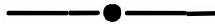


FILED IN THE OFFICE OF  
THE SECRETARY OF STATE  
THIS DATE 12/22/2011  
ADMINISTRATIVE LAW DIVISION

**WEST VIRGINIA LEGISLATURE**  
FOURTH EXTRAORDINARY SESSION, 2011



**ENROLLED**

**House Bill No. 401**

(By Mr. Speaker, Mr. Thompson)  
[By Request of the Executive]



Passed December 14, 2011

In Effect From Passage

HB 401

ENROLLED

H. B. 401

FILED IN THE OFFICE OF  
THE SECRETARY OF STATE  
THIS DATE 12/22/2011  
ADMINISTRATIVE LAW DIVISION

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(BY MR SPEAKER, MR. THOMPSON)  
[BY REQUEST OF THE EXECUTIVE]

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[Passed December 14, 2011; in effect from passage.]

AN ACT to repeal §22C-7-1, §22C-7-2 and §22C-7-3 of the Code of West Virginia, 1931, as amended; to amend said code by adding thereto a new section, designated §5B-2B-4a; to amend and reenact §22-6-1 and §22-6-2 of said code; to amend said code by adding thereto a new section, designated §22-6-2a; to amend said code by adding thereto a new article, designated §22-6A-1, §22-6A-2, §22-6A-3, §22-6A-3a, §22-6A-4, §22-6A-5, §22-6A-6, §22-6A-7, §22-6A-8, §22-6A-9, §22-6A-10, §22-6A-10a, §22-6A-11, §22-6A-12, §22-6A-13, §22-6A-14, §22-6A-15, §22-6A-16, §22-6A-17, §22-6A-18, §22-6A-19, §22-6A-20, §22-6A-21, §22-6A-22, §22-6A-23 and §22-6A-24; to amend said code by adding thereto a new article, designated §22-6B-1, §22-6B-2, §22-6B-3, §22-6B-4, §22-6B-5, §22-6B-6, §22-6B-7 and §22-6B-8; to amend and reenact §22C-8-2 of said code; and to amend and reenact §22C-9-2 of said code, all relating generally to oil and gas wells; requiring West Virginia Workforce Investment Council to complete certain reviews and provide report to Legislature; expanding powers of Secretary of the Department of Environmental Protection; authorizing secretary to determine number of oil and gas inspectors and supervisors and to make investigations or inspections to ensure compliance with applicable law; providing for inspector qualifications, duties and minimum

salaries; creating Natural Gas Horizontal Well Control Act; providing short title; making legislative findings and declarations of public policy; requiring secretary to submit written report to Legislature on number of waivers granted; providing for applicability of act and exceptions; providing special considerations regarding karst formations; requiring the secretary to propose emergency and legislative rules pertaining to drilling in karst formations; defining terms; making horizontal wells subject to certain provisions in article six, chapter twenty-two of the Code of West Virginia; specifying powers and duties of secretary, including certain rule-making power and reporting duties; requiring permit for horizontal wells; establishing permit application requirements and contents; requiring bond and permit fees; providing for issuance of emergency permits; providing for denial, suspension and reinstatement of permits in certain circumstances; providing for application review, requirements for issuance of permit and permit requirements; establishing performance standards; providing for copies of permits to be furnished to county assessors; requiring certificate of approval for large pits or impoundments construction; requiring application for certificate; establishing application requirements and payment of fees; providing for modification, revocation or suspension of certificate and hearing procedure, including an administrative appeals process; providing exceptions for certain farm ponds; authorizing secretary to propose legislative rules governing large pits and impoundment; providing certain notices to certain property owners regarding certain applications and intent to enter property to survey or to conduct seismic activity; requiring the submission of certain documents and information to be provided with such notice; clarifying that notice to certain lienholders is not notice to certain landowners; providing for public notice and comment; requiring applicant to file Class II ad and allowing submission of written comments to Department of Environmental Protection; establishing certain information to be contained in the

published newspaper notice; providing for the publishing public comment received by the Department of Environmental Protection on the department's public website; clarifying method of delivery of notice; establishing procedure for filing written comments; establishing well location restrictions; requiring the secretary to prepare a report to the legislature on noise, light dust and volatile organic compounds and their relationship to well location restrictions for occupied dwellings; allowing the secretary to propose guidelines and procedures for controlling and mitigating levels of noise, light, dust and volatile organic compounds in relation to horizontal drilling activities; requiring promulgation of legislative rules for plugging and abandonment of horizontal wells; exempting certain wells from Natural Gas Horizontal Well Control Act; establishing reclamation requirements; requiring performance bonds or other security; providing notice of planned operation and contents of notice to certain surface owners; providing notice to certain surface owner and offer for compensation for certain damages to certain surface owner; providing for reimbursement of property taxes to surface owner; providing for civil action, rebuttable presumption and relief for water contamination or deprivation; establishing water rights and replacement procedure; establishing civil penalties and offenses; establishing criminal penalties and offenses; requiring gas operations to submit certification from Division of Highways that operator has entered into road maintenance agreement pursuant to Division of Highways Oil and Gas Road Policy; creating public website and electronic notification registry of horizontal well permit applications and public notice of website; providing for the publication of information pertaining to permit applications on that public website; providing for air quality study, report to Legislature and rulemaking; requiring secretary to report to Legislature regarding safety of pits and impoundments; providing casing and cement standards; authorizing secretary to promulgate legislative and emergency rules relating to casing and cement

standards; authorizing secretary to promulgate legislative rules governing pits and impoundments; providing secretary authority to establish, revise and grant waivers regarding casing and cement standards and programs; creating the Oil and Gas Horizontal Well Production Damage Compensation Act; providing legislative findings and purpose; defining terms; providing conditions and parameters for compensation of surface owners for drilling operations; preserving common law right of action and providing offset for compensation or damages paid; requiring notice of claims by surface owners; providing manner in which oil and gas operator must provide notice of reclamation; providing for offers of settlement; providing procedures for civil actions, arbitration and fees; preserving alternate remedies; and modifying definitions of "shallow wells" and "deep wells".

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

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

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

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

**§5B-2B-4a. Report to Legislature.**

1       (a) The Legislature finds that:

2       (1) The advent and advancement of new technologies in  
3 horizontal drilling and the production of horizontal wells  
4 defined in article six-a, chapter twenty-two of this code has  
5 created thousands and has the potential to create thousands of  
6 additional drilling, production, construction, manufacturing,  
7 and related jobs in West Virginia and in the Appalachian  
8 Basin;

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

11       (3) The state needs to take all necessary steps to retain,  
12 educate and train West Virginians to have the skills necessary to  
13 compete for job opportunities resulting from horizontal drilling;  
14 and

15       (4) Specific attention shall be made by the state of West  
16 Virginia to train and educate West Virginia citizens that have  
17 not historically or traditionally been exposed to the oil and  
18 gas industry through training programs offered by  
19 community colleges, technical schools and institutions and  
20 small business owners. Small business owners shall be made  
21 aware by the State of West Virginia of any and all programs  
22 and grants available to assist them in training said  
23 individuals.

24       (b) To assist in maximizing the economic opportunities  
25 available with horizontal drilling, the council shall make a  
26 report to the Joint Committee on Government and Finance  
27 and the Legislative Oversight Commission on Education  
28 Accountability on or before November 1 of each year  
29 through 2016, detailing a comprehensive review of the direct  
30 and indirect economic impact of employers engaged in the  
31 production of horizontal wells in the State of West Virginia,  
32 as more specifically defined in article six-a, chapter twenty-  
33 two of this code, which shall include:

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

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

36       (3) The average salary per job type;

37       (4) A review of the number of employees domiciled in the  
38 State of West Virginia;

39       (5) A review of total economic impact;

40       (6) The council's recommendations for the establishment of  
41 an overall workforce investment public education agenda with  
42 goals and benchmarks toward maximizing job creation  
43 opportunities in the State of West Virginia;

44       (7) A review of number of jobs created for minorities based  
45 on race, ethnicity and gender;

46       (8) A review of number of jobs created for individuals re-  
47 employed from the state of West Virginia's unemployment  
48 rosters;

49       (9) A review of number of jobs created for returning veterans;  
50 and

51 (10) A review of number of jobs created for legal West  
52 Virginia residents and non-West Virginia residents.

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

## **CHAPTER 22. ENVIRONMENTAL RESOURCES.**

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

#### **§22-6-1. Definitions.**

1 As used in this article:

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

4 (b) "Cement" means hydraulic cement properly mixed with  
5 water;

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

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

12 (e) "Coal seam" and "workable coal bed" are  
13 interchangeable terms and mean any seam of coal twenty  
14 inches or more in thickness, unless a seam of less thickness  
15 is being commercially worked, or can in the judgment of the



16 department foreseeably be commercially worked and will  
17 require protection if wells are drilled through it;

18 (f) "Director" means the Secretary of the Department of  
19 Environmental Protection as established in article one of this  
20 chapter or other person to whom the secretary has delegated  
21 authority or duties pursuant to sections six or eight, article  
22 one of this chapter.

23 (g) "Deep well" means any well other than a shallow well  
24 or coalbed methane well, drilled to a formation below the top  
25 of the uppermost member of the "Onondaga Group";

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

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

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

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

41 (l) "Owner" when used with reference to any well, shall  
42 include any person or persons, firm, partnership, partnership  
43 association or corporation that owns, manages, operates,  
44 controls or possesses such well as principal, or as lessee or  
45 contractor, employee or agent of such principal;

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

49 (n) "Person" means any natural person, corporation, firm,  
50 partnership, partnership association, venture, receiver,  
51 trustee, executor, administrator, guardian, fiduciary or other  
52 representative of any kind, and includes any government or  
53 any political subdivision or any agency thereof;

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

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

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

61 (r) "Safe mining through of a well" means the mining of  
62 coal in a workable coal bed up to a well which penetrates  
63 such workable coal bed and through such well so that the  
64 casing or plug in the well bore where the well penetrates the  
65 workable coal bed is severed;

66 (s) "Secretary" means the Secretary of the Department of  
67 Environmental Protection as established in article one of this  
68 chapter or other person to whom the secretary has delegated  
69 authority or duties pursuant to sections six or eight, article  
70 one of this chapter;

71 (t) "Shallow well" means any gas well, other than a  
72 coalbed methane well, drilled no deeper than one hundred  
73 feet below the top of the "Onondaga Group": *Provided, That*  
74 in no event may the "Onondaga Group" formation or any

75 formation below the "Onondaga Group" be produced,  
76 perforated or stimulated in any manner;

77 (u) "Stimulate" means any action taken by a well  
78 operator to increase the inherent productivity of an oil or gas  
79 well, including, but not limited to, fracturing, shooting or  
80 acidizing, but excluding cleaning out, bailing or workover  
81 operations;

82 (v) "Waste" means (i) physical waste, as the term is  
83 generally understood in the oil and gas industry; (ii) the  
84 locating, drilling, equipping, operating or producing of any  
85 oil or gas well in a manner that causes, or tends to cause a  
86 substantial reduction in the quantity of oil or gas ultimately  
87 recoverable from a pool under prudent and proper operations,  
88 or that causes or tends to cause a substantial or unnecessary  
89 or excessive surface loss of oil or gas; or (iii) the drilling of  
90 more deep wells than are reasonably required to recover  
91 efficiently and economically the maximum amount of oil and  
92 gas from a pool; (iv) substantially inefficient, excessive or  
93 improper use, or the substantially unnecessary dissipation of,  
94 reservoir energy, it being understood that nothing in this chapter  
95 authorizes any agency of the state to impose mandatory spacing  
96 of shallow wells except for the provisions of section eight,  
97 article nine, chapter twenty-two-c of this code and the provisions  
98 of article eight, chapter twenty-two-c of this code; (v) inefficient  
99 storing of oil or gas: *Provided*, That storage in accordance with  
100 a certificate of public convenience issued by the Federal Energy  
101 Regulatory Commission is conclusively presumed to be  
102 efficient; and (vi) other underground or surface waste in the  
103 production or storage of oil, gas or condensate, however caused.  
104 Waste does not include gas vented or released from any mine  
105 areas as defined in section two, article one, chapter twenty-two-a  
106 of this code, or from adjacent coal seams which are the subject  
107 of a current permit issued under article two of chapter twenty-  
108 two-a of this code: *Provided, however*, That nothing in this  
109 exclusion is intended to address ownership of the gas;

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

113 (x) "Well" means any shaft or hole sunk, drilled, bored or  
114 dug into the earth or into underground strata for the  
115 extraction or injection or placement of any liquid or gas, or  
116 any shaft or hole sunk or used in conjunction with such  
117 extraction or injection or placement. The term "well" does  
118 not include any shaft or hole sunk, drilled, bored or dug into  
119 the earth for the sole purpose of core drilling or pumping or  
120 extracting therefrom potable, fresh or usable water for  
121 household, domestic, industrial, agricultural or public use;

122 (y) "Well work" means the drilling, redrilling, deepening,  
123 stimulating, pressuring by injection of any fluid, converting  
124 from one type of well to another, combining or physically  
125 changing to allow the migration of fluid from one formation  
126 to another or plugging or replugging of any well; and

127 (z) "Well operator" or "operator" means any person or  
128 persons, firm, partnership, partnership association or  
129 corporation that proposes to or does locate, drill, operate or  
130 abandon any well as herein defined.

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

1 (a) The secretary shall have as his or her duty the  
2 supervision of the execution and enforcement of matters  
3 related to oil and gas set out in this article and in articles six-  
4 a, eight, nine, ten and twenty-one of this chapter.

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

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

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

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

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

27           (4) Make investigations or inspections necessary to  
28 ensure compliance with and to enforce the provisions of this  
29 article and articles six-a, eight, nine, ten, and twenty-one of  
30 this chapter;

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

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

40       (7) Hear and determine applications made by owners,  
41 well operators and coal operators for the annulment or  
42 revision of orders made by oil and gas inspectors or the  
43 supervising inspector, and to make inspections, in accordance  
44 with the provisions of this article and articles eight and nine  
45 of this chapter;

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

49       (9) Conduct research and studies as the secretary shall  
50 deem necessary to aid in protecting the health and safety of  
51 persons employed within or at potential or existing oil or gas  
52 production fields within this state, to improve drilling and  
53 production methods and to provide for the more efficient  
54 protection and preservation of oil and gas-bearing rock strata  
55 and property used in connection therewith;

56       (10) Collect a permit fee of \$400 for each permit  
57 application filed other than an application for a deep well,  
58 horizontal wells regulated pursuant to article six-a of this  
59 chapter, or a coalbed methane well; and collect a permit fee  
60 of \$650 for each permit application filed for a deep well:  
61 *Provided*, That no permit application fee is required when an  
62 application is submitted solely for the plugging or replugging  
63 of a well, or to modify an existing application for which the  
64 operator previously has submitted a permit fee under this  
65 section. All application fees required hereunder are in lieu of  
66 and not in addition to any fees imposed under article eleven  
67 of this chapter relating to discharges of stormwater but are in  
68 addition to any other fees required by the provisions of this  
69 article: *Provided, however*, That upon a final determination  
70 by the United States Environmental Protection Agency  
71 regarding the scope of the exemption under section 402(l)(2)  
72 of the federal Clean Water Act (33 U.S.C. 1342(l)(2)), which

73 determination requires a “national pollutant discharge  
74 elimination system” permit for stormwater discharges from  
75 the oil and gas operations described therein, any permit fees  
76 for stormwater permits required under article eleven of this  
77 chapter for such operations may not exceed \$100.

78 (11) Perform all other duties which are expressly imposed  
79 upon the secretary by the provisions of this chapter;

80 (12) Perform all duties as the permit issuing authority for  
81 the state in all matters pertaining to the exploration,  
82 development, production, storage and recovery of this state’s  
83 oil and gas;

84 (13) Adopt rules with respect to the issuance, denial,  
85 retention, suspension or revocation of permits, authorizations  
86 and requirements of this chapter, which rules shall assure that  
87 the rules, permits and authorizations issued by the secretary  
88 are adequate to satisfy the purposes of this article and articles  
89 six-a, seven, eight, nine, ten and twenty-one of this chapter  
90 particularly with respect to the consolidation of the various  
91 state and federal programs which place permitting  
92 requirements on the exploration, development, production,  
93 storage and recovery of this state’s oil and gas; and

94 (14) Perform such acts as may be necessary or  
95 appropriate to secure to this state the benefits of federal  
96 legislation establishing programs relating to the exploration,  
97 development, production, storage and recovery of this state’s  
98 oil and gas, which programs are assumable by the state.

99 (d) The secretary shall have authority to visit and inspect  
100 any well or well site and any other oil or gas facility in this  
101 state and may call for the assistance of any oil and gas  
102 inspector or inspectors or supervising inspector whenever  
103 such assistance is necessary in the inspection of any such

104 well or well site or any other oil or gas facility. Similarly, all  
105 oil and gas inspectors and supervising inspectors shall have  
106 authority to visit and inspect any well or well site and any  
107 other oil or gas facility in this state. Such inspectors shall  
108 make all necessary inspections of oil and gas operations  
109 required by this article and articles six-a, eight, nine, ten and  
110 twenty-one of this chapter; administer and enforce all oil and  
111 gas laws and rules; and perform other duties and services as  
112 may be prescribed by the secretary. The inspectors shall note  
113 and describe all violations of this article and articles six-a,  
114 eight, nine, ten or twenty-one of this chapter and promptly  
115 report those violations to the secretary in writing, furnishing  
116 at the same time a copy of the report to the operator  
117 concerned. Any well operator, coal operator operating coal  
118 seams beneath the tract of land, or the coal seam owner or  
119 lessee, if any, if said owner or lessee is not yet operating said  
120 coal seams beneath said tract of land may request the  
121 secretary to have an immediate inspection made. The  
122 operator or owner of every well or well site or any other oil  
123 or gas facility shall cooperate with the secretary, all oil and  
124 gas inspectors and the supervising inspector in making  
125 inspections or obtaining information.

126 (e) Subject to the provisions of article one, chapter  
127 twenty-nine-b of this code, all records of the office shall be  
128 open to the public.

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

1 (a) No person is eligible for appointment as an oil and gas  
2 inspector or supervising inspector unless, at the time of  
3 probationary appointment, the person: (1) is a citizen of  
4 West Virginia, in good health and of good character,  
5 reputation and temperate habits; (2) has had at least two years  
6 actual relevant experience in the oil and gas industry:  
7 *Provided*, That no more than one year of the experience



8 requirement may be satisfied by any of following: (i) A  
9 bachelor of science degree in science or engineering; (ii) an  
10 associate degree in petroleum technology; or (iii) actual  
11 relevant environmental experience including, without  
12 limitation, experience in wastewater, solid waste or  
13 reclamation, each full year of which shall be considered as a  
14 year of actual relevant experience in the oil and gas industry;  
15 and (3) has good theoretical and practical knowledge of oil  
16 and gas drilling and production methods, practices and  
17 techniques, sound safety practices and applicable water and  
18 mining laws.

19 (b) In order to qualify for appointment as an oil and gas  
20 inspector or supervising inspector by the secretary, an  
21 eligible applicant shall submit to a written and oral  
22 examination by the Division of Personnel within the  
23 Department of Administration and shall furnish any evidence  
24 of good health, character and other facts establishing  
25 eligibility required by the Division of Personnel. The Office  
26 of Oil and Gas shall determine the substance of the  
27 examinations administered to candidates for the positions of  
28 oil and gas inspector and supervising oil and gas inspector by  
29 the Division of Personnel. If the Division of Personnel finds  
30 after investigation and examination that an applicant: (1) is  
31 eligible for appointment; and (2) has passed all written and  
32 oral examinations, the division shall add the applicant's name  
33 and grade to the register of qualified eligible candidates and  
34 certify its action to the secretary. No candidate's name may  
35 remain on the register for more than three years without  
36 requalifying.

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

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

**§22-6A-1. Short title.**

1        This article shall be known and cited as the “Horizontal Well  
2   Act”.

**§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  
4   opportunity for the efficient development of natural gas  
5   contained in underground shales and other geologic  
6   formations;

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

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

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

18       (5) The secretary should have broad authority to  
19   condition the issuance of well work permits when, in the  
20   secretary’s discretion, it is necessary to protect the safety of  
21   persons, to prevent inadequate or ineffective erosion and

22 sediment control plans, to prevent damage to publicly owned  
23 lands or resources, to protect fresh water sources or supplies  
24 or to otherwise protect the environment;

25 (6) Concomitant with the broad powers to condition the  
26 issuance of well work permits, the secretary should also have  
27 broad authority to waive certain minimum requirements of  
28 this article when, in his or her discretion, such waiver is  
29 appropriate: *Provided*, That the secretary shall submit a  
30 written report of the number of waivers granted to the  
31 Legislature commencing January 1, 2013, and each year  
32 thereafter;

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

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

40 (b) The Legislature declares that the establishment of a  
41 new regulatory scheme to address new and advanced natural  
42 gas development technologies and drilling practices is in the  
43 public interest and should be done in a manner that protects  
44 the environment and our economy for current and future  
45 generations.

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

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

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

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

1       (a) Because drilling horizontal wells in naturally  
2       occurring karst terrain may require precautions not necessary  
3       in other parts of the state, the secretary may require  
4       additional safeguards to protect this geological formation.  
5       When drilling horizontal wells in naturally occurring karst  
6       terrain, such additional safeguards may include changing  
7       proposed well locations to avoid damage to water resources,  
8       special casing programs, and additional or special review of  
9       drilling procedures.

10      (b) In order to carry out the purposes of this section, the  
11      secretary, in consultation with the state geologist, shall  
12      propose emergency and legislative rules in accordance with  
13      the provisions of chapter twenty-nine-a of this code to  
14      establish designated geographic regions of the state where the  
15      provisions of this section are applicable and to establish  
16      standards for drilling horizontal wells in naturally occurring

17 karst terrain. For horizontal wells drilled into naturally  
18 occurring karst terrain in such designated geographic regions,  
19 the rules shall, at a minimum:

20 (1) Require operators to perform certain predrilling  
21 testing to identify the location of caves and other voids, faults  
22 and relevant features in the strata and the location of surface  
23 features prevalent in naturally occurring karst terrain such as  
24 sink holes; and

25 (2) Provide any other requirements deemed necessary by  
26 the secretary to protect the unique characteristics of naturally  
27 occurring karst terrain, which requirements may include  
28 baseline water testing within an established distance from a  
29 drilling site.

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

#### **§22-6A-4. Definitions.**

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

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

7 (1) "Best management practices" means schedules of  
8 activities, prohibitions of practices, maintenance procedures  
9 and other management practices established by the  
10 department to prevent or reduce pollution of waters of this  
11 state. For purposes of this article, best management practices  
12 also includes those practices and procedures set out in the  
13 Erosion and Sediment Control Manual of the Office of Oil  
14 and Gas;

15       (2) "Department" means the Department of  
16       Environmental Protection;

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

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

23       (5) "Horizontal drilling" means a method of drilling a  
24       well for the production of natural gas that is intended to  
25       maximize the length of wellbore that is exposed to the  
26       formation and in which the wellbore is initially vertical but  
27       is eventually curved to become horizontal, or nearly  
28       horizontal, to parallel a particular geologic formation;

29       (6) "Horizontal well" means any well site, other than a  
30       coalbed methane well, drilled using a horizontal drilling  
31       method, and which disturbs three acres or more of surface,  
32       excluding pipelines, gathering lines and roads, or utilizes  
33       more than two hundred ten thousand gallons of water in any  
34       thirty-day period;

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

37       (8) "Karst terrain" means a terrain, generally underlain by  
38       limestone or dolomite, in which the topography is formed  
39       chiefly by the dissolving of rock, and which may be  
40       characterized by sinkholes, sinking streams, closed  
41       depressions, subterranean drainage and caves;

42       (9) "Perennial stream" means a stream or portion of a  
43       stream that flows year-round, is considered a permanent

44 stream and for which base flow is maintained by ground-  
45 water discharge to the streambed due to the ground-water  
46 elevation adjacent to the stream being higher than the  
47 elevation of the streambed;

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

53 (11) "Secretary" means the Secretary of the Department  
54 of Environmental Protection as established in article one of  
55 this chapter or other person to whom the secretary has  
56 delegated authority or duties pursuant to sections six or eight,  
57 article one of this chapter; and

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

**§22-6A-5. Application of article six of this chapter to 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  
5 reference 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  
9 for abatement, extensions of time for abatement, special  
10 inspections 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  
14 or 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  
27 chapter pertaining to plats prerequisite to drilling or  
28 fracturing wells, the preparation and contents thereof, notice  
29 furnished to coal operators, owners or lessees, the issuance of  
30 permits and required performance bonds, with the following  
31 exceptions:

32       (A) Under subsection (a), section twelve, article six of  
33 this chapter, the plat also shall identify all surface tract  
34 boundaries within the scope of the plat proposed to be  
35 crossed by the horizontal lateral of the horizontal well and the  
36 proposed path of such horizontal lateral, and

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



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

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

51       (9) The provisions of section seventeen, article six of this  
52 chapter pertaining to drilling of shallow gas wells, notice to  
53 be provided to the chair of the review board, orders issued by  
54 the review board and permits issued for such drilling, with  
55 the exception that the applicable time for filing objections is  
56 thirty days from the date of receipt by the secretary of the  
57 required plat and notice in lieu of fifteen days;

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

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

65       (12) The provisions of section twenty, article six of this  
66 chapter providing for protective devices when a well is  
67 drilled through the horizon of a coal bed from which the coal  
68 has been removed;

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

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

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

78       (16) The provisions of section twenty-eight, article six of  
79 this chapter relating to supervision by the secretary over  
80 drilling and reclamation operations, the filing of complaints,  
81 hearings on the same and appeals;

82       (17) The provisions of section twenty-nine, article six of  
83 this chapter providing for the Operating Permit and  
84 Processing Fund, the oil and gas reclamation fund and  
85 associated fees, with the exception that in the first paragraph  
86 of subsection (a), section twenty-nine, article six of this  
87 chapter, the fees to be credited to the Oil and Gas Operating  
88 Permit and Processing Fund are the permit fees collected  
89 pursuant to section seven of this article;

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

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

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

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

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

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

108           (b) Notwithstanding any other provision of this code to  
109 the contrary, no provision of article six of this chapter shall  
110 apply to horizontal wells subject to this article except as  
111 expressly incorporated by reference in this article. Any  
112 conflict between the provisions of article six and the  
113 provisions of this article shall be resolved in favor of this  
114 article.

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

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

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

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

8           (3) To utilize any oil and gas inspectors or other  
9 employees of the department in the enforcement of the  
10 provisions of this article;

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

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

16 (b) Except for the duties and obligations conferred by  
17 statute upon the shallow gas well review board pursuant to  
18 article eight, chapter twenty-two-c of this code, the coalbed  
19 methane review board pursuant to article twenty-one of this  
20 chapter, and the oil and gas conservation commission  
21 pursuant to article nine, chapter twenty-two-c of this code,  
22 the secretary has sole and exclusive authority to regulate the  
23 permitting, location, spacing, drilling, fracturing, stimulation,  
24 well completion activities, operation, any and all other  
25 drilling and production processes, plugging and reclamation  
26 of oil and gas wells and production operations within the  
27 state.

28 (c) The secretary shall, on a monthly basis, make a  
29 written report to the Governor disclosing, for all well work  
30 permits issued in a particular month, the average number of  
31 days elapsed between the date on which a complete  
32 application for a well work permit was filed and the date on  
33 which such well work permit was issued. This report shall be  
34 posted to the website required to be established and  
35 maintained pursuant to section twenty-one of this article.

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

1 (a) It is unlawful for any person to commence any well  
2 work, including site preparation work which involves any

3 disturbance of land, for a horizontal well without first  
4 securing from the secretary a well work permit pursuant to  
5 this article.

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

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

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

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

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

26 (5) The approximate total depth to which the well is to be  
27 drilled or deepened, or the actual depth if the well has been  
28 drilled; the proposed angle and direction of the well; the  
29 actual depth or the approximate depth at which the well to be  
30 drilled deviates from vertical, the angle and direction of the  
31 nonvertical well bore until the well reaches its total target  
32 depth or its actual final depth and the length and direction of  
33 any actual or proposed horizontal lateral or well bore;

34       (6) Each formation in which the well will be completed  
35       if applicable;

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

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

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

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

50       (11) If the proposed well work is to stimulate a horizontal  
51       well, all information necessary to demonstrate compliance  
52       with the requirements of subdivision (7), subsection (a),  
53       section five of this article;

54       (12) The erosion and sediment control plan required  
55       under subsection (c) of this section for applications for  
56       permits to drill;

57       (13) A well site safety plan to address proper safety  
58       measures to be employed for the protection of persons on the  
59       site as well as the general public. The plan shall encompass all  
60       aspects of the operation, including the actual well work for  
61       which the permit was obtained, completion activities and  
62       production activities, and shall provide an emergency point of  
63       contact for the well operator. The well operator shall provide a

64 copy of the well site safety plan to the local emergency planning  
65 committee established pursuant to section seven, article five-a,  
66 chapter fifteen of this code, for the emergency planning district  
67 in which the well work will occur at least seven days before  
68 commencement of well work or site preparation work that  
69 involves any disturbance of land;

70 (14) A certification from the operator that (i) it has  
71 provided the owners of the surface described in subdivisions  
72 (1), (2) and (4), subsection (b), section ten of this article, the  
73 information required by subsections (b) and (c), section  
74 sixteen of this article; (ii) that the requirement was deemed  
75 satisfied as a result of giving the surface owner notice of  
76 entry to survey pursuant to subsection (a), section ten of this  
77 article; or (iii) the notice requirements of subsection (b),  
78 section sixteen of this article were waived in writing by the  
79 surface owner; and

80 (15) Any other relevant information which the secretary  
81 may reasonably require.

82 (c)(1) An erosion and sediment control plan shall  
83 accompany each application for a well work permit under  
84 this article. The plan shall contain methods of stabilization  
85 and drainage, including a map of the project area indicating  
86 the amount of acreage disturbed. The erosion and sediment  
87 control plan shall meet the minimum requirements of the  
88 West Virginia Erosion and Sediment Control Manual as  
89 adopted and from time to time amended by the department.  
90 The erosion and sediment control plan shall become part of  
91 the terms and conditions of any well work permit that is  
92 issued pursuant to this article and the provisions of the plan  
93 shall be carried out where applicable in the operation. The  
94 erosion and sediment control plan shall set out the proposed  
95 method of reclamation which shall comply with the  
96 requirements of section fourteen of this article.

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

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

107       (e) In addition to the other requirements of this section,  
108       if the drilling, fracturing or stimulating of the horizontal well  
109       requires the use of water obtained by withdrawals from  
110       waters of this state in amounts that exceed two hundred ten  
111       thousand gallons during any thirty day period, the application  
112       for a well work permit shall include a water management  
113       plan, which may be submitted on an individual well basis or  
114       on a watershed basis, and which shall include the following  
115       information:

116       (1) The type of water source, such as surface or  
117       groundwater, the county of each source to be used by the  
118       operation for water withdrawals, and the latitude and  
119       longitude of each anticipated withdrawal location;

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

121       (3) The anticipated months when water withdrawals will  
122       be made;

123       (4) The planned management and disposition of  
124       wastewater after completion from fracturing, refracturing,  
125       stimulation and production activities;



126       (5) A listing of the anticipated additives that may be used  
127 in water utilized for fracturing or stimulating the well. Upon  
128 well completion, a listing of the additives that were actually  
129 used in the fracturing or stimulating of the well shall be  
130 submitted as part of the completion log or report required by  
131 subdivision (14), subsection (a), section five of this article;

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

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

139       (B) For surface waters, a demonstration, using methods  
140 acceptable to the secretary, that sufficient in-stream flow will  
141 be available immediately downstream of the point of  
142 withdrawal. A sufficient in-stream flow is maintained when  
143 a pass-by flow that is protective of the identified use of the  
144 stream is preserved immediately downstream of the point of  
145 withdrawal; and

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

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

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

157       (g) The application for a permit under this section shall  
158 be accompanied by the applicable bond as required by  
159 section fifteen of this article, the applicable plat required by  
160 subdivision (6), subsection (a), section five of this article and  
161 a permit fee of \$10,000 for the initial horizontal well drilled  
162 at a location and a permit fee of \$5,000 for each additional  
163 horizontal well drilled on a single well pad at the same  
164 location.

165       (h) The well operator named in the application shall  
166 designate the name and address of an agent for the operator  
167 who is the attorney-in-fact for the operator and who is a  
168 resident of the State of West Virginia upon whom notices,  
169 orders or other communications issued pursuant to this article  
170 or article eleven of this chapter may be served, and upon  
171 whom process may be served. Every well operator required  
172 to designate an agent under this section shall, within five  
173 days after the termination of the designation, notify the  
174 secretary of the termination and designate a new agent.

175       (i) The well owner or operator shall install the permit  
176 number as issued by the secretary and a contact telephone  
177 number for the operator in a legible and permanent manner  
178 to the well upon completion of any permitted work. The  
179 dimensions, specifications, and manner of installation shall  
180 be in accordance with the rules of the secretary.

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

187       (k) The secretary shall deny the issuance of a permit if  
188 the secretary determines that the applicant has committed a

189 substantial violation of a previously issued permit for a  
190 horizontal well, including the applicable erosion and  
191 sediment control plan associated with the previously issued  
192 permit, or a substantial violation of one or more of the rules  
193 promulgated under this article, and in each instance has failed  
194 to abate or seek review of the violation within the time  
195 prescribed by the secretary pursuant to the provisions of  
196 subdivisions (1) and (2), subsection (a), section five of this  
197 article and the rules promulgated hereunder, which time may  
198 not be unreasonable.

199 (l) In the event the secretary finds that a substantial  
200 violation has occurred and that the operator has failed to  
201 abate or seek review of the violation in the time prescribed,  
202 the secretary may suspend the permit on which said violation  
203 exists, after which suspension the operator shall forthwith  
204 cease all well work being conducted under the permit.  
205 However, the secretary may reinstate the permit without  
206 further notice, at which time the well work may be continued.  
207 The secretary shall make written findings of any such  
208 suspension and may enforce the same in the circuit courts of  
209 this state. The operator may appeal a suspension pursuant to  
210 the provisions of subdivision (23), subsection (a), section five  
211 of this article. The secretary shall make a written finding of  
212 any such determination.

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

1 (a) The secretary shall review each application for a well  
2 work permit and shall determine whether or not a permit is  
3 issued.

4 (b) No permit may be issued less than thirty days after the  
5 filing date of the application for any well work except

6 plugging or replugging; and no permit for plugging or  
7 replugging may be issued less than five days after the filing  
8 date of the application except a permit for plugging or  
9 replugging a dry hole: *Provided*, That if the applicant  
10 certifies that all persons entitled to notice of the application  
11 under the provisions of subsection (b), section ten of this  
12 article have been served in person or by certified mail, return  
13 receipt requested, with a copy of the well work application,  
14 including the erosion and sediment control plan, if required,  
15 and the well plat, and further files written statements of no  
16 objection by all such persons, the secretary may issue the  
17 well work permit at any time.

18 (c) Prior to the issuance of any permit, the secretary shall  
19 ascertain from the Executive Director of Workforce West  
20 Virginia and the Insurance Commissioner whether the  
21 applicant is in default pursuant to the provisions of section  
22 six-c, article two, chapter twenty-one-a of this code, and in  
23 compliance with section five, article two, chapter twenty-  
24 three of this code, with regard to any required subscription to  
25 the Unemployment Compensation Fund or mandatory  
26 Workers' Compensation insurance, the payment of premiums  
27 and other charges to the fund, the timely filing of payroll  
28 reports and the maintenance of adequate deposits. If the  
29 applicant is delinquent or defaulted, or has been terminated  
30 by the executive director or the Insurance Commissioner, the  
31 permit may not be issued until the applicant returns to  
32 compliance or is restored by the executive director or the  
33 Insurance Commissioner under a reinstatement agreement:  
34 *Provided*, That in all inquiries the Executive Director of  
35 Workforce West Virginia and the Insurance Commissioner  
36 shall make response to the Department of Environmental  
37 Protection within fifteen calendar days; otherwise, failure to  
38 respond timely is considered to indicate the applicant is in  
39 compliance and the failure will not be used to preclude  
40 issuance of the permit.

41 (d) The secretary may cause such inspections to be made  
42 of the proposed well work location as necessary to assure  
43 adequate review of the application. The permit may not be  
44 issued, or may be conditioned including conditions with  
45 respect to the location of the well and access roads prior to  
46 issuance if the director determines that:

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

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

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

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

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

59 (1) The well location restrictions of section twelve of this  
60 article have been satisfied, unless the requirements have been  
61 waived by written consent of the surface owner or the  
62 secretary has granted a variance to the restrictions, each in  
63 accordance with section twelve of this article;

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

67 (f) The secretary shall promptly review all written  
68 comments filed by persons entitled to notice pursuant to

69 subsection (b), section ten of this article. If after review of  
70 the application and all written comments received from  
71 persons entitled to notice pursuant to subsection (b), section  
72 ten of this article, the application for a well work permit is  
73 approved, and no timely objection has been filed with the  
74 secretary by the coal operator operating coal seams beneath  
75 the tract of land, or the coal seam owner or lessee, if any, if  
76 said owner or lessee is not yet operating said coal seams, or  
77 made by the secretary under the provisions of section ten and  
78 eleven of this article, the permit shall be issued, with  
79 conditions, if any. This section does not supersede the  
80 provisions of section seven or subdivisions (6) through (9),  
81 subsection (a), section five of this article.

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

84 (1) Plug all wells in accordance with the requirements of  
85 this article and the rules promulgated pursuant thereto when  
86 the wells become abandoned;

87 (2) With respect to disposal of cuttings at the well site, all  
88 drill cuttings and associated drilling mud generated from  
89 horizontal well sites shall be disposed of in an approved solid  
90 waste facility, or if the surface owner consents, the drill  
91 cuttings and associated drilling mud may be managed on-site  
92 in a manner approved by the secretary;

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

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

100       (5) Protect the quantity and the quality of water in surface  
101 and groundwater systems both during and after drilling  
102 operations and during reclamation by: (A) Withdrawing  
103 water from surface waters of the state by methods deemed  
104 appropriate by the secretary, so as to maintain sufficient in-  
105 stream flow immediately downstream of the withdrawal  
106 location. In no case shall an operator withdraw water from  
107 ground or surface waters at volumes beyond which the waters  
108 can sustain; (B) Casing, sealing or otherwise managing wells  
109 to keep returned fluids from entering ground and surface  
110 waters; (C) Conducting oil and gas operations so as to  
111 prevent, to the extent possible using the best management  
112 practices, additional contributions of suspended or dissolved  
113 solids to streamflow or runoff outside the permit area, but in  
114 no event shall the contributions be in excess of requirements  
115 set by applicable state or federal law; and (D) Registering all  
116 water supply wells drilled and operated by the operator with  
117 the Office of Oil and Gas. All drinking water wells within  
118 one thousand five hundred feet of a water supply well shall  
119 be flow and quality tested by the operator upon request of the  
120 drinking well owner prior to operating the water supply well.  
121 The secretary shall propose legislative rules to identify  
122 appropriate methods for testing water flow and quality.

123       (6) In addition to the other requirements of this  
124 subsection, an operator proposing to drill any horizontal well  
125 requiring the withdrawal of more than two hundred ten  
126 thousand gallons in a thirty-day period shall have the  
127 following requirements added to its permit:

128       (A) Identification of water withdrawal locations. Within  
129 forty-eight hours prior to the withdrawal of water, the  
130 operator shall identify to the department the location of  
131 withdrawal by latitude and longitude and verify that  
132 sufficient flow exists to protect designated uses of the stream.  
133 The operator shall use methods deemed appropriate by the

134 secretary to determine if sufficient flow exists to protect  
135 designated uses of the stream.

136 (B) Signage for water withdrawal locations. All water  
137 withdrawal locations and facilities identified in the water  
138 management plan shall be identified with a sign that  
139 identifies that the location is a water withdrawal point, the  
140 name and telephone number of the operator and the permit  
141 numbers(s) for which the water withdrawn will be utilized.

142 (C) Recordkeeping and reporting. For all water used for  
143 hydraulic fracturing of horizontal wells and for flowback  
144 water from hydraulic fracturing activities and produced water  
145 from production activities from horizontal wells, an operator  
146 shall comply with the following record keeping and reporting  
147 requirements:

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

150 (I) The quantity of flowback water from hydraulic  
151 fracturing the well;

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

153 (III) The method of management or disposal of the  
154 flowback and produced water.

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

157 (I) The quantity of water transported;

158 (II) The collection and delivery or disposal locations of water;  
159 and



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

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

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

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

174       (i) Upon the issuance of any permit pursuant to the  
175 provisions of this article, the secretary shall transmit a copy  
176 of the permit to the office of the assessor for the county in  
177 which the well is located.

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

1       (a) The Legislature finds that large impoundments and  
2 pits (i.e. impoundments or pits with a capacity of two  
3 hundred ten thousand gallons or more) not associated with a  
4 specific well work permit must be properly regulated and  
5 controlled. It is the intent of the Legislature by this section  
6 to provide for the regulation and supervision of large

7 impoundments or pits not associated with a well work permit.  
8 This section does not apply to large pits or impoundments  
9 authorized under a well work permit.

10 (b) It is unlawful for any person to place, construct,  
11 enlarge, alter, repair, remove or abandon any freshwater  
12 impoundment or pit with capacity of two hundred ten  
13 thousand gallons or more used in association with any  
14 horizontal well operation until he or she has first secured  
15 from the secretary a certificate of approval for the same:  
16 *Provided*, That routine repairs that do not affect the safety of  
17 the impoundment are not subject to the application and  
18 approval requirements. A separate application for a certificate  
19 of approval shall be submitted by a person for each  
20 impoundment he or she desires to place, construct, enlarge,  
21 alter, repair, remove or abandon, but one application may be  
22 valid for more than one impoundment that supports one or  
23 more well pads.

24 (c) The application fee for placement, construction,  
25 enlargement, alteration, repair or removal of an impoundment  
26 pursuant to this section is \$300, and the fee shall accompany  
27 the application for certificate of approval. Operators holding  
28 certificates of approval shall be assessed an annual  
29 registration fee of \$100, which is valid for more than one  
30 impoundment that supports one or more well pads.

31 (d) Any certificate of approval required by this section  
32 shall be issued or denied no later than sixty days from the  
33 submission of an application containing the information  
34 required by this section. However, if the application for a  
35 certificate of approval is submitted with the application for a  
36 horizontal well permit, the certificate shall be issued or  
37 denied no later than thirty days from the submission of the  
38 permit application.

39       (e) The initial term of a certificate of approval issued  
40 pursuant to this section is one year. Existing certificates of  
41 approval shall be extended for one year upon receipt of the  
42 annual registration fee, an inspection report, a monitoring and  
43 emergency action plan, and a maintenance plan: *Provided,*  
44 That where an approved, up-to-date inspection report,  
45 monitoring and emergency action plan, and maintenance plan  
46 are on file with the department, and where no outstanding  
47 violation of the requirements of the certificate of approval or  
48 any plan submitted pursuant to this article related to the  
49 impoundment exist, then the certificate of approval shall be  
50 extended without resubmission of the foregoing documents  
51 upon receipt of the annual registration fee.

52       (f) Every application for a certificate of approval shall be  
53 made in writing on a form prescribed by the secretary and  
54 shall be signed and verified by the applicant. The application  
55 shall include a monitoring and emergency action plan and a  
56 maintenance plan, the required contents of which shall be  
57 established by the secretary by legislative rule. The  
58 application shall contain and provide information that may  
59 reasonably be required by the secretary to administer the  
60 provisions of this article.

61       (g) Plans and specifications for the placement,  
62 construction, erosion and sediment control, enlargement,  
63 alteration, repair or removal and reclamation of  
64 impoundments shall be the charge of a registered professional  
65 engineer licensed to practice in West Virginia. Any plans or  
66 specifications submitted to the department shall bear the seal  
67 of a registered professional engineer.

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

71 (i) The secretary may revoke or suspend any certificate  
72 of approval whenever the secretary determines that the  
73 impoundment for which the certificate was issued constitutes  
74 an imminent danger to human life or property. If necessary  
75 to safeguard human life or property, the secretary may also  
76 amend the terms and conditions of any certificate by issuing  
77 a new certificate containing the revised terms and conditions.

78 (1) Before any certificate of approval is amended,  
79 suspended or revoked by the secretary without the consent of  
80 the operator holding the certificate, the secretary shall hold a  
81 hearing in accordance with the provisions of article five,  
82 chapter twenty-nine-a of this code.

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

87 (j) Upon expiration of the certificate of approval, the  
88 operator shall within six months, or upon its revocation by  
89 the secretary, the operator shall within sixty days, fill all  
90 impoundments that are not required or allowed by state or  
91 federal law or rule or agreement between the operator and the  
92 surface owner allowing the impoundment to remain open for  
93 the use and benefit of the surface owner and reclaim the site  
94 in accordance with the approved erosion and sediment  
95 control plan.

96 (k) This section does not apply to:

97 (1) Farm ponds constructed by the operator with the  
98 written consent of the surface owner, which will be used after  
99 completion of the drilling activity primarily for agricultural  
100 purposes, including without limitation livestock watering,  
101 irrigation, retention of animal wastes and fish culture. Any

102 impoundment that is intended to be left permanent as a farm  
103 pond under this subdivision shall meet the requirements set  
104 forth by the United States Department of Agriculture's  
105 Natural Resources Conservation Service "Conservation  
106 Practice Standard - Ponds" (Code 378).

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

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

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

1 (a) Prior to filing a permit application, the operator shall  
2 provide notice of planned entry on to the surface tract to conduct  
3 any plat surveys required pursuant to this article. Such notice  
4 shall be provided at least seven days but no more than forty-five  
5 days prior to such entry to: (1) The surface owner of such tract;  
6 (2) to any owner or lessee of coal seams beneath such tract that  
7 has filed a declaration pursuant to section thirty-six, article six,  
8 chapter twenty-two of this code; and (3) any owner of minerals  
9 underlying such tract in the county tax records. The notice shall  
10 include a statement that copies of the state Erosion and Sediment  
11 Control Manual and the statutes and rules related to oil and gas  
12 exploration and production may be obtained from the Secretary,  
13 which statement shall include contact information, including the  
14 address for a web page on the Secretary's website, to enable the  
15 surface owner to obtain copies from the secretary.

16 (b) No later than the filing date of the application, the  
17 applicant for a permit for any well work or for a certificate of  
18 approval for the construction of an impoundment or pit as  
19 required by this article shall deliver, by personal service or by

20 registered mail or by any method of delivery that requires a  
21 receipt or signature confirmation, copies of the application,  
22 the erosion and sediment control plan required by section  
23 seven of this article, and the well plat to each of the following  
24 persons:

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

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

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

36 (4) The owners of record of the surface tract or tracts  
37 overlying the oil and gas leasehold being developed by the  
38 proposed well work, if the surface tract is to be used for the  
39 placement, construction, enlargement, alteration, repair,  
40 removal or abandonment of any impoundment or pit as  
41 described in section nine of this article;

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

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

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

55       (2) Notwithstanding any provision of this article to the  
56 contrary, notice to a lien holder is not notice to a landowner,  
57 unless the lien holder is the landowner.

58       (d) With respect to surface landowners identified in  
59 subsection (b) or water purveyors identified in subdivision  
60 (5), subsection (b) of this section, notification shall be made  
61 on forms and in a manner prescribed by the secretary  
62 sufficient to identify, for those persons, the rights afforded  
63 them under sections eleven and twelve of this article, and the  
64 opportunity for testing their water well.

65       (e) Prior to filing an application for a permit for a horizontal  
66 well under this article, the applicant shall publish in the county  
67 in which the well is located or is proposed to be located a Class  
68 II legal advertisement as described in section two, article three,  
69 chapter fifty-nine of this code, containing notice of the public  
70 website required to be established and maintained pursuant to  
71 section twenty-one of this article and language indicating the  
72 ability of the public to submit written comments on the proposed  
73 permit, with the first publication date being at least ten days prior  
74 to the filing of the permit application. The secretary shall  
75 consider, in the same manner required by subsection (f), section  
76 eight of this article and subdivision one, subsection (c), section  
77 eleven of this article, written comments submitted in response to  
78 the legal advertisement received by the secretary within thirty  
79 days following the last required publication date: *Provided*, That  
80 such parties submitting written comments pursuant to this  
81 subsection are not entitled to participate in the processes and

82 proceedings that exist under sections fifteen, seventeen or forty,  
83 article six of this chapter, as applicable and incorporated into this  
84 article by section five of this article.

85 (f) Materials served upon persons described in subsection  
86 (b) of this section shall contain a statement of the time limits  
87 for filing written comments, who may file written comments,  
88 the name and address of the secretary for the purpose of  
89 filing the comments and obtaining additional information,  
90 and a statement that the persons may request, at the time of  
91 submitting written comments, notice of the permit decision  
92 and a list of persons qualified to test water.

93 (g) Any person entitled to submit written comments to  
94 the secretary pursuant to subsection (a), section eleven of this  
95 article, shall also be entitled to receive from the secretary a  
96 copy of the permit as issued or a copy of the order modifying  
97 or denying the permit if the person requests receipt of them  
98 as a part of the written comments submitted concerning the  
99 permit application.

100 (h) The surface owners described in subdivisions (1), (2)  
101 and (4), subsection (b) of this section, and the coal owner,  
102 operator or lessee described in subdivision (3) of that  
103 subsection is also entitled to receive notice within seven days  
104 but no less than two days before commencement that well  
105 work or site preparation work that involves any disturbance  
106 of land is expected to commence.

107 (i) Persons entitled to notice pursuant to subsection (b) of  
108 this section may contact the department to ascertain the  
109 names and locations of water testing laboratories in the  
110 subject area capable and qualified to test water supplies in  
111 accordance with standard accepted methods. In compiling  
112 that list of names the department shall consult with the state  
113 Bureau for Public Health and local health departments.



114       (j)(1) Prior to conducting any seismic activity for seismic  
115 exploration for natural gas to be extracted using horizontal  
116 drilling methods, the company or person performing the  
117 activity shall provide notice to Miss Utility of West Virginia  
118 Inc. and to all surface owners, coal owners and lessees, and  
119 natural gas storage field operators on whose property  
120 blasting, percussion or other seismic-related activities will  
121 occur.

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

124       (3) The notice shall also include a reclamation plan in  
125 accordance with the erosion and sediment control manual that  
126 provides for the reclamation of any areas disturbed as a result  
127 of the seismic activity, including filling of shotholes used for  
128 blasting.

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

**§22-6A-10a. Method of Delivery of Notice.**

1       Notwithstanding any provision of this article to the  
2 contrary, all notices required by this article shall be delivered  
3 by the method set forth in subsection (b), section ten of this  
4 article, which notice shall provide that further information  
5 may be obtained from the department's website.

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

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

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

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

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

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

31 (3) The secretary shall retain all applications, plats and  
32 other documents filed with the secretary, any proposed  
33 revisions thereto, all notices given and proof of service  
34 thereof and all orders issued and all permits issued. Subject  
35 to the provisions of article one, chapter twenty-nine-b of this

36 code, the record prepared by the secretary is open to  
37 inspection by the public.

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

1 (a) Wells may not be drilled within two hundred fifty feet  
2 measured horizontally from any existing water well or  
3 developed spring used for human or domestic animal  
4 consumption. The center of well pads may not be located  
5 within six hundred twenty-five feet of an occupied dwelling  
6 structure, or a building two thousand five hundred square feet  
7 or larger used to house or shelter dairy cattle or poultry  
8 husbandry. This limitation is applicable to those wells,  
9 developed springs, dwellings or agricultural buildings that  
10 existed on the date a notice to the surface owner of planned  
11 entry for surveying or staking as provided in section ten of  
12 this article or a notice of intent to drill a horizontal well as  
13 provided in subsection (b), section sixteen of this article was  
14 provided, whichever occurs first, and to any dwelling under  
15 construction prior to that date. This limitation may be waived  
16 by written consent of the surface owner transmitted to the  
17 department and recorded in the real property records  
18 maintained by the clerk of the county commission for the  
19 county in which such property is located. Furthermore, the  
20 well operator may be granted a variance by the secretary  
21 from these distance restrictions upon submission of a plan  
22 which identifies the sufficient measures, facilities or practices  
23 to be employed during well site construction, drilling and  
24 operations. The variance, if granted, shall include terms and  
25 conditions the department requires to ensure the safety and  
26 protection of affected persons and property. The terms and  
27 conditions may include insurance, bonding and  
28 indemnification, as well as technical requirements.

29 (b) No well pad may be prepared or well drilled within  
30 one hundred feet measured horizontally from any perennial

31 stream, natural or artificial lake, pond or reservoir, or a  
32 wetland, or within three hundred feet of a naturally  
33 reproducing trout stream. No wellpad may be located within  
34 one thousand feet of a surface or ground water intake of a  
35 public water supply. The distance from the public water  
36 supply as identified by the department shall be measured as  
37 follows:

38 (1) For a surface water intake on a lake or reservoir, the  
39 distance shall be measured from the boundary of the lake or  
40 reservoir.

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

44 (3) For a groundwater source, the distance shall be  
45 measured from the wellhead or spring. The department may,  
46 in its discretion, waive these distance restrictions upon  
47 submission of a plan identifying sufficient measures,  
48 facilities or practices to be employed during well site  
49 construction, drilling and operations to protect the waters of  
50 the state. A waiver, if granted, shall impose any permit  
51 conditions as the secretary considers necessary.

52 (c) Notwithstanding the foregoing provisions of this  
53 section, nothing contained in this section prevents an operator  
54 from conducting the activities permitted or authorized by a  
55 Clean Water Act Section 404 permit or other approval from  
56 the United States Army Corps of Engineers within any waters  
57 of the state or within the restricted areas referenced in this  
58 section.

59 (d) The well location restrictions set forth in this section  
60 shall not apply to any well on a multiple well pad if at least  
61 one of the wells was permitted or has an application pending  
62 prior to the effective date of this article.

63       (e) The secretary shall, by December 31, 2012, report to  
64       the Legislature on the noise, light, dust and volatile organic  
65       compounds generated by the drilling of horizontal wells as  
66       they relate to the well location restrictions regarding occupied  
67       dwelling structures pursuant to this section. Upon a finding,  
68       if any, by the secretary that the well location restrictions  
69       regarding occupied dwelling structures are inadequate or  
70       otherwise require alteration to address the items examined in  
71       the study required by this subsection, the secretary shall have  
72       the authority to propose for promulgation legislative rules  
73       establishing guidelines and procedures regarding reasonable  
74       levels of noise, light, dust and volatile organic compounds  
75       relating to drilling horizontal wells, including reasonable  
76       means of mitigating such factors, if necessary.

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

1       The secretary shall propose legislative rules for  
2       promulgation to govern the procedures for plugging  
3       horizontal wells, including rules relating to the methods of  
4       plugging the wells and the notices required to be provided in  
5       connection with plugging the wells.

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

1       (a) The operator of a horizontal well shall reclaim the  
2       land surface within the area disturbed in siting, drilling,  
3       completing or producing the well in accordance with the  
4       following requirements:

5       (1) Except as provided elsewhere in this article, within  
6       six months after a horizontal well is drilled and completed on  
7       a well pad designed for a single horizontal well, the operator  
8       shall fill all the pits and impoundments that are not required  
9       or allowed by state or federal law or rule or agreement  
10      between the operator and the surface owner that allows the

11 impoundment to remain open for the use and benefit of the  
12 surface owner (i.e. a farm pond as described in section nine  
13 of this article) and remove all concrete bases, drilling  
14 supplies and drilling equipment: *Provided*, That  
15 impoundments or pits for which certificates have been  
16 approved pursuant to section nine of this article shall be  
17 reclaimed at a time and in a manner as provided in the  
18 applicable certificate and section nine. Within that six-month  
19 period, the operator shall grade or terrace and plant, seed or  
20 sod the area disturbed that is not required in production of the  
21 horizontal well in accordance with the erosion and sediment  
22 control plan. No pit may be used for the ultimate disposal of  
23 salt water. Salt water and oil shall be periodically drained or  
24 removed and properly disposed of from any pit that is  
25 retained so the pit is kept reasonably free of salt water and  
26 oil. Pits may not be left open permanently.

27       (2) For well pads designed to contain multiple horizontal  
28 wells, partial reclamation shall begin upon completion of the  
29 construction of the well pad. For purposes of this section, the  
30 term partial reclamation means grading or terracing and  
31 planting, or seeding the area disturbed that is not required in  
32 drilling, completing or producing any of the horizontal wells  
33 on the well pad in accordance with the erosion and sediment  
34 control plan. This partial reclamation satisfies the reclamation  
35 requirements of this section for a maximum of twenty-four  
36 months between the drilling of horizontal wells on a well pad  
37 designed to contain multiple horizontal wells: *Provided*,  
38 That the maximum aggregate period in which partial  
39 reclamation satisfies the reclamation requirements of this  
40 section is five years from completion of the construction of  
41 the well pad. Within six months after the completion of the  
42 final horizontal well on the pad or the expiration of the five-  
43 year maximum aggregate partial reclamation period,  
44 whichever occurs first, the operator shall complete final  
45 reclamation of the well pad as set forth in this subsection.

46       (3) Within six months after a horizontal well that has  
47       produced oil or gas is plugged or after the plugging of a dry  
48       hole, the operator shall remove all production and storage  
49       structures, supplies and equipment and any oil, salt water and  
50       debris and fill any remaining excavations. Within that six-  
51       month period, the operator shall grade or terrace and plant,  
52       seed or sod the area disturbed where necessary to bind the  
53       soil and prevent substantial erosion and sedimentation.

54       (4) The operator shall reclaim the area of land disturbed  
55       in siting, drilling, completing or producing the horizontal  
56       well in accordance with the erosion and sediment control  
57       plans approved by the secretary or the secretary's designee  
58       pursuant to this article.

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

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

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

5       (b) A separate bond as described in subsection (d) of this  
6       section may be furnished for each horizontal well drilled.  
7       Each of these bonds shall be in the sum of \$50,000 payable  
8       to the State of West Virginia, conditioned on full compliance  
9       with all laws, rules relating to the drilling, redrilling,

10 deepening, casing and stimulating of horizontal wells and to  
11 the plugging, abandonment and reclamation of horizontal  
12 wells and for furnishing reports and information required by  
13 the secretary.

14 (c) When an operator makes or has made application for  
15 permits to drill or stimulate a number of horizontal wells, the  
16 operator may, in lieu of furnishing a separate bond, furnish a  
17 blanket bond in the sum of \$250,000 payable to the State of  
18 West Virginia, and conditioned as provided in subsection (b)  
19 of this section.

20 (d) The form of the bond required by this article shall be  
21 approved by the secretary and may include, at the option of  
22 the operator, surety bonding, collateral bonding, including  
23 cash and securities, letters of credit, establishment of an  
24 escrow account, self-bonding or a combination of these  
25 methods. If collateral bonding is used, the operator may elect  
26 to deposit cash, or collateral securities or certificates as  
27 follows: Bonds of the United States or its possessions, of the  
28 federal land bank, or of the homeowners' loan corporation;  
29 full faith and credit general obligation bonds of the State of  
30 West Virginia or other states or of any county, district or  
31 municipality of the State of West Virginia or other states; or  
32 certificates of deposit in a bank in this state, which  
33 certificates shall be in favor of the department. The cash  
34 deposit or market value of the securities or certificates shall  
35 be equal to or greater than the amount of the bond. The  
36 secretary shall, upon receipt of any deposit of cash, securities  
37 or certificates, promptly place the same with the Treasurer of  
38 the State of West Virginia whose duty it is to receive and  
39 hold them in the name of the state in trust for the purpose of  
40 which the deposit is made when the permit is issued. The  
41 operator is entitled to all interest and income earned on the  
42 collateral securities filed by the operator. The operator  
43 making the deposit is entitled from time to time to receive



44 from the State Treasurer, upon the written approval of the  
45 secretary, the whole or any portion of any cash, securities or  
46 certificates so deposited, upon depositing with the State  
47 Treasurer in lieu thereof, cash or other securities or  
48 certificates of the classes herein specified having value equal  
49 to or greater than the amount of the bond.

50 (e) When an operator has furnished a separate bond from a  
51 corporate bonding or surety company to drill, fracture or  
52 stimulate a horizontal well and the well produces oil or gas or  
53 both, its operator may deposit with the secretary cash from the  
54 sale of the oil or gas or both until the total deposited is \$50,000.  
55 When the sum of the cash deposited is \$50,000, the separate  
56 bond for the well shall be released by the secretary. Upon receipt  
57 of that cash, the secretary shall immediately deliver that amount  
58 to the State Treasurer, who shall hold the cash in the name of the  
59 state in trust for the purpose for which the bond was furnished  
60 and the deposit was made. The operator is entitled to all interest  
61 and income which may be earned on the cash deposited so long  
62 as the operator is in full compliance with all laws and rules  
63 relating to the drilling, redrilling, deepening, casing, plugging,  
64 abandonment and reclamation of the well for which the cash was  
65 deposited and so long as the operator has furnished all reports  
66 and information required by the secretary. The secretary may  
67 establish procedures under which an operator may substitute a  
68 new bond for an existing bond or provide a new bond under  
69 certain circumstances specified in a legislative rule promulgated  
70 in accordance with chapter twenty-nine-a of this code.

71 (f) Any separate bond furnished for a particular well prior  
72 to the effective date of this article continues to be valid for all  
73 work on the well permitted prior to the effective date of this  
74 article; but no permit may be issued on such a particular well  
75 without a bond complying with the provisions of this section.  
76 Any blanket bond furnished prior to the effective date of this  
77 article shall be replaced with a new blanket bond conforming

78 to the requirements of this section, at which time the prior  
79 bond is discharged by operation of law; and if the secretary  
80 determines that any operator has not furnished a new blanket  
81 bond, the secretary shall notify the operator by registered  
82 mail or by any method of delivery that requires a receipt or  
83 signature confirmation of the requirement for a new blanket  
84 bond, and failure to submit a new blanket bond within sixty  
85 days after receipt of the notice from the secretary works a  
86 forfeiture under subsection (i) of this section of the blanket  
87 bond furnished prior to the effective date of this article.

88 (g) Any such bond shall remain in force until released by  
89 the secretary, and the secretary shall release the same upon  
90 satisfaction that the conditions thereof have been fully  
91 performed. Upon the release of that bond, any cash or  
92 collateral securities deposited shall be returned by the  
93 secretary to the operator who deposited it.

94 (h) (1) Whenever the right to operate a well is assigned  
95 or otherwise transferred, the assignor or transferor shall  
96 notify the department of the name and address of the assignee  
97 or transferee by registered mail or by any method of delivery  
98 that requires a receipt or signature confirmation not later than  
99 thirty days after the date of the assignment or transfer. No  
100 assignment or transfer by the owner relieves the assignor or  
101 transferor of the obligations and liabilities unless and until  
102 the assignee or transferee files with the department the well  
103 name and the permit number of the subject well, the county  
104 and district in which the subject well is located, the names  
105 and addresses of the assignor or transferor, and assignee or  
106 transferee, a copy of the instrument of assignment or transfer  
107 accompanied by the applicable bond, cash, collateral security  
108 or other forms of security described in this section, and the  
109 name and address of the assignee's or transferee's designated  
110 agent if the assignee or transferee would be required to  
111 designate an agent under this article if the assignee or

112 transferee were an applicant for a permit under this article.  
113 Every well operator required to designate an agent under this  
114 section shall, within five days after the termination of the  
115 designation, notify the department of the termination and  
116 designate a new agent.

117 (2) Upon compliance with the requirements of this  
118 section by the assignor or transferor and assignee or  
119 transferee, the secretary shall release the assignor or  
120 transferor from all duties and requirements of this article and  
121 shall give written notice of release to the assignor or  
122 transferor of any bond and return to the assignor or transferor  
123 any cash or collateral securities deposited pursuant to this  
124 section.

125 (i) If any of the requirements of this article or rules  
126 promulgated pursuant thereto or the orders of the secretary  
127 has not been complied with within the time limit set by any  
128 notice of violation issued pursuant to this article, the  
129 performance bond shall then be forfeited.

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

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

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

1 (a) The provisions of article seven of this chapter do not  
2 apply to horizontal wells governed by this article. In lieu  
3 thereof, the provisions of article six-b of this chapter shall

4 provide for the compensation of surface owners for damage  
5 caused by drilling horizontal wells.

6 (b) At least ten days prior to filing a permit application,  
7 an operator shall, by certified mail return receipt requested or  
8 hand delivery, give the surface owner notice of its intent to  
9 enter upon the surface owner's land for the purpose of  
10 drilling a horizontal well: *Provided*, That notice given  
11 pursuant to subsection (a), section ten of this article satisfies  
12 the requirements of this subsection as of the date the notice  
13 was provided to the surface owner: *Provided, however*, That  
14 the notice requirements of this subsection may be waived in  
15 writing by the surface owner. The notice, if required, shall  
16 include the name, address, telephone number, and if  
17 available, facsimile number and electronic mail address of  
18 the operator and the operator's authorized representative.

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

25 (1) A copy of this code section;

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

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

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

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

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

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

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

5       (b) Unless rebutted by one of the defenses established in  
6       subsection (c) of this section, in any action for contamination  
7       or deprivation of a fresh water source or supply within one  
8       thousand five hundred feet of the center of the well pad for  
9       horizontal well, there is a rebuttable presumption that the  
10      drilling and the oil or gas well or either was the proximate  
11      cause of the contamination or deprivation of the fresh water  
12      source or supply.

13       (c) In order to rebut the presumption of liability  
14 established in subsection (b) of this section, the operator must  
15 prove by a preponderance of the evidence one of the  
16 following defenses:

17       (1) The pollution existed prior to the drilling or alteration  
18 activity as determined by a predrilling or prealteration water  
19 well test.

20       (2) The landowner or water purveyor refused to allow the  
21 operator access to the property to conduct a predrilling or  
22 prealteration water well test.

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

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

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

29       (d) Any operator electing to preserve its defenses under  
30 subdivision (1), subsection (c) of this section shall retain the  
31 services of an independent certified laboratory to conduct the  
32 predrilling or prealteration water well test. A copy of the  
33 results of the test shall be submitted to the department and the  
34 surface owner or water purveyor in a manner prescribed by  
35 the secretary.

36       (e) Any operator shall replace the water supply of an  
37 owner of interest in real property who obtains all or part of  
38 that owner's supply of water for domestic, agricultural,  
39 industrial or other legitimate use from an underground or  
40 surface source with a comparable water supply where the  
41 secretary determines that the water supply has been affected

42 by contamination, diminution or interruption proximately  
43 caused by the oil or gas operation, unless waived in writing  
44 by that owner.

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

47 (1) Provide an emergency drinking water supply within  
48 twenty-four hours;

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

51 (3) Within thirty days begin activities to establish a  
52 permanent water supply or submit a proposal to the secretary  
53 outlining the measures and timetables to be used in establishing  
54 a permanent supply. The total time in providing a permanent  
55 water supply may not exceed two years. If the operator  
56 demonstrates that providing a permanent replacement water  
57 supply cannot be completed within two years, the secretary may  
58 extend the time frame on case-by-case basis; and

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

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

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

68 (i) Notwithstanding the denial of the operator of  
69 responsibility for the damage to the real property owner's water

70 supply or the status of any appeal on determination of liability  
71 for the damage to the real property owner's water supply, the  
72 operator may not discontinue providing the required water  
73 service until authorized to do so by the secretary or a court of  
74 competent jurisdiction.

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

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

12 (b) Notwithstanding the provisions of subsection (a) and  
13 (c) of this section, any person or persons, firm, partnership,  
14 partnership association or corporation who willfully disposes  
15 of waste fluids, drill cuttings or any other liquid substance  
16 generated in the development of a horizontal well in violation  
17 of this article or any rule or order promulgated under this  
18 article or in violation of any other state or federal statutes,  
19 rules or regulations, and which disposal was found to have  
20 had a significant adverse environmental impact on surface or  
21 groundwater by the secretary, is subject to a civil penalty not  
22 exceeding \$100,000. The penalty shall be recovered by a  
23 civil action brought by the department, in the name of the  
24 state, before the circuit court of the county in which the  
25 subject well or facility is located. All the civil penalties  
26 collected shall be credited to the General Fund of the state.



27 (c) Notwithstanding the provisions of subsections (a) and  
28 (b) of this section, any person or persons, firm, partnership,  
29 partnership association or corporation willfully violating any  
30 of the provisions of this article which prescribe the manner of  
31 drilling and casing or plugging and filling any well or which  
32 prescribe the methods of conserving gas from waste, shall be  
33 guilty of a misdemeanor, and, upon conviction thereof shall  
34 be punished by a fine not exceeding five thousand dollars, or  
35 imprisonment in jail not exceeding twelve months, or both,  
36 in the discretion of the court, and prosecution under this  
37 section may be brought in the name of the State of West  
38 Virginia in the court exercising criminal jurisdiction in the  
39 county in which the violation of such provisions of the article  
40 or terms of such order was committed, and at the instance and  
41 upon the relation of any citizens of this state.

42 (d) Any person who intentionally misrepresents any  
43 material fact in an application, record, report, plan or other  
44 document filed or required to be maintained under the  
45 provisions of this article or any rules promulgated by the  
46 secretary under this article shall be fined not less than \$1,000  
47 nor more than \$10,000.

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

1 As part of the permit application for horizontal wells, the  
2 operator shall submit a letter of certification from the  
3 Division of Highways that the operator has, pursuant to the  
4 Division of Highways Oil and Gas Road Policy, entered into  
5 an agreement with the Division of Highways pertaining to the  
6 state local service roads associated with the proposed well  
7 work set forth in the permit application or has certified that  
8 no such agreement is required by the Oil and Gas Road  
9 Policy and the reasons therefor.

**§22-6A-21. Establishment of public website information and electronic notification registry regarding 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  
7 which a permit application is filed, the referenced well  
8 application number, date of application, name of the  
9 applicant, and any written comments submitted by the public.

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

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

1       The secretary shall, by July 1, 2013, report to the  
2 Legislature on the need, if any, for further regulation of air  
3 pollution occurring from well sites, including the possible  
4 health impacts, the need for air quality inspections during  
5 drilling, the need for inspections of compressors, pits and  
6 impoundments, and any other potential air quality impacts  
7 that could be generated from this type of drilling activity that  
8 could harm human health or the environment. If he or she  
9 finds that specialized permit conditions are necessary, the

10 secretary shall promulgate legislative rules establishing these  
11 new requirements.

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

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

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

1 (a) The operator may only drill through fresh  
2 groundwater zones in a manner that will minimize any  
3 disturbance of the zones. Further, the operator shall construct  
4 the well and conduct casing and cementing activities for all  
5 horizontal wells in a manner that will provide for control of  
6 the well at all times, prevent the migration of gas and other  
7 fluids into the fresh groundwater and coal seams, and prevent  
8 pollution of or diminution of fresh groundwater.

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

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

15 (1) Effective control of the horizontal well by the  
16 operator;

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

19 (3) Prevention of pollution of or diminution of fresh  
20 groundwater;

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

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

24 (d) Procedures for the filing, approval, and revision of  
25 casing program:

26 (1) The operator shall prepare a casing program  
27 demonstrating how the horizontal well is to be drilled, cased,  
28 and cemented. The program shall comply with rules  
29 promulgated by the secretary.

30 (2) The rules regarding the casing program shall require  
31 the following information:

32 (A) The anticipated depth and thickness of any producing  
33 formation, expected pressures, anticipated fresh groundwater  
34 zones, and the method or information by which the depth of  
35 the deepest fresh groundwater was determined;

36 (B) The diameter of the borehole;

37 (C) The casing type, whether the casing to be utilized is  
38 new or used, and the depth, diameter, wall thickness, and  
39 burst pressure rating for the casing;

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

42 (E) The estimated location of centralizers;

43 (F) The proposed borehole conditioning procedures; and

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

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

48 (4) Supervisory oil and gas inspectors and oil and gas  
49 inspectors may approve revisions to previously approved casing  
50 programs when conditions encountered during the drilling  
51 process so require: *Provided*, That any revisions to casing  
52 programs approved by inspectors as aforesaid shall ensure that  
53 the revised casing programs are at least as protective of the  
54 environment as the casing and cementing standards required by  
55 this section. Any revisions to the casing program made as a  
56 result of on-site modifications shall be documented in the  
57 program by the inspector approving the modification. The  
58 person making any revisions to the program shall initial and date  
59 the revisions and make the revised program available for  
60 inspection by the department.

61 (e) The rules promulgated by the secretary shall provide  
62 procedures for the following:

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

66 (2) Installation of the surface and coal protection casing  
67 including remedial procedures addressing lost circulation  
68 during surface or coal casing;

69       (3) Installation of intermediate production casing;

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

74       (5) Investigation of natural gas migration, including  
75 requirements that the operator promptly notify the secretary  
76 and conduct an investigation of the incident; and

77       (6) Any other procedure or requirements considered  
78 necessary by the secretary.

79       (f) *Minimum casing standards.*

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

84       (2) The casing shall be of sufficient quality and condition  
85 to withstand the effects of tension and maintain its structural  
86 integrity during installation, cementing, and subsequent  
87 drilling and production operations.

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

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

93       (5) No gas or oil production or pressure may exist on the  
94 surface casing or the annulus or the coal protection casing  
95 annulus.

96           (g) *Minimum cement standards.*

97           (1) All cement used in the well must meet the appropriate  
98 nationally recognized standards and must secure the casing  
99 to the wellbore, isolate the wellbore from all fluids, contain  
100 all pressures during all phases of drilling and operation of the  
101 well, and protect the casing from corrosion and degradation.

102           (2) Cement used in conjunction with surface and coal  
103 protection casing must provide zonal isolation in the casing  
104 annulus.

105           (h) Notwithstanding the minimum casing and cementing  
106 standards set forth in subsections (f) and (g) of this section,  
107 the secretary may:

108           (1) Revise the casing and cementing standards applicable  
109 to horizontal wells from time to time through the legislative  
110 rulemaking process so long as the revised casing and  
111 cementing standards are at least as protective of the  
112 environment; and

113           (2) Approve alternative casing programs submitted with  
114 applications for well work permits so long as the secretary  
115 determines that the casing program submitted with the  
116 application is at least as protective of the environment as the  
117 casing and cementing standards required by this section.

**ARTICLE 6B. OIL AND GAS HORIZONTAL WELL  
P R O D U C T I O N   D A M A G E  
C O M P E N S A T I O N.**

**§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  
3 reserves 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  
7 are drilled shall be compensated for damages to the surface  
8 of the 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  
11 this article for surface owners may not be diminished by any  
12 provision in a deed, lease or other contract of conveyance  
13 entered into 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  
18 commenced after January 1, 2012. This article is to be  
19 interpreted in the light of the legislative intent expressed  
20 herein. This article shall be interpreted to benefit surface  
21 owners, regardless of whether the oil and gas mineral estate  
22 was separated from the surface estate and regardless of who  
23 executed the document which gave the oil and gas developer  
24 the right to conduct drilling operations on the land. Section  
25 four of this article shall be interpreted to benefit all persons.

26       (d) The provisions of this article apply to any natural gas  
27 well, other than a coalbed methane well, drilled using a  
28 horizontal drilling method, and which disturbs three acres or  
29 more of surface, excluding pipelines, gathering lines and  
30 roads or uses more than two hundred ten thousand gallons of  
31 water in any thirty-day period. Article seven of this chapter  
32 does not apply to any damages associated with the drilling of  
33 a horizontal well.



**§22-6B-2. Definitions.**

1       In this article:

2       (1) "Drilling operations" means the actual drilling or  
3       redrilling of a horizontal well commenced subsequent to the  
4       effective date of this article, and the related preparation of the  
5       drilling site and access road, which requires entry, upon the  
6       surface estate;

7       (2) "Horizontal drilling" means a method of drilling a  
8       well for the production of natural gas that is intended to  
9       maximize the length of wellbore that is exposed to the  
10      formation and in which the wellbore is initially vertical but  
11      is eventually curved to become horizontal, or nearly  
12      horizontal, to parallel a particular geologic formation;

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

19      (4) "Oil and gas developer" means the person who  
20      secures the drilling permit required by article six-a of this  
21      chapter;

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

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

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

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

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

3       (1) Lost income or expenses incurred as a result of being  
4     unable to dedicate land actually occupied by the driller's  
5     operation, or to which access is prevented by the drilling  
6     operation, to the uses to which it was dedicated prior to  
7     commencement of the activity for which a permit was  
8     obtained, measured from the date the operator enters upon the  
9     land and commences drilling operations until the date  
10    reclamation is completed;

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

13      (3) Any damage to a water supply in use prior to the  
14    commencement of the permitted activity;

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

18      (5) The diminution in value, if any, of the surface lands  
19    and other property after completion of the surface disturbance  
20    done pursuant to the activity for which the permit was issued  
21    determined according to the market value of the actual use  
22    made thereof by the surface owner immediately prior to the  
23    commencement of the permitted activity.

24       The amount of damages may be determined by any  
25       formula mutually agreeable between the surface owner and  
26       the oil and gas developer.

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

30       (c) In the case of surface lands owned by more than one  
31       person as tenants in common, joint tenants or other co-  
32       ownership, any claim for compensation under this article  
33       shall be for the benefit of all co-owners. The resolution of a  
34       claim for compensation provided in this article operates as a  
35       bar to the assertion of additional claims under this section  
36       arising out of the same drilling operations.

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

1       (a) Nothing in section three or elsewhere in this article  
2       diminishes in any way the common law remedies, including  
3       damages, of a surface owner or any other person against the  
4       oil and gas developer for the unreasonable, negligent or  
5       otherwise wrongful exercise of the contractual right, whether  
6       express or implied, to use the surface of the land for the  
7       benefit of the developer's mineral interest.

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

14       (c) An oil and gas developer is entitled to offset damages  
15       agreed to be paid or awarded to a surface owner through the  
16       assertion of common-law remedies against compensation

17 sought by or awarded to the surface owner under section  
18 three of this article respecting the surface land actually  
19 occupied by the same drilling operation.

**§22-6B-5. Notification of claim.**

1 Any surface owner, to receive compensation under  
2 section three of this article, shall notify the oil and gas  
3 developer of the damages sustained by the person within two  
4 years after the date that the oil and gas developer files notice  
5 that final reclamation is commencing under section fourteen,  
6 article six-a of this chapter. The notice of reclamation shall  
7 be given to surface owners by registered or certified mail,  
8 return receipt requested, and is complete upon mailing. If  
9 more than three tenants in common or other co-owners hold  
10 interests in the lands, the oil and gas developer may give the  
11 notice to the person described in the records of the sheriff  
12 required to be maintained pursuant to section eight, article  
13 one, chapter eleven-a of this code or publish in the county in  
14 which the well is located or to be located a Class II legal  
15 advertisement as described in section two, article three,  
16 chapter fifty-nine of this code, containing the notice and  
17 information the secretary prescribes by rule.

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

1 Unless the parties provide otherwise by written  
2 agreement, within sixty days after the oil and gas developer  
3 received the notification of claim specified in section five of  
4 this article, the oil and gas developer shall either make an  
5 offer of settlement to the surface owner seeking  
6 compensation, or reject the claim. The surface owner may  
7 accept or reject any offer so made: *Provided*, That the oil  
8 and gas developer may make a final offer within seventy-five  
9 days after receiving the notification of claim specified in  
10 section five of this article.

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

1       (a) (1) Unless the oil and gas developer has paid the  
2 surface owner a negotiated settlement of compensation  
3 within seventy-five days after the date the notification of  
4 claim was mailed under section five of this article, the  
5 surface owner may, within eighty days after the notification  
6 mail date, either (i) Bring an action for compensation in the  
7 circuit court of the county in which the well is located; or (ii)  
8 elect instead, by written notice delivered by personal service  
9 or by certified mail, return receipt requested, to the  
10 designated agent named by the oil and gas developer under  
11 the provisions of section seven, article six-a of this chapter,  
12 to have his, her or its compensation finally determined by  
13 binding arbitration pursuant to article ten, chapter fifty-five  
14 of this code.

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

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

33 chosen by the judge of the circuit court of the county in  
34 which the surface estate lies.

35 (c) The following persons are considered interested and  
36 may not be appointed as arbitrators: Any person who is  
37 personally interested in the land on which horizontal drilling  
38 is being performed or has been performed, or in any interest  
39 or right therein, or in the compensation and any damages to  
40 be awarded therefor, or who is related by blood or marriage  
41 to any person having such personal interest, or who stands in  
42 the relation of guardian and ward, master and servant,  
43 principal and agent, or partner, real estate broker, or surety to  
44 any person having such personal interest, or who has enmity  
45 against or bias in favor of any person who has such personal  
46 interest or who is the owner of, or interested in, the land or  
47 the oil and gas development of the land. A person is not  
48 considered interested or incompetent to act as arbitrator by  
49 reason of being an inhabitant of the county, district or  
50 municipal corporation in which the land is located, or holding  
51 an interest in any other land therein.

52 (d) The panel of arbitrators shall hold hearings and take  
53 testimony and receive exhibits necessary to determine the  
54 amount of compensation to be paid to the surface owner.  
55 However, no award of compensation may be made to the  
56 surface owner unless the panel of arbitrators has first viewed  
57 the surface estate in question. A transcript of the evidence  
58 may be made but is not required.

59 (e) Each party shall pay the compensation of the party's  
60 arbitrator and one half of the compensation of the third  
61 arbitrator or each party's own court costs as the case may be.

**B-8. A: tion of article.**

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

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

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

**§22C-8-2. Definitions.**

1       As used in this article:

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

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

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

8       (4) "Coal seam" and "workable coal bed" are  
9       interchangeable terms and mean any seam of coal twenty  
10      inches or more in thickness, unless a seam of less thickness  
11      is being commercially worked, or can in the judgment of the  
12      division foreseeably be commercially worked and will  
13      require protection if wells are drilled through it;

14      (5) "Commission" means the Oil and Gas Conservation  
15      Commission provided for in section four, article nine of this  
16      chapter;

17      (6) "Commissioner" means the Oil and Gas Conservation  
18      Commissioner provided for in section four, article nine of this  
19      chapter;

20      (7) "Correlative rights" means the reasonable opportunity  
21      of each person entitled thereto to recover and receive without

22 waste the gas in and under a tract or tracts, or the equivalent  
23 thereof;

24 (8) "Deep well" means any well other than a shallow well  
25 or coalbed methane well, drilled to a formation below the top  
26 of the uppermost member of the "Onondaga Group";

27 (9) "Division" means the state Department of  
28 Environmental Protection provided for in chapter twenty-two  
29 of this code;

30 (10) "Director" means the Secretary of the Department of  
31 Environmental Protection as established in article one,  
32 chapter twenty-two of this code or other person to whom the  
33 secretary delegates authority or duties pursuant to sections six  
34 or eight, article one, chapter twenty-two of this code;

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

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

41 (13) "Gas operator" means any person who owns or has  
42 the right to develop, operate and produce gas from a pool and  
43 to appropriate the gas produced therefrom either for that  
44 person or for that person and others. In the event that there is  
no gas lease in existence with respect to the tract in question,  
the person who owns or has the gas rights therein is  
considered a "gas operator" to the extent of seven-eighths of  
the gas in the portion of the pool underlying the tract owned  
by such person, and a "royalty owner" to the extent of one-  
eighth of the gas;



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

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

60       (16) "Owner" when used with reference to any coal seam,  
61       includes any person or persons who own, lease or operate the  
62       coal seam;

63       (17) "Person" means any natural person, corporation,  
64       firm, partnership, partnership association, venture, receiver,  
65       trustee, executor, administrator, guardian, fiduciary or other  
66       representative of any kind, and includes any government or  
67       any political subdivision or any agency thereof;

68       (18) "Plat" means a map, drawing or print showing the  
69       location of one or more wells or a drilling unit;

70       (19) "Pool" means an underground accumulation of gas  
71       in a single and separate natural reservoir (ordinarily a porous  
72       sandstone or limestone). It is characterized by a single  
73       natural-pressure system so that production of gas from one  
74       part of the pool tends to or does affect the reservoir pressure  
75       throughout its extent. A pool is bounded by geologic barriers  
76       in all directions, such as geologic structural conditions,  
77       impermeable strata, and water in the formation, so that it is  
78       effectively separated from any other pools which may be  
79       present in the same district or in the same geologic structure;

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

83 (21) "Shallow well" means any gas well other than a  
 84 coalbed methane well, drilled no deeper than one hundred  
 85 feet below the top of the "Onondaga Group": *Provided*, That  
 86 in no event may the "Onondaga Group" formation or any  
 87 formation below the "Onondaga Group" be produced,  
 88 perforated or stimulated in any manner;

89 (22) "Tracts comprising a drilling unit" means that all  
 90 separately owned tracts or portions thereof which are  
 91 included within the boundary of a drilling unit;

92 (23) "Well" means any shaft or hole sunk, drilled, bored  
 93 or dug into the earth or into underground strata for the  
 94 extraction, injection or placement of any liquid or gas, or any  
 95 shaft or hole sunk or used in conjunction with the extraction,  
 96 injection or placement. The term "well" does not include any  
 97 shaft or hole sunk, drilled, bored or dug into the earth for the  
 98 sole purpose of core drilling or pumping or extracting  
 99 therefrom potable, fresh or usable water for household,  
 100 domestic, industrial, agricultural or public use; and

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

## ARTICLE 9. OIL AND GAS CONSERVATION.

### § 9-2. Definitions.

(a) In this article:

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

6       (2) "Director" means the Secretary of the Department of  
7   Environmental Protection and "chief" means the Chief of the  
8   Office of Oil and Gas;

9       (3) "Person" means any natural person, corporation,  
10   partnership, receiver, trustee, executor, administrator,  
11   guardian, fiduciary or other representative of any kind, and  
12   includes any government or any political subdivision or any  
13   agency thereof;

14       (4) "Operator" means any owner of the right to develop,  
15   operate and produce oil and gas from a pool and to appropriate  
16   the oil and gas produced therefrom, either for that person or for  
17   that person and others; in the event that there is no oil and gas  
18   lease in existence with respect to the tract in question, the owner  
19   of the oil and gas rights therein is the "operator" to the extent of  
20   seven-eighths of the oil and gas in that portion of the pool  
21   underlying the tract owned by such owner, and as "royalty  
22   owner" as to one-eighth interest in such oil and gas; and in the  
23   event the oil is owned separately from the gas, the owner of the  
24   substance being produced or sought to be produced from the  
25   pool is the "operator" as to that pool;

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

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

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

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

41       (9) "Pool" means an underground accumulation of  
42 petroleum or gas in a single and separate reservoir (ordinarily  
43 a porous sandstone or limestone). It is characterized by a  
44 single natural-pressure system so that production of  
45 petroleum or gas from one part of the pool affects the  
46 reservoir pressure throughout its extent. A pool is bounded  
47 by geologic barriers in all directions, such as geologic  
48 structural conditions, impermeable strata, and water in the  
49 formations, so that it is effectively separated from any other  
50 pools that may be present in the same district or on the same  
51 geologic structure;

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

55       (11) "Shallow well" means any well other than a coalbed  
56 methane well, drilled no deeper than one hundred feet below  
57 the top of the "Onondaga Group": *Provided*, That in no  
58 event may the "Onondaga Group" formation or any  
59 formation below the "Onondaga Group" be produced,  
60 perforated or stimulated in any manner;

61       (12) "Deep well" means any well, other than a shallow  
62 well or coalbed methane well, drilled to a formation below  
63 the top of the uppermost member of the "Onondaga Group;"

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

66       (14) "Waste" means and includes:

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

69       (B) The locating, drilling, equipping, operating or  
70   producing of any oil or gas well in a manner that causes, or  
71   tends to cause, a reduction in the quantity of oil or gas  
72   ultimately recoverable from a pool under prudent and proper  
73   operations, or that causes or tends to cause unnecessary or  
74   excessive surface loss of oil or gas; or

75       (C) The drilling of more deep wells than are reasonably  
76   required to recover efficiently and economically the  
77   maximum amount of oil and gas from a pool. Waste does not  
78   include gas vented or released from any mine areas as  
79   defined in section two, article one, chapter twenty-two-a of  
80   this code or from adjacent coal seams which are the subject  
81   of a current permit issued under article two of chapter  
82   twenty-two-a of this code: *Provided*, That this exclusion  
83   does not address ownership of the gas;

84       (15) “Correlative rights” means the reasonable  
85   opportunity of each person entitled thereto to recover and  
86   receive without waste the oil and gas in and under his tract or  
87   tracts, or the equivalent thereof; and

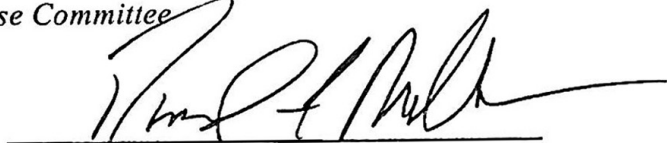
88       (16) “Just and equitable share of production” means, as  
89   to each person, an amount of oil or gas or both substantially  
90   equal to the amount of recoverable oil and gas in that part of  
91   a pool underlying the person’s tract or tracts.

92       (b) Unless the context clearly indicates otherwise, the use  
93   of the word “and” and the word “or” are interchangeable, as,  
94   for example, “oil and gas” means oil or gas or both.”

The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.



Chairman, House Committee



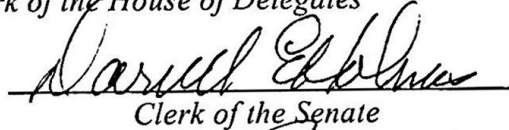
Chairman, Senate Committee

Originating in the House.

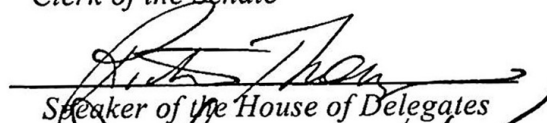
To take effect from passage.



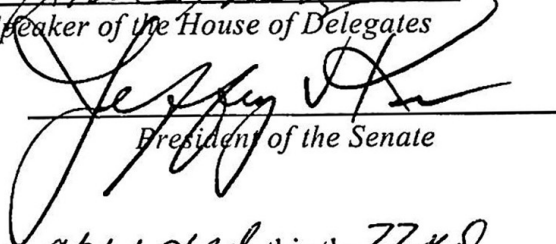
Clerk of the House of Delegates



Clerk of the Senate



Speaker of the House of Delegates



President of the Senate

The within is approved this the 22nd  
day of December, 2011.



Governor

PRESENTED TO THE GOVERNOR

DEC 22 2011

Time 8:50 am