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West Virginia Department of Environmental Protection

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Office of Oil and Gas Pipeline Burial Policy

West Virginia Code Chapter 22, Article 6, Section 30(d) states that "(T)he director shall promulgate rules setting forth requirements for the safe and efficient installation and burying of all production and gathering pipelines where practical and reasonable except that such rules shall not apply to those pipelines regulated by the public service commission." The rules promulgated pursuant to this statute can be found in Title 35, Series 4, Section 16.7 and address production and gathering pipelines installed, relocated or replaced after June 9, 1983. As with the statute, the purpose of the rule is for the "safe and efficient installation of all production and gathering pipelines....". The rule further states that "(T)he chief reserves the right to direct the burial of any line installed under this rule to protect the public safety....". The language found in both statute and rule indicates the impetus for such revolves around the issue of safety.

As stated above, the statute requires burying of pipelines "where practical and reasonable". Title 35, Series 4, Section 16.7 defines "practicable and reasonable" by citing four specific examples. These situations are: 1) where the line crosses agricultural land, 2) where an unburied line would prohibit use of a pre-existing private roadway or other means of access to property, 3) where the line cannot more practically and reasonably be securely suspended to cross stream beds and 4) where the line crosses a public road. Accordingly, lines shall be buried when they fall into one of those four situations unless the surface owner requests that the pipeline not be buried. The surface owner request shall be on Form WR-75, in a right-of-way agreement or contained in a lease agreement.

Regarding the four situations in which pipeline burial is required, the situation that contains the most ambiguity is the reference to the crossing of "agricultural lands". West Virginia Code Chapter 19, Article 19 (Preservation of Agricultural Production), Section 2 defines agricultural lands as "...not less than five acres of land and the improvements thereupon, used or usable in the production of food, fiber or woodland products of an annual value of one thousand dollars, or more, by the conduct of the business of agriculture...". In this same Section, "agriculture" is defined as "the production of food, fiber and woodland products, by means of cultivation, tillage of the soil and by the conduct of animal, livestock, dairy, apiary, equine or poultry husbandry, and the practice of forestry, silviculture, horticulture, or any other plant or animal production...". An important point in this definition is that the production referred to is a result of some



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specific activity (i.e. cultivation, tillage, etc.) or “tending” of the property.

It is not uncommon for oil and gas operations to cross paths with “timbering” operations. Not surprisingly, the timber company in most, if not all cases, would prefer not to have to contend with oil or gas pipelines. Certainly pipelines that are buried are less likely to impede the timbering activities. However, timbering by itself, and the associated land, would not appear to meet the above definitions. In fact, an interpretation by the Department of Agriculture corroborates this position. According to the Department of Agriculture, land being timbered but not otherwise being “farmed” or used, would not likely be considered agricultural land. Hence, in these instances, the definition of practical and reasonable would not be met.

Under 35CSR4-16.7.b. and 35CSR4-16.7.c.1.E., the chief has the authority to require pipeline burial regardless of how it may otherwise be defined. As a general rule however, in the absence of a threat to public safety, the Office of Oil and Gas will require pipeline burial only in those four instances discussed above that define practical and reasonable.

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