

1 ENGROSSED

2 COMMITTEE SUBSTITUTE

3 FOR

4 **Senate Bill No. 4001**

5 (By Senators Kessler (Mr. President) and Hall,

6 By Request of the Executive)

7 \_\_\_\_\_  
8 [Originating in the Committee on the Judiciary;

9 reported December 12, 2011.]  
10 \_\_\_\_\_  
11

12 A BILL to repeal §22C-7-1, §22C-7-2 and §22C-7-3 of the Code of  
13 West Virginia, 1931, as amended; to amend said code by adding  
14 thereto a new section, designated §5B-2B-4a; to amend and  
15 reenact §22-6-1 and §22-6-2 of said code; to amend said code  
16 by adding thereto a new section, designated §22-6-2a; to amend  
17 said code by adding thereto a new article, designated §22-6A-  
18 1, §22-6A-2, §22-6A-3, §22-6A-3a, §22-6A-4, §22-6A-5, §22-6A-  
19 6, §22-6A-7, §22-6A-8, §22-6A-9, §22-6A-10, §22-6A-10a, §22-  
20 6A-11, §22-6A-12, §22-6A-13, §22-6A-14, §22-6A-15, §22-6A-16,  
21 §22-6A-17, §22-6A-18, §22-6A-19, §22-6A-20, §22-6A-21, §22-6A-  
22 22, §22-6A-23 and §22-6A-24; to amend said code by adding  
23 thereto a new article, designated §22-6B-1, §22-6B-2, §22-6B-  
24 3, §22-6B-4, §22-6B-5, §22-6B-6, §22-6B-7 and §22-6B-8; to  
25 amend and reenact §22C-8-2 of said code; and to amend and  
26 reenact §22C-9-2 of said code, all relating generally to oil

1 and gas wells; requiring West Virginia Workforce Investment  
2 Council to complete certain reviews and provide report to  
3 Legislature; expanding powers of Secretary of the Department  
4 of Environmental Protection; authorizing secretary to  
5 determine number of oil and gas inspectors and supervisors and  
6 to make investigations or inspections to ensure compliance  
7 with applicable law; providing for inspector qualifications,  
8 duties and minimum salaries; creating Natural Gas Horizontal  
9 Well Control Act; providing short title; making legislative  
10 findings and declarations of public policy; requiring  
11 secretary to submit written report to Legislature on number of  
12 waivers granted; providing for applicability of act and  
13 exceptions; providing special considerations and rulemaking  
14 for karst formations; defining terms; making horizontal wells  
15 subject to certain provisions in article six, chapter twenty-  
16 two of the Code of West Virginia; specifying powers and duties  
17 of secretary, including certain rule-making power and  
18 reporting duties; requiring permit for horizontal wells;  
19 establishing permit application requirements and contents;  
20 requiring bond and permit fees; providing for issuance of  
21 emergency permits; providing for denial, suspension and  
22 reinstatement of permits in certain circumstances; providing  
23 for application review, requirements for issuance of permit  
24 and permit requirements; establishing performance standards;  
25 providing for copies of permits to be furnished to county  
26 assessors; requiring certificate of approval for large pits or

1 impoundment construction; requiring application for  
2 certificate; establishing application requirements and payment  
3 of fees; providing for modification, revocation or suspension  
4 of certificate and hearing procedure, including an  
5 administrative appeals process; providing exceptions for  
6 certain farm ponds; authorizing secretary to propose  
7 legislative rules governing large pits and impoundments;  
8 providing certain notices to certain property owners regarding  
9 certain applications and intent to enter property to survey or  
10 to conduct seismic activity; clarifying that notice to certain  
11 lienholders is not notice to certain landowners; requiring  
12 applicant to file Class II ad and allowing submission of  
13 written comments to Department of Environmental Protection  
14 website; clarifying method of delivery of notice; establishing  
15 procedure for filing written comments; establishing well  
16 location restrictions; requiring promulgation of legislative  
17 rules for plugging and abandonment of horizontal wells;  
18 exempting certain wells from Natural Gas Horizontal Well  
19 Control Act; establishing reclamation requirements; requiring  
20 performance bonds or other security; providing notice of  
21 planned operation and contents of notice to certain surface  
22 owners; providing notice to certain surface owner and offer  
23 for compensation for certain damages to certain surface owner;  
24 providing for reimbursement of property taxes to surface  
25 owner; providing for civil action, rebuttable presumption and  
26 relief for water contamination or deprivation; establishing

1 water rights and replacement procedure; establishing civil  
2 penalties and offenses; requiring gas operations to submit  
3 certification from Division of Highways that operator has  
4 entered into road maintenance agreement pursuant to Division  
5 of Highways Oil and Gas Road Policy; creating public website  
6 and electronic notification registry of horizontal well permit  
7 applications and public notice of website; providing for air  
8 quality study, report to Legislature and rulemaking; requiring  
9 secretary to report to Legislature regarding safety of pits  
10 and impoundments; providing casing and cement standards;  
11 authorizing secretary to promulgate legislative and emergency  
12 rules relating to casing and cement standards; authorizing  
13 secretary to promulgate legislative rules governing pits and  
14 impoundments; providing secretary authority to establish,  
15 revise and grant waivers regarding casing and cement standards  
16 and programs; creating the Oil and Gas Horizontal Well  
17 Production Damage Compensation Act; providing legislative  
18 findings and purpose; defining terms; providing conditions and  
19 parameters for compensation of surface owners for drilling  
20 operations; preserving common law right of action and  
21 providing offset for compensation or damages paid; requiring  
22 notice of claims by surface owners; providing manner in which  
23 oil and gas operator must provide notice of reclamation;  
24 providing for offers of settlement; providing procedures for  
25 civil actions, arbitration and fees; preserving alternate  
26 remedies; and modifying definitions of "shallow wells" and

1 "deep wells".

2 *Be it enacted by the Legislature of West Virginia:*

3 That §22C-7-1, §22C-7-2 and §22C-7-3 of the Code of West  
4 Virginia, 1931, as amended, be repealed; that said code be amended  
5 by adding thereto a new section, designated §5B-2B-4a; that §22-6-1  
6 and §22-6-2 of said code be amended and reenacted; that said code  
7 be amended by adding thereto a new section, designated §22-6-2a;  
8 that said code be amended by adding thereto a new article,  
9 designated §22-6A-1, §22-6A-2, §22-6A-3, §22-6A-3a, §22-6A-4, §22-  
10 6A-5, §22-6A-6, §22-6A-7, §22-6A-8, §22-6A-9, §22-6A-10, §22-6A-  
11 10a, §22-6A-11, §22-6A-12, §22-6A-13, §22-6A-14, §22-6A-15, §22-6A-  
12 16, §22-6A-17, §22-6A-18, §22-6A-19, §22-6A-20, §22-6A-21, §22-6A-  
13 22, §22-6A-23 and §22-6A-24; that said code be amended by adding  
14 thereto a new article, designated §22-6B-1, §22-6B-2, §22-6B-3,  
15 §22-6B-4, §22-6B-5, §22-6B-6, §22-6B-7 and §22-6B-8; that §22C-8-2  
16 of said code be amended and reenacted; and that §22C-9-2 of said  
17 code be amended and reenacted, all to read as follows:

18 **CHAPTER 5B. ECONOMIC DEVELOPMENT ACT OF 1985.**

19 **ARTICLE 2B. WEST VIRGINIA WORKFORCE INVESTMENT ACT.**

20 **§5B-2B-4a. Report to Legislature.**

21 (a) The Legislature finds that:

22 (1) The advent and advancement of new technologies in  
23 horizontal drilling and the production of horizontal wells  
24 defined in article six-a, chapter twenty-two of this code has  
25 created thousands and has the potential to create thousands of

1 additional drilling, production, construction, manufacturing, and  
2 related jobs in West Virginia and in the Appalachian Basin;

3 (2) This economic opportunity presents new and exciting  
4 opportunities for jobs for West Virginians; and

5 (3) The state needs to take all necessary steps to retain,  
6 educate and train West Virginians to have the skills necessary to  
7 compete for job opportunities resulting from horizontal drilling.

8 (b) To assist in maximizing the economic opportunities  
9 available with horizontal drilling, the council shall make a  
10 report to the Joint Committee on Government and Finance and the  
11 Legislative Oversight Commission on Education Accountability on  
12 or before November 1 of each year through 2016, detailing a  
13 comprehensive review of the direct and indirect economic impact  
14 of employers engaged in the production of horizontal wells in the  
15 State of West Virginia, as more specifically defined in article  
16 six-a, chapter twenty-two of this code, which shall include:

17 (1) A review of the total number of jobs created;

18 (2) A review of total payroll of all jobs created;

19 (3) The average salary per job type;

20 (4) A review of the number of employees domiciled in the  
21 State of West Virginia;

22 (5) A review of total economic impact; and

23 (6) The council's recommendations for the establishment of  
24 an overall workforce investment public education agenda with  
25 goals and benchmarks toward maximizing job creation opportunities  
26 in the State of West Virginia.

1 (c) To the extent permitted by federal law, and to the  
2 extent necessary for the council to comply with this section, the  
3 council, Workforce West Virginia, the Division of Labor, and the  
4 Office of the Insurance Commissioner may enter into agreements  
5 providing for the sharing of job data and related information.

6 **CHAPTER 22. ENVIRONMENTAL RESOURCES.**

7 **ARTICLE 6. OFFICE OF OIL AND GAS; OIL AND GAS WELLS.**

8 **§22-6-1. Definitions.**

9 ~~Unless the context in which used clearly requires a~~  
10 ~~different meaning,~~ As used in this article:

11 (a) "Casing" means a string or strings of pipe commonly  
12 placed in wells drilled for natural gas or petroleum or both;

13 (b) "Cement" means hydraulic cement properly mixed with  
14 water;

15 (c) "Chair" means the chair of the West Virginia shallow gas  
16 well review board as provided for in section four, article eight,  
17 chapter twenty-two-c of this code;

18 (d) "Coal operator" means any person or persons, firm,  
19 partnership, partnership association or corporation that proposes  
20 to or does operate a coal mine;

21 (e) "Coal seam" and "workable coal bed" are interchangeable  
22 terms and mean any seam of coal twenty inches or more in  
23 thickness, unless a seam of less thickness is being commercially  
24 worked, or can in the judgment of the department foreseeably be  
25 commercially worked and will require protection if wells are

1 drilled through it;

2 (f) "Director" means the ~~director of the division~~ Secretary  
3 of the Department of Environmental Protection as established in  
4 article one of this chapter or ~~such~~ other person to whom the  
5 ~~director~~ secretary has delegated authority or duties pursuant to  
6 sections six or eight, article one of this chapter.

7 (g) "Deep well" means any well other than a shallow well or  
8 coalbed methane well, drilled ~~and completed in to~~ a formation ~~at~~  
9 ~~or~~ below the top of the uppermost member of the "Onondaga Group";

10 (h) "Expanding cement" means any cement approved by the  
11 office of oil and gas which expands during the hardening process,  
12 including, but not limited to, regular oil field cements with the  
13 proper additives;

14 (i) "Facility" means any facility utilized in the oil and  
15 gas industry in this state and specifically named or referred to  
16 in this article or in article eight or nine of this chapter,  
17 other than a well or well site;

18 (j) "Gas" means all natural gas and all other fluid  
19 hydrocarbons not defined as oil in this section;

20 (k) "Oil" means natural crude oil or petroleum and other  
21 hydrocarbons, regardless of gravity, which are produced at the  
22 well in liquid form by ordinary production methods and which are  
23 not the result of condensation of gas after it leaves the  
24 underground reservoirs;

25 (l) "Owner" when used with reference to any well, shall  
26 include any person or persons, firm, partnership, partnership

1 association or corporation that owns, manages, operates, controls  
2 or possesses such well as principal, or as lessee or contractor,  
3 employee or agent of such principal;

4 (m) "Owner" when used with reference to any coal seam, shall  
5 include any person or persons who own, lease or operate such coal  
6 seam;

7 (n) "Person" means any natural person, corporation, firm,  
8 partnership, partnership association, venture, receiver, trustee,  
9 executor, administrator, guardian, fiduciary or other  
10 representative of any kind, and includes any government or any  
11 political subdivision or any agency thereof;

12 (o) "Plat" means a map, drawing or print showing the  
13 location of a well or wells as herein defined;

14 (p) "Pollutant" has the same meaning as provided in section  
15 three, article eleven of this chapter;

16 ~~(p)~~ (q) "Review board" means the West Virginia Shallow Gas  
17 Well Review Board as provided for in section four, article eight,  
18 chapter twenty-two-c of this code;

19 ~~(q)~~ (r) "Safe mining through of a well" means the mining of  
20 coal in a workable coal bed up to a well which penetrates such  
21 workable coal bed and through such well so that the casing or  
22 plug in the well bore where the well penetrates the workable coal  
23 bed is severed;

24 (s) "Secretary" means the Secretary of the Department of  
25 Environmental Protection as established in article one of this  
26 chapter or other person to whom the secretary has delegated

1 authority or duties pursuant to sections six or eight, article  
2 one of this chapter;

3 ~~(r)~~ (t) "Shallow well" means any gas well, other than a  
4 coalbed methane well, drilled and completed in a formation above  
5 the top of the uppermost member of the "Onondaga Group" no deeper  
6 than one hundred feet below the top of the "Onondaga Group":

7 *Provided,* That ~~in drilling a shallow well the operator may~~  
8 ~~penetrate into the "Onondaga Group" to a reasonable depth, not in~~  
9 ~~excess of twenty feet, in order to allow for logging and~~  
10 ~~completion operations, but in no event may the "Onondaga Group"~~  
11 ~~formation or any formation below the "Onondaga Group" be~~  
12 ~~otherwise produced, perforated or stimulated in any manner;~~

13 ~~(s)~~ (u) "Stimulate" means any action taken by a well  
14 operator to increase the inherent productivity of an oil or gas  
15 well, including, but not limited to, fracturing, shooting or  
16 acidizing, but excluding cleaning out, bailing or workover  
17 operations;

18 ~~(t)~~ (v) "Waste" means (i) physical waste, as the term is  
19 generally understood in the oil and gas industry; (ii) the  
20 locating, drilling, equipping, operating or producing of any oil  
21 or gas well in a manner that causes, or tends to cause a  
22 substantial reduction in the quantity of oil or gas ultimately  
23 recoverable from a pool under prudent and proper operations, or  
24 that causes or tends to cause a substantial or unnecessary or  
25 excessive surface loss of oil or gas; or (iii) the drilling of  
26 more deep wells than are reasonably required to recover

1 efficiently and economically the maximum amount of oil and gas  
2 from a pool; (iv) substantially inefficient, excessive or  
3 improper use, or the substantially unnecessary dissipation of,  
4 reservoir energy, it being understood that nothing in this  
5 chapter ~~shall be construed to authorize~~ authorizes any agency of  
6 the state to impose mandatory spacing of shallow wells except for  
7 the provisions of section eight, article nine, chapter twenty-  
8 two-c of this code and the provisions of article eight, chapter  
9 twenty-two-c of this code; (v) inefficient storing of oil or gas:

10 *Provided*, That storage in accordance with a certificate of  
11 public convenience issued by the Federal Energy Regulatory  
12 Commission ~~shall be~~ is conclusively presumed to be efficient; and  
13 (vi) other underground or surface waste in the production or  
14 storage of oil, gas or condensate, however caused. Waste does  
15 not include gas vented or released from any mine areas as defined  
16 in section two, article one, chapter twenty-two-a of this code,  
17 or from adjacent coal seams which are the subject of a current  
18 permit issued under article two of chapter twenty-two-a of this  
19 code: *Provided, however*, That nothing in this exclusion is  
20 intended to address ownership of the gas;

21 (w) "Waters of this state" has the same meaning as the term  
22 "waters" as provided in section three, article eleven of this  
23 chapter;

24 ~~(u)~~ (x) "Well" means any shaft or hole sunk, drilled, bored  
25 or dug into the earth or into underground strata for the  
26 extraction or injection or placement of any liquid or gas, or any

1 shaft or hole sunk or used in conjunction with such extraction or  
2 injection or placement. The term "well" does not include any  
3 shaft or hole sunk, drilled, bored or dug into the earth for the  
4 sole purpose of core drilling or pumping or extracting therefrom  
5 potable, fresh or usable water for household, domestic,  
6 industrial, agricultural or public use;

7 ~~(v)~~ (y) "Well work" means the drilling, redrilling,  
8 deepening, stimulating, pressuring by injection of any fluid,  
9 converting from one type of well to another, combining or  
10 physically changing to allow the migration of fluid from one  
11 formation to another or plugging or replugging of any well; and

12 ~~(w)~~ (z) "Well operator" or "operator" means any person or  
13 persons, firm, partnership, partnership association or  
14 corporation that proposes to or does locate, drill, operate or  
15 abandon any well as herein defined.

16 ~~(x) "Pollutant" shall have the same meaning as provided in~~  
17 ~~subsection (17), section three, article eleven, chapter twenty-~~  
18 ~~two of this code; and~~

19 ~~(y) "Waters of this state" shall have the same meaning as~~  
20 ~~the term "waters" as provided in subsection (23), section three,~~  
21 ~~article eleven, chapter twenty-two of this code.~~

22 **§22-6-2. Secretary -- Powers and duties generally; department**  
23 **records open to public; inspectors.**

24 (a) The secretary shall have as his or her duty the  
25 supervision of the execution and enforcement of matters related  
26 to oil and gas set out in this article and in articles six-a,

1 eight, ~~and~~ nine, ten and twenty-one of this chapter.

2 (b) The secretary is authorized to propose rules for  
3 legislative approval in accordance with the provisions of article  
4 three, chapter twenty-nine-a of this code necessary to effectuate  
5 the above stated purposes.

6 (c) The secretary shall have full charge of the oil and gas  
7 matters set out in this article and in articles six-a, eight, ~~and~~  
8 nine, ten and twenty-one of this chapter. In addition to all  
9 other powers and duties conferred upon him or her, the secretary  
10 shall have the power and duty to:

11 (1) Supervise and direct the activities of the office of oil  
12 and gas and see that the purposes set forth in subsections (a)  
13 and (b) of this section are carried out;

14 (2) ~~Employ a supervising oil and gas inspector and oil and~~  
15 ~~gas inspectors~~ Determine the number of supervising oil and gas  
16 inspectors and oil and gas inspectors needed to carry out the  
17 purposes of this article and articles six-a, eight, nine, ten,  
18 and twenty-one of this chapter and appoint them as such. All  
19 appointees must be qualified civil service employees, but no  
20 person is eligible for appointment until he or she has served in  
21 a probationary status for a period of six months to the  
22 satisfaction of the secretary;

23 (3) Supervise and direct such oil and gas inspectors and  
24 supervising inspectors in the performance of their duties;

25 (4) ~~Suspend for good cause any oil and gas inspector or~~  
26 ~~supervising inspector without compensation for a period not~~

1 ~~exceeding thirty days in any calendar year~~ Make investigations or  
2 inspections necessary to ensure compliance with and to enforce  
3 the provisions of this article and articles six-a, eight, nine,  
4 ten, and twenty-one of this chapter;

5 (5) Prepare report forms to be used by oil and gas  
6 inspectors or the supervising inspector in making their findings,  
7 orders and notices, upon inspections made in accordance with this  
8 article and articles ~~seven,~~ six-a, eight, nine, ~~and ten~~ and  
9 twenty-one of this chapter;

10 (6) Employ a hearing officer and such clerks, stenographers  
11 and other employees, as may be necessary to carry out his or her  
12 duties and the purposes of the office of oil and gas and fix  
13 their compensation;

14 (7) Hear and determine applications made by owners, well  
15 operators and coal operators for the annulment or revision of  
16 orders made by oil and gas inspectors or the supervising  
17 inspector, and to make inspections, in accordance with the  
18 provisions of this article and articles eight and nine of this  
19 chapter;

20 (8) Cause a properly indexed permanent and public record to  
21 be kept of all inspections made by the secretary or by oil and  
22 gas inspectors or the supervising inspector;

23 (9) Conduct ~~such~~ research and studies as the secretary shall  
24 deem necessary to aid in protecting the health and safety of  
25 persons employed within or at potential or existing oil or gas  
26 production fields within this state, to improve drilling and

1 production methods and to provide for the more efficient  
2 protection and preservation of oil and gas-bearing rock strata  
3 and property used in connection therewith;

4 (10) Collect a permit fee of \$400 for each permit  
5 application filed other than an application for a deep well,  
6 horizontal wells regulated pursuant to article six-a of this  
7 chapter, or a coalbed methane well; and collect a permit fee of  
8 \$650 for each permit application filed for a deep well:

9 *Provided,* That no permit application fee ~~shall be~~ is required  
10 when an application is submitted solely for the plugging or  
11 replugging of a well, or to modify an existing application for  
12 which the operator previously has submitted a permit fee under  
13 this section. All application fees required hereunder ~~shall be~~  
14 are in lieu of and not in addition to any fees imposed under  
15 article eleven of this chapter relating to discharges of  
16 stormwater but ~~shall be~~ are in addition to any other fees  
17 required by the provisions of this article: *Provided, however,*  
18 That upon a final determination by the United States  
19 Environmental Protection Agency regarding the scope of the  
20 exemption under section 402(1)(2) of the federal Clean Water Act  
21 (33 U.S.C. 1342(1)(2)), which determination requires a "national  
22 pollutant discharge elimination system" permit for stormwater  
23 discharges from the oil and gas operations described therein, any  
24 permit fees for stormwater permits required under article eleven  
25 of this chapter for such operations ~~shall~~ may not exceed \$100.

26 (11) Perform all other duties which are expressly imposed

1 upon the secretary by the provisions of this chapter;

2 (12) Perform all duties as the permit issuing authority for  
3 the state in all matters pertaining to the exploration,  
4 development, production, storage and recovery of this state's oil  
5 and gas;

6 (13) Adopt rules with respect to the issuance, denial,  
7 retention, suspension or revocation of permits, authorizations  
8 and requirements of this chapter, which rules shall assure that  
9 the rules, permits and authorizations issued by the secretary are  
10 adequate to satisfy the purposes of this article and articles  
11 six-a, seven, eight, nine, ~~and ten and twenty-one~~ of this chapter  
12 particularly with respect to the consolidation of the various  
13 state and federal programs which place permitting requirements on  
14 the exploration, development, production, storage and recovery of  
15 this state's oil and gas ~~Provided, That notwithstanding any~~  
16 ~~provisions of this article and articles seven, eight, nine and~~  
17 ~~ten of this chapter to the contrary, the Environmental Quality~~  
18 ~~Board shall have the sole authority pursuant to section three,~~  
19 ~~article three, chapter twenty-two b to promulgate rules setting~~  
20 ~~standards of water quality applicable to waters of the state; and~~

21 (14) Perform such acts as may be necessary or appropriate to  
22 secure to this state the benefits of federal legislation  
23 establishing programs relating to the exploration, development,  
24 production, storage and recovery of this state's oil and gas,  
25 which programs are assumable by the state.

26 (d) The secretary shall have authority to visit and inspect

1 any well or well site and any other oil or gas facility in this  
2 state and may call for the assistance of any oil and gas  
3 inspector or inspectors or supervising inspector whenever such  
4 assistance is necessary in the inspection of any such well or  
5 well site or any other oil or gas facility. Similarly, all oil  
6 and gas inspectors and ~~the supervising inspector~~ supervising  
7 inspectors shall have authority to visit and inspect any well or  
8 well site and any other oil or gas facility in this state. Such  
9 inspectors shall make all necessary inspections of oil and gas  
10 operations required by this article and articles six-a, eight,  
11 nine, ten and twenty-one of this chapter; administer and enforce  
12 all oil and gas laws and rules; and perform other duties and  
13 services as may be prescribed by the secretary. The inspectors  
14 shall note and describe all violations of this article and  
15 articles six-a, eight, nine, ten or twenty-one of this chapter  
16 and promptly report those violations to the secretary in writing,  
17 furnishing at the same time a copy of the report to the operator  
18 concerned. Any well operator, coal operator operating coal seams  
19 beneath the tract of land, or the coal seam owner or lessee, if  
20 any, if said owner or lessee is not yet operating said coal seams  
21 beneath said tract of land may request the secretary to have an  
22 immediate inspection made. The operator or owner of every well  
23 or well site or any other oil or gas facility shall cooperate  
24 with the secretary, all oil and gas inspectors and the  
25 supervising inspector in making inspections or obtaining  
26 information.

1           ~~(e) Oil and gas inspectors shall devote their full time and~~  
2 ~~undivided attention to the performance of their duties, and they~~  
3 ~~shall be responsible for the inspection of all wells or well~~  
4 ~~sites or other oil or gas facilities in their respective~~  
5 ~~districts as often as may be required in the performance of their~~  
6 ~~duties.~~

7           ~~(f)~~ (e) Subject to the provisions of article one, chapter  
8 twenty-nine-b of this code, all records of the office shall be  
9 open to the public.

10 **§22-6-2a. Oil and gas inspectors qualifications and salary.**

11           (a) No person is eligible for appointment as an oil and gas  
12 inspector or supervising inspector unless, at the time of  
13 probationary appointment, the person: (1) is a citizen of West  
14 Virginia, in good health and of good character, reputation and  
15 temperate habits; (2) has had at least two years actual relevant  
16 experience in the oil and gas industry: *Provided,* That no more  
17 than one year of the experience requirement may be satisfied by  
18 any of following: (i) A bachelor of science degree in science or  
19 engineering; (ii) an associate degree in petroleum technology; or  
20 (iii) actual relevant environmental experience including, without  
21 limitation, experience in wastewater, solid waste or reclamation,  
22 each full year of which shall be considered as a year of actual  
23 relevant experience in the oil and gas industry; and (3) has good  
24 theoretical and practical knowledge of oil and gas drilling and  
25 production methods, practices and techniques, sound safety  
26 practices and applicable water and mining laws.

1 (b) In order to qualify for appointment as an oil and gas  
2 inspector or supervising inspector by the secretary, an eligible  
3 applicant shall submit to a written and oral examination by the  
4 Division of Personnel within the Department of Administration and  
5 shall furnish any evidence of good health, character and other  
6 facts establishing eligibility required by the Division of  
7 Personnel. The Office of Oil and Gas shall determine the  
8 substance of the examinations administered to candidates for the  
9 positions of oil and gas inspector and supervising oil and gas  
10 inspector by the Division of Personnel. If the Division of  
11 Personnel finds after investigation and examination that an  
12 applicant: (1) is eligible for appointment; and (2) has passed  
13 all written and oral examinations, the division shall add the  
14 applicant's name and grade to the register of qualified eligible  
15 candidates and certify its action to the secretary. No  
16 candidate's name may remain on the register for more than three  
17 years without requalifying.

18 (c) Every supervising oil and gas inspector shall be paid  
19 not less than \$40,000 per year. Every oil and gas inspector  
20 shall be paid not less than \$35,000 per year.

21 **ARTICLE 6A. NATURAL GAS HORIZONTAL WELL CONTROL ACT.**

22 **§22-6A-1. Short title.**

23 This article shall be known and cited as the Horizontal Well  
24 Act.

25 **§22-6A-2. Legislative findings; declaration of public policy.**

1 (a) The Legislature finds that:

2 (1) The advent and advancement of new and existing  
3 technologies and drilling practices have created the opportunity  
4 for the efficient development of natural gas contained in  
5 underground shales and other geologic formations;

6 (2) These practices have resulted in a new type and scale of  
7 natural gas development that utilize horizontal drilling  
8 techniques, allow the development of multiple wells from a single  
9 surface location, and may involve fracturing processes that use  
10 and produce large amounts of water;

11 (3) In some instances these practices may require the  
12 construction of large impoundments or pits for the storage of  
13 water or wastewater;

14 (4) Existing laws and regulations developed for conventional  
15 oil and gas operations do not adequately address these new  
16 technologies and practices;

17 (5) The secretary should have broad authority to condition  
18 the issuance of well work permits when, in the secretary's  
19 discretion, it is necessary to protect the safety of persons, to  
20 prevent inadequate or ineffective erosion and sediment control  
21 plans, to prevent damage to publicly owned lands or resources, to  
22 protect fresh water sources or supplies or to otherwise protect  
23 the environment;

24 (6) Concomitant with the broad powers to condition the  
25 issuance of well work permits, the secretary should also have  
26 broad authority to waive certain minimum requirements of this

1 article when, in his or her discretion, such waiver is  
2 appropriate: *Provided*, That the secretary shall submit a written  
3 report of the number of waivers granted to the Legislature  
4 commencing January 1, 2013, and each year thereafter;

5 (7) Practices involving reuse of water in the fracturing and  
6 stimulating of horizontal wells should be considered and  
7 encouraged by the department, as appropriate; and

8 (8) Allowing the responsible development of our state's  
9 natural gas resources will enhance the economy of our state and  
10 the quality of life for our citizens while assuring the long term  
11 protection of the environment.

12 (b) The Legislature declares that the establishment of a new  
13 regulatory scheme to address new and advanced natural gas  
14 development technologies and drilling practices is in the public  
15 interest and should be done in a manner that protects the  
16 environment and our economy for current and future generations.

17 (c) The Legislature declares that in view of the urgent need  
18 for prompt decision of matters submitted to the secretary under  
19 this article, all actions which the secretary or oil and gas  
20 inspectors are required to take under this article shall be taken  
21 as rapidly as practicable, consistent with adequate consideration  
22 of the issues involved.

23 **§22-6A-3. Applicability; exceptions.**

24 Notwithstanding any other provision of this code to the  
25 contrary, the provisions of this article shall apply to any  
26 natural gas well, other than a coalbed methane well, drilled

1 using a horizontal drilling method, and which disturbs three  
2 acres or more of surface, excluding pipelines, gathering lines  
3 and roads, or utilizes more than two hundred ten thousand gallons  
4 of water in any thirty day period: *Provided*, That this article  
5 does not apply to or affect any well work permitted for a  
6 horizontal well or orders issued regarding horizontal wells or  
7 permit applications pending prior to the effective date of this  
8 article: *Provided further*, That this article shall not apply to  
9 or affect any rights bargained for in any agreement between a  
10 surface owner and operator made prior to the effective date of  
11 this article.

12 **§22-6A-3a. Karst terrain; rulemaking.**

13 (a) Because drilling horizontal wells in naturally occurring  
14 karst terrain may require precautions not necessary in other  
15 parts of the state, the secretary may require additional  
16 safeguards to protect this geological formation. When drilling  
17 horizontal wells in naturally occurring karst terrain, such  
18 additional safeguards may include changing proposed well  
19 locations to avoid damage to water resources, special casing  
20 programs, and additional or special review of drilling  
21 procedures.

22 (b) In order to carry out the purposes of this section, the  
23 secretary, in consultation with the state geologist, may propose  
24 legislative rules in accordance with the provisions of chapter  
25 twenty-nine-a of this code to establish designated geographic

1 regions of the state where the provisions of this section are  
2 applicable and to establish standards for drilling horizontal  
3 wells in naturally occurring karst terrain. For horizontal wells  
4 drilled into naturally occurring karst terrain in such designated  
5 geographic regions, the rules shall, at a minimum:

6 (1) Require operators to perform certain predrilling testing  
7 to identify the location of caves and other voids, faults and  
8 relevant features in the strata and the location of surface  
9 features prevalent in naturally occurring karst terrain such as  
10 sink holes; and

11 (2) Provide any other requirements deemed necessary by the  
12 secretary to protect the unique characteristics of naturally  
13 occurring karst terrain, which requirements may include baseline  
14 water testing within an established distance from a drilling  
15 site.

16 (c) Nothing in this section allows the department to prevent  
17 drilling in naturally occurring karst terrain.

18 **§22-6A-4. Definitions.**

19 (a) All definitions set forth in article six of this chapter  
20 apply when those defined terms are used in this article, unless  
21 the context in which the term is used clearly requires a  
22 different meaning.

23 (b) Unless the context in which the term used clearly  
24 requires a different meaning, as used in this article:

25 (1) "Best management practices" means schedules of  
26 activities, prohibitions of practices, maintenance procedures and

1 other management practices established by the department to  
2 prevent or reduce pollution of waters of this state. For  
3 purposes of this article, best management practices also includes  
4 those practices and procedures set out in the Erosion and  
5 Sediment Control Manual of the Office of Oil and Gas;

6 (2) "Department" means the Department of Environmental  
7 Protection;

8 (3) "Flowback Recycle Pit" means a pit used for the  
9 retention of flowback and freshwater and into which no other  
10 wastes of any kind are placed;

11 (4) "Freshwater Impoundment" means an impoundment used for  
12 the retention of fresh water and into which no wastes of any kind  
13 are placed;

14 (5) "Horizontal drilling" means a method of drilling a well  
15 for the production of natural gas that is intended to maximize  
16 the length of wellbore that is exposed to the formation and in  
17 which the wellbore is initially vertical but is eventually curved  
18 to become horizontal, or nearly horizontal, to parallel a  
19 particular geologic formation;

20 (6) "Horizontal well" means any well site, other than a  
21 coalbed methane well, drilled using a horizontal drilling method,  
22 and which disturbs three acres or more of surface, excluding  
23 pipelines, gathering lines and roads, or utilizes more than two  
24 hundred ten thousand gallons of water in any thirty day period;

25 (7) "Impoundment" means a man-made excavation or diked area  
26 for the retention of fluids;

1 (8) "Karst terrain" means a terrain, generally underlain by  
2 limestone or dolomite, in which the topography is formed chiefly  
3 by the dissolving of rock, and which may be characterized by  
4 sinkholes, sinking streams, closed depressions, subterranean  
5 drainage and caves;

6 (9) "Perennial stream" means a stream or portion of a stream  
7 that flows year-round, is considered a permanent stream and for  
8 which base flow is maintained by ground-water discharge to the  
9 streambed due to the ground-water elevation adjacent to the  
10 stream being higher than the elevation of the streambed;

11 (10) "Pit" means a man-made excavation or diked area that  
12 contains or is intended to contain an accumulation of process  
13 waste fluids, drill cuttings or any other liquid substance  
14 generated in the development of a horizontal well and which could  
15 impact surface or groundwater;

16 (11) "Secretary" means the Secretary of the Department of  
17 Environmental Protection as established in article one of this  
18 chapter or other person to whom the secretary has delegated  
19 authority or duties pursuant to sections six or eight, article  
20 one of this chapter; and

21 (12) "Water purveyor" means any person engaged in the  
22 business of selling water to another and who is regulated by the  
23 Bureau for Public Health pursuant to title sixty-four, series  
24 three of the West Virginia Code of State Rules.

25 **§22-6A-5. Application of article six of this chapter to**  
26 **horizontal wells subject to this article.**

1 (a) To the extent that horizontal wells governed by this  
2 article are similar to conventional oil and gas wells regulated  
3 under article six of this chapter, the following sections of  
4 article six of this chapter are hereby incorporated by reference  
5 in this article:

6 (1) The provisions of section three, article six of this  
7 chapter relating to the findings and orders of inspectors  
8 concerning violations, the determination of reasonable time for  
9 abatement, extensions of time for abatement, special inspections  
10 and notice of findings and orders;

11 (2) The provisions of section four, article six of this  
12 chapter providing for the review of findings and orders by the  
13 secretary, special inspections and applications for annulment or  
14 revision of orders by the secretary;

15 (3) The provisions of section five, article six of this  
16 chapter relating to the requirements for findings, orders and  
17 notices, notice to the operator of findings and orders and  
18 judicial review of final orders of the secretary;

19 (4) The provisions of section seven, article six of this  
20 chapter relating to the issuance of water pollution control  
21 permits, the powers and duties of the secretary related thereto  
22 and penalties for violations of the same;

23 (5) The provisions of section eight, article six of this  
24 chapter relating to the prohibition of permits for wells on flat  
25 well royalty leases and requirements for permits;

26 (6) The provisions of section twelve, article six of this

1 chapter pertaining to plats prerequisite to drilling or  
2 fracturing wells, the preparation and contents thereof, notice  
3 furnished to coal operators, owners or lessees, the issuance of  
4 permits and required performance bonds, with the following  
5 exceptions:

6 (A) Under subsection (a), section twelve, article six of  
7 this chapter, the plat also shall identify all surface tract  
8 boundaries within the scope of the plat proposed to be crossed by  
9 the horizontal lateral of the horizontal well and the proposed  
10 path of such horizontal lateral, and

11 (B) Under subsection (b), section twelve, article six of  
12 this chapter, any reference to a time period shall be thirty days  
13 in lieu of fifteen days;

14 (7) The provisions of section thirteen, article six of this  
15 chapter providing for notice of the operator's intention to  
16 fracture wells, with the exception that under the third paragraph  
17 of section thirteen, article six of this chapter, the applicable  
18 periods shall be thirty days in lieu of fifteen days;

19 (8) The provisions of section fifteen, article six of this  
20 chapter pertaining to objections to proposed deep well drilling  
21 sites above seam or seams of coal, with the exception that the  
22 applicable time for filing objections is within thirty days of  
23 receipt by the secretary of the required plat and/or notice in  
24 lieu of fifteen days;

25 (9) The provisions of section seventeen, article six of this  
26 chapter pertaining to drilling of shallow gas wells, notice to be

1 provided to the chair of the review board, orders issued by the  
2 review board and permits issued for such drilling, with the  
3 exception that the applicable time for filing objections is  
4 thirty days from the date of receipt by the secretary of the  
5 required plat and notice in lieu of fifteen days;

6 (10) The provisions of section eighteen, article six of this  
7 chapter providing for protective devices for when a well  
8 penetrates one or more workable coal beds and when gas is found  
9 beneath or between workable coal beds;

10 (11) The provisions of section nineteen, article six of this  
11 chapter providing for protective devices during the life of the  
12 well and for dry or abandoned wells;

13 (12) The provisions of section twenty, article six of this  
14 chapter providing for protective devices when a well is drilled  
15 through the horizon of a coalbed from which the coal has been  
16 removed;

17 (13) The provisions of section twenty-one, article six of  
18 this chapter requiring the installation of fresh water casings;

19 (14) The provisions of section twenty-two, article six of  
20 this chapter relating to the filing of a well completion log and  
21 the contents thereof, confidentiality and permitted use and the  
22 secretary's authority to promulgate rules;

23 (15) The provisions of section twenty-seven, article six of  
24 this chapter regarding a cause of action for damages caused by an  
25 explosion;

26 (16) The provisions of section twenty-eight, article six of

1 this chapter relating to supervision by the secretary over  
2 drilling and reclamation operations, the filing of complaints,  
3 hearings on the same and appeals;

4 (17) The provisions of section twenty-nine, article six of  
5 this chapter providing for the Operating Permit and Processing  
6 Fund, the oil and gas reclamation fund and associated fees, with  
7 the exception that in the first paragraph of subsection (a),  
8 section twenty-nine, article six of this chapter, the fees to be  
9 credited to the Oil and Gas Operating Permit and Processing Fund  
10 are the permit fees collected pursuant to section seven of this  
11 article;

12 (18) The provisions of section thirty-one, article six of  
13 this chapter providing for preventing waste of gas, plans of  
14 operation for wasting gas in the process of producing oil and the  
15 secretary's rejection thereof;

16 (19) The provisions of section thirty-two, article six of  
17 this chapter pertaining to the right of an adjacent owner or  
18 operator to prevent waste of gas and the recovery of costs;

19 (20) The provisions of section thirty-three, article six of  
20 this chapter relating to circuit court actions to restrain waste;

21 (21) The provisions of section thirty-six, article six of  
22 this chapter providing for the declaration of oil and gas notice  
23 by owners and lessees of coal seams and setting out the form of  
24 such notice;

25 (22) The provisions of section thirty-nine, article six of  
26 this chapter relating to petitions for injunctive relief; and

1 (23) The provisions of section forty, article six of this  
2 chapter relating to appeals from orders issuing or refusing to  
3 issue a permit to drill or fracture, and the procedure therefore.

4 (b) Notwithstanding any other provision of this code to the  
5 contrary, no provision of article six of this chapter shall apply  
6 to horizontal wells subject to this article except as expressly  
7 incorporated by reference in this article. Any conflict between  
8 the provisions of article six and the provisions of this article  
9 shall be resolved in favor of this article.

10 **§22-6A-6. Secretary of Department of Environmental Protection;**  
11 **powers and duties.**

12 (a) The secretary is vested with jurisdiction over all  
13 aspects of this article, including, but not limited to, the  
14 following powers and duties:

15 (1) All powers and duties conferred upon the secretary  
16 pursuant to article six, chapter twenty-two of this code;

17 (2) To control and exercise regulatory authority over all  
18 gas operations regulated by this article;

19 (3) To utilize any oil and gas inspectors or other employees  
20 of the department in the enforcement of the provisions of this  
21 article;

22 (4) To propose any necessary legislative rules, in  
23 accordance with the provisions of chapter twenty-nine-a of this  
24 code to implement the provisions of this article;

25 (5) To make investigations and inspections necessary to  
26 ensure compliance with the provisions of this article;

1 (b) Except for the duties and obligations conferred by  
2 statute upon the shallow gas well review board pursuant to  
3 article eight, chapter twenty-two-c of this code, the coalbed  
4 methane review board pursuant to article twenty-one of this  
5 chapter, and the oil and gas conservation commission pursuant to  
6 article nine, chapter twenty-two-c of this code, the secretary  
7 has sole and exclusive authority to regulate the permitting,  
8 location, spacing, drilling, fracturing, stimulation, well  
9 completion activities, operation, any and all other drilling and  
10 production processes, plugging and reclamation of oil and gas  
11 wells and production operations within the state.

12 (c) The secretary shall, on a monthly basis, make a written  
13 report to the Governor disclosing, for all well work permits  
14 issued in a particular month, the average number of days elapsed  
15 between the date on which a complete application for a well work  
16 permit was filed and the date on which such well work permit was  
17 issued. This report shall be posted to the website required to  
18 be established and maintained pursuant to section twenty-one of  
19 this article.

20 **§22-6A-7. Horizontal well permit required; permit fee;**  
21 **application; soil erosion control plan; well**  
22 **site safety plan; site construction plan; water**  
23 **management plan; permit fee; installation of**  
24 **permit number; suspension of a permit.**

25 (a) It is unlawful for any person to commence any well work,

1 including site preparation work which involves any disturbance of  
2 land, for a horizontal well without first securing from the  
3 secretary a well work permit pursuant to this article.

4 (b) Every permit application filed under this section shall  
5 be on a form as may be prescribed by the secretary, shall be  
6 verified and shall contain the following information:

7 (1) The names and addresses of (i) the well operator, (ii)  
8 the agent required to be designated under subsection (h) of this  
9 section and (iii) every person whom the applicant shall notify  
10 under any section of this article, together with a certification  
11 and evidence that a copy of the application and all other  
12 required documentation has been delivered to all such persons;

13 (2) The names and addresses of every coal operator operating  
14 coal seams under the tract of land on which the well is or may be  
15 located, and the coal seam owner of record and lessee of record  
16 required to be given notice by subdivision (6), subsection (a),  
17 section five of this article, if any, if said owner or lessee is  
18 not yet operating said coal seams;

19 (3) The number of the well or such other identification as  
20 the secretary may require;

21 (4) The well work for which a permit is requested;

22 (5) The approximate total depth to which the well is to be  
23 drilled or deepened, or the actual depth if the well has been  
24 drilled; the proposed angle and direction of the well; the actual  
25 depth or the approximate depth at which the well to be drilled  
26 deviates from vertical, the angle and direction of the

1 nonvertical well bore until the well reaches its total target  
2 depth or its actual final depth and the length and direction of  
3 any actual or proposed horizontal lateral or well bore;

4 (6) Each formation in which the well will be completed if  
5 applicable;

6 (7) A description of any means used to stimulate the well;

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

12 (9) If the proposed well work is to convert an existing  
13 well, all information required by this section, all formations  
14 from which production is anticipated and any plans to plug any  
15 portion of the well;

16 (10) If the proposed well work is to plug or replug the  
17 well, all information necessary to demonstrate compliance with  
18 the legislative rules promulgated by the secretary in accordance  
19 with section thirteen of this article;

20 (11) If the proposed well work is to stimulate a horizontal  
21 well, all information necessary to demonstrate compliance with  
22 the requirements of subdivision (7), subsection (a), section five  
23 of this article;

24 (12) The erosion and sediment control plan required under  
25 subsection (c) of this section for applications for permits to  
26 drill;

1           (13) A well site safety plan to address proper safety  
2 measures to be employed for the protection of persons on the site  
3 as well as the general public. The plan shall encompass all  
4 aspects of the operation, including the actual well work for  
5 which the permit was obtained, completion activities and  
6 production activities, and shall provide an emergency point of  
7 contact for the well operator. The well operator shall provide a  
8 copy of the well site safety plan to the local emergency planning  
9 committee established pursuant to section seven, article five-a,  
10 chapter fifteen of this code, for the emergency planning district  
11 in which the well work will occur at least seven days before  
12 commencement of well work or site preparation work that involves  
13 any disturbance of land;

14           (14) A certification from the operator that (i) it has  
15 provided the owners of the surface described in subdivisions (1),  
16 (2) and (4), subsection (b), section ten of this article, the  
17 information required by subsections (b) and (c), section sixteen  
18 of this article; (ii) that the requirement was deemed satisfied  
19 as a result of giving the surface owner notice of entry to survey  
20 pursuant to subsection (a), section ten of this article six-a; or  
21 (iii) the notice requirements of subsection (b), section sixteen  
22 of this article were waived in writing by the surface owner; and

23           (15) Any other relevant information which the secretary may  
24 reasonably require.

25           (c) (1) An erosion and sediment control plan shall accompany  
26 each application for a well work permit under this article. The

1 plan shall contain methods of stabilization and drainage,  
2 including a map of the project area indicating the amount of  
3 acreage disturbed. The erosion and sediment control plan shall  
4 meet the minimum requirements of the West Virginia Erosion and  
5 Sediment Control Manual as adopted and from time to time amended  
6 by the department. The erosion and sediment control plan shall  
7 become part of the terms and conditions of any well work permit  
8 that is issued pursuant to this article and the provisions of the  
9 plan shall be carried out where applicable in the operation. The  
10 erosion and sediment control plan shall set out the proposed  
11 method of reclamation which shall comply with the requirements of  
12 section fourteen of this article.

13 (2) For well sites that disturb three acres or more of  
14 surface, excluding pipelines, gathering lines and roads, the  
15 erosion and sediment control plan submitted in accordance with  
16 this section shall be certified by a registered professional  
17 engineer.

18 (d) For well sites that disturb three acres or more of  
19 surface, excluding pipelines, gathering lines and roads, the  
20 operator shall submit a site construction plan that shall be  
21 certified by a registered professional engineer and contains  
22 information that the secretary may require by rule.

23 (e) In addition to the other requirements of this section,  
24 if the drilling, fracturing or stimulating of the horizontal well  
25 requires the use of water obtained by withdrawals from waters of  
26 this state in amounts that exceed two hundred ten thousand

1 gallons during any thirty day period, the application for a well  
2 work permit shall include a water management plan, which may be  
3 submitted on an individual well basis or on a watershed basis,  
4 and which shall include the following information:

5 (1) The type of water source, such as surface or  
6 groundwater, the county of each source to be used by the  
7 operation for water withdrawals, and the latitude and longitude  
8 of each anticipated withdrawal location;

9 (2) The anticipated volume of each water withdrawal;

10 (3) The anticipated months when water withdrawals will be  
11 made;

12 (4) The planned management and disposition of wastewater  
13 after completion from fracturing, refracturing, stimulation and  
14 production activities;

15 (5) A listing of the anticipated additives that may be used  
16 in water utilized for fracturing or stimulating the well. Upon  
17 well completion, a listing of the additives that were actually  
18 used in the fracturing or stimulating of the well shall be  
19 submitted as part of the completion log or report required by  
20 subdivision (14), subsection (a), section five of this article;

21 (6) For all surface water withdrawals, a water management  
22 plan that includes the information requested in subdivisions (1)  
23 through (5) of this subsection and the following:

24 (A) Identification of the current designated and existing  
25 water uses, including any public water intakes within one mile  
26 downstream of the withdrawal location;

1 (B) For surface waters, a demonstration, using methods  
2 acceptable to the secretary, that sufficient in-stream flow will  
3 be available immediately downstream of the point of withdrawal.  
4 A sufficient in-stream flow is maintained when a pass-by flow  
5 that is protective of the identified use of the stream is  
6 preserved immediately downstream of the point of withdrawal; and

7 (C) Methods to be used for surface water withdrawal to  
8 minimize adverse impact to aquatic life; and

9 (7) This subsection is intended to be consistent with and  
10 does not supersede, revise, repeal or otherwise modify articles  
11 eleven, twelve or twenty-six of this chapter and does not revise,  
12 repeal or otherwise modify the common law doctrine of riparian  
13 rights in West Virginia law.

14 (f) An application may propose and a permit may approve two  
15 or more activities defined as well work, however, a separate  
16 permit shall be obtained for each horizontal well drilled.

17 (g) The application for a permit under this section shall be  
18 accompanied by the applicable bond as required by section fifteen  
19 of this article, the applicable plat required by subdivision (6),  
20 subsection (a), section five of this article and a permit fee of  
21 \$10,000 for the initial horizontal well drilled at a location and  
22 a permit fee of \$5,000 for each additional horizontal well  
23 drilled on a single well pad at the same location.

24 (h) The well operator named in the application shall  
25 designate the name and address of an agent for the operator who  
26 is the attorney-in-fact for the operator and who is a resident of

1 the State of West Virginia upon whom notices, orders or other  
2 communications issued pursuant to this article or article eleven  
3 of this chapter may be served, and upon whom process may be  
4 served. Every well operator required to designate an agent under  
5 this section shall, within five days after the termination of the  
6 designation, notify the secretary of the termination and  
7 designate a new agent.

8 (i) The well owner or operator shall install the permit  
9 number as issued by the secretary and a contact telephone number  
10 for the operator in a legible and permanent manner to the well  
11 upon completion of any permitted work. The dimensions,  
12 specifications, and manner of installation shall be in accordance  
13 with the rules of the secretary.

14 (j) The secretary may waive the requirements of this section  
15 and sections eight, ten, eleven and twenty-four of this article  
16 in any emergency situation, if the secretary deems the action  
17 necessary. In such case the secretary may issue an emergency  
18 permit which is effective for not more than thirty days, unless  
19 reissued by the secretary.

20 (k) The secretary shall deny the issuance of a permit if the  
21 secretary determines that the applicant has committed a  
22 substantial violation of a previously issued permit for a  
23 horizontal well, including the applicable erosion and sediment  
24 control plan associated with the previously issued permit, or a  
25 substantial violation of one or more of the rules promulgated  
26 under this article, and in each instance has failed to abate or

1 seek review of the violation within the time prescribed by the  
2 secretary pursuant to the provisions of subdivisions (1) and (2),  
3 subsection (a), section five of this article and the rules  
4 promulgated hereunder, which time may not be unreasonable.

5 (1) In the event the secretary finds that a substantial  
6 violation has occurred and that the operator has failed to abate  
7 or seek review of the violation in the time prescribed, the  
8 secretary may suspend the permit on which said violation exists,  
9 after which suspension the operator shall forthwith cease all  
10 well work being conducted under the permit. However, the  
11 secretary may reinstate the permit without further notice, at  
12 which time the well work may be continued. The secretary shall  
13 make written findings of any such suspension and may enforce the  
14 same in the circuit courts of this state. The operator may appeal  
15 a suspension pursuant to the provisions of subdivision (23),  
16 subsection (a), section five of this article. The secretary  
17 shall make a written finding of any such determination.

18 **§22-6A-8. Review of application; issuance of permit; performance**  
19 **standards; copy of permits to county assessor.**

20 (a) The secretary shall review each application for a well  
21 work permit and shall determine whether or not a permit is  
22 issued.

23 (b) No permit may be issued less than thirty days after the  
24 filing date of the application for any well work except plugging  
25 or replugging; and no permit for plugging or replugging may be  
26 issued less than five days after the filing date of the

1 application except a permit for plugging or replugging a dry  
2 hole: *Provided*, That if the applicant certifies that all persons  
3 entitled to notice of the application under the provisions of  
4 subsection (b), section ten of this article have been served in  
5 person or by certified mail, return receipt requested, with a  
6 copy of the well work application, including the erosion and  
7 sediment control plan, if required, and the well plat, and  
8 further files written statements of no objection by all such  
9 persons, the secretary may issue the well work permit at any  
10 time.

11 (c) Prior to the issuance of any permit, the secretary shall  
12 ascertain from the Executive Director of Workforce West Virginia  
13 and the Insurance Commissioner whether the applicant is in  
14 default pursuant to the provisions of section six-c, article two,  
15 chapter twenty-one-a of this code, and in compliance with section  
16 five, article two, chapter twenty-three of this code, with regard  
17 to any required subscription to the Unemployment Compensation  
18 Fund or mandatory Workers' Compensation insurance, the payment of  
19 premiums and other charges to the fund, the timely filing of  
20 payroll reports and the maintenance of adequate deposits. If the  
21 applicant is delinquent or defaulted, or has been terminated by  
22 the executive director or the Insurance Commissioner, the permit  
23 may not be issued until the applicant returns to compliance or is  
24 restored by the executive director or the Insurance Commissioner  
25 under a reinstatement agreement: *Provided*, That in all inquiries  
26 the Executive Director of Workforce West Virginia and the

1 Insurance Commissioner shall make response to the Department of  
2 Environmental Protection within fifteen calendar days; otherwise,  
3 failure to respond timely is considered to indicate the applicant  
4 is in compliance and the failure will not be used to preclude  
5 issuance of the permit.

6 (d) The secretary may cause such inspections to be made of  
7 the proposed well work location as necessary to assure adequate  
8 review of the application. The permit may not be issued, or be  
9 conditioned including conditions with respect to the location of  
10 the well and access roads prior to issuance if the director  
11 determines that:

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

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

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

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

20 (e) In addition to the considerations set forth in  
21 subsection (d) of this section, in determining whether a permit  
22 should be issued, issued with conditions, or denied, the  
23 secretary shall determine that:

24 (1) The well location restrictions of section twelve of this  
25 article have been satisfied, unless the requirements have been  
26 waived by written consent of the surface owner or the secretary

1 has granted a variance to the restrictions, each in accordance  
2 with section twelve of this article;

3 (2) The water management plan submitted to the secretary, if  
4 required by subdivision (e), section seven of this article, has  
5 been received and approved.

6 (f) The secretary shall promptly review all written comments  
7 filed by persons entitled to notice pursuant to subsection (b),  
8 section ten of this article. If after review of the application  
9 and all written comments received from persons entitled to notice  
10 pursuant to subsection (b), section ten of this article, the  
11 application for a well work permit is approved, and no timely  
12 objection has been filed with the secretary by the coal operator  
13 operating coal seams beneath the tract of land, or the coal seam  
14 owner or lessee, if any, if said owner or lessee is not yet  
15 operating said coal seams, or made by the secretary under the  
16 provisions of section ten and eleven of this article, the permit  
17 shall be issued, with conditions, if any. This section does not  
18 supersede the provisions of section seven or subdivisions (6)  
19 through (9), subsection (a), section five of this article.

20 (g) Each permit issued by the secretary pursuant to this  
21 article shall require the operator at a minimum to:

22 (1) Plug all wells in accordance with the requirements of  
23 this article and the rules promulgated pursuant thereto when the  
24 wells become abandoned;

25 (2) With respect to disposal of cuttings at the well site,  
26 all drill cuttings and associated drilling mud generated from

1 horizontal well sites shall be disposed of in an approved solid  
2 waste facility or managed on-site in a manner approved by the  
3 secretary;

4 (3) Grade, terrace and plant, seed or sod the area disturbed  
5 that is not required in production of the horizontal well where  
6 necessary to bind the soil and prevent substantial erosion and  
7 sedimentation;

8 (4) Take action in accordance with industry standards to  
9 minimize fire hazards and other conditions which constitute a  
10 hazard to health and safety of the public;

11 (5) Protect the quantity and the quality of water in surface  
12 and groundwater systems both during and after drilling operations  
13 and during reclamation by: (A) Withdrawing water from surface  
14 waters of the state by methods deemed appropriate by the  
15 secretary, so as to maintain sufficient in-stream flow immediately  
16 downstream of the withdrawal location. In no case shall an  
17 operator withdraw water from ground or surface waters at volumes  
18 beyond which the waters can sustain; (B) Casing, sealing or  
19 otherwise managing wells to keep returned fluids from entering  
20 ground and surface waters; (C) Conducting oil and gas operations  
21 so as to prevent, to the extent possible using the best  
22 management practices, additional contributions of suspended or  
23 dissolved solids to streamflow or runoff outside the permit area,  
24 but in no event shall the contributions be in excess of  
25 requirements set by applicable state or federal law; and (D)  
26 Registering all water supply wells drilled and operated by the

1 operator with the Office of Oil and Gas. All drinking water  
2 wells within one thousand five hundred feet of a water supply  
3 well shall be flow and quality tested by the operator upon  
4 request of the drinking well owner prior to operating the water  
5 supply well. The secretary shall propose legislative rules to  
6 identify appropriate methods for testing water flow and quality.

7 (6) In addition to the other requirements of this  
8 subsection, an operator proposing to drill any horizontal well  
9 requiring the withdrawal of more than two hundred ten thousand  
10 gallons in a thirty day period shall have the following  
11 requirements added to its permit:

12 (A) Identification of water withdrawal locations. Within  
13 forty-eight hours prior to the withdrawal of water, the operator  
14 shall identify to the department the location of withdrawal by  
15 latitude and longitude and verify that sufficient flow exists to  
16 protect designated uses of the stream. The operator shall use  
17 methods deemed appropriate by the secretary to determine if  
18 sufficient flow exists to protect designated uses of the stream.

19 (B) Signage for water withdrawal locations. All water  
20 withdrawal locations and facilities identified in the water  
21 management plan shall be identified with a sign that identifies  
22 that the location is a water withdrawal point, the name and  
23 telephone number of the operator and the permit numbers(s) for  
24 which the water withdrawn will be utilized.

25 (C) Recordkeeping and reporting. For all water used for  
26 hydraulic fracturing of horizontal wells and for flowback water

1 from hydraulic fracturing activities and produced water from  
2 production activities from horizontal wells, an operator shall  
3 comply with the following record keeping and reporting  
4 requirements:

5 (i) For production activities, the following information  
6 shall be recorded and retained by the well operator:

7 (I) The quantity of flowback water from hydraulic fracturing  
8 the well;

9 (II) The quantity of produced water from the well; and

10 (III) The method of management or disposal of the flowback  
11 and produced water.

12 (ii) For transportation activities, the following  
13 information shall be recorded and maintained by the operator:

14 (I) The quantity of water transported;

15 (II) The collection and delivery or disposal locations of  
16 water; and

17 (III) The name of the water hauling company.

18 (iii) The information maintained pursuant to this  
19 subdivision shall be available for inspection by the department  
20 along with other required permits and records and maintained for  
21 three years after the water withdrawal activity.

22 (iv) This subdivision is intended to be consistent with and  
23 does not supersede, revise, repeal or otherwise modify articles  
24 eleven, twelve or twenty-six of this chapter and does not revise,  
25 repeal or otherwise modify the common law doctrine of riparian  
26 rights in West Virginia law.

1 (h) The secretary shall mail a copy of the permit as issued  
2 or a copy of the order denying a permit to any person entitled to  
3 submit written comments pursuant to subsection (a), section  
4 eleven of this article and who requested a copy.

5 (i) Upon the issuance of any permit pursuant to the  
6 provisions of this article, the secretary shall transmit a copy  
7 of the permit to the office of the assessor for the county in  
8 which the well is located.

9 **§22-6A-9. Certificate of approval required for large pits or**  
10 **impoundment construction; certificate of approval**  
11 **and annual registration fees; application required**  
12 **to obtain certificate; term of certificate;**  
13 **revocation or suspension of certificates; appeals;**  
14 **farm ponds.**

15 (a) The Legislature finds that large impoundments and pits  
16 (i.e. impoundments or pits with a capacity of two hundred ten  
17 thousand gallons or more) not associated with a specific well  
18 work permit must be properly regulated and controlled. It is the  
19 intent of the Legislature by this section to provide for the  
20 regulation and supervision of large impoundments or pits not  
21 associated with a well work permit. This section does not apply  
22 to large pits or impoundments authorized under a well work  
23 permit.

24 (b) It is unlawful for any person to place, construct,  
25 enlarge, alter, repair, remove or abandon any freshwater

1 impoundment or pit with capacity of two hundred ten thousand  
2 gallons or more used in association with any horizontal well  
3 operation until he or she has first secured from the secretary a  
4 certificate of approval for the same: *Provided*, That routine  
5 repairs that do not affect the safety of the impoundment are not  
6 subject to the application and approval requirements. A separate  
7 application for a certificate of approval shall be submitted by a  
8 person for each impoundment he or she desires to place,  
9 construct, enlarge, alter, repair, remove or abandon, but one  
10 application may be valid for more than one impoundment that  
11 supports one or more well pads.

12 (c) The application fee for placement, construction,  
13 enlargement, alteration, repair or removal of an impoundment  
14 pursuant to this section is \$300, and the fee shall accompany the  
15 application for certificate of approval. Operators holding  
16 certificates of approval shall be assessed an annual registration  
17 fee of \$100, which is valid for more than one impoundment that  
18 supports one or more well pads.

19 (d) Any certificate of approval required by this section  
20 shall be issued or denied no later than sixty days from the  
21 submission of an application containing the information required  
22 by this section. However, if the application for a certificate  
23 of approval is submitted with the application for a horizontal  
24 well permit, the certificate shall be issued or denied no later  
25 than thirty days from the submission of the permit application.

26 (e) The initial term of a certificate of approval issued

1 pursuant to this section is one year. Existing certificates of  
2 approval shall be extended for one year upon receipt of the  
3 annual registration fee, an inspection report, a monitoring and  
4 emergency action plan, and a maintenance plan: *Provided, That*  
5 where an approved, up-to-date inspection report, monitoring and  
6 emergency action plan, and maintenance plan are on file with the  
7 department, and where no outstanding violation of the  
8 requirements of the certificate of approval or any plan submitted  
9 pursuant to this article related to the impoundment exist, then  
10 the certificate of approval shall be extended without  
11 resubmission of the foregoing documents upon receipt of the  
12 annual registration fee.

13 (f) Every application for a certificate of approval shall be  
14 made in writing on a form prescribed by the secretary and shall  
15 be signed and verified by the applicant. The application shall  
16 include a monitoring and emergency action plan and a maintenance  
17 plan, the required contents of which shall be established by the  
18 secretary by legislative rule. The application shall contain and  
19 provide information that may reasonably be required by the  
20 secretary to administer the provisions of this article.

21 (g) Plans and specifications for the placement,  
22 construction, erosion and sediment control, enlargement,  
23 alteration, repair or removal and reclamation of impoundments  
24 shall be the charge of a registered professional engineer  
25 licensed to practice in West Virginia. Any plans or  
26 specifications submitted to the department shall bear the seal of

1 a registered professional engineer.

2 (h) Each certificate of approval issued by the secretary  
3 pursuant to the provisions of this article may contain other  
4 terms and conditions the secretary prescribes.

5 (i) The secretary may revoke or suspend any certificate of  
6 approval whenever the secretary determines that the impoundment  
7 for which the certificate was issued constitutes an imminent  
8 danger to human life or property. If necessary to safeguard human  
9 life or property, the secretary may also amend the terms and  
10 conditions of any certificate by issuing a new certificate  
11 containing the revised terms and conditions.

12 (1) Before any certificate of approval is amended, suspended  
13 or revoked by the secretary without the consent of the operator  
14 holding the certificate, the secretary shall hold a hearing in  
15 accordance with the provisions of article five, chapter twenty-  
16 nine-a of this code.

17 (2) Any person adversely affected by an order entered  
18 following this hearing has the right to appeal to the  
19 Environmental Quality Board pursuant to the provisions of article  
20 one, chapter twenty-two-b of this code.

21 (j) Upon expiration of the certificate of approval, the  
22 operator shall within six months, or upon its revocation by the  
23 secretary, the operator shall within sixty days, fill all  
24 impoundments that are not required or allowed by state or federal  
25 law or rule or agreement between the operator and the surface  
26 owner allowing the impoundment to remain open for the use and

1 benefit of the surface owner and reclaim the site in accordance  
2 with the approved erosion and sediment control plan.

3 (k) This section does not apply to:

4 (1) Farm ponds constructed by the operator with the written  
5 consent of the surface owner, which will be used after completion  
6 of the drilling activity primarily for agricultural purposes,  
7 including without limitation livestock watering, irrigation,  
8 retention of animal wastes and fish culture. Any impoundment that  
9 is intended to be left permanent as a farm pond under this  
10 subdivision shall meet the requirements set forth by the United  
11 States Department of Agriculture's Natural Resources Conservation  
12 Service "Conservation Practice Standard - Ponds" (Code 378).

13 (2) Farm ponds subject to certificates of approval under  
14 article fourteen of this chapter.

15 (1) The secretary is authorized to propose rules for  
16 legislative approval in accordance with the provisions of article  
17 three, chapter twenty-nine-a of this code, necessary to  
18 effectuate the provisions of this section.

19 **§22-6A-10. Notice to property owners.**

20 (a) Prior to filing a permit application, the operator shall  
21 provide notice of planned entry on to the surface tract to  
22 conduct any plat surveys required pursuant to this article. Such  
23 notice shall be provided at least seven days but no more than  
24 forty-five days prior to such entry to: (1) The surface owner of  
25 such tract; (2) to any owner or lessee of coal seams beneath such  
26 tract that has filed a declaration pursuant to section thirty-

1 six, article six, chapter twenty-two of this code; and (3) any  
2 owner of minerals underlying such tract in the county tax  
3 records.

4 (b) No later than the filing date of the application, the  
5 applicant for a permit for any well work or for a certificate of  
6 approval for the construction of an impoundment or pit as  
7 required by this article shall deliver, by personal service or by  
8 registered mail or by any method of delivery that requires a  
9 receipt or signature confirmation, copies of the application, the  
10 erosion and sediment control plan required by section seven of  
11 this article, and the well plat to each of the following persons:

12 (1) The owners of record of the surface of the tract on  
13 which the well is or is proposed to be located;

14 (2) The owners of record of the surface tract or tracts  
15 overlying the oil and gas leasehold being developed by the  
16 proposed well work, if the surface tract is to be used for roads  
17 or other land disturbance as described in the erosion and  
18 sediment control plan submitted pursuant to subsection (c),  
19 section seven of this article;

20 (3) The coal owner, operator or lessee, in the event the  
21 tract of land on which the well proposed to be drilled is located  
22 is known to be underlain by one or more coal seams;

23 (4) The owners of record of the surface tract or tracts  
24 overlying the oil and gas leasehold being developed by the  
25 proposed well work, if the surface tract is to be used for the  
26 placement, construction, enlargement, alteration, repair, removal

1 or abandonment of any impoundment or pit as described in section  
2 nine of this article;

3 (5) Any surface owner or water purveyor who is known to the  
4 applicant to have a water well, spring or water supply source  
5 located within one thousand five hundred feet of the center of  
6 the well pad which is used to provide water for consumption by  
7 humans or domestic animals; and

8 (6) The operator of any natural gas storage field within  
9 which the proposed well work activity is to take place.

10 (c) (1) If more than three tenants in common or other co-  
11 owners of interests described in subsection (b) of this section  
12 hold interests in the lands, the applicant may serve the  
13 documents required upon the person described in the records of  
14 the sheriff required to be maintained pursuant to section eight,  
15 article one, chapter eleven-a of this code.

16 (2) Notwithstanding any provision of this article to the  
17 contrary, notice to a lien holder is not notice to a landowner,  
18 unless the lien holder is the landowner.

19 (d) With respect to surface landowners identified in  
20 subsection (b) or water purveyors identified in subdivision (5),  
21 subsection (b) of this section, notification shall be made on  
22 forms and in a manner prescribed by the secretary sufficient to  
23 identify, for those persons, the rights afforded them under  
24 sections eleven and twelve of this article, and the opportunity  
25 for testing their water well.

26 (e) Prior to filing an application for a permit for a

1 horizontal well under this article, the applicant shall publish  
2 in the county in which the well is located or is proposed to be  
3 located a Class II legal advertisement as described in section  
4 two, article three, chapter fifty-nine of this code, containing  
5 notice of the public website required to be established and  
6 maintained pursuant to section twenty-one of this article and  
7 language indicating the ability of the public to submit written  
8 comments on the proposed permit, with the first publication date  
9 being at least ten days prior to the filing of the permit  
10 application. The secretary shall consider, in the same manner  
11 required by subsection (f), section eight of this article and  
12 subdivision one, subsection (c), section eleven of this article,  
13 written comments submitted in response to the legal advertisement  
14 received by the secretary within thirty days following the last  
15 required publication date: *Provided*, That such parties submitting  
16 written comments pursuant to this subsection are not entitled to  
17 participate in the processes and proceedings that exist under  
18 sections fifteen, seventeen or forty, article six of this  
19 chapter, as applicable and incorporated into this article by  
20 section five of this article.

21 (f) Materials served upon persons described in subsection  
22 (b) of this section shall contain a statement of the time limits  
23 for filing written comments, who may file written comments, the  
24 name and address of the secretary for the purpose of filing the  
25 comments and obtaining additional information, and a statement  
26 that the persons may request, at the time of submitting written

1 comments, notice of the permit decision and a list of persons  
2 qualified to test water.

3 (g) Any person entitled to submit written comments to the  
4 secretary pursuant to subsection (a), section eleven of this  
5 article, shall also be entitled to receive from the secretary a  
6 copy of the permit as issued or a copy of the order modifying or  
7 denying the permit if the person requests receipt of them as a  
8 part of the written comments submitted concerning the permit  
9 application.

10 (h) The surface owners described in subdivisions (1), (2)  
11 and (4), subsection (b) of this section, and the coal owner,  
12 operator or lessee described in subdivision (3) of that  
13 subsection is also entitled to receive notice within seven days  
14 but no less than two days before commencement that well work or  
15 site preparation work that involves any disturbance of land is  
16 expected to commence.

17 (i) Persons entitled to notice pursuant to subsection (b) of  
18 this section may contact the department to ascertain the names  
19 and locations of water testing laboratories in the subject area  
20 capable and qualified to test water supplies in accordance with  
21 standard accepted methods. In compiling that list of names the  
22 department shall consult with the state Bureau for Public Health  
23 and local health departments.

24 (j) (1) Prior to conducting any seismic activity for seismic  
25 exploration for natural gas to be extracted using horizontal  
26 drilling methods, the company or person performing the activity

1 shall provide notice to Miss Utility of West Virginia Inc. and to  
2 all surface owners, coal owners and lessees, and natural gas  
3 storage field operators on whose property blasting, percussion or  
4 other seismic-related activities will occur.

5 (2) The notice shall be provided at least three days prior  
6 to commencement of the seismic activity.

7 (3) The notice shall also include a reclamation plan in  
8 accordance with the erosion and sediment control manual that  
9 provides for the reclamation of any areas disturbed as a result  
10 of the seismic activity, including filling of shotholes used for  
11 blasting.

12 (4) Nothing in this subsection decides questions as to  
13 whether seismic activity may be secured by mineral owners,  
14 surface owners or other ownership interests.

15 **§22-6A-10a. Method of delivery of notice.**

16 Notwithstanding any provision of this article to the  
17 contrary, all notices required by this article shall be delivered  
18 by the method set forth in subsection (b), section ten of this  
19 article, which notice shall provide that further information may  
20 be obtained from the agency's website.

21 **§22-6A-11. Procedure for filing written comments; procedures for**  
22 **considering objections and comments; issues to be**  
23 **considered; and newspaper notice.**

24 (a) All persons described in subsection (b), section ten of  
25 this article may file written comments with the secretary as to

1 the location or construction of the applicant's proposed well  
2 work within thirty days after the application is filed with the  
3 secretary.

4 (b) The applicant shall tender proof of and certify to the  
5 secretary that the notice requirements of section ten of this  
6 article have been completed by the applicant. The certification  
7 of notice to the person may be made by affidavit of personal  
8 service, the return receipt card or other postal receipt for  
9 certified mailing.

10 (c) (1) The secretary shall promptly review all written  
11 comments filed by the persons entitled to notice under subsection  
12 (b), section ten of this article. The secretary shall notify the  
13 applicant of the character of the written comments submitted no  
14 later than fifteen days after the close of the comment period.

15 (2) Any objections of the affected coal operators and coal  
16 seam owners and lessees shall be addressed through the processes  
17 and procedures that exist under sections fifteen, seventeen and  
18 forty, article six of this chapter, as applicable and as  
19 incorporated into this article by section five of this article.  
20 The written comments filed by the parties entitled to notice  
21 under subdivisions (1), (2), (4), (5) and (6), subsection (b),  
22 section ten of this article shall be considered by the secretary  
23 in the permit issuance process, but the parties are not entitled  
24 to participate in the processes and proceedings that exist under  
25 sections fifteen, seventeen or forty, article six of this  
26 chapter, as applicable and as incorporated into this article by

1 section five of this article.

2 (3) The secretary shall retain all applications, plats and  
3 other documents filed with the secretary, any proposed revisions  
4 thereto, all notices given and proof of service thereof and all  
5 orders issued and all permits issued. Subject to the provisions  
6 of article one, chapter twenty-nine-b of this code, the record  
7 prepared by the secretary is open to inspection by the public.

8 **§22-6A-12. Well location restrictions.**

9 (a) Wells may not be drilled within two hundred fifty feet  
10 measured horizontally from any existing water well or developed  
11 spring used for human or domestic animal consumption. The center  
12 of well pads may not be located within six hundred twenty-five  
13 feet of an occupied dwelling structure, or a building two  
14 thousand five hundred square feet or larger used to house or  
15 shelter dairy cattle or poultry husbandry. This limitation is  
16 applicable to those wells, developed springs, dwellings or  
17 agricultural buildings that existed on the date a notice to the  
18 surface owner of planned entry for surveying or staking as  
19 provided in section ten of this article or a notice of intent to  
20 drill a horizontal well as provided in subsection (b), section  
21 sixteen of this article was provided, whichever occurs first, and  
22 to any dwelling under construction prior to that date. This  
23 limitation may be waived by written consent of the surface owner  
24 transmitted to the department and recorded in the real property  
25 records maintained by the clerk of the county commission for the  
26 county in which such property is located. Furthermore, the well

1 operator may be granted a variance by the secretary from these  
2 distance restrictions upon submission of a plan which identifies  
3 the sufficient measures, facilities or practices to be employed  
4 during well site construction, drilling and operations. The  
5 variance, if granted, shall include terms and conditions the  
6 department requires to ensure the safety and protection of  
7 affected persons and property. The terms and conditions may  
8 include insurance, bonding and indemnification, as well as  
9 technical requirements.

10 (b) No well pad may be prepared or well drilled within one  
11 hundred feet measured horizontally from any perennial stream,  
12 natural or artificial lake, pond or reservoir, or a wetland, or  
13 within three hundred feet of a naturally reproducing trout  
14 stream. No wellpad may be located within one thousand feet of a  
15 surface or ground water intake of a public water supply. The  
16 distance from the public water supply as identified by the  
17 department shall be measured as follows:

18 (1) For a surface water intake on a lake or reservoir, the  
19 distance shall be measured from the boundary of the lake or  
20 reservoir.

21 (2) For a surface water intake on a flowing stream, the  
22 distance shall be measured from a semicircular radius extending  
23 upstream of the surface water intake.

24 (3) For a groundwater source, the distance shall be measured  
25 from the wellhead or spring. The department may, in its  
26 discretion, waive these distance restrictions upon submission of

1 a plan identifying sufficient measures, facilities or practices  
2 to be employed during well site construction, drilling and  
3 operations to protect the waters of the state. A waiver, if  
4 granted, shall impose any permit conditions as the secretary  
5 considers necessary.

6 (c) Notwithstanding the foregoing provisions of this  
7 section, nothing contained in this section prevents an operator  
8 from conducting the activities permitted or authorized by a Clean  
9 Water Act Section 404 permit or other approval from the United  
10 States Army Corps of Engineers within any waters of the state or  
11 within the restricted areas referenced in this section.

12 (d) The well location restrictions set forth in this section  
13 shall not apply to any well on a multiple well pad if at least  
14 one of the wells was permitted prior to the effective date of  
15 this article.

16 **§22-6A-13. Plugging of horizontal wells.**

17 The secretary shall propose legislative rules for  
18 promulgation to govern the procedures for plugging horizontal  
19 wells, including rules relating to the methods of plugging the  
20 wells and the notices required to be provided in connection with  
21 plugging the wells.

22 **§22-6A-14. Reclamation requirements.**

23 (a) The operator of a horizontal well shall reclaim the land  
24 surface within the area disturbed in siting, drilling, completing  
25 or producing the well in accordance with the following  
26 requirements:

1           (1) Except as provided elsewhere in this article, within six  
2 months after a horizontal well is drilled and completed on a well  
3 pad designed for a single horizontal well, the operator shall  
4 fill all the pits and impoundments that are not required or  
5 allowed by state or federal law or rule or agreement between the  
6 operator and the surface owner that allows the impoundment to  
7 remain open for the use and benefit of the surface owner (i.e. a  
8 farm pond as described in section nine of this article) and  
9 remove all concrete bases, drilling supplies and drilling  
10 equipment: *Provided*, That impoundments or pits for which  
11 certificates have been approved pursuant to section nine of this  
12 article shall be reclaimed at a time and in a manner as provided  
13 in the applicable certificate and section nine. Within that six-  
14 month period, the operator shall grade or terrace and plant, seed  
15 or sod the area disturbed that is not required in production of  
16 the horizontal well in accordance with the erosion and sediment  
17 control plan. No pit may be used for the ultimate disposal of  
18 salt water. Salt water and oil shall be periodically drained or  
19 removed and properly disposed of from any pit that is retained so  
20 the pit is kept reasonably free of salt water and oil. Pits may  
21 not be left open permanently.

22           (2) For well pads designed to contain multiple horizontal  
23 wells, partial reclamation shall begin upon completion of the  
24 construction of the well pad. For purposes of this section, the  
25 term partial reclamation means grading or terracing and planting,  
26 or seeding the area disturbed that is not required in drilling,

1 completing or producing any of the horizontal wells on the well  
2 pad in accordance with the erosion and sediment control plan.  
3 This partial reclamation satisfies the reclamation requirements  
4 of this section for a maximum of twenty-four months between the  
5 drilling of horizontal wells on a well pad designed to contain  
6 multiple horizontal wells: *Provided*, That the maximum aggregate  
7 period in which partial reclamation satisfies the reclamation  
8 requirements of this section is five years from completion of the  
9 construction of the well pad. Within six months after the  
10 completion of the final horizontal well on the pad or the  
11 expiration of the five-year maximum aggregate partial reclamation  
12 period, whichever occurs first, the operator shall complete final  
13 reclamation of the well pad as set forth in this subsection.

14 (3) Within six months after a horizontal well that has  
15 produced oil or gas is plugged or after the plugging of a dry  
16 hole, the operator shall remove all production and storage  
17 structures, supplies and equipment and any oil, salt water and  
18 debris and fill any remaining excavations. Within that six-month  
19 period, the operator shall grade or terrace and plant, seed or  
20 sod the area disturbed where necessary to bind the soil and  
21 prevent substantial erosion and sedimentation.

22 (4) The operator shall reclaim the area of land disturbed in  
23 siting, drilling, completing or producing the horizontal well in  
24 accordance with the erosion and sediment control plans approved  
25 by the secretary or the secretary's designee pursuant to this  
26 article.

1 (b) The secretary, upon written application by an operator  
2 showing reasonable cause, may extend the period within which  
3 reclamation must be completed, but not to exceed a further six-  
4 month period. If the secretary refuses to approve a request for  
5 extension, the refusal shall be by order, which may be appealed  
6 pursuant to the provisions of subdivision twenty-three,  
7 subsection (a), section five of this article.

8 **§22-6A-15. Performance bonds; corporate surety or other**  
9 **security.**

10 (a) No permit may be issued pursuant to this article unless  
11 a bond as described in subsection (d) of this section which is  
12 required for a particular activity by this article is or has been  
13 furnished as provided in this section.

14 (b) A separate bond as described in subsection (d) of this  
15 section may be furnished for each horizontal well drilled. Each  
16 of these bonds shall be in the sum of \$50,000 payable to the  
17 State of West Virginia, conditioned on full compliance with all  
18 laws, rules relating to the drilling, redrilling, deepening,  
19 casing and stimulating of horizontal wells and to the plugging,  
20 abandonment and reclamation of horizontal wells and for  
21 furnishing reports and information required by the secretary.

22 (c) When an operator makes or has made application for  
23 permits to drill or stimulate a number of horizontal wells, the  
24 operator may, in lieu of furnishing a separate bond, furnish a  
25 blanket bond in the sum of \$250,000 payable to the State of West  
26 Virginia, and conditioned as provided in subsection (b) of this

1 section.

2 (d) The form of the bond required by this article shall be  
3 approved by the secretary and may include, at the option of the  
4 operator, surety bonding, collateral bonding, including cash and  
5 securities, letters of credit, establishment of an escrow  
6 account, self-bonding or a combination of these methods. If  
7 collateral bonding is used, the operator may elect to deposit  
8 cash, or collateral securities or certificates as follows: Bonds  
9 of the United States or its possessions, of the federal land  
10 bank, or of the homeowners' loan corporation; full faith and  
11 credit general obligation bonds of the State of West Virginia or  
12 other states or of any county, district or municipality of the  
13 State of West Virginia or other states; or certificates of  
14 deposit in a bank in this state, which certificates shall be in  
15 favor of the department. The cash deposit or market value of the  
16 securities or certificates shall be equal to or greater than the  
17 amount of the bond. The secretary shall, upon receipt of any  
18 deposit of cash, securities or certificates, promptly place the  
19 same with the Treasurer of the State of West Virginia whose duty  
20 it is to receive and hold them in the name of the state in trust  
21 for the purpose of which the deposit is made when the permit is  
22 issued. The operator is entitled to all interest and income  
23 earned on the collateral securities filed by the operator. The  
24 operator making the deposit is entitled from time to time to  
25 receive from the State Treasurer, upon the written approval of  
26 the secretary, the whole or any portion of any cash, securities

1 or certificates so deposited, upon depositing with the State  
2 Treasurer in lieu thereof, cash or other securities or  
3 certificates of the classes herein specified having value equal  
4 to or greater than the amount of the bond.

5 (e) When an operator has furnished a separate bond from a  
6 corporate bonding or surety company to drill, fracture or  
7 stimulate a horizontal well and the well produces oil or gas or  
8 both, its operator may deposit with the secretary cash from the  
9 sale of the oil or gas or both until the total deposited is  
10 \$50,000. When the sum of the cash deposited is \$50,000, the  
11 separate bond for the well shall be released by the secretary.  
12 Upon receipt of that cash, the secretary shall immediately  
13 deliver that amount to the State Treasurer, who shall hold the  
14 cash in the name of the state in trust for the purpose for which  
15 the bond was furnished and the deposit was made. The operator is  
16 entitled to all interest and income which may be earned on the  
17 cash deposited so long as the operator is in full compliance with  
18 all laws and rules relating to the drilling, re-drilling,  
19 deepening, casing, plugging, abandonment and reclamation of the  
20 well for which the cash was deposited and so long as the operator  
21 has furnished all reports and information required by the  
22 secretary. The secretary may establish procedures under which an  
23 operator may substitute a new bond for an existing bond or  
24 provide a new bond under certain circumstances specified in a  
25 legislative rule promulgated in accordance with chapter twenty-  
26 nine-a of this code.

1 (f) Any separate bond furnished for a particular well prior  
2 to the effective date of this article continues to be valid for  
3 all work on the well permitted prior to the effective date of  
4 this article; but no permit may be issued on such a particular  
5 well without a bond complying with the provisions of this  
6 section. Any blanket bond furnished prior to the effective date  
7 of this article shall be replaced with a new blanket bond  
8 conforming to the requirements of this section, at which time the  
9 prior bond is discharged by operation of law; and if the  
10 secretary determines that any operator has not furnished a new  
11 blanket bond, the secretary shall notify the operator by  
12 registered mail or by any method of delivery that requires a  
13 receipt or signature confirmation of the requirement for a new  
14 blanket bond, and failure to submit a new blanket bond within  
15 sixty days after receipt of the notice from the secretary works a  
16 forfeiture under subsection (i) of this section of the blanket  
17 bond furnished prior to the effective date of this article.

18 (g) Any such bond shall remain in force until released by  
19 the secretary, and the secretary shall release the same upon  
20 satisfaction that the conditions thereof have been fully  
21 performed. Upon the release of that bond, any cash or collateral  
22 securities deposited shall be returned by the secretary to the  
23 operator who deposited it.

24 (h) (1) Whenever the right to operate a well is assigned or  
25 otherwise transferred, the assignor or transferor shall notify  
26 the department of the name and address of the assignee or

1 transferee by registered mail or by any method of delivery that  
2 requires a receipt or signature confirmation not later than  
3 thirty days after the date of the assignment or transfer. No  
4 assignment or transfer by the owner relieves the assignor or  
5 transferor of the obligations and liabilities unless and until  
6 the assignee or transferee files with the department the well  
7 name and the permit number of the subject well, the county and  
8 district in which the subject well is located, the names and  
9 addresses of the assignor or transferor, and assignee or  
10 transferee, a copy of the instrument of assignment or transfer  
11 accompanied by the applicable bond, cash, collateral security or  
12 other forms of security described in this section, and the name  
13 and address of the assignee's or transferee's designated agent if  
14 the assignee or transferee would be required to designate an  
15 agent under this article if the assignee or transferee were an  
16 applicant for a permit under this article. Every well operator  
17 required to designate an agent under this section shall, within  
18 five days after the termination of the designation, notify the  
19 department of the termination and designate a new agent.

20 (2) Upon compliance with the requirements of this section by  
21 the assignor or transferor and assignee or transferee, the  
22 secretary shall release the assignor or transferor from all  
23 duties and requirements of this article and shall give written  
24 notice of release to the assignor or transferor of any bond and  
25 return to the assignor or transferor any cash or collateral  
26 securities deposited pursuant to this section.

1 (i) If any of the requirements of this article or rules  
2 promulgated pursuant thereto or the orders of the secretary has  
3 not been complied with within the time limit set by any notice of  
4 violation issued pursuant to this article, the performance bond  
5 shall then be forfeited.

6 (j) When any bond is forfeited pursuant to the provisions of  
7 this article or rules promulgated pursuant thereto, the secretary  
8 shall collect the forfeiture without delay.

9 (k) All forfeitures shall be deposited in the Treasury of  
10 the State of West Virginia in the Oil and Gas Reclamation Fund as  
11 defined in section twenty-nine, article six of this chapter.

12 **§22-6A-16. Compensation of surface owners for drilling**  
13 **operations.**

14 (a) The provisions of article seven of this chapter do not  
15 apply to horizontal wells governed by this article. In lieu  
16 thereof, the provisions of article six-b of this chapter shall  
17 provide for the compensation of surface owners for damage caused  
18 by drilling horizontal wells.

19 (b) At least ten days prior to filing a permit application,  
20 an operator shall, by certified mail return receipt requested or  
21 hand delivery, give the surface owner notice of its intent to  
22 enter upon the surface owner's land for the purpose of drilling a  
23 horizontal well: *Provided*, That notice given pursuant to  
24 subsection (a), section ten of this article satisfies the  
25 requirements of this subsection as of the date the notice was

1 provided to the surface owner: *Provided, however,* That the  
2 notice requirements of this subsection may be waived in writing  
3 by the surface owner. The notice, if required, shall include the  
4 name, address, telephone number, and if available, facsimile  
5 number and electronic mail address of the operator and the  
6 operator's authorized representative.

7 (c) No later than the date for filing the permit  
8 application, an operator shall, by certified mail return receipt  
9 requested or hand delivery, give the surface owner whose land  
10 will be used for the drilling of a horizontal well notice of the  
11 planned operation. The notice required by this subsection shall  
12 include:

13 (1) A copy of this code section;

14 (2) The information required to be provided by subsection  
15 (b), section ten of this article to a surface owner whose land  
16 will be used in conjunction with the drilling of a horizontal  
17 well; and

18 (3) A proposed surface use and compensation agreement  
19 containing an offer of compensation for damages to the surface  
20 affected by oil and gas operations to the extent the damages are  
21 compensable under article six-b of this chapter.

22 (d) The notices required by this section shall be given to  
23 the surface owner at the address listed in the records of the  
24 sheriff at the time of notice.

25 **§22-6A-17. Reimbursement of property taxes of encumbered**  
26 **properties.**

1           In addition to any compensation owed by the operator to the  
2 surface owner pursuant to the provisions of article six-b of this  
3 chapter, the operator shall pay the surface owner a one-time  
4 payment of \$2,500 to compensate for payment of real property  
5 taxes for surface lands and surrounding lands that are encumbered  
6 or disturbed by construction or operation of the horizontal well  
7 pad regardless of how many wells are drilled on a single pad or  
8 how many permits are issued for the pad.

9   **§22-6A-18. Civil action for contamination or deprivation of**  
10           **fresh water source or supply; presumption; water**  
11           **rights and replacement; waiver of replacement.**

12           (a) Nothing in this article affects in any way the rights of  
13 any person to enforce or protect, under applicable law, the  
14 person's interest in water resources affected by an oil or gas  
15 operation.

16           (b) Unless rebutted by one of the defenses established in  
17 subsection (c) of this section, in any action for contamination  
18 or deprivation of a fresh water source or supply within one  
19 thousand five hundred feet of the center of the well pad for  
20 horizontal well, there is a rebuttable presumption that the  
21 drilling and the oil or gas well or either was the proximate  
22 cause of the contamination or deprivation of the fresh water  
23 source or supply.

24           (c) In order to rebut the presumption of liability  
25 established in subsection (b) of this section, the operator must

1 prove by a preponderance of the evidence one of the following  
2 defenses:

3 (1) The pollution existed prior to the drilling or  
4 alteration activity as determined by a predrilling or  
5 prealteration water well test.

6 (2) The landowner or water purveyor refused to allow the  
7 operator access to the property to conduct a predrilling or  
8 prealteration water well test.

9 (3) The water supply is not within one thousand five hundred  
10 feet of the well.

11 (4) The pollution occurred more than six months after  
12 completion of drilling or alteration activities.

13 (5) The pollution occurred as the result of some cause other  
14 than the drilling or alteration activity.

15 (d) Any operator electing to preserve its defenses under  
16 subdivision (1), subsection (c) of this section shall retain the  
17 services of an independent certified laboratory to conduct the  
18 predrilling or prealteration water well test. A copy of the  
19 results of the test shall be submitted to the department and the  
20 surface owner or water purveyor in a manner prescribed by the  
21 secretary.

22 (e) Any operator shall replace the water supply of an owner  
23 of interest in real property who obtains all or part of that  
24 owner's supply of water for domestic, agricultural, industrial or  
25 other legitimate use from an underground or surface source with a  
26 comparable water supply where the secretary determines that the

1 water supply has been affected by contamination, diminution or  
2 interruption proximately caused by the oil or gas operation,  
3 unless waived in writing by that owner.

4 (f) The secretary may order the operator conducting the oil  
5 or gas operation to:

6 (1) Provide an emergency drinking water supply within  
7 twenty-four hours;

8 (2) Provide temporary water supply within seventy-two hours;

9 (3) Within thirty days begin activities to establish a  
10 permanent water supply or submit a proposal to the secretary  
11 outlining the measures and timetables to be used in establishing  
12 a permanent supply. The total time in providing a permanent  
13 water supply may not exceed two years. If the operator  
14 demonstrates that providing a permanent replacement water supply  
15 cannot be completed within two years, the secretary may extend  
16 the time frame on case-by-case basis; and

17 (4) Pay all reasonable costs incurred by the real property  
18 owner in securing a water supply.

19 (g) A person as described in subsection (b) of this section  
20 aggrieved under the provisions of subsections (b), (e) or (f) of  
21 this section may seek relief in court.

22 (h) The secretary shall propose rules for legislative  
23 approval in accordance with the provisions of article three,  
24 chapter twenty-nine-a of this code to implement the requirements  
25 of this section.

26 (i) Notwithstanding the denial of the operator of

1 responsibility for the damage to the real property owner's water  
2 supply or the status of any appeal on determination of liability  
3 for the damage to the real property owner's water supply, the  
4 operator may not discontinue providing the required water service  
5 until authorized to do so by the secretary or a court of  
6 competent jurisdiction.

7 **§22-6A-19. Offenses; civil penalties.**

8 (a) Any person or persons, firm, partnership, partnership  
9 association or corporation who willfully violates any provision  
10 of this article or any rule or order promulgated under this  
11 article or any permit issued pursuant to this article is subject  
12 to a civil penalty not exceeding \$5,000. Each day a violation  
13 continues after notice by the department constitutes a separate  
14 offense. The penalty shall be recovered by a civil action brought  
15 by the department, in the name of the state, before the circuit  
16 court of the county in which the subject well or facility is  
17 located. All the civil penalties collected shall be credited to  
18 the General Fund of the state.

19 (b) Notwithstanding the provisions of subsection (a) of  
20 this section, any person or persons, firm, partnership,  
21 partnership association or corporation who willfully disposes of  
22 waste fluids, drill cuttings or any other liquid substance  
23 generated in the development of a horizontal well in violation of  
24 this article or any rule or order promulgated under this article  
25 or in violation of any other state or federal statutes, rules or  
26 regulations, and which disposal was found to have had a

1 significant adverse environmental impact on surface or  
2 groundwater by the secretary, is subject to a civil penalty not  
3 exceeding \$100,000. The penalty shall be recovered by a civil  
4 action brought by the department, in the name of the state,  
5 before the circuit court of the county in which the subject well  
6 or facility is located. All the civil penalties collected shall  
7 be credited to the General Fund of the state.

8 (c) Any person who intentionally misrepresents any material  
9 fact in an application, record, report, plan or other document  
10 filed or required to be maintained under the provisions of this  
11 article or any rules promulgated by the secretary under this  
12 article shall be fined not less than \$1,000 nor more than  
13 \$10,000.

14 **§22-6A-20. Division of Highways certification.**

15 As part of the permit application for horizontal wells, the  
16 operator shall submit a letter of certification from the Division  
17 of Highways that the operator has, pursuant to the Division of  
18 Highways Oil and Gas Road Policy, entered into an agreement with  
19 the Division of Highways pertaining to the state local service  
20 roads associated with the proposed well work set forth in the  
21 permit application or has certified that no such agreement is  
22 required by the Oil and Gas Road Policy and the reasons therefor.

23 **§22-6A-21. Establishment of public website information and**  
24 **electronic notification registry regarding**  
25 **horizontal well permit applications.**

1 (a) No later than ninety days after the effective date of  
2 this article, the secretary shall establish resources on the  
3 department's public website which will list searchable  
4 information related to all horizontal well applications filed in  
5 this state, including information sufficient to identify the  
6 county and approximate location of each horizontal well for which  
7 a permit application is filed, the referenced well application  
8 number, date of application and name of the applicant.

9 (b) The secretary shall also establish a registration and e-  
10 notification process by which individuals, corporations and  
11 agencies may register to receive electronic notice of horizontal  
12 well applications filings and notices, by county of interest.  
13 Once established, individuals, agencies and corporations  
14 interested who are properly registered to receive e-notices of  
15 filings and actions on horizontal well permits shall receive  
16 electronic notifications of applications and notices of permits  
17 issued for horizontal drilling in their designated county or  
18 counties of interest.

19 **§22-6A-22. Air quality study and rulemaking.**

20 The secretary shall, by July 1, 2013, report to the  
21 Legislature on the need, if any, for further regulation of air  
22 pollution occurring from well sites, including the possible  
23 health impacts, the need for air quality inspections during  
24 drilling, the need for inspections of compressors, pits and  
25 impoundments, and any other potential air quality impacts that  
26 could be generated from this type of drilling activity that could

1 harm human health or the environment. If he or she finds that  
2 specialized permit conditions are necessary, the secretary shall  
3 promulgate legislative rules establishing these new requirements.

4 **§22-6A-23. Impoundment and pit safety study; rulemaking.**

5 The secretary shall, by January 1, 2013, report to the  
6 Legislature on the safety of pits and impoundments utilized  
7 pursuant to section nine of this article including an evaluation  
8 of whether testing and special regulatory provision is needed for  
9 radioactivity or other toxins held in the pits and impoundments.  
10 Upon a finding that greater monitoring, safety and design  
11 requirements or other specialized permit conditions are  
12 necessary, the secretary shall propose for promulgation  
13 legislative rules establishing these new requirements.

14 **§22-6A-24. Casing and cement standards.**

15 (a) The operator may only drill through fresh groundwater  
16 zones in a manner that will minimize any disturbance of the  
17 zones. Further, the operator shall construct the well and conduct  
18 casing and cementing activities for all horizontal wells in a  
19 manner that will provide for control of the well at all times,  
20 prevent the migration of gas and other fluids into the fresh  
21 groundwater and coal seams, and prevent pollution of or  
22 diminution of fresh groundwater.

23 (b) The secretary shall propose legislative and emergency  
24 rules in accordance with the provisions of article three, chapter  
25 twenty-nine-a of this code to carry out the purposes of this  
26 section.

1 (c) Rules promulgated by the secretary pursuant to this  
2 section shall include provisions to accomplish the following:

3 (1) Effective control of the horizontal well by the  
4 operator;

5 (2) Prevention of the migration of gas or other fluids into  
6 sources of fresh groundwater or into coal seams;

7 (3) Prevention of pollution of or diminution of fresh  
8 groundwater;

9 (4) Prevention of blowouts, explosions, or fires; and

10 (5) Appropriate disposition of brines and discharges from  
11 the drilling or operation of horizontal well.

12 (d) Procedures for the filing, approval, and revision of  
13 casing program:

14 (1) The operator shall prepare a casing program  
15 demonstrating how the horizontal well is to be drilled, cased,  
16 and cemented. The program shall comply with rules promulgated by  
17 the secretary.

18 (2) The rules regarding the casing program shall require the  
19 following information:

20 (A) The anticipated depth and thickness of any producing  
21 formation, expected pressures, anticipated fresh groundwater  
22 zones, and the method or information by which the depth of the  
23 deepest fresh groundwater was determined;

24 (B) The diameter of the borehole;

25 (C) The casing type, whether the casing to be utilized is  
26 new or used, and the depth, diameter, wall thickness, and burst

1 pressure rating for the casing;

2 (D) The cement type, yield, additives, and estimated amount  
3 of cement to be used;

4 (E) The estimated location of centralizers;

5 (F) The proposed borehole conditioning procedures; and

6 (G) Any alternative methods or materials required by the  
7 secretary as a condition of the well work permit.

8 (3) A copy of casing program shall be kept at the well site.

9 (4) Supervisory oil and gas inspectors and oil and gas  
10 inspectors may approve revisions to previously approved casing  
11 programs when conditions encountered during the drilling process  
12 so require: *Provided, That* any revisions to casing programs  
13 approved by inspectors as aforesaid shall ensure that the revised  
14 casing programs are at least as protective of the environment as  
15 the casing and cementing standards required by this section. Any  
16 revisions to the casing program made as a result of on-site  
17 modifications shall be documented in the program by the inspector  
18 approving the modification. The person making any revisions to  
19 the program shall initial and date the revisions and make the  
20 revised program available for inspection by the department.

21 (e) The rules promulgated by the secretary shall provide  
22 procedures for the following:

23 (1) Appropriate installation and use of conductor pipe,  
24 which shall be installed in a manner that prevents the subsurface  
25 infiltration of surface water or fluids;

26 (2) Installation of the surface and coal protection casing

1 including remedial procedures addressing lost circulation during  
2 surface or coal casing;

3 (3) Installation of intermediate production casing;

4 (4) Correction of defective casing and cementing, including  
5 requirements that the operator report the defect to the secretary  
6 within twenty-four hours of discovery by the operator;

7 (5) Investigation of natural gas migration, including  
8 requirements that the operator promptly notify the secretary and  
9 conduct an investigation of the incident; and

10 (6) Any other procedure or requirements considered necessary  
11 by the secretary.

12 (f) *Minimum casing standards.*

13 (1) All casing installed in the well, whether new or used,  
14 shall have a pressure rating that exceeds the anticipated maximum  
15 pressure to which the casing will be exposed and meet appropriate  
16 nationally recognized standards.

17 (2) The casing shall be of sufficient quality and condition  
18 to withstand the effects of tension and maintain its structural  
19 integrity during installation, cementing, and subsequent drilling  
20 and production operations.

21 (3) Centralizers shall be used, with the proper spacing for  
22 such well, during the casing installation to ensure that the  
23 casing is centered in the hole.

24 (4) Casing may not be disturbed for a period of at least  
25 eight hours after the completion of cementing operations.

26 (5) No gas or oil production or pressure may exist on the

1 surface casing annulus or the coal protection casing annulus.

2 (g) *Minimum cement standards.*

3 (1) All cement used in the well must meet the appropriate  
4 nationally recognized standards and must secure the casing to the  
5 wellbore, isolate the wellbore from all fluids, contain all  
6 pressures during all phases of drilling and operation of the  
7 well, and protect the casing from corrosion and degradation.

8 (2) Cement used in conjunction with surface and coal  
9 protection casing must provide zonal isolation in the casing  
10 annulus.

11 (h) Notwithstanding the minimum casing and cementing  
12 standards set forth in subsections (f) and (g) of this section,  
13 the secretary may:

14 (1) Revise the casing and cementing standards applicable to  
15 horizontal wells from time to time through the legislative  
16 rulemaking process so long as the revised casing and cementing  
17 standards are at least as protective of the environment; and

18 (2) Approve alternative casing programs submitted with  
19 applications for well work permits so long as the secretary  
20 determines that the casing program submitted with the application  
21 is at least as protective of the environment as the casing and  
22 cementing standards required by this section.

23 **ARTICLE 6B. OIL AND GAS HORIZONTAL WELL PRODUCTION DAMAGE**

24 **COMPENSATION.**

25 **§22-6B-1. Legislative findings and purpose; applicability.**

1 (a) The Legislature finds the following:

2 (1) Exploration for and development of oil and gas reserves  
3 in this state must coexist with the use, agricultural or  
4 otherwise, of the surface of certain land and that each  
5 constitutes a right equal to the other.

6 (2) The surface owner of lands on which horizontal wells are  
7 drilled shall be compensated for damages to the surface of the  
8 land pursuant to the provisions of this article.

9 (b) The Legislature declares that the public policy of this  
10 state shall be that the compensation and damages provided in this  
11 article for surface owners may not be diminished by any provision  
12 in a deed, lease or other contract of conveyance entered into  
13 after December 31, 2011.

14 (c) It is the purpose of this article to provide  
15 Constitutionally permissible protection and compensation to  
16 surface owners of lands on which horizontal wells are drilled  
17 from the burden resulting from drilling operations commenced  
18 after January 1, 2012. This article is to be interpreted in the  
19 light of the legislative intent expressed herein. This article  
20 shall be interpreted to benefit surface owners, regardless of  
21 whether the oil and gas mineral estate was separated from the  
22 surface estate and regardless of who executed the document which  
23 gave the oil and gas developer the right to conduct drilling  
24 operations on the land. Section four of this article shall be  
25 interpreted to benefit all persons.

26 (d) The provisions of this article apply to any natural gas

1 well, other than a coalbed methane well, drilled using a  
2 horizontal drilling method, and which disturbs three acres or  
3 more of surface, excluding pipelines, gathering lines and roads  
4 or uses more than two hundred ten thousand gallons of water in  
5 any thirty-day period. Article seven of this chapter does not  
6 apply to any damages associated with the drilling of a horizontal  
7 well.

8 **§22-6B-2. Definitions.**

9 In this article:

10 (1) "Drilling operations" means the actual drilling or  
11 redrilling of a horizontal well commenced subsequent to the  
12 effective date of this article, and the related preparation of  
13 the drilling site and access road, which requires entry, upon the  
14 surface estate;

15 (2) "Horizontal drilling" means a method of drilling a well  
16 for the production of natural gas that is intended to maximize  
17 the length of wellbore that is exposed to the formation and in  
18 which the wellbore is initially vertical but is eventually curved  
19 to become horizontal, or nearly horizontal, to parallel a  
20 particular geologic formation;

21 (3) "Horizontal well" means any well site, other than a  
22 coalbed methane well, drilled using a horizontal drilling method,  
23 and which disturbs three acres or more of surface, excluding  
24 pipelines, gathering lines and roads, or uses more than two  
25 hundred ten thousand gallons of water in any thirty-day period;

26 (4) "Oil and gas developer" means the person who secures the

1 drilling permit required by article six-a of this chapter;

2 (5) "Person" means any natural person, corporation, firm,  
3 partnership, partnership association, venture, receiver, trustee,  
4 executor, administrator, guardian, fiduciary or other  
5 representative of any kind, and includes any government or any  
6 political subdivision or agency thereof;

7 (6) "Surface estate" means an estate in or ownership of the  
8 surface of a particular tract of land overlying the oil or gas  
9 leasehold being developed; and

10 (7) "Surface owner" means a person who owns an estate in fee  
11 in the surface of land, either solely or as a co-owner.

12 **§22-6B-3. Compensation of surface owners for drilling**

13 **operations.**

14 (a) The oil and gas developer is obligated to pay the  
15 surface owner compensation for:

16 (1) Lost income or expenses incurred as a result of being  
17 unable to dedicate land actually occupied by the driller's  
18 operation, or to which access is prevented by the drilling  
19 operation, to the uses to which it was dedicated prior to  
20 commencement of the activity for which a permit was obtained,  
21 measured from the date the operator enters upon the land and  
22 commences drilling operations until the date reclamation is  
23 completed;

24 (2) The market value of crops, including timber, destroyed,  
25 damaged or prevented from reaching market;

26 (3) Any damage to a water supply in use prior to the

1 commencement of the permitted activity;

2 (4) The cost of repair of personal property up to the value  
3 of replacement by personal property of like age, wear and  
4 quality; and

5 (5) The diminution in value, if any, of the surface lands  
6 and other property after completion of the surface disturbance  
7 done pursuant to the activity for which the permit was issued  
8 determined according to the market value of the actual use made  
9 thereof by the surface owner immediately prior to the  
10 commencement of the permitted activity.

11 The amount of damages may be determined by any formula  
12 mutually agreeable between the surface owner and the oil and gas  
13 developer.

14 (b) Any reservation or assignment of the compensation  
15 provided in this section apart from the surface estate except to  
16 a tenant of the surface estate is prohibited.

17 (c) In the case of surface lands owned by more than one  
18 person as tenants in common, joint tenants or other co-ownership,  
19 any claim for compensation under this article shall be for the  
20 benefit of all co-owners. The resolution of a claim for  
21 compensation provided in this article operates as a bar to the  
22 assertion of additional claims under this section arising out of  
23 the same drilling operations.

24 **§22-6B-4. Common law right of action preserved; offsets.**

25 (a) Nothing in section three or elsewhere in this article  
26 diminishes in any way the common law remedies, including damages,

1 of a surface owner or any other person against the oil and gas  
2 developer for the unreasonable, negligent or otherwise wrongful  
3 exercise of the contractual right, whether express or implied, to  
4 use the surface of the land for the benefit of the developer's  
5 mineral interest.

6 (b) An oil and gas developer is entitled to offset  
7 compensation agreed to be paid or awarded to a surface owner  
8 under section three of this article against any damages sought by  
9 or awarded to the surface owner through the assertion of common  
10 law remedies respecting the surface land actually occupied by the  
11 same drilling operation.

12 (c) An oil and gas developer is entitled to offset damages  
13 agreed to be paid or awarded to a surface owner through the  
14 assertion of common-law remedies against compensation sought by  
15 or awarded to the surface owner under section three of this  
16 article respecting the surface land actually occupied by the same  
17 drilling operation.

18 **§22-6B-5. Notification of claim.**

19 Any surface owner, to receive compensation under section  
20 three of this article, shall notify the oil and gas developer of  
21 the damages sustained by the person within two years after the  
22 date that the oil and gas developer files notice that final  
23 reclamation is commencing under section fourteen, article six-a  
24 of this chapter. The notice of reclamation shall be given to  
25 surface owners by registered or certified mail, return receipt  
26 requested, and is complete upon mailing. If more than three

1 tenants in common or other co-owners hold interests in the lands,  
2 the oil and gas developer may give the notice to the person  
3 described in the records of the sheriff required to be maintained  
4 pursuant to section eight, article one, chapter eleven-a of this  
5 code or publish in the county in which the well is located or to  
6 be located a Class II legal advertisement as described in section  
7 two, article three, chapter fifty-nine of this code, containing  
8 the notice and information the secretary prescribes by rule.

9 **§22-6B-6. Agreement; offer of settlement.**

10 Unless the parties provide otherwise by written agreement,  
11 within sixty days after the oil and gas developer received the  
12 notification of claim specified in section five of this article,  
13 the oil and gas developer shall either make an offer of  
14 settlement to the surface owner seeking compensation, or reject  
15 the claim. The surface owner may accept or reject any offer so  
16 made: *Provided*, That the oil and gas developer may make a final  
17 offer within seventy-five days after receiving the notification  
18 of claim specified in section five of this article.

19 **§22-6B-7. Rejection; legal action; arbitration; fees and costs.**

20 (a) (1) Unless the oil and gas developer has paid the  
21 surface owner a negotiated settlement of compensation within  
22 seventy-five days after the date the notification of claim was  
23 mailed under section five of this article, the surface owner may,  
24 within eighty days after the notification mail date, either (i)  
25 Bring an action for compensation in the circuit court of the  
26 county in which the well is located; or (ii) elect instead, by

1 written notice delivered by personal service or by certified  
2 mail, return receipt requested, to the designated agent named by  
3 the oil and gas developer under the provisions of section seven,  
4 article six-a of this chapter, to have his, her or its  
5 compensation finally determined by binding arbitration pursuant  
6 to article ten, chapter fifty-five of this code.

7 (2) Settlement negotiations, offers and counter-offers  
8 between the surface owner and the oil and gas developer are not  
9 admissible as evidence in any arbitration or judicial proceeding  
10 authorized under this article, or in any proceeding resulting  
11 from the assertion of common law remedies.

12 (b) The compensation to be awarded to the surface owner  
13 shall be determined by a panel of three disinterested  
14 arbitrators. The first arbitrator shall be chosen by the surface  
15 owner in the party's notice of election under this section to the  
16 oil and gas developer; the second arbitrator shall be chosen by  
17 the oil and gas developer within ten days after receipt of the  
18 notice of election; and the third arbitrator shall be chosen  
19 jointly by the first two arbitrators within twenty days  
20 thereafter. If they are unable to agree upon the third  
21 arbitrator within twenty days, then the two arbitrators shall  
22 immediately submit the matter to the court under the provisions  
23 of section one, article ten, chapter fifty-five of this code, so  
24 that, among other things, the third arbitrator can be chosen by  
25 the judge of the circuit court of the county in which the surface  
26 estate lies.

1 (c) The following persons are considered interested and may  
2 not be appointed as arbitrators: Any person who is personally  
3 interested in the land on which horizontal drilling is being  
4 performed or has been performed, or in any interest or right  
5 therein, or in the compensation and any damages to be awarded  
6 therefor, or who is related by blood or marriage to any person  
7 having such personal interest, or who stands in the relation of  
8 guardian and ward, master and servant, principal and agent, or  
9 partner, real estate broker, or surety to any person having such  
10 personal interest, or who has enmity against or bias in favor of  
11 any person who has such personal interest or who is the owner of,  
12 or interested in, the land or the oil and gas development of the  
13 land. A person is not considered interested or incompetent to  
14 act as arbitrator by reason of being an inhabitant of the county,  
15 district or municipal corporation in which the land is located,  
16 or holding an interest in any other land therein.

17 (d) The panel of arbitrators shall hold hearings and take  
18 testimony and receive exhibits necessary to determine the amount  
19 of compensation to be paid to the surface owner. However, no  
20 award of compensation may be made to the surface owner unless the  
21 panel of arbitrators has first viewed the surface estate in  
22 question. A transcript of the evidence may be made but is not  
23 required.

24 (e) Each party shall pay the compensation of the party's  
25 arbitrator and one half of the compensation of the third  
26 arbitrator, or each party's own court costs as the case may be.

1     **§22-6B-8. Application of article.**

2             The remedies provided by this article do not preclude any  
3 person from seeking other remedies allowed by law.

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

6     **ARTICLE 8. SHALLOW GAS WELL REVIEW BOARD.**

7     **§22C-8-2. Definitions.**

8             ~~Unless the context in which used clearly requires a~~  
9 ~~different meaning,~~ As used in this article:

10            (1) "Board" means the Shallow Gas Well Review Board provided  
11 for in section four of this article;

12            (2) "Chair" means the chair of the Shallow Gas Well Review  
13 Board provided for in section four of this article;

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

16            (4) "Coal seam" and "workable coal bed" are interchangeable  
17 terms and mean any seam of coal twenty inches or more in  
18 thickness, unless a seam of less thickness is being commercially  
19 worked, or can in the judgment of the division foreseeably be  
20 commercially worked and will require protection if wells are  
21 drilled through it;

22            (5) "Commission" means the Oil and Gas Conservation  
23 Commission provided for in section four, article nine of this  
24 chapter;

25            (6) "Commissioner" means the Oil and Gas Conservation

1 Commissioner provided for in section four, article nine of this  
2 chapter;

3 (7) "Correlative rights" means the reasonable opportunity of  
4 each person entitled thereto to recover and receive without waste  
5 the gas in and under a tract or tracts, or the equivalent  
6 thereof;

7 (8) "Deep well" means any well other than a shallow well or  
8 coalbed methane well, drilled ~~and completed in to~~ a formation ~~at~~  
9 ~~or~~ below the top of the uppermost member of the "Onondaga Group";

10 (9) "Division" means the state ~~Division~~ Department of  
11 Environmental Protection provided for in chapter twenty-two of  
12 this code;

13 (10) "Director" means the ~~Director of the Division~~ Secretary  
14 of the Department of Environmental Protection as established in  
15 article one, chapter twenty-two of this code or ~~such~~ other person  
16 to whom the ~~director~~ secretary delegates authority or duties  
17 pursuant to sections six or eight, article one, chapter twenty-  
18 two of this code;

19 (11) "Drilling unit" means the acreage on which the board  
20 decides one well may be drilled under section ten of this  
21 article;

22 (12) "Gas" means all natural gas and all other fluid  
23 hydrocarbons not defined as oil in subdivision (15) of this  
24 section;

25 (13) "Gas operator" means any person who owns or has the  
26 right to develop, operate and produce gas from a pool and to

1 appropriate the gas produced therefrom either for ~~such~~ that  
2 person or for ~~such~~ that person and others. In the event that  
3 there is no gas lease in existence with respect to the tract in  
4 question, the person who owns or has the gas rights therein ~~shall~~  
5 ~~be~~ is considered a "gas operator" to the extent of seven-eighths  
6 of the gas in that portion of the pool underlying the tract owned  
7 by such person, and a "royalty owner" to the extent of one-eighth  
8 of ~~such~~ the gas;

9 (14) "Just and equitable share of production" means, as to  
10 each person, an amount of gas in the same proportion to the total  
11 gas production from a well as that person's acreage bears to the  
12 total acreage in the drilling unit;

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

18 (16) "Owner" when used with reference to any coal seam,  
19 ~~shall include~~ includes any person or persons who own, lease or  
20 operate ~~such~~ the coal seam;

21 (17) "Person" means any natural person, corporation, firm,  
22 partnership, partnership association, venture, receiver, trustee,  
23 executor, administrator, guardian, fiduciary or other  
24 representative of any kind, and includes any government or any  
25 political subdivision or any agency thereof;

26 (18) "Plat" means a map, drawing or print showing the

1 location of one or more wells or a drilling unit;

2 (19) "Pool" means an underground accumulation of gas in a  
3 single and separate natural reservoir (ordinarily a porous  
4 sandstone or limestone). It is characterized by a single natural-  
5 pressure system so that production of gas from one part of the  
6 pool tends to or does affect the reservoir pressure throughout  
7 its extent. A pool is bounded by geologic barriers in all  
8 directions, such as geologic structural conditions, impermeable  
9 strata, and water in the formation, so that it is effectively  
10 separated from any other pools which may be present in the same  
11 district or in the same geologic structure;

12 (20) "Royalty owner" means any owner of gas in place, or gas  
13 rights, to the extent that such owner is not a gas operator as  
14 defined in subdivision (13) of this section;

15 (21) "Shallow well" means any gas well other than a coalbed  
16 methane well, drilled and completed in a formation above the top  
17 of the uppermost member of the "Onondaga Group:" no deeper than  
18 one hundred feet below the top of the "Onondaga Group":

19 *Provided, That in drilling a shallow well the well operator may*  
20 *penetrate into the "Onondaga Group" to a reasonable depth, not in*  
21 *excess of twenty feet, in order to allow for logging and*  
22 *completion operations, but in no event may the "Onondaga Group"*  
23 *formation or any formation below the "Onondaga Group" be*  
24 *otherwise produced, perforated or stimulated in any manner;*

25 (22) "Tracts comprising a drilling unit" means that all  
26 separately owned tracts or portions thereof which are included

1 within the boundary of a drilling unit;

2 (23) "Well" means any shaft or hole sunk, drilled, bored or  
3 dug into the earth or into underground strata for the extraction,  
4 injection or placement of any liquid or gas, or any shaft or hole  
5 sunk or used in conjunction with ~~such~~ the extraction, injection  
6 or placement. The term "well" does not include any shaft or hole  
7 sunk, drilled, bored or dug into the earth for the sole purpose  
8 of core drilling or pumping or extracting therefrom potable,  
9 fresh or usable water for household, domestic, industrial,  
10 agricultural or public use; and

11 (24) "Well operator" means any person who proposes to or  
12 does locate, drill, operate or abandon any well.

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

14 **§22C-9-2. Definitions.**

15 (a) ~~Unless the context in which used clearly requires a~~  
16 ~~different meaning,~~ As used in this article:

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

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

23 (3) "Person" means any natural person, corporation,  
24 partnership, receiver, trustee, executor, administrator,  
25 guardian, fiduciary or other representative of any kind, and  
26 includes any government or any political subdivision or any

1 agency thereof;

2 (4) "Operator" means any owner of the right to develop,  
3 operate and produce oil and gas from a pool and to appropriate  
4 the oil and gas produced therefrom, either for ~~such~~ that person  
5 or for ~~such~~ that person and others; in the event that there is no  
6 oil and gas lease in existence with respect to the tract in  
7 question, the owner of the oil and gas rights therein ~~shall be~~  
8 ~~considered as~~ is the "operator" to the extent of seven-eighths of  
9 the oil and gas in that portion of the pool underlying the tract  
10 owned by such owner, and as "royalty owner" as to one-eighth  
11 interest in such oil and gas; and in the event the oil is owned  
12 separately from the gas, the owner of the substance being  
13 produced or sought to be produced from the pool ~~shall be~~  
14 ~~considered as~~ is the "operator" as to ~~such~~ that pool;

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

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

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

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

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

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

17           (11) "Shallow well" means any well other than a coalbed  
18 methane well, drilled and completed in a formation above the top  
19 of the uppermost member of the "Onondaga Group" no deeper than  
20 one hundred feet below the top of the "Onondaga Group":

21 *Provided, That in drilling a shallow well the operator may*  
22 *penetrate into the "Onondaga Group" to a reasonable depth, not in*  
23 *excess of twenty feet, in order to allow for logging and*  
24 *completion operations, but in no event may the "Onondaga Group"*  
25 *formation or any formation below the "Onondaga Group" be*  
26 *otherwise produced, perforated or stimulated in any manner;*

1 (12) "Deep well" means any well, other than a shallow well  
2 or coalbed methane well, drilled and completed in to a formation  
3 ~~at or~~ below the top of the uppermost member of the "Onondaga  
4 Group;"

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

7 (14) "Waste" means and includes:

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

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

16 (C) The drilling of more deep wells than are reasonably  
17 required to recover efficiently and economically the maximum  
18 amount of oil and gas from a pool. Waste does not include gas  
19 vented or released from any mine areas as defined in section two,  
20 article one, chapter twenty-two-a of this code or from adjacent  
21 coal seams which are the subject of a current permit issued under  
22 article two of chapter twenty-two-a of this code: *Provided*, That  
23 ~~nothing in this exclusion is intended to~~ does not address  
24 ownership of the gas;

25 (15) "Correlative rights" means the reasonable opportunity  
26 of each person entitled thereto to recover and receive without

1 waste the oil and gas in and under his tract or tracts, or the  
2 equivalent thereof; and

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

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