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AN ACT

Providing for Conservation in the Production of Oil and Natural Gas from Unconventional Reservoirs Within The Commonwealth Through the Formation of Appropriate Production Units and the Integration of Interests Therein For the Protection of Correlative Rights.

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The General Assembly of the Commonwealth of Pennsylvania hereby enacts as follows:

Section 1. Legislative Findings. — The General Assembly of the Commonwealth of Pennsylvania notes that Pennsylvania was the first state in the United States of America to

33 achieve the production of oil from a commercial well
34 drilled specifically for that purpose through the efforts
35 of (Col.) Edwin L. Drake in Titusville, Crawford County,
36 Pennsylvania on August 27, 1859. Pennsylvania also
37 attained the first commercial production of natural gas
38 through a well located in Murrysville, Westmoreland County,
39 in 1878. Pennsylvania has been an oil and natural gas
40 producing state since that date.

41 Oil and natural gas development has become a great
42 tool for the reindustrialization of the Commonwealth and
43 for the creation of new wealth among the workers and
44 landowners of the Commonwealth.

45 Under the Act of July 23, 1941, P.L. 435, 58 P.S. §§
46 191 *et seq.*, the Commonwealth of Pennsylvania became a
47 party to the Interstate Compact to Conserve Oil and Gas
48 (the Compact). Under the terms of the Compact, the
49 Commonwealth committed, *inter alia*, to the prevention of
50 the drilling, equipping, locating, spacing or operating of
51 a well or wells so as to bring about physical waste of oil
52 or gas or loss in the ultimate recovery thereof and to
53 further prevent the inefficient, excessive or improper use
54 of the reservoir energy in producing any well. In response
55 to its obligations under the Compact, the Commonwealth
56 adopted the Oil and Gas Conservation Law, Act of July 25,
57 1961, P.L. 825, 58 P.S. §§ 401, *et seq.* The Oil and Gas
58 Conservation Law has had little use and has not been
59 substantively amended since its adoption to keep pace with
60 technology relevant to the production and conservation of
61 oil or gas.

62 The Commonwealth is currently experiencing new and
63 state-wide natural gas development from the Marcellus Shale

64 formation. Wells designed to produce from the Marcellus
65 Shale formation are most frequently horizontal wells, a
66 type of well unknown and not anticipated in the adoption of
67 the Oil and Gas Conservation Law. The legal, conservation
68 and technological issues related to wells drilled to
69 produce from unconventional reservoirs are distinct and
70 different from those of traditional vertical wells
71 regardless of the formation affected. The present and
72 foreseeable unconventional reservoirs subject to
73 exploration and development in Pennsylvania present unique
74 challenges to avoiding waste, inefficient production, loss
75 of recoverable reserves and wasteful dissipation of
76 reservoir energy. In addition, the current methods of
77 exploring unconventional reservoirs through the use of
78 horizontal wells permits the development of such reservoirs
79 with substantially reduced surface disturbance as compared
80 to traditional vertical well technology.

81 The General Assembly of the Commonwealth of
82 Pennsylvania finds that it can best discharge its
83 obligations under the Compact and its general obligations
84 to all of its citizens by adopting a specific statute for
85 the permitting and placement of wells in unconventional
86 reservoirs, the creation of conservation based production
87 units related thereto and the integration of all interests
88 in such units; hence this Act.

89 **Section 2. Short Title.** - This Act shall be known and may
90 be cited as the Pennsylvania Unconventional Oil and Gas
91 Fair Pooling Act.

92 **Section 3. Declaration of Purpose.** - The purposes of this
93 Act are to promote the development of unconventional oil
94 and gas resources of the Commonwealth in accord with the

95 best principles and practices of oil and gas conservation
96 while reasonably protecting the correlative rights of a
97 person affected and to provide for the protection of the
98 environment.

99 **Section 4. Scope and Applicability.** - This Act shall apply
100 to all wells drilled after the effective date hereof into
101 and producing from unconventional oil and natural gas
102 reservoirs below the base of the Elk Sandstone or its
103 stratigraphic equivalent in this Commonwealth other than
104 coal bed methane or oil or gas found in tight sandstone
105 reservoirs. This Act shall apply to both vertical and to
106 horizontal wells, however, that the only provision of this
107 Act that shall apply to vertical wells is the 250' set back
108 requirement from lease or unit lines and from other wells
109 seeking production from the same stratigraphic interval.
110 In the event of a pre-existing vertical well on any land
111 subject to an integration proceeding in which the Applicant
112 owns or controls less than 75% of the working interests, a
113 set back of 250' around the bore of that well shall be
114 maintained in all operations upon a unit created under this
115 Act and the acreage within that set-back area shall not be
116 included in the unit and shall not count as acreage within
117 the unit. As to horizontal wells, the 250' set back
118 requirement from lease and unit lines imposed by Section 8,
119 subsection (c) of this Act shall apply to all wells drilled
120 after the effective date of this Act.

121 **Section 5. Administration.** -

122 (a) Creation of the Oil and Gas Fair Pooling Office.
123 - There is hereby created in the Bureau of Topographic and
124 Geologic Services of the Pennsylvania Department of
125 Conservation and Natural Resources a special purpose agency

126 to be known and denominated as the Pennsylvania Oil and Gas
127 Fair Pooling Office (the Office).

128 (b) Purposes. - The purposes of the Office shall
129 be a.) to administer the provisions of this Act; b.) to
130 promote the development of unconventional oil and gas
131 resources of the Commonwealth in accord with the best
132 principles and practices of oil and gas conservation while
133 reasonably protecting the correlative rights of a person
134 affected hereby.

135 (c) Staff. - The Office shall be administered by a
136 director who shall be a civil service employee of the
137 Commonwealth of Pennsylvania and who shall have a
138 demonstrated experience in the administration of oil and
139 gas conservation laws, rules and regulations. The Director
140 shall report to the Secretary of the Department of
141 Conservation and Natural Resources and shall be assisted by
142 such assistants, technicians, hearing officers and staff as
143 may, from time to time, be appropriate. All such employees
144 shall be civil service employees of the Commonwealth and
145 shall have suitable training, experience and competence in
146 geology and petroleum and reservoir engineering to address
147 the proper administration of this act. The assignment and
148 location of the Office staff shall be at the discretion of
149 the Director and shall be accomplished in a manner to
150 assure adequate staffing to meet in a timely manner the
151 application review and issuance and hearing needs arising
152 in each Office.

153 (d) Applications and Orders. - The Office shall keep
154 copies of its proceedings at its principal office and, in
155 addition, shall maintain a world wide web site available
156 for public access on which all pending applications shall

157 be listed within three business days of filing and upon
158 which all final orders shall be posted. In addition all
159 orders of the Office shall be recorded among the land
160 record of the county(ies) affected by each.

161 (e) Regulations and Forms. – The Office may from time
162 to time promulgate reasonable regulations and establish
163 forms to aide in the administration and implementation of
164 this Act. For the purpose of executing its
165 responsibilities, notwithstanding any the Office may, at
166 any time, accept and use any model form operating agreement
167 sanctioned by the American Association of Professional
168 Landmen or any other model form operating agreement
169 generally recognized in the industry together with all
170 applicable schedules and exhibits thereto, as may be
171 appropriately modified and completed. The Office may also,
172 by regulation, establish a form operating agreement
173 generally conforming to such industry accepted forms.

174 **Section 6. Definitions. –**

175 The following words and phrases when used in this Act
176 shall have the meanings given to them in this section
177 unless the context clearly indicates otherwise:

178 "Consenting Party." A party participating in a unit
179 created under this Act who agrees or elects, under Section
180 10 subsection(a) paragraph(3) or Section 11 subsection(a)
181 paragraph(2) to participate in its *pro rata* share of costs
182 and production of a well or wells drilled upon that unit
183 under and in accord with the terms of the joint operating
184 agreement applicable to that unit.

185 "Control, Controlled." To own or to have the right to
186 explore for, to develop, to operate, and to produce oil or

187 gas from the stratigraphic interval proposed to be included
188 in any unit.

189 "Correlative Rights." The rights of each owner of oil and
190 gas interests included or proposed to be included in a
191 standard unit or a special unit or in any land that
192 constitutes stranded acreage as defined in this Act, to
193 have a fair and reasonable opportunity to obtain and
194 produce their just and equitable share of the oil and gas
195 in such sources of supply, without being required to drill
196 unnecessary wells or incur other unnecessary expense to
197 recover or receive such oil or gas or its equivalent. For
198 the purpose of considering objections to applications for
199 the designation of special units to be created under the
200 terms of this Act, the term shall also apply to owners of
201 oil and gas interests in properties that are adjacent to
202 properties included or proposed to be included within any
203 such unit.

204 "Drill Pad." The area of surface operations surrounding
205 the surface location of a well or wells.

206 "Drill, Drilled or Drilling." The drilling or re-drilling
207 of any well or the deepening or plugging back of any
208 existing well.

209 "Good Faith." For the purpose of this statute shall mean
210 honesty in fact in conducting negotiations and an
211 obligation not to take an unconscionable advantage of
212 circumstances specific to the individual or the interests
213 to be integrated within a standard or special unit in order
214 to manipulate the terms being negotiated.

215 Honesty in fact requires that a party not attempt to
216 mislead or deceive, but does not require a party to
217 disclose any information it deems confidential so long as a

218 party is honest and does not attempt to mislead or deceive
219 should it decline to answer any inquiry relative to a
220 confidential matter. Recognizing a qualitative difference
221 in tracts including, but not limited to, the tract size,
222 shape, topography, configuration, available access and
223 other operational considerations does not constitute an
224 unconscionable advantage.

225 "Gas." Any fluid, either combustible or noncombustible,
226 which is produced in a natural state from the earth and
227 which maintains a gaseous or rarified state at standard
228 temperature of 60 degrees Fahrenheit and pressure 14.7
229 PSIA, any manufactured gas, any byproduct gas or any
230 mixture of gases.

231 "Horizontal Well." A directional well that is drilled
232 nearly vertically to a certain depth and then angled-out
233 horizontally or nearly horizontally with the intent to
234 produce from a specific geologic interval and to
235 substantially or entirely remain within the specific
236 geologic interval until the desired terminus of the well
237 bore is reached.

238 "Joint Operating Agreement." An agreement governing the
239 actions of all participants in a unit created under the
240 terms of this Act which shall be in a form operating
241 agreement approved by the Office pursuant to this Act or,
242 in the absence of such form, any model form operating
243 agreement sanctioned by the American Association of
244 Professional Landmen or any other model form operating
245 agreement generally recognized in the industry together
246 with all applicable schedules and exhibits thereto, as may
247 be appropriately modified and completed.

248 "Lateral." The portion of a well bore that deviates from
249 approximate vertical orientation to approximate horizontal
250 orientation and all well bores beyond such deviation to
251 total depth or terminus thereof.

252 "Non-Consenting Party." A party participating in a unit
253 created under this Act who elects not to participate in its
254 *pro rata* share of the costs of any well or wells drilled
255 upon that unit and who will only share in the production
256 therefrom after paying a risk avoidance fee under and in
257 accord with the terms of this Act and the joint operating
258 agreement applicable to that unit.

259 "Office." The Pennsylvania Oil and Gas Fair Pooling
260 Office created under the terms of this Act.

261 "Oil" or "Petroleum." Hydrocarbons in liquid form at
262 standard temperature of 60 degrees Fahrenheit and pressure
263 14.7 PSIA.

264 "Operator." The person or entity designated to be the
265 operator under the joint operating agreement affecting a
266 unit created under this Act.

267 "Perforated Segment." The entire perforated length of
268 each lateral well bore, as shown on a directional survey,
269 or predrilled unsurveyed plan, projected vertically to the
270 surface. In the event of the use of any form of completion
271 that does not involve cementing and perforating, the term
272 "perforated segment" shall be read to be the entire length
273 of each lateral from penetration point of the target
274 reservoir being unitized all the way down to the terminus
275 of the well bore.

276 "Person." Any individual, group of individuals holding
277 interests in a common property, association, partnership,

278 corporation, political subdivision, or Office of the State
279 or Federal Government, or other legal entity.

280 "Plat." A map, drawing or print showing the proposed or
281 existing location of a well or a unit.

282 "Royalty Interests." Any interest in the oil or gas in
283 place, or oil or gas rights which are expressly stated to
284 be royalty interests, overriding royalty interests or which
285 are in the nature of royalty interests in that they afford
286 a right to participate in a share of production but do not
287 provide the owner any right to conduct exploration,
288 drilling, production or other activities.

289 "Special Unit." A unit for the production of oil or
290 natural gas from formations subject to this Act other than
291 a standard unit.

292 "Standard Unit." A unit for the production of oil or
293 natural gas from formations subject to this Act that meets
294 the standards set forth in Section 9 hereof.

295 "Stranded Acreage." Land that cannot be developed for
296 production of oil or natural gas from unconventional
297 reservoirs because of the 250' minimum set back
298 requirements of this Act when applied to the boundaries of
299 standard or special units created under the terms of this
300 Act.

301 "Unconventional Reservoir." Any geological shale
302 formation existing below the base of the Elk sandstone or
303 its geologic equivalent stratigraphic interval that
304 contains or is otherwise productive of oil or natural gas
305 that generally cannot be produced at economic flow rates
306 nor in economic volumes except by wells stimulated by
307 hydraulic fracture treatments, a horizontal wellbore, or by
308 using multilateral wellbores or some other technique to

309 expose more of the reservoir to the wellbore. The term
310 "shale" shall include any non-shale rock integrated with
311 the shale formations subject to this Act and to the
312 production therefrom.

313 "Unit." A pooling of interests within a defined
314 geographic area created voluntarily or under this Act to
315 facilitate the drilling of wells producing from one or more
316 unconventional reservoirs.

317 "Voluntary Unit." A unit created under provisions of
318 leases or other voluntary agreements of the owners and
319 lessees of all interests in the oil or gas in such unit.

320 "Waste." The unnecessary loss of potentially recoverable
321 oil or gas.

322 "Well." A bore hole or excavation for the purpose of
323 producing oil or gas.

324 "Working Interest Owner." An owner of the right to
325 develop, operate and produce the substance being produced
326 or sought to be produced except where specifically provided
327 otherwise in the joint operating agreement governing any
328 unit created under this Act.

329 **Section 7. Legislative Declarations and Enactments on the**
330 **Effects of Unitization under this Act. -**

331 (a) In order to assure the satisfaction of the
332 purposes of this Act, the General Assembly of the
333 Commonwealth of Pennsylvania finds, declares and enacts as
334 follows:

335 (1) The owners of all interests in oil and gas
336 in standard units or special units declared under this
337 Act are hereby declared to have correlative rights and
338 not to be subject to the doctrine of the rule of
339 capture otherwise applicable to the ownership of oil

340 and gas in this Commonwealth. Nothing in this Act
341 shall be deemed to affect the applicability of the
342 rule of capture to any interests outside units created
343 hereunder.

344 (2) Standard units and special units as defined
345 in and established under this Act are hereby declared
346 to be necessary and reasonable for the development of
347 unconventional oil and gas resources in accord with
348 reasonable conservation principles and to reasonably
349 protect affected correlative rights and such units are
350 hereby declared to be *per se* reasonable when
351 established under and in accord with the terms of this
352 Act.

353 (3) Production from any lease or a portion
354 thereof in any standard unit or special unit created
355 under this Act or any pool or unit created under any
356 pooling or unitization clause of any lease signed by
357 the lessors therein is hereby declared to be
358 production from all leases included, in whole or in
359 part, in any such unit.

360 (4) Encouragement of the use of horizontal wells
361 drilled from common drill pads promotes the protection
362 of the environment through limiting surface
363 disturbance and through concentrating initial
364 activities in the drilling process at the fewest
365 possible locations. In addition, horizontal wells
366 promote the development of all of the Commonwealth's
367 natural resources including but not limited to oil,
368 gas and coal. A proper conservation law providing for
369 fair pooling and interest integration is essential to
370 effective horizontal well based development of

371 unconventional reservoirs that promote conservation of
372 oil and natural gas and environmental protection and
373 the avoidance of waste.

374 (5) The creation of units under this Act
375 represent acts of the Commonwealth in promotion of the
376 public welfare and are separate and distinct from the
377 creation of voluntary units under pooling and
378 unitization clauses in oil and gas leases. Units may
379 be created under and in accord with the terms of this
380 Act without regard to the terms or limitations of any
381 voluntary pooling or unitization provisions of any oil
382 and gas lease.

383 (b) The findings set forth in this Section shall be
384 conclusive and binding in all cases arising under this Act.

385 **Section 8. Drilling Permits and Well Setback**
386 **Requirements.-**

387 (a) No well shall be drilled for the production of
388 oil or natural gas from an unconventional reservoir without
389 a drilling permit issued by the Pennsylvania Department of
390 Environmental Protection.

391 (b) Drilling Permit Applications shall be made upon
392 application forms and in accord with procedures from time
393 to time established by the Department of Environmental
394 Protection.

395 (c) No perforated segment of any well drilled to be
396 produced from an unconventional reservoir shall be located
397 at any point less than 250' from the boundary of a.) a
398 lease not included in a proposed Voluntary unit or unit
399 applied for or created under this Act, or b.) a voluntary
400 unit formed for such well, or c.) any unit applied for or
401 created under this Act for such well.

402 (d) The setback requirement set forth in Section 8
403 subsection(c) of this Act shall supersede all well setback
404 and spacing requirements otherwise applicable to wells
405 subject to this Act, including but not limited to setbacks
406 and spacing requirements under the Oil and Gas Conservation
407 Act and the Coal Gas Resource Coordination Act.

408 (e) Nothing in this Act shall require a unit order or
409 other regulatory action to obtain a drilling permit on a
410 single lease or parcel or upon a voluntary unit created
411 under the terms of any lease or agreement.

412 **Section 9. Units and Unit Integration.-**

413 (a) A person (or group of persons) that owns or
414 controls at least seventy-five percent of the oil gas
415 working interests in the proposed unit may obtain approval
416 for a unit and the integration of all interests owned and
417 not owned or controlled by that person to form a unit for
418 the development and production from unconventional oil or
419 gas reservoirs. In the event that a single person does not
420 own or control at least seventy-five percent of the oil gas
421 working interest in the proposed unit but demonstrates by
422 providing written evidence that it has an agreement with
423 collaborating owners that control interests within the
424 proposed unit to the extent that with the other
425 collaborating owners' interest the person making
426 application then does hold at least 75%, that applicant
427 may apply for the integration of interest for that unit

428 (b) The interests that may be integrated under the
429 provisions of this Act are all interests of all working
430 interest owners, all interests of all owners of unleased
431 oil and gas interests, and all royalty interests in any
432 property as to which an integration unit application is

433 filed. Unleased property included in a unit under this Act
434 will not be subject to surface operations absent a lease,
435 consent or other agreement with the surface owner unless
436 the surface owner's land is otherwise burdened or subject
437 to such operations by preexisting rights of access or use.

438 (c) Units may be created without the prior issuance
439 of any drilling permits provided, however, that the initial
440 horizontal well must be begun by the commencement of
441 drilling with a rig capable of drilling to the target
442 formation in the integration unit within one year after the
443 date of the order of the Office approving the unit, except
444 to the extent that a well permit application was filed
445 within six (6) months after the approval of the integration
446 unit and the working interest owner was prevented from
447 drilling the well due to governmental or regulatory delays
448 associated with well permits or authorizations required to
449 drill or to allow the drilling of the initial well in which
450 case the initial well must be commenced with a rig capable
451 of drilling to the target formation in the integration unit
452 within one (1) year after the date of the issuance of the
453 well drilling permit. In the event that a well is commenced
454 in accord with the terms of this paragraph but is
455 determined to be a dry hole or otherwise not appropriate
456 for completion, the Applicant may continue the unit by
457 drilling a replacement well in accord with the replacement
458 well provisions of the joint operating agreement governing
459 the unit. A person seeking approval of a unit may seek
460 approval for a standard unit or a special unit.

461 (1) A standard unit shall be any unit that is
462 not more than 640 acres in area plus ten percent (10%)
463 tolerance for possible survey error or other acreage

464 discrepancies and that (absent interference by
465 adjacent pre-existing voluntary unit(s) or unit(s)
466 created under this Act) is configured generally in a
467 regular square or other rectangular form oriented
468 generally with the orientation of one or more
469 horizontal well bores in the vicinity that the
470 Applicant reasonably believes can be developed from a
471 single pad (which may be located on or off the unit);
472 and that includes all interests in and to the oil and
473 gas within the boundaries of the proposed unit.
474 Acreage in excess of the stated 640 acre maximum and
475 10% supplemental tolerance may be included in a
476 standard unit if necessary to avoid the creation of
477 stranded acreage through the creation of the unit.

478 (2) A special unit shall be all other units of
479 any size or shape that the Applicant reasonably
480 believes can be developed from a single pad located on
481 or off the unit.

482 (d) Upon the grant of an order establishing a
483 standard unit or a special unit, all oil and gas interests
484 within the area of any such unit shall be integrated in
485 accord with the terms of this Act.

486 (e) An application for a proposed standard unit or
487 special unit order that complies with the terms of this Act
488 shall be granted within thirty (30) days after the date of
489 filing unless it is subject to a timely filed objection,
490 filed by a person or entity with standing and basis as
491 defined in this Act.

492 (f) The right to proceed under this Act is
493 independent from any right to pool or to unitize under any
494 oil or gas lease. Lessees of leases that provide for

495 voluntary pooling and unitization may elect to proceed
496 under the terms of their leases and no proceedings under
497 this Act shall be required. Such Lessees may also elect to
498 proceed under this Act in which event the terms of this Act
499 shall supersede the pooling and unitization terms of such
500 leases with respect to the lands included in a unit formed
501 under this Act.

502 (g) No unit order or other regulatory action shall be
503 required for, units voluntarily created under the terms of
504 any lease or other agreement.

505 (h) Standard Unit Applications. - All standard unit
506 applications shall be made to the Office. Standard unit
507 Applications shall include:

508 (1) A list of all interests proposed to be
509 included in the unit that are not controlled by the
510 Applicant and a list of all interests proposed to be
511 included in the unit that are controlled by the
512 Applicant. The interests to be listed include but are
513 not limited to all leases, working interests,
514 mortgages, judgments and other liens and encumbrances
515 of record upon any interest in the proposed unit
516 including:

517 (i) The name and address of each interest
518 proposed to be integrated;

519 (ii) The type of interest held by each party
520 listed;

521 (iii) The extent of the interest held by
522 each party listed.

523 (2) plat

524 (i) Depicting the location of the
525 boundaries of the proposed unit, the total

526 acreage included in the unit and the location and
527 acreage of each tract included in the unit;
528 (ii) Identifying the location of the initial
529 proposed well or wells and lateral or laterals;
530 (iii) Identifying, the stratigraphic
531 interval proposed for integration.
532 (3) A certification that a reasonable good faith
533 effort was made a.) to lease unleased oil and gas
534 owners, and b.) to otherwise reach a voluntary
535 agreement with all working interest owner for the
536 development of the proposed unit.
537 (4) A statement of the allocation of interests
538 in the unit.
539 (5) Proof of notice of the application for the
540 unit to the owners of interests that are not
541 controlled by the Applicant that are proposed to be
542 integrated and to the owner(s) of all land adjacent to
543 the proposed unit. In addition, notice of the filing
544 of the application shall be published in a newspaper
545 of general circulation in the County in which the
546 proposed unit is located which shall identify all
547 parcels and parts of parcels proposed to be included
548 in the unit using the existing tax and property
549 records of the County at least five days prior the
550 date of the filing of the application.
551 (6) A draft order.
552 (7) A statement of the estimated well costs and
553 include an industry form of Authorization For
554 Expenditure with detailed tangible and intangible
555 drilling costs.

556 (8) A form joint operating agreement with an
557 attached proposed lease and all relevant schedules, as
558 applicable.

559 (i) Standard Unit Objections. -

560 (1) The only parties who may object to a
561 proposed standard unit are the owners of a working
562 interest subject to integration in the unit, who have
563 not otherwise entered into a voluntary agreement with
564 the Applicant, the owners of oil and gas in land
565 directly adjacent to but outside the proposed unit
566 and the owners of interests in potentially stranded
567 acreage who have not otherwise entered into a
568 voluntary agreement with the Applicant.

569 (2) The only objections to applications for a
570 standard unit that shall be permitted are:

571 (i) That the application for the proposed
572 unit fails to comply with the requirements of
573 Section 9 subsection(i); or

574 (ii) That the proposed unit fails to comply
575 with the requirements of a standard unit listed
576 in Section 9 subsection(d); or

577 (iii) That the terms of the proposed
578 joint operating agreement are not reasonable; or

579 (iv) That an owner or a collaborating group
580 of owners of a working interest proposed to be
581 integrated into the unit has or will have the
582 capacity, resources and plan to develop their
583 respective acreage in a manner that is consistent
584 with conservation principles. In determining
585 whether the objection shall result in a denial or
586 modification of the application as to the acreage

587 subject to the objection the Office may consider
588 a.) the timing of the proposed development, b.)
589 the investment of the parties in their respective
590 acreage, c.) the impact of the inclusion or
591 exclusion of the contested parcel upon the long
592 term development plans of the applicant and the
593 objector, d.) the scope of the proposed
594 development, e.) the commitments each applicant is
595 willing to make to develop the land subject to
596 the contest, f.) whether inclusion or exclusion
597 of the contested parcel best serves the purposes
598 of this Act and g.) such other reasonable and
599 relevant factors as the Office may reasonably
600 determine to be appropriate to its inquiry. Any
601 commitments made by any party and relied upon by
602 the Office in evaluating an objection under this
603 section shall become enforceable conditions; or

604 (v) By an adjacent oil and gas owner or the
605 owner of potentially stranded acreage that the
606 proposed unit fails to protect correlative
607 rights.

608 (3) Objections must be filed with the Office
609 within ten (10) calendar days after the date stated in
610 the notice as the intended date for filing of the
611 standard unit application with the Office. Copies of
612 all objections shall be simultaneously served upon the
613 Applicant by the objecting party.

614 (4) All attempted objections by persons other
615 than those with standing as defined in this section
616 and all objections by any person other than those

617 expressly stated to be available in this section shall
618 be summarily dismissed by the Office.

619 (5) The Office shall grant the standard unit
620 application upon its determination that the standard
621 unit reasonably promotes conservation of oil or gas
622 resources.

623 (6) The Office shall have authority to
624 reasonably expand proposed standard units and special
625 units to avoid the potential for stranded acreage.

626 (j) Special Unit Applications. - All special unit
627 applications shall be made to the Office and shall contain
628 the following items:

629 (1) The items (1) through (6) listed in Section
630 9 subsection (i).

631 (2) A statement of the conservation purpose that
632 supports the establishment of a special unit. Such
633 statement shall include an explanation of why the
634 proposed unit accomplishes the purposes of this Act.

635 (k) Special Unit Objections. -

636 (1) The only parties who may object to a
637 proposed special unit are the owners of a cost bearing
638 interest subject to integration in the unit who have
639 not otherwise entered into a voluntary agreement with
640 the Applicant, the owners of oil and gas in land
641 directly adjacent to but outside the proposed unit
642 and the owners of interests in potentially stranded
643 acreage who have not otherwise entered into a
644 voluntary agreement with the Applicant.

645 (2) The only objections to applications for a
646 special unit that shall be permitted are:

647 (i) That the application for the proposed
648 unit fails to comply with the requirements of
649 Section 9 subsection(i) and Section 9
650 subsection(k); or

651 (ii) That the proposed unit fails to comply
652 with the requirements of a special unit listed in
653 Section 9 subsection(d); or

654 (iii) That the terms of the proposed
655 joint operating agreement are not reasonable; or

656 (iv) That an owner or a collaborating group
657 of owners of a working interest proposed to be
658 integrated into the unit has or will have the
659 capacity, resources and plan to develop their
660 respective acreage in a manner that is consistent
661 with conservation principles. In determining
662 whether the objection shall result in a denial or
663 modification of the application as to the acreage
664 subject to the objection the Office may consider
665 a.) the timing of the proposed development; b.)
666 the investment of the parties in their respective
667 acreage, c.) the impact of the inclusion or
668 exclusion of the contested parcel upon the long
669 term development plans of the applicant and the
670 objector; d.) the scope of the proposed
671 development; e.) the commitments each applicant is
672 willing to make to develop the land subject to
673 the contest, f.) whether inclusion or exclusion
674 of the contested parcel best serves the purposes
675 of this Act and g.) such other reasonable and
676 relevant factors as the Office may reasonably
677 determine to be appropriate to its inquiry. Any

678 commitments made by any party and relied upon by
679 the Office in evaluating an objection under this
680 section shall become enforceable conditions; or

681 (v) By an adjacent oil and gas owner or the
682 owner of potentially stranded acreage that the
683 proposed unit fails to protect correlative
684 rights.

685 (3) Objections must be filed with the Office
686 within ten (10) calendar days after the date stated in
687 the notice as the intended date for filing of the
688 special unit application with the Office.

689 (4) All attempted objections by persons other
690 than those with standing as defined in this section
691 and all objections by any person other than those
692 expressly stated to be available in this section shall
693 be summarily dismissed by the Office.

694 (5) The Office shall grant the special unit
695 application upon its determination that the special
696 unit reasonably promotes conservation of oil and gas
697 resources.

698 (6) The Office shall have authority to
699 reasonably expand proposed standard units and special
700 units to avoid the potential for stranded acreage.

701 (1) Notices. - Notice shall be sent to a person with
702 standing to object, as established by this Act, for each
703 standard or special unit request. All notices shall state
704 the date intended for the filing of an Application and
705 shall be sent via United States Certified Mail with return
706 receipt requested or other mail or delivery service
707 providing a proof of delivery at least five (5) business
708 days before the filing of a standard unit or special unit

709 application form. In addition, an applicant may arrange for
710 personal service of any notices required by this Act and
711 shall prove such service by the affidavit of the process
712 server. Applicants are responsible to employ reasonable
713 methods to determine the identity of persons entitled to
714 notice.

715 Notices to unidentified or unlocatable persons shall
716 be given in accord with the requirements of Pennsylvania
717 Rule of Civil Procedure 430. The Office shall have the
718 power to authorize service by publication in such
719 publications and in the manner provided by that rule upon
720 satisfaction of the Office that an Applicant has made a
721 reasonable and unsuccessful effort to locate the person
722 proposed to be served by publication.

723 (m) Units created under this Act. -

724 (1) shall be specific as to the stratigraphic
725 intervals sought to be explored and produced by the
726 Applicant.

727 (2) may be created in stratigraphic intervals
728 in lands already subject to voluntary unit(s) or
729 involuntary unit(s) under this or any other act;
730 However,

731 (i) that to incorporate in whole or in part
732 a prior involuntary unit, or a prior voluntary
733 unit as to which the Applicant does not control
734 at least 75% of the interests operator, such
735 prior unit(s) may not contain a well capable of
736 producing from that stratigraphic interval and no
737 active drilling permit exists for such a well and

738 (ii) upon the creation of any unit under
739 this Act within any part of any pre-existing

740 voluntary or involuntary unit producing from a
741 different stratigraphic interval, that voluntary
742 or involuntary unit shall not be applicable to
743 the portion of the specific stratigraphic
744 interval that is subject to the new unit to be
745 established. Otherwise, the prior unit shall
746 continue in effect as originally created.

747 (n) Nothing in this Act shall be construed to
748 prohibit the formation of involuntary unit(s) which is/are
749 located around or in whole or in part within voluntary
750 unit(s) as to which the applicant is the working interest
751 owner(s) in control of at least 75% of the interests
752 producing from the same formation or stratigraphic
753 interval. To the extent that any objection is made to a
754 proposed allocation of royalty under any such unit, the
755 Office shall consider the objection and shall adjust the
756 proposed allocation as necessary to promote fairness among
757 all interest holders.

758 (o) Units may be created under this Act covering
759 leased or unleased lands upon which a well or wells exist
760 except no perforated segment of any well drilled under such
761 later unitization shall be less than 500 feet from any
762 perforated segment of any well in the same stratigraphic
763 interval existing on the date of the creation of the unit.

764 (p) Upon the agreement of the working interest
765 owner(s) of at least seventy-five percent (75%) of the cost
766 bearing interests in each of two or more contiguous units,
767 wells may be drilled within 250 feet from the adjacent
768 boundaries of those units and production from such wells
769 shall be allocated among the units as may be agreed by such
770 working interest owner(s).

771 (q) For the purpose of this Act, royalties and
772 interests being integrated under the Act shall be
773 apportioned and paid to royalty interest holders based upon
774 the relative surface acreage of the interests in each unit
775 as set forth in the unit order unless all of the owners of
776 interests to be integrated under the Act agree in writing
777 to a different allocation method, which writing must
778 expressly state an intent to deviate from the provisions of
779 this Act. Nothing in this section shall alter the
780 application of the rule of apportionment of royalties as to
781 oil and gas leases partially included in any unit created
782 under this Act.

783 (r) Any gas or oil owner, including but not limited
784 to any unidentified or unlocatable lessors, whose identity
785 or location is unknown after reasonable investigation and
786 reasonable and unsuccessful attempts at notice have been
787 made by the time for entering an integration order shall be
788 deemed to have elected to lease their interest to the
789 Petitioner upon the terms of the Lease attached to the
790 joint operating agreement governing the unit. The proceeds
791 of any such deemed lease, shall be paid to the Office and
792 the Office shall cause to be established an escrow account
793 into which the unknown owner's share of proceeds shall be
794 paid and held for their benefit until the identity or
795 location of the unknown lessor is proven and determined or
796 such funds are required to be escheated to the Commonwealth
797 under applicable law. Upon discovery of the identity and
798 location of any unknown owner subject to escrow under this
799 subsection and not subject to conflicting claims of
800 ownership, the designated operator shall file with the
801 Office a petition for disbursement of funds. The petition

802 shall include an accounting of all funds deposited in
803 escrow for the account of such owner. Once appropriate
804 payments are deposited by an operator with the Office for
805 escrow under the provisions of this Act, the operator shall
806 have no further obligation or accountability therefore.

807 This paragraph creates a supplemental and alternative
808 remedy to address unknown and unlocatable oil or gas
809 interests holders to the provisions of the Pennsylvania
810 Dormant Oil and Gas Act of 2006, 58 P.S. § § 701.1 *et seq.*
811 and nothing in this section shall bar or in any way limit
812 the right of a petitioner to proceed under the terms of
813 that Act.

814 The executive right of any unidentifiable or
815 unlocatable oil or gas interest owners for whom notice and
816 escrow proceedings under this Act are instituted shall be
817 controlled by the Petitioner. The executive right of any
818 unidentifiable or unlocatable oil or gas Interest Owners as
819 to whom proceedings under the Pennsylvania Dormant Oil and
820 Gas Act of 2006, 58 P.S. §§ 701.1, *et seq.* shall be
821 controlled by the Petitioner in those proceedings.

822 (s) Stranded Acreage. – If any land becomes stranded
823 acreage as the result of the creation of a standard unit or
824 special unit under this act and an application by owners of
825 at least seventy-five percent of the interests in the
826 stranded acreage is filed within the time set forth in this
827 Act for the filing of objections to the application for the
828 creation of the unit, the Office may order that:

829 (1) the stranded acreage shall be incorporated
830 into that unit; or

831 (2) the owners of such land shall be granted an
832 exception to allow it to be developed for oil and

833 natural gas production purposes without regard to the
834 mandatory 250' setback requirements established by
835 this Act

836 **Section 10. Integration of Unleased Oil and Gas**
837 **Interests.—**

838 (a) In the order of integration of interests in a
839 unit, an owner of an unleased oil and gas interest who has
840 not entered into a voluntary agreement with the Applicant
841 or other working interest owner shall be given the option
842 to:

843 (1) be treated as a lessor under the lease
844 attached to the joint operating agreement for the
845 unit; or

846 (2) be treated as a non-consenting party
847 subject to the terms of the joint operating agreement
848 for the unit, entitling them to a proportionate share
849 of profits after being assessed a risk fee apportioned
850 among all non-consenting parties at the rate of 400%
851 of their proportionate share of all costs incurred by
852 the designated working interest owner; or

853 (3) be treated as a consenting party subject to
854 the terms of the joint operating agreement for the
855 unit, requiring them to contribute their share of all
856 costs of preparing, drilling, completing, equipping
857 and operating the well at the time of their election
858 hereunder and entitling them to a proportionate share
859 of profits.

860 Such option shall be exercised by returning a signed
861 election form to the working interest owner within fourteen
862 (14) calendar days after the date of the integration order.
863 If an unleased oil and gas owner does not make a timely

864 election, the interest shall be treated as leased under the
865 lease attached to the joint operating agreement for the
866 unit.

867 (b) If an unleased oil and gas owner elects to be
868 treated as a lessor under Section 10, subsection (a)
869 paragraph (1) or is treated as such for failure to make an
870 election, the oil and gas owner shall be treated as a
871 lessor under the terms and provisions and the rights and
872 obligations of the lease form attached to the joint
873 operating agreement for the unit for all wells drilled on
874 the unit.

875 (c) If an unleased oil and gas owner elects to be
876 treated as a consenting or non-consenting party, the
877 unleased oil and gas owner shall be subject to the terms
878 and conditions and rights and obligations specified in the
879 joint operating agreement and the election shall apply only
880 to the well or wells as to which the election is made with
881 any further elections to be governed by the joint operating
882 agreement.

883 (d) Leases between oil and gas interest holders,
884 other than arms length, *bona fide* agreements shall not be
885 recognized as oil and gas leases and all interests subject
886 to such leases shall be deemed to be and shall be treated
887 as unleased oil and gas interests for all purposes of this
888 Act.

889 **Section 11. Integration of Other Interests. -**

890 (a) All working interest owners other than unleased
891 oil and gas interest owners governed under Section 10
892 subsection (a) that have not entered into a voluntary
893 agreement with the proposed Applicant shall have the option
894 to:

895 (1) be treated as a non-consenting party,
896 subject to the terms of the joint operating agreement
897 for the unit, entitling that party to a proportionate
898 share of profits after being assessed a risk fee
899 apportioned among all non-consenting parties at the
900 rate of 400% of their proportionate share of all of
901 the costs incurred by the designated operator; or

902 (2) be treated as a consenting party subject to
903 the terms of the joint operating agreement for the
904 unit, requiring that party to contribute a
905 proportionate share of the costs of preparing,
906 drilling, completing and operating the well at the
907 time of their election hereunder and entitling that
908 party to a proportionate share of profits.

909 (b) Such option shall be exercised by returning a
910 signed election form to the operator within fourteen (14)
911 calendar days after the date of the integration order. A
912 working interest owner who fails to make an election under
913 this section shall be treated as a non-consenting party
914 under the joint operating agreement for the unit.

915 (c) All working interest owners shall be subject to
916 the terms and conditions and the rights and obligations
917 specified in the joint operating agreement and the election
918 shall apply only to the well or wells as to which the
919 election is made with any further elections to be governed
920 by the joint operating agreement.

921 (d) All matters regarding interest owners who are
922 integrated under the Act to be treated as consenting or
923 non-consenting parties shall be governed by the terms of
924 the joint operating agreement. The applicant shall file a
925 proposed joint operating agreement for the unit as part of

926 the application for a standard unit or special unit
927 utilizing the form of a joint operating agreement generally
928 recognized in the industry or a form approved by the Office
929 which shall be completed with reasonable terms but which
930 shall be completed to include the following:

931 (1) Any party or cooperating group of parties
932 controlling at least 15% of the working interests in
933 the unit may propose additional drilling. No party or
934 parties owning or controlling less than 75% of all
935 interests in the unit may propose the drilling of more
936 than one well in any calendar year.

937 (2) The lease form attached to the JOA shall be
938 the lease form currently in use by the Applicant in
939 the area.

940 (3) The royalty provided by the lease form shall
941 be 1/8th of production and such royalty shall be
942 treated as a burden shared *pro rata* among all
943 consenting and non-consenting parties to the JOA.

944 (4) The risk avoidance penalty shall be 400%.

945 (5) The parties to the JOA shall have the right
946 to take their gas in kind. Should any party
947 participating in a unit as a consenting or a non-
948 consenting party not elect to take its share of the
949 gas in kind, the operator of the unit shall market
950 such share of production along with the operator's
951 production. In no event shall the non-operator be
952 entitled to receive any amount in excess of the amount
953 received by the operator for its share of production.
954 An appropriate gas balancing agreement shall be an
955 exhibit to the joint operating agreement. No working
956 interest owner transporting gas from a well in which

957 the working interest owner has an interest shall be
958 deemed a utility.

959 Any party aggrieved by the other terms proposed by the
960 Applicant in the joint operating agreement filed with the
961 unit application shall make objection thereto in the time
962 set forth in this Act for the making of objections to the
963 Application and the Office shall resolve all such
964 objections after hearing to assure a reasonable operating
965 arrangement for each unit. An Applicant may withdraw its
966 application within ten days after the decision of the
967 Office on any objections to the joint operating agreement
968 terms proposed by the Applicant.

969 **Section 12. Hearings and Appeals. -**

970 (a) Hearings upon all objections to applications for
971 integration units under this Act shall be heard by staff
972 hearing officers of the Office.

973 (b) Hearings upon all objections shall be held within
974 thirty days after the date of the timely filed objections.

975 (c) Proceedings at all hearings shall be conducted
976 under and in accord with the provisions of the
977 Administrative Agency Law. (2 Pa. C.S. §§ 101 *et seq.*)

978 (d) Hearings shall be held at the Office in which the
979 integration application was filed unless all parties
980 consent to another venue.

981 (e) The hearing officer shall render a written
982 decision on the application no later than ten calendar days
983 following the date of the hearing.

984 (f) If the hearing officer determines that an
985 Applicant failed to make a good faith effort to reach a
986 voluntary agreement for control of all unleased oil and gas
987 owners and all working interests to be integrated into a

988 unit, the hearing officer may exclude the property subject
989 to that determination from the proposed unit and the
990 Applicant shall have the option of proceeding with the unit
991 as modified or of withdrawing its application for the unit.

992 (g) If the hearing officer makes a determination to
993 exclude a property from a proposed unit based upon a
994 specific development plan, the development plan of the
995 successful applicant or objecting party shall be codified
996 in the order and shall become mandatory upon the objecting
997 party. Failure to meet the mandated development plan shall
998 be subject to such reasonable penalties as the hearing
999 officer shall prescribe in the order.

1000 (h) Decisions of the hearing officers of the Office
1001 shall be the final action of the Office and of the
1002 Department with respect to the matters subject to the
1003 hearing upon signature by the hearing officers.

1004 (i) Appeals from all decisions of hearing officers of
1005 the Office shall be to the Commonwealth Court which shall
1006 consider all such appeals on the record of the proceedings
1007 before the hearing officer applying a narrow certiorari
1008 review standard.

1009 **Section 13. Unit Operations—Joint Operating Agreement.—**

1010 (a) Units created under this Act shall be operated by
1011 the Applicant under and in accord with the terms of the
1012 applicable oil and gas leases, as modified by the
1013 integration order issued under this Act, if the only
1014 interest holders in the unit are the Applicant and lessors.

1015 (b) All other units created under this act shall be
1016 operated by the Applicant under the terms of the applicable
1017 leases as may be modified by the integration order and
1018 under the terms of the joint operating agreement and all

1019 attachments. The parties may alter the terms of the joint
1020 operating agreement initially approved by the Office for
1021 the unit only by the unanimous agreement of parties
1022 integrated as a consenting or non-consenting party under
1023 the Act or with the approval of the Office.

1024 **Section 14. Certain Rights Preserved.-**

1025 (a) Unleased oil and gas owners shall be able to
1026 enter into such lease or agreement affecting their oil and
1027 gas upon such terms and with such arms length third-parties
1028 as they may elect up to the date and time an order
1029 integrating the subject land into a unit is entered by the
1030 Office. Applicants are only required to provide notice of
1031 integration applications to the owners of record as of the
1032 date of the application and any person subsequently
1033 acquiring a lease or interest will be deemed to have
1034 received proper notice to be bound by the order.
1035 Applicants are responsible to employ reasonable methods to
1036 determine the identity of persons entitled to notice.

1037 (b) Voluntary pooling and unitization arrangements
1038 implemented under and in accord with the terms of oil and
1039 gas leases signed by the lessors therein and for the *bona*
1040 *fide* purpose of promoting the development of unconventional
1041 natural gas resources therein are hereby declared to be
1042 necessary and reasonable to the development of
1043 unconventional gas resources in accord with reasonable
1044 conservation principles and to reasonably protect affected
1045 correlative rights and such units created thereunder are
1046 hereby declared to be *per se* reasonable and subject to
1047 modification only in accord with the terms of the
1048 applicable leases or the express terms of this Act.

1049 (c) Except as expressly provided in this Act and in
1050 orders issued under this Act, this Act does not supersede
1051 any common law rights of any person before this Act takes
1052 effect or after this Act takes effect recognized by the
1053 courts of this Commonwealth.

1054 (d) All rights related to units created under this
1055 Act and all leases integrated therein in whole or in part
1056 shall be binding upon the heirs, successors and assigns of
1057 all parties including any party taking title to the
1058 property as the result of any type of judicial sale,
1059 mortgage foreclosure, tax sale or by any other operation of
1060 law and shall be binding upon and shall run with the land.
1061 No action by any owner of any interest in any lien,
1062 judgment, mortgage or other encumbrance shall extinguish or
1063 impair the integration of the property into a unit created
1064 under this Act.

1065 **Section 15. Confidentiality and Protection of Trade**
1066 **Secrets.-**

1067 (a) Any confidential proprietary information or trade
1068 secrets submitted by parties during any proceedings under
1069 this Act shall not be disclosed by the Office or any other
1070 parties privy to such information or secrets. Any such
1071 information may be submitted under seal for review by the
1072 hearing examiner only and shall be exempt from the "Right
1073 to Know Law."

1074 (b) Any violation of this section shall constitute a
1075 violation of this Act and also a violation of the Uniform
1076 Trade Secrets Act for which relief may be sought by any
1077 aggrieved party under and in accord with the terms of the
1078 Uniform Trade Secrets Act.

1079 **Section 16. Severability.** - The provisions of this Act are
1080 severable. If any provision of this Act or its application
1081 to any person or circumstances is held invalid, the
1082 invalidity shall not affect other provisions or
1083 applications of this Act which can be given effect without
1084 the invalid provision or application.

1085 **Section 17. Repeal.** - All acts and parts of acts are
1086 repealed in so far as they are inconsistent

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