of West Virginia, conditioned on full compliance with all laws and rules relating to the drilling, operation and stimulation of such wells, to the plugging, abandonment and reclamation thereof, and for furnishing such reports and information as may be required by the chief.

(c) When an operator makes or has made application for permits to drill, operate or stimulate more than one coalbed methane well or a combination of coalbed methane wells and wells regulated under article one [§ 22B-1-1 et seq.], chapter twenty-two-b of this code, the operator may in lieu of furnishing a separate bond furnish a blanket bond in the sum of fifty thousand dollars, payable to the state of West Virginia, and conditioned as stated in subsection (b) of this section.

(d) All bonds submitted hereunder shall have a corporate bonding or surety company authorized to do business in the state of West Virginia as surety thereon, or in lieu of a corporate surety, the operator may elect to deposit with the chief cash, collateral securities or any combination thereof as provided for in subsection (d), section twenty-six [§ 22-6-26(d)], article six of this chapter.

(e) For purposes of bonding requirements, a coalbed methane well shall be treated as a well, as defined and regulated in article one [§ 22B-1-1 et seq.], chapter twenty-two-b of this code, and the provisions of subsections (e), (g), (h), (i) and (j) of section twenty-six [§§ 22B-1-26(e), 22B-1-26(g), 22B-1-26(h), 22B-1-26(i) and 22B-1-26(j)] thereof shall apply. (1994, c. 24.)

Editor's notes. — Section 22B-1-26, referred to in (e) above, was repealed by Acts 1944, c. 61. A similar provision is now codified at § 22-6-26.

§ 22-21-9. Notice to owners.

(a) Prior to filing an application for a permit for a coalbed methane well under this article, the applicant shall deliver by personal service or by certified mail, return receipt requested, copies of the application, well plat and erosion and sediment control plan to the following:

(1) The owners of record of the surface of the tract on which the coalbed methane well is to be located;

(2) The owners of record of the surface of any tract which is to be utilized for roads or other land disturbance;

(3) Each coal owner and each coal operator (i) from whom a consent and agreement provided for in section seven [§ 22-21-7] of this article is required, or (ii) whose coal seam will be penetrated by the proposed coalbed methane well or is within seven hundred fifty feet of any portion of the well bore; and

(4) Each owner and lessee of record and each operator of natural gas surrounding the well bore and existing in formations above the top of the uppermost member of the "Onondaga Group" or at a depth less than six thousand feet, whichever is shallower. Notices to gas operators shall be sufficient if served upon the agent of record with the office of oil and gas.

(b) If more than three tenants in common or other co-owners of interests described in subsection (a) of this section hold interests in such lands, the applicant may serve the documents required upon the person described in the records of the sheriff required to be maintained pursuant to section eight [§ 11A-1-8], article one, chapter eleven-a of this code; provided, that all owners and operators occupying or operating on the tracts where the well work is proposed to be located at the filing date of the permit application shall receive actual service of the documents required by subsection (a) of this section.

(c) Prior to filing an application for a permit for a coalbed methane well under this article, the applicant shall cause to be published in the county in which the well is located or to be located a Class II legal advertisement as described in section two [§ 59-3-2], article three, chapter fifty-nine of this code, containing such notice and information as the chief shall prescribe by rule, with the first publication date being no more than ten days after the filing of the permit application.

(d) Materials served upon persons described in subsections (a) and (b) of this section shall contain a statement of the methods and time limits for filing comment and objection, who may file comment and objection, the name and address of the chief with whom the comment and objection must be filed, the ability to obtain additional information from the chief, the fact that such persons may request notice of the permit decision, and a list of persons qualified to test water as provided in this section.

(e) Any person entitled to submit comment or objection shall also be entitled to receive a copy of the permit as issued or a copy of the order denying the permit if such person requests the receipt thereof as a part of the comment or objection concerning said permit application.

(f) Persons entitled to notice may contact the district office of the office of oil and gas to ascertain the names and location of water testing laboratories in the area capable and qualified to test water supplies in accordance with standard accepted methods. In compiling such list of names the office of oil and gas shall consult with the state and local health departments. (1994, c. 24.)

§ 22-21-10. Procedure for filing comments.

All persons described in subsection (a), section nine [§ 22-21-9(a)] of this article may file comments with the chief as to the location or construction of the applicant's proposed well within fifteen days after the application is filed with the chief. (1994, c. 24.)

§ 22-21-11. Objections or comments to coalbed methane wells by coal owner or operator; hearings.

The owner or operator of any coal seam whose interests may be adversely affected by a coalbed methane well may, within fifteen days from the receipt of notice required by section nine [§ 22-21-9] of this article, file objections in writing to such proposed drilling with the chief, setting out the grounds on which such objections are based. (1994, c. 24.)

§ 22-21-12. Review of application; issuance of permit in the absence of objections; copy of permits to county assessor.

The chief shall review each application for a permit and shall determine whether or not a permit shall be issued.

No permit shall be issued less than fifteen days after the filing date of the application for any well work except plugging or replugging; and no permit for plugging or replugging shall be issued less than five days after the filing date of the application except a permit for plugging or replugging a dry hole: Provided, That if the applicant certifies that all persons entitled to notice of the application under the provisions of this article have been served in person or by certified mail, return receipt requested, with a copy of the permit application, including the erosion and sediment control plan, if required, and the plat required by section six [§ 22-21-6] of this article, and further files written statements of no objection by all such persons, the chief may issue the permit at any time.

The chief may cause such inspections to be made of the proposed location as to assure adequate review of the application. The permit shall not be issued, or shall be conditioned, including conditions with respect to the location of the well and access roads, prior to issuance if the chief determines that:

(1) The proposed well work will constitute a hazard to the safety of persons; or

(2) The plan for soil erosion and sediment control is not adequate or effective; or

(3) Damage would occur to publicly owned lands or resources; or

(4) The proposed well work fails to protect fresh water sources or supplies.

Upon the issuance of any permit pursuant to the provisions of this article, the chief shall transmit a copy of such permit to the office of the assessor for the county in which the well is located. (1994, c. 24.)

§ 22-21-13. Review board hearing; findings; order.

(a) If comment or objection is filed under section ten or eleven [§ 22-21-10 or § 22-21-11] of this article, the chief shall forthwith provide to the chairman of the coalbed methane review board a copy of any such objection or comment, together with the application for a permit for the coalbed methane well in question, the plat filed therewith and such other information accompanying the permit as may relate to the comment or grounds for the objection.

(b) The review board shall forthwith schedule a hearing for the purpose of considering such objection or comment. Notice shall be given fifteen days in advance of the hearing to any person filing comment or objection, and to any person to whom notice of the application required, and to any applicant, and the review board shall hold such hearing within thirty days after the deadline for filing objection or comment. At such hearing the review board shall consider the matters raised in any objection or comment, including surface topography and use, and with respect to the ability to mine any affected coal seam safely and the protection of any such seam for future mining shall consider the following:

(1) Whether the drilling location is above or in close proximity to any mine opening, shaft, entry, travelway, airway, haulageway, drainageway or passageway, or to any proposed extension thereof, any abandoned, operating coal mine or any coal mine already surveyed and platted but not yet being operated;

(2) Whether the proposed drilling can reasonably be done through an existing or planned pillar of coal, or in close proximity to an existing or planned pillar of coal, taking into consideration the surface topography;

(3) Whether the proposed well can be drilled safely, taking into consideration the dangers from creeps, squeezes or other disturbances due to the extraction of coal;

(4) The extent to which the proposed drilling location unreasonably interferes with the safe recovery of coal or coalbed methane;

(5) The extent to which the proposed drilling location will unreasonably interfere with present or future coal mining operations on the surface including, but not limited to, operations subject to the provisions of article three [§ 22-3-1 et seq.] of this chapter;

(6) The feasibility of moving the proposed drilling location to a mined-out area, below the coal outcrop, or to some other location;

(7) The feasibility of a drilling moratorium for not more than one year in order to permit the completion of imminent coal mining operations;

(8) The methods proposed for the recovery of coal and coalbed methane;

(9) The practicality of locating the well on a uniform pattern with other wells;

(10) The surface topography and use;

(11) Whether any stimulation of the coal seam will render such seam or any other workable coal seams unmineable or unsafe for mining; and

(12) Whether the director of the office of miners' health, safety and training has submitted recommendations as to the safety of any proposed stimulation. In considering any recommendations made by the director of the office of miners' health, safety and training, the board shall incorporate such recommendations in its findings, conclusions and order unless the board determines that there is clear and convincing evidence on the record supporting a finding, conclusion or order inconsistent with such recommendations.

(c) In weighing the evidence presented to the board the applicant shall have the burden of proving by clear and convincing evidence that stimulation of a workable coal seam of twenty-eight inches or more in thickness will not render such seam or any other workable coal seam of twenty-eight inches or more in thickness unmineable or unsafe for mining.

(d) Upon consideration of the matters raised at the hearing, the review board shall render a decision based upon the ability to mine any affected coal seam safely and the protection of any coal seam for safe future mining, shall enter a written order containing findings of fact and conclusions which address any relevant considerations in subsection (b) of this section and based thereon shall issue and file with the chief a written order directing him to:

(1) Refuse a drilling permit; or

(2) Issue a drilling permit for the proposed drilling location; or

(3) Issue a drilling permit for an alternate drilling location different from that requested by the applicant; or

(4) Issue a drilling permit either for the proposed drilling location or for an alternative drilling location different from that requested by the applicant, provided such alternate location is covered by the agreement and consent required by section seven [§ 22-21-7] of this article, but not allow the drilling of the well for a period of not more than one year from the date of issuance of such permit; or

(5) Issue a permit authorizing the applicant to stimulate the well in the absence of consent of the affected coal operators or owners of workable coal seams of twenty-eight inches or more in thickness as described in subsection (a) of section seven [§ 22-21-7(a)] of this article, as proposed or as modified by the order of the board. Such order shall further provide for the applicant to furnish evidence of financial security in one of the following forms: (a) A corporate surety bond having on it a company authorized to do business in this state as surety; (b) bonds of the United States or agency thereof, or those guaranteed by, or for which the credit of the United States or agency therefor is pledged for the payment of the principal and interest thereof; (c) direct general obligation bonds of this state, or any other state, or territory of the United States, or the District of Columbia if such other state, territory or the District of Columbia has the power to levy taxes for the payment of the principal and interest of such securities, and if at the time of the deposit such other state, territory or the District of Columbia is not in default in the payment of any part of the principal or interest owing by it upon any part of its funded indebtedness; (d) direct general obligation bonds of any county, district, city, town, village, school district or other political subdivision of this state issued pursuant to law and payable from ad valorem taxes levied on all taxable property located herein, that the total indebtedness after deducting sinking funds and all debts incurred for self-sustaining public works does not exceed five percent of the assessed value of all taxable property therein at the time of the last assessment made before the date of such deposit, and that the issuer has not, within five years prior to the making thereof, been in default for more than ninety days in the payment of any part of the principal or interest on any debt, evidenced by its bonds; (e) revenue bonds issued by this state or any

agency of this state when such bonds are payable from revenues or earnings specifically pledged for the payment of principal and interest, and a lawful sinking fund or reserve fund has been established and is being maintained for the payment of such bonds; (f) revenue bonds issued by a municipality in this state for the acquisition, construction, improvement or extension of a waterworks system, or a sewerage system, or a combined waterworks and sewerage system, when such bonds are payable from revenue or earnings specifically pledged for the payment of principal and interest, and a lawful sinking fund or reserve fund has been established and is being maintained for the payment of such bonds; (g) revenue bonds issued by a public service board of a public service district in this state for the acquisition, construction, improvement or extension of any public service properties, or for the reimbursement of payment of the costs and expenses of creating the district, when such bonds are payable from revenue or earnings specifically pledged for the payment of principal and interest, and a lawful sinking fund or reserve fund has been established and is being maintained for the payment of such bonds; (h) revenue bonds issued by a board of trustees of a sanitary district in this state for the corporate purposes of such district, when such bonds are payable from revenue or earnings specifically pledged for the payment of principal and interest, and a lawful sinking fund or reserve fund has been established and is being maintained for the payment of such bonds; and (i) bonds issued by a federal land bank or home owners' loan corporation; (j) cash; or (k) any combination of the above. The operator of the well shall be entitled to all interest and income earned on the collateral securities provided pursuant to the order. Such security given shall be placed in an escrow account. The operator providing security shall be entitled from time to time to receive, upon written order of the board, the whole or any portion of such securities upon depositing in lieu thereof cash equal to the approved securities of the classes herein specified.

The amount of such financial security shall be set by order of the board but shall in no event exceed an amount of fifty thousand dollars. In setting the amount of financial security, the board shall consider the total amount of coal which could be at risk of economic harm, demonstrated experience in the locale and seams of the proposed stimulation, the probability of damages to the seam and the likelihood of commercial recovery within thirty years of the date of stimulation.

Such financial security shall remain in force until two years after the affected coal is mined or for a period of thirty years after stimulation of the coal seam or until final resolution of any action timely instituted to collect the bond proceeds, whichever first occurs.

Any coal owner or operator may assert a claim to the posted financial security by instituting an action therefor in the circuit court of the county where the well is located or where the damages occurred.

Upon receipt of such review board order, the chief shall promptly undertake the action directed by the review board, provided that all other provisions of this article have been complied with. All permits issued by the chief pursuant to this section shall be effective ten days after issuance unless the review board orders the chief to stay the effectiveness of a permit for a period not to exceed thirty days from the date of issuance.

If a permit is issued, the chief shall indicate the approved drilling location on the plat filed with the application for a permit and shall number and keep an index of and docket each plat, the name of the well operator, the names and addresses of all persons notified, the dates of conferences, hearings and all other actions taken by the chief and the review board. The chief shall also prepare a record of the proceedings, which record shall include all applications, plats and other documents filed with the chief, all notices given and proof of service thereof, all orders issued, all permits issued and a transcript of the hearing. The record prepared by the chief shall be open to inspection by the public.

(e) Notwithstanding any finding or determination made by the board, in the event a workable coal seam twenty-eight inches or more in thickness is stimulated absent the consent of the coal owner or operator, the applicant and well operator shall be liable in tort without proof of negligence for any damage to such coal seam stimulated or any other workable coal seam twenty-eight inches or more in thickness within seven hundred fifty horizontal feet or one hundred vertical feet of the stimulation and for damages to any mining equipment proximately caused by such stimulation. Such applicant and well operator shall indemnify and hold the coal owner and coal operator harmless against any liability for injury, death or damage to property proximately caused by the stimulation. (1994, c. 24.)

§ 22-21-14. Protective devices required when a coalbed methane well penetrates workable coal bed; when a coalbed methane well is drilled through horizon of coal bed from which coal has been removed; notice of stimulation; results of stimulation.

(a) Except for those coalbeds which the coalbed methane operator proposes to complete for production of coalbed methane or where a ventilation hole is being converted to a well, when a well penetrates one or more workable coal beds, the well operator shall run and cement a string of casing in the hole through the workable coalbed or beds in such a manner as will exclude all oil, gas or gas pressure as may be found in such coalbed or beds. Such string of casing shall be circulated and cemented in such a manner as provided for in reasonable rules promulgated by the chief in accordance with the provisions of chapter twenty-nine-a [§ 29A-1-1 et seq.]. After any such string of casing has been so run and cemented to the surface, drilling may proceed to the permitted depth.

(b) When a coalbed methane well is drilled through the horizon of a coalbed from which the coal has been removed, the hole shall be drilled at least thirty feet below the coalbed, of a size sufficient to permit the placing of a liner which shall start not less than twenty feet above it. Within this liner, which may be welded to the casing to be used, shall be centrally placed the largest sized casing to be used in the well, and the space between the liner and casing shall be filed with cement as they are lowered into the hole. Cement shall be placed in the bottom of the hole to a depth of twenty feet to form a sealed seat for both liner and casing. Following the setting of the liner, drilling shall proceed in the manner provided above. Should it be found necessary to drill through the horizon of two or more workable coalbeds from which the coal has been removed, such liner shall be started not less than twenty feet below the lowest such horizon penetrated and shall extend to a point not less than twenty feet above the highest such horizon.

(c) At least five days prior to the stimulation of any coal seam the well operator shall give the coal owner and operator notice of the date and time of stimulation and shall allow the coal owner or operator to have an observer present at the site at the coal owner or operator's risk and cost. Within thirty days after stimulation is completed, the well operator shall certify the actual stimulation procedure used including, but not limited to, the fluid injection rate, the injection pressure, the volume and components of fluid injected and the amount and components of the propping agent, if any.

(d) The chief may grant variances to the requirements of this section where such variance would promote the extraction of coalbed methane without affecting mine safety. (1994, c. 24.)

§ 22-21-15. Drilling units and pooling of interests.

(a) In the absence of a voluntary agreement, an operator, owner or other party claiming an ownership interest in the coalbed methane may file an application with the chief to pool (i) separately owned interests in a single tract, (ii) separately owned tracts, (iii) separately owned interests in any tract, and (iv) any combination of (i), (ii) and (iii) to form a drilling unit for the production of coalbed methane from one or more coalbed methane wells.

(b) The application for a drilling unit may accompany the application for a permit for a coalbed methane well or be filed as a supplement to the permit application. Such application shall be verified by the applicant and contain the following information for the proposed unit:

(1) The identity of each well and operator as set out in the well permit application;

(2) Each well number, if one has been assigned;

(3) The acreage of the proposed unit, the identity and acreage of each separate tract to be included in the proposed unit, and, where parts of tracts are included, the acreage of such parts;

(4) The district and county in which the unit is located;

(5) The names and addresses of the owners of the coal and coalbed methane underlying each separate tract, or the portion thereof which is to be included in the unit, any lessees or operators thereof, any coalbed methane owners not otherwise named, and any other claimants thereto known to the applicant. When any coal seam is separately owned, the list of names shall identify such separate ownership giving the names of the separately owned seams;

(6) A statement describing the actions taken by the applicant to obtain a voluntary agreement from each interest owner or claimant named in the application from which agreement has not been obtained;

(7) Other pertinent and relevant information as the chief may prescribe by rules.

(c) The application for a drilling unit shall be accompanied with the following:

(1) A plat prepared by a licensed land surveyor or registered professional engineer showing the location of the coalbed methane well or wells, or proposed well or wells, the boundary and acreage of the proposed drilling unit, the boundary and acreage of each tract contained in the unit and, where parts of tracts are included, the boundary and acreage of such parts, a name identification of each tract, and the district and county in which the unit is located. All boundaries must be shown with courses and distances;

(2) A permit application fee of two hundred fifty dollars;

(3) A certificate by the applicant that the notice requirements of section sixteen [§ 22-21-16] of this article were satisfied by the applicant. Such certification may be by affidavit of personal service, or the return receipt card, or other postal receipt, for certified mailing;

(4) An estimate of the cost, or the actual cost if known, of drilling, completing, equipping, operating, plugging and abandoning any well or wells in the proposed unit. (1994, c. 24.)

§ 22-21-16. Notice to owners.

(a) At least thirty days prior to the date set for hearing under section seventeen [§ 22-21-17] of this article, the applicant shall deliver by personal service or by certified mail, return receipt requested, notice to the following:

(1) Each coal owner and coal operator of any coal seam underlying any tract or portion thereof which is proposed to be included in the unit;

(2) Each owner and lessee of record and each operator of natural gas surrounding the well bore and existing in formations above the top of the uppermost member of the "Onondaga Group" or at a depth less than six thousand feet, whichever is shallower. Notices to gas operators shall be sufficient if served upon the agent of record with the office of oil and gas;

(3) Any coalbed methane owner to the extent not otherwise named; and

(4) Any other person or entity known to the operator to have an interest in the coal or coalbed methane.

(b) The notice required by subsection (a) of this section shall specify a time and place for a conference and a hearing on this application, shall advise the persons notified that the applicant has filed an application for a drilling unit for the production of coalbed methane, that they may be present and object or offer comments to the formation of the proposed unit, and shall be accompanied with copies of (i) the permit application for the coalbed methane well, (ii) the permit application for the drilling unit, and (iii) the plat of the drilling unit. (1994, c. 24.)

§ 22-21-17. Review of application; hearing; pooling order; spacing; operator; elections; working interests, royalty interests, carried interests, escrow account for conflicting claims, division order.

(a) Prior to the time fixed for a hearing under subsection (b) of this section, the board shall also set a time and place for a conference between the proposed applicant to operate a coalbed methane drilling unit and all persons identified in the application as having an interest in the coalbed methane or being a claimant if such interests are disputed, who have not entered into a voluntary agreement. At such conference the applicant and such other persons present or represented having an interest in the proposed unit shall be given an opportunity to enter into voluntary agreements for the development of the unit upon reasonable terms and conditions.

No order may be issued by the board as to any unit unless the applicant submits at the hearing a verified statement setting forth the results of the conference. If agreement is reached with all parties to the conference, the board shall find the unit is a voluntary unit and issue an order consistent with such finding.

(b) The review board shall, upon request of a proposed applicant for a drilling unit or upon request of a coal owner or operator, provide a convenient date and time for a hearing on the application for a drilling unit, which hearing date shall be no sooner than thirty-five days nor more than sixty days of the date the request for hearing is made. The review board shall review the application and on the date specified for a hearing shall conduct a public hearing. The review board shall take evidence, making a record thereof, and consider:

(1) The area which may be drained efficiently and economically by the proposed coalbed methane well or wells;

(2) The plan of development of the coal and the need for proper ventilation of any mines or degasification of any affected coal seams;

(3) The nature and character of any coal seam or seams which will be affected by the coalbed methane well or wells;

(4) The surface topography and property lines of the lands underlaid by the coal seams to be included in the unit;

(5) Evidence relevant to the proper boundary of the drilling unit;

(6) The nature and extent of ownership of each coalbed methane owner or claimant and whether conflicting claims exist;

(7) Whether the applicant for the drilling unit proposes to be the operator of the coalbed methane well or wells within the unit; and if so, whether such applicant has a lease or other agreement from the owners or claimants of a majority interest in the proposed drilling unit;

(8) Whether a disagreement exists among the coalbed methane owners or claimants over the designation of the operator for any coalbed methane wells within the unit, and if so, relevant evidence to determine which operator can properly and efficiently develop the coalbed methane within the unit for the benefit of the majority of the coalbed methane owners;

(9) If more than one person is interested in operating a well within the unit, the estimated cost submitted by each such person for drilling, completing, operating and marketing the coalbed methane from any proposed well or wells; and

(10) Any other available geological or scientific data pertaining to the pool which is proposed to be developed.

(c) The review board shall take into account the evidence introduced, comments received and any objections at the hearing, and if satisfied that a drilling unit should not be established, shall enter an order denying the application. If the review board is satisfied that a drilling unit should be established, it shall enter a pooling order establishing a drilling unit. Such pooling order shall:

(1) Establish the boundary of the proposed unit, making such adjustment in the boundary as is just;

(2) Authorize the drilling and operation of a coalbed methane well or wells for production of coalbed methane from the pooled acreage;

(3) Establish minimum distances for any wells in the unit and for other wells which would drain the pooled acreage;

(4) Designate the operator who will be authorized to drill, complete and operate any well or wells in the unit;

(5) Establish a reasonable fee for the operator for operating costs, which shall include routine maintenance of the well and all accounting necessary to pay all expenses, royalties and amounts due working interest owners;

(6) Such other findings and provisions as are appropriate for each order.

(d) The operator designated in such order shall be responsible for drilling, completing, equipping, operating, plugging and abandoning the well, shall market all production therefrom, shall collect all proceeds therefor, and shall distribute such proceeds in accordance with the division order issued by the review board.

(e) Upon issuance of the pooling order, the coalbed methane owners or any lessee of any such owners or any claimants thereto may make one of the following elections within thirty days after issuance of the order:

(1) An election to sell or lease its interest to the operator on such terms as the parties may agree, or if unable to agree, upon such terms as are set forth by the board in its order;

(2) An election to become a working interest owner by participating in the risk and cost of the well; or

(3) An election to participate in the operation of the well as a carried interest owner.

Any entity which does not make an election within said thirty days prescribed herein shall be deemed to have elected to sell or lease under election (1) above.

(f) The working interest in the well shall include (i) the right to participate in decisions regarding expenditures in excess of operating costs, taxes, any royalties in excess of one eighth, and other costs and expenses allowed in the pooling order and (ii) the obligation to pay for all expenditures. The working interest shall exist in (i) all owners who participate in the risk and cost of drilling and completing the well and (ii) carried interest owners after recoupment provided in subsection (h) of this section. The working interest owners' net revenue share shall be seven eighths of the proceeds of sales of coalbed methane at the wellhead after deduction of operating costs, taxes, any royalties in excess of one eighth, and other costs and expenses allowed in a pooling order. Unless the working interest owners otherwise agree, the working interest owners shall share in all costs and decisions in proportion to their ownership interest in the unit. If any working interest owner deposits or contributes amounts in the escrow account which exceed actual costs, such owner shall be entitled to a refund; and if amounts deposited or contributed are less than actual costs, such owner shall make a deposit or contribution for the deficiency.

(g) The royalty interest in a well shall include the right to receive one eighth of the gross proceeds resulting from the sale of methane at the wellhead and such interest shall exist in the coalbed methane owners: Provided, That any coalbed methane owner who in good faith has entered a lease or other contract prior to receiving notice of an application to form the drilling unit as provided herein, shall be entitled to such owner's fractional interest in the royalty calculated at a rate provided for in such contract. Each such owner shall be entitled to share in the royalty in proportion to his or her fractional interest in the unit.

(h) Where a coalbed methane owner elects to become a carried interest owner, such owner shall be entitled to his or her proportionate share of the working interest after the other working interest owners have recouped three hundred percent of the reasonable capital costs of the well or wells, including drilling, completing, equipping, plugging and abandoning and any further costs of reworking or other improvements of a capital nature.

(i) Each pooling order issued shall provide for the establishment of an escrow account into which the payment of costs and proceeds attributable to any conflicting interests shall be deposited and held for the interest of the claimants as follows:

(1) Each participating working interest owner, except for the operator, shall deposit in the escrow account its proportionate share of the costs allocable to the ownership interest claimed by such working interest owner.

(2) The operator shall deposit in the escrow account all proceeds attributable to the conflicting interests of any coalbed methane owners who lease, or are deemed to have leased, their interest, plus all proceeds in excess of operational expenses, as allowed in the pooling order, attributable to the conflicting working and carried interest owners.

(j) After each coalbed methane owner has made, or has been deemed to have made, an election under subsection (e) of this section, the review board shall enter a division order which shall set out the net revenue interest of each working interest owner, including each carried interest owner and the royalty interest of each coalbed methane owner. Thereafter payments shall be made to working interest owners, carried interest owners and royalty interest owners in accordance with the division order, except that payments attributable to conflicting claims shall be deposited in the escrow account. The fractional interest of each owner shall be expressed as a decimal carried to the sixth place.

(k) Upon resolution of conflicting claims either by voluntary agreement of the parties or a final judicial determination, the review board shall enter a revised division order in accordance with such agreement or determination and all amounts in escrow shall be distributed as follows:

(1) Each legally entitled working interest owner shall receive its proportionate share of the proceeds attributable to the conflicting ownership interests;

(2) Each legally entitled carried interest owner shall receive its proportionate share of the proceeds attributable to the conflicting ownership interests, after recoupment of amounts provided in subsection (h) of this section;

(3) Each legally entitled entity leasing, or deemed to have leased, its coalbed methane shall receive a share of the royalty proceeds attributable to the conflicting interests; and

(4) The operator shall receive the costs contributed to the escrow account by each legally entitled participating working interest owner.

(*l*) The review board shall enact rules for the administration and protection of funds delivered to escrow accounts.

(m) No provision of this section or article shall obviate the requirement that the coal owner's consent and agreement be obtained prior to the issuance of a permit as required under section seven [§ 22-21-7] of this article. (1994, c. 24.)

§ 22-21-18. Operation on drilling units.

All operations including, but not limited to, the commencement, drilling or operation of a well upon a drilling unit for which a pooling order has been entered, are hereby deemed to be operations on each separately owned tract in the drilling unit by the several owners. That portion of the production allocated to a separately owned tract included in a drilling unit is hereby deemed to be produced from that tract. (1994, c. 24.)

§ 22-21-19. Validity of unit agreements.

No agreement between or among coalbed methane operators or owners entered into for the development of coalbed methane or forming drilling units therefor may be held to violate the statutory or common law of this state prohibiting monopolies or acts, arrangements, contracts, combinations or conspiracies in restraint of trade or commerce. (1994, c. 24.)

§ 22-21-20. Spacing.

No coalbed methane well may be drilled closer than one hundred feet of the outside boundary of the coal tract from which coalbed methane is or will be produced or within one thousand six hundred linear feet of the location of an existing well for which a permit application is on file, unless all owners and operators of any affected workable coal seams agree in writing. Affected workable coal seams for purposes of this section shall be those which will be penetrated or those seams more than twenty-eight inches in thickness from which production is targeted. Spacing shall otherwise be as provided in a pooling order issued by the chief, an order establishing special field rules or an order issued by the review board. (1994, c. 24.)

§ 22-21-21. Dry or abandoned wells.

Any coalbed methane well which is completed as a dry hole or which has not produced coalbed methane in paying quantities for a period of twelve consecutive months shall be presumed to have been abandoned and the operator shall promptly plug the well and reclaim all surface land affected by the well in accordance with the provisions of this article, unless the operator furnishes satisfactory proof to the chief that there is a bona fide future use for such well in accordance with the rules promulgated under article six [§ 22-6-1 et seq.] of this chapter. (1994, c. 24.)

§ 22-21-22. Notice of plugging and reclamation of well; right to take well; objection; plugging order; plugging for minethrough.

(a) Prior to the commencement of plugging operations the operator shall give thirty days' advance notice to the chief and to all coal owners and operators whose names and addresses would be required for a permit application under subdivision (2), subsection (b), section six [§ 22-21-6(b)(2)] of this article as of the date of the notice. Such notice shall set out the number and other identification of the well, a copy of the well plat, the date plugging will commence, and the manner and method of plugging.

(b) Any coal owner or operator whose coal seam is affected by such well shall have the following rights:

(1) To convert the well to a vent hole or otherwise take the well. In such event the chief, upon determination that the coal owner or operator has placed the well under a mining permit, shall release the well operator's bond and the well operator shall be relieved of further responsibility for the well; and

(2) To file comment or objection with the chief, within fifteen days after receipt of notice of intent to plug, with respect to the proposed manner or method of plugging. The chief shall consider any such comment or objection and issue an order specifying the manner and method of plugging and reclamation.

(c) Whenever any coalbed methane well is located in that portion of a coal seam which will be mined within six months, the well operator shall, within sixty days after notice from the coal owner or coal operator that the well is to be mined through, plug the well in such manner that the well can be safely mined through. (1994, c. 24.)

§ 22-21-23. Method of plugging.

All coalbed methane wells shall be plugged in such a manner that any workable coal seam surrounding the well can be safely mined and that the well can be mined through. The chief shall promulgate rules specifying the manner and method of plugging coalbed methane wells and in doing so, or in entering any order for such plugging and reclamation, shall give special consideration to the ability to mine any affected coal seam safely and the protection of any affected coal seam for future mining. (1994, c. 24.)

§ 22-21-24. Existing mining rights.

Nothing in this article shall be construed to affect the mining and other property rights of any coal owner nor shall any provision of this article be construed to preclude a coal operator from removing support of the surface and any structure or facilities thereon and other strata as such rights may exist in any severance deed or other contract. (1994, c. 24.)

§ 22-21-25. Judicial review; appeal to supreme court of appeals; legal representation for review board.

(a) Any person adversely affected by an order of the chief or review board is entitled to judicial review. All of the pertinent provisions of section four [§ 29A-5-4], article five, chapter twenty-nine-a of this code apply to and govern the judicial review.

(b) The judgment of the circuit court is final unless reversed, vacated or modified on appeal to the supreme court of appeals in accordance with the provisions of section one [§ 29A-6-1], article six, chapter twenty-nine-a of this code.

(c) Legal counsel and services for the chief or review board in all appeal proceedings in any circuit court and the supreme court of appeals shall be provided by the attorney general or his or her assistants and in any circuit court by the prosecuting attorney of the county, all without additional compensation. The chief or review board, with the written approval of the attorney general, may employ special counsel to represent the chief or review board at any appeal proceedings. (1994, c. 24.)

§ 22-21-26. Limitation on actions in trespass.

In any case where title to subsurface minerals has been severed in such a way that title to natural gas underlying such tract and title to coal underlying such tract are in different persons, it shall be an affirmative defense to any action for willful trespass arising from the drilling and commercial production of methane from any coal seam underlying such tract, that the operator of such well permitted, drilled and completed such well under color of title of any instrument, deed, or lease for oil and gas purposes from the gas owner, or an instrument, deed or lease for coal mining purposes from the coal owner. (1994, c. 24.)

§ 22-21-27. Injunctive relief.

(a) Whenever it appears to the chief or review board that any person has been or is violating or is about to violate any provision of this article, any rule promulgated by the chief or review board, any order or any final decision of the chief or review board, the chief or review board may apply, in the name of the state, to the circuit court of the county in which the violation occurred, is occurring or is about to occur, or to the judge thereof in vacation, for injunctive relief against the person and any other persons who have been, are or are about to be, involved in any practices, acts or omissions, in violation, enjoining the violation or violations. The application may be made and prosecuted to conclusion whether any violation or violations have resulted or may result in prosecution or conviction under the provisions of section six or twenty-eight [§ 22-21-6 or § 22-21-28] of this article.

(b) Upon application by the chief or review board, the circuit courts of this state may by mandatory or prohibitory injunction compel compliance with the provisions of this article, the rules promulgated by the chief or review board and all orders of the chief or review board. The court may issue a temporary injunction in any case pending a decision on the merits of any application filed. Any other section of this code to the contrary notwithstanding, the state may not be required to furnish bond or other undertaking as a prerequisite to obtaining mandatory, prohibitory or temporary injunctive relief under the provisions of this article.

(c) The judgment of the circuit court upon any application permitted by the provisions of this section is final unless reversed, vacated or modified on appeal to the supreme court of appeals.

(d) The chief or review board shall be represented in all such proceedings by the attorney general or his or her assistants and in proceedings in the circuit courts by the prosecuting attorneys of the several counties as well, all without additional compensation. The chief or review board, with the written approval of the attorney general, may employ special counsel to represent the chief or review board in any proceedings.

(e) If the chief or review board refuses or fails to apply for an injunctive relief to enjoin a violation or threatened violation of any provision of this article, any rule promulgated by the chief or review board hereunder or any order or final decision of the chief or review board, within ten days after receipt of a written request to do so by any person who is or will be adversely affected by such violation or threatened violation, the person making such request may apply in his or her own behalf for an injunction to enjoin the violation or threatened violation in any court in which the chief or review board might have brought suit. The chief or review board shall be made a party defendant in the application in addition to the person or persons violating or threatening to violate any provision of this article, any rule promulgated by the chief or review board hereunder or any order of the chief or review board. The application shall proceed and injunctive relief may be granted without bond or other undertaking in the same manner as if the application had been made by the chief or review board. (1994, c. 24.)

§ 22-21-28. Penalties.

(a) Any person who violates any term or condition of a permit issued under this article, and the violation is found by the chief or review board to have rendered unmineable all or a portion of a workable coal seam, is subject to civil penalties, to be imposed and collected by the chief or review board in an amount not to exceed the reasonably expected net profit lost to the coal owner as a result. All penalties collected shall be transferred to the special reclamation fund as provided by section twenty-nine [§ 22-6-29], article six of this chapter.

(b) Any person who violates any provision of this article, any of the rules promulgated by the chief or review board or any order of the chief or review board other than a violation governed by the provisions of subsection (c) of this section, is guilty of a misdemeanor, and, upon conviction thereof, shall be fined not more than one thousand dollars.

(c) Any person who, with the intention of evading any provision of this article, any of the rules promulgated by the chief or any order of the chief or review board, who makes or causes to be made any false entry or statement in any application or other document permitted or required to be filed under the provisions of this article, shall be guilty of a misdemeanor, and, upon conviction thereof, shall be fined not more than five thousand dollars, or imprisoned in the county jail not more than six months, or both fined and imprisoned.

(d) Any person who knowingly aids or abets any other person in the violation of any provision of this article, any of the rules promulgated hereunder or any order or final decision of the chief or review board or director, shall be subject to the same penalty as that prescribed in this article for the violation by such other person. (1994, c. 24.)

§ 22-21-29. Construction.

This article shall be liberally construed so as to effectuate the declaration of public policy set forth in section one [§ 22-21-1] of this article. (1994, c. 24.)