



Economic Impact Analysis Virginia Department of Planning and Budget

4 VAC 25-165 – Regulations Governing the Use of Arbitration to Resolve Coalbed Methane Gas Ownership Disputes

Department of Mines, Minerals and Energy

September 2, 2011

Summary of the Proposed Amendments to Regulation

Chapter 442 of the 2010 Acts of Assembly directs the Virginia Gas and Oil Board (Board) to adopt regulations to implement the arbitration process created in that act within 280 days of its enactment. The Board proposes these regulations in order to establish guidelines for the voluntary arbitration process. Some of the key provisions include how arbitrations are funded, the qualifications of the arbitrator, and procedures associated with the arbitration itself. Except for one minor change, these proposed regulations are identical to the existing emergency regulations currently in effect.

Result of Analysis

The benefits likely exceed the costs for all proposed changes.

Estimated Economic Impact

The purpose of this regulation is to administer the arbitration process mandated in Chapter 442 of the 2010 Acts of Assembly. The act creates a voluntary arbitration process for parties with conflicting claims of ownership of coalbed methane gas. Currently, there are approximately \$26 million in royalties held in escrow, most of which is due to unresolved claims of ownership. The creation of an arbitration system that is an effective alternative to litigation could potentially help reduce the amount of funds in escrow and legal costs for the parties involved. Emergency regulations which are effectively the same as these proposed regulations have been in effect since December 20, 2010. To date, the Board has not received any requests for arbitration.

Since the proposed arbitration system is voluntary, it will be used if all affected parties believe it would be to their benefit. Thus the proposed creation of this system would be net beneficial if it is used in practice, and neutral in impact if it is not. Since the emergency regulations have been in effect since December 20, 2010 and thus far no parties have approached the Board requesting arbitration, the initial evidence indicates that the use of the proposed arbitration may be limited in practice.

Businesses and Entities Affected

Due to family heirships, the Department of Mines, Minerals and Energy (Department) estimates there could be anywhere from 8,000 to 12,000 entities primarily affected by these regulations. Most of these entities are landowners and energy firms with conflicting claims of ownership of coalbed methane gas. The Board, though, has not yet received any requests for arbitration. Potential affected small businesses could include land management groups or small coal companies.

Localities Particularly Affected

Coalbeds in the Commonwealth primarily occur in the following seven counties: Buchanan, Dickenson, Lee, Russell, Scott, Tazewell, and Wise.

Projected Impact on Employment

The proposed amendments are unlikely to significantly affect employment.

Effects on the Use and Value of Private Property

To the extent that affected parties pursue the proposed arbitration process, legal costs may be reduced and funds currently in escrow may be more quickly distributed.

Small Businesses: Costs and Other Effects

The proposed regulations will not increase costs for small businesses.

Small Businesses: Alternative Method that Minimizes Adverse Impact

The proposed regulations will not produce an adverse impact for small businesses.

Real Estate Development Costs

To the extent that affected parties pursue the proposed arbitration process, the cost of developing land for coalbed methane gas extraction may be moderately reduced due to savings in legal costs associated with the ownership disputes.

Legal Mandate

The Department of Planning and Budget (DPB) has analyzed the economic impact of this proposed regulation in accordance with Section 2.2-4007.04 of the Administrative Process Act and Executive Order Number 14 (10). Section 2.2-4007.04 requires that such economic impact analyses include, but need not be limited to, the projected number of businesses or other entities to whom the regulation would apply, the identity of any localities and types of businesses or other entities particularly affected, the projected number of persons and employment positions to be affected, the projected costs to affected businesses or entities to implement or comply with the regulation, and the impact on the use and value of private property. Further, if the proposed regulation has adverse effect on small businesses, Section 2.2-4007.04 requires that such economic impact analyses include (i) an identification and estimate of the number of small businesses subject to the regulation; (ii) the projected reporting, recordkeeping, and other administrative costs required for small businesses to comply with the regulation, including the type of professional skills necessary for preparing required reports and other documents; (iii) a statement of the probable effect of the regulation on affected small businesses; and (iv) a description of any less intrusive or less costly alternative methods of achieving the purpose of the regulation. The analysis presented above represents DPB's best estimate of these economic impacts.