

1 COMMITTEE SUBSTITUTE

2 FOR

3 **H. B. 2878**

4 (By Delegates Manchin, Fleischauer, Caputo,
5 Wells, Manypenny, Barker, Moore, Miley and Ferro)
6

7 (Originating in the House Committee on the Judiciary)

8 [February 24, 2011]

9
10 A BILL to amend and reenact §22-6-1, §22-6-8 and §22-6-9 of the
11 Code of West Virginia, 1931, as amended, and to amend said
12 code by adding thereto a new article, designated §22-6A-1, §22-
13 6A-2, §22-6A-3, §22-6A-4, §22-6A-5, §22-6A-6, §22-6A-7, §22-
14 6A-8, §22-6A-9, §22-6A-10, §22-6A-11, §22-6A-12 and §22-6A-13;
15 and to amend and reenact §22-7-3 of said code, all relating
16 to the regulation of oil and gas wells; providing definitions;
17 requiring disclosure of binding contract; providing additional
18 notice requirements to surface owners; requiring operators to
19 take certain actions to assist surface owners; establishing
20 new regulatory scheme for horizontal shallow wells; providing
21 purpose and findings for horizontal shallow wells regulation;
22 requiring compliance with other programs; requiring
23 certification from department of highways; establishing well
24 location restrictions and exceptions thereto; providing agency
25 inspection requirements; authorizing predrilling water well
26 inspections; requiring hydraulic fracturing fluids monitoring,
27 recordkeeping and reporting requirements; providing

1 requirements associated with pits and impoundments;
2 establishing a water management plan; establishing
3 requirements relating to water withdrawals; providing
4 limitations on local ordinances; prohibiting construction on
5 certain surface owners without authorization; requiring
6 reports to the legislature; establishing permit application
7 rulemaking authority; and expanding timber compensation
8 requirements for lost timber removed during oil and gas well
9 activities.

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

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

18 **ARTICLE 6. DIVISION OF OIL AND GAS; OIL AND GAS WELLS;**
19 **ADMINISTRATION; ENFORCEMENT.**

20 **§22-6-1. Definitions.**

21 Unless the context in which used clearly requires a different
22 meaning, as used in this article and article six-a of this chapter:

23 (a) "Administratively complete application" means an
24 application for permit approval that the secretary determines to
25 contain information addressing each application requirement of the

1 regulatory program and to contain all information necessary to
2 initiate processing and review;

3 (b) "Assessment officer" means an employee of the department,
4 other than an oil and gas inspector supervisor, inspector or
5 inspector-in-training, appointed by the secretary to issue proposed
6 penalty assessments and to conduct informal conferences to review
7 notices, orders, and proposed penalty assessments;

8 (c) "Best management practice" means schedules of activities,
9 prohibitions of practices, maintenance procedures, and other
10 management practices that will prevent or reduce pollution of
11 waters of the state and include treatment requirements, operating
12 procedures, and practices to control site runoff, spillage or
13 leaks, sludge or waste disposal or drainage from raw material
14 storage;

15 ~~(a)~~ (d) "Casing" means a string or strings of pipe commonly
16 placed in wells drilled for natural gas or petroleum or both;

17 ~~(b)~~ (e) "Cement" means hydraulic cement properly mixed with
18 water;

19 ~~(c)~~ (f) "Chair" means the chair of the West Virginia Shallow
20 Gas Well Review Board as provided for in section four, article
21 eight, chapter twenty-two-c of this code;

22 ~~(d)~~ (g) "Coal operator" means any person or persons, firm,
23 partnership, partnership association or corporation that proposes
24 to or does operate a coal mine;

25 ~~(e)~~ (h) "Coal seam" and "workable coal bed" are
26 interchangeable terms and mean any seam of coal twenty inches or

1 more in thickness, unless a seam of less thickness is being
2 commercially worked, or can in the judgment of the department
3 foreseeably be commercially worked and will require protection if
4 wells are drilled through it;

5 ~~(f) "Director" means the director of the Division of~~
6 ~~Environmental Protection as established in article one of this~~
7 ~~chapter or such other person to whom the director has delegated~~
8 ~~authority or duties pursuant to sections six or eight, article one~~
9 ~~of this chapter;~~

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

13 ~~(h) (j) "Expanding cement" means any cement approved by the~~
14 ~~office division of oil and gas which expands during the hardening~~
15 ~~process, including, but not limited to, regular oil field cements~~
16 ~~with the proper additives;~~

17 ~~(i) (k) "Facility" means any facility utilized in the oil and~~
18 ~~gas industry in this state and including but not limited to those~~
19 ~~specifically named or referred to in this article or in article~~
20 ~~six-a, eight, or nine, ten or twenty-one of this chapter, other~~
21 ~~than a well or well site;~~

22 ~~(j) (l) "Gas" means all natural gas and all other fluid~~
23 ~~hydrocarbons not defined as oil in this section;~~

24 ~~(m) "Horizontal shallow well" means a shallow well that is~~
25 ~~first drilled on a vertical or directional plane, but which is~~
26 ~~eventually curved to become horizontal (or near horizontal) in~~

1 order to parallel a particular geologic formation. Multiple
2 horizontal wells may be drilled from the same surface well pad. A
3 horizontal shallow well may also have multiple horizontal side
4 laterals drilled into the same formation.

5 (n) "Impoundment" means a man-made excavation or diked area
6 for the retention of fresh water and into which no wastes of any
7 kind are placed;

8 (o) "Modification" means any change to the permit or permit
9 application that would require renotice to any party originally
10 receiving notice as part of the permit application or any changes
11 to the plat or casing program, whether or not such changes would
12 require renotice;

13 (p) "Occupied dwelling" means any building that is currently
14 being used on a regular or periodic basis for human habitation;

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

20 ~~(t)~~ (r) "Owner" when used with reference to any well, shall
21 include any person or persons, firm, partnership, partnership
22 association or corporation that owns, manages, operates, controls
23 or possesses such well as principal, or as lessee or contractor,
24 employee or agent of such principal;

1 ~~(m)~~ (s) "Owner" when used with reference to any coal seam,
2 shall include any person or persons who own, lease or operate such
3 coal seam;

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

9 (u) "Pit" means a man-made excavation or diked area that
10 contains or is intended to contain an accumulation of process waste
11 fluids, drill cuttings or any other liquid substance that could
12 impact surface or groundwater;

13 (v) "Pollutant" shall have the same meaning as provided in
14 subsection (17), section three, article eleven, chapter twenty-two
15 of this code;

16 ~~(o)~~ (w) "Plat" means a map, drawing or print showing the
17 location of a well or wells as herein defined;

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

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

1 (z) "Secretary" means the Cabinet Secretary of the Department
2 of Environmental Protection as established in article one of this
3 chapter or such other person to whom the secretary has delegated
4 authority or duties pursuant to sections six or eight, article one
5 of this chapter;

6 ~~(r)~~(aa) "Shallow well" means any gas well, other than a
7 coalbed methane well, drilled no deeper than one hundred feet below
8 the top of the "Onondaga Group" and completed in a formation above
9 the top of the uppermost member of the "Onondaga Group": and
10 completed in a formation above the top of the uppermost member of
11 the "Onondaga Group": Provided, That in drilling a shallow well the
12 operator may penetrate into the "Onondaga Group" to a reasonable
13 depth, not in excess of ~~twenty~~ 100 feet, in order to allow for
14 logging and completion operations, but in drilling a shallow well
15 the operator may penetrate into the "Onondaga Group" to a
16 reasonable depth, not in excess of 100 feet, in order to allow for
17 logging and completion operations, but in no event may the
18 "Onondaga Group" formation or any formation below the "Onondaga
19 Group" be otherwise produced, perforated or stimulated in any
20 manner;

21 (bb) "Significant, imminent environmental harm to land, air or
22 water resources" means the existence of any condition or practice
23 or any violation of a permit or other requirement of this article
24 or article six-a of this chapter, which condition, practice of
25 violation could reasonably be expected to cause significant and
26 imminent environmental harm to land, air or water resources. The

1 term "environmental harm" means any material adverse impact on
2 land, air or water resources, including but not limited to plant,
3 wildlife and fish, and the environmental harm is imminent if a
4 condition or practice exists that is causing the harm or may
5 reasonably be expected to cause the harm at any time before the end
6 of the abatement time set by the secretary. An environmental harm
7 is "significant" if that harm is material and not immediately
8 repairable;

9 ~~(s)~~(cc) "Stimulate" means any action taken by a well operator
10 to increase the inherent productivity of an oil or gas well,
11 including, but not limited to, fracturing, shooting or acidizing,
12 but excluding cleaning out, bailing or work over operations;

13 ~~(t)~~(dd) "Waste" means: (i) Physical waste, as the term is
14 generally understood in the oil and gas industry; (ii) the
15 locating, drilling, equipping, operating or producing of any oil or
16 gas well in a manner that causes, or tends to cause a substantial
17 reduction in the quantity of oil and gas ultimately recoverable
18 from a pool under prudent and proper operations, or that causes or
19 tends to cause a substantial or unnecessary or excessive surface
20 loss of oil or gas; or (iii) the drilling of more deep wells than
21 are reasonably required to recover efficiently and economically the
22 maximum amount of oil and gas from a pool; (iv) substantially
23 inefficient, excessive or improper use, or the substantially
24 unnecessary dissipation of, reservoir energy, it being understood
25 that nothing in this chapter shall be construed to authorize any
26 agency of the state to impose mandatory spacing of shallow wells

1 except for the provisions of section eight, article nine, chapter
2 twenty-two-c of this code and the provisions of article eight,
3 chapter twenty-two-c of this code; (v) inefficient storing of oil
4 or gas: *Provided*, That storage in accordance with a certificate of
5 public convenience issued by the Federal Energy Regulatory
6 Commission shall be conclusively presumed to be efficient; and (vi)
7 other underground or surface waste in the production or storage of
8 oil, gas or condensate, however caused. Waste does not include gas
9 vented or released from any mine areas as defined in section two,
10 article one, chapter twenty-two-a of this code or from adjacent
11 coal seams which are the subject of a current permit issued under
12 article two of chapter twenty-two-a of this code: *Provided*,
13 *however*, That nothing in this exclusion is intended to address
14 ownership of the gas;

15 (ee) "Waters of this state" Shall have the same meaning as
16 the term "waters" as provided in subsection (23), section three,
17 article eleven, chapter twenty-two of this code;

18 ~~(u)~~(ff) "Well" means any shaft or hole sunk, drilled, bored or
19 dug into the earth or into underground strata for the extraction or
20 injection or placement of any liquid or gas, or any shaft or hole
21 sunk or used in conjunction with such extraction or injection or
22 placement. The term "well" does not include any shaft or hole
23 sunk, drilled, bored or dug into the earth for the sole purpose of
24 core drilling or pumping or extracting therefrom potable, fresh or
25 usable water for household, domestic, industrial, agricultural or
26 public use;

1 ~~(v)~~(gg) "Well work" means the drilling, redrilling, deepening,
2 stimulating, pressuring by injection of any fluid, converting from
3 one type of well to another, combining or physically changing to
4 allow the migration of fluid from one formation to another or
5 plugging or replugging of any well; and

6 ~~(w)~~(hh) "Well operator" or "operator" means any person or
7 persons, firm, partnership, partnership association or corporation
8 that proposes to or does locate, drill, operate or abandon any well
9 as herein defined.

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

13 ~~(y)~~ "Waters of this state" shall have the same meaning as the
14 term "waters" as provided in subsection (23), section three,

15 **§22-6-8. Permits not to be on flat well royalty leases;**
16 **legislative findings and declarations; permit**
17 **requirements.**

18 (a) The Legislature hereby finds and declares:

19 (1) That a significant portion of the oil and gas underlying
20 this state is subject to development pursuant to leases or other
21 continuing contractual agreements wherein the owners of ~~such~~ the
22 oil and gas are paid upon a royalty or rental basis known in the
23 industry as the annual flat well royalty basis, in which the
24 royalty is based solely on the existence of a producing well, and

1 thus is not inherently related to the volume of the oil and gas
2 produced or marketed;

3 (2) That continued exploitation of the natural resources of
4 this state in exchange for such wholly inadequate compensation is
5 unfair, oppressive, works an unjust hardship on the owners of the
6 oil and gas in place, and unreasonably deprives the economy of the
7 State of West Virginia of the just benefit of the natural wealth of
8 this state;

9 (3) That a great portion, if not all, of such leases or other
10 continuing contracts based upon or calling for an annual flat well
11 royalty have been in existence for a great many years and were
12 entered into at a time when the techniques by which oil and gas are
13 currently extracted, produced or marketed were not known or
14 contemplated by the parties, nor was it contemplated by the parties
15 that oil and gas would be recovered or extracted or produced or
16 marketed from the depths and horizons currently being developed by
17 the well operators;

18 (4) That while being fully cognizant that the provisions of
19 section 10, article I of the United States Constitution and of
20 section 4, article III of the Constitution of West Virginia
21 proscribe the enactment of any law impairing the obligation of a
22 contract, the Legislature further finds that it is a valid exercise
23 of the police powers of this state and in the interest of the State
24 of West Virginia and in furtherance of the welfare of its citizens
25 to discourage as far as Constitutionally possible the production

1 and marketing of oil and gas located in this state under the type
2 of leases or other continuing contracts described above.

3 (b) In the light of the foregoing findings, the Legislature
4 hereby declares that it is the policy of this state, to the extent
5 possible, to prevent the extraction, production or marketing of oil
6 or gas under a lease or leases or other continuing contract or
7 contracts providing a flat well royalty or any similar provisions
8 for compensation to the owner of the oil and gas in place, which is
9 not inherently related to the volume of oil or gas produced or
10 marketed, and toward these ends, the Legislature further declares
11 that it is the obligation of this state to prohibit the issuance of
12 any permit required by it for the development of oil or gas where
13 the right to develop, extract, produce or market the same is based
14 upon ~~such~~ flat well royalty leases or other continuing contractual
15 agreements.

16 (c) Any lease or other continuing contract purporting to
17 convey an interest in the extraction, production or marketing of
18 oil or gas for a sum of money or for any other good and valuable
19 consideration shall contain in bold face type of a font size not
20 less than 16 points above the signature line the following warning
21 language: "This is a binding contract. Before signing this
22 contract, consult with an attorney of your choice to ensure the
23 protection of your rights and interests.

24 By placing our initials at the end of this paragraph we, the
25 lessors, acknowledge we have read and understood this paragraph:
26 _____ (initials of lessors)."

1 ~~(c)~~ (d) In addition to any requirements contained in this
2 article with respect to the issuance of any permit required for the
3 drilling, redrilling, deepening, fracturing, stimulating,
4 pressuring, converting, combining or physically changing to allow
5 the migration of fluid from one formation to another, no such
6 permit shall be hereafter issued unless the lease or leases or
7 other continuing contract or contracts by which the right to
8 extract, produce or market the oil or gas is filed with the permit
9 application. ~~for such permit.~~ In lieu of filing the lease or
10 leases or other continuing contract or contracts, the applicant for
11 a permit described herein may file the following:

12 (1) A brief description of the tract of land including the
13 district and county wherein the tract is located;

14 (2) The identification of all parties to all leases or other
15 continuing contractual agreements by which the right to extract,
16 produce or market the oil or gas is claimed;

17 (3) The book and page number wherein each ~~such~~ lease or
18 contract by which the right to extract, produce or market the oil
19 or gas is recorded; and

20 (4) A brief description of the royalty provisions of each ~~such~~
21 lease or contract.

22 ~~(d)~~ (e) Unless the provisions of subsection (e) are met, no
23 ~~such~~ permit shall be ~~hereafter~~ issued after this article takes
24 effect for the drilling of a new oil or gas well or for the
25 redrilling, deepening, fracturing, stimulating, pressuring,
26 converting, combining or physically changing to allow the migration

1 of fluid from one formation to another, of an existing oil or gas
2 production well, where or if the right to extract, produce or
3 market the oil or gas is based upon a lease or leases or other
4 continuing contract or contracts providing for flat well royalty or
5 any similar provision for compensation to the owner of the oil or
6 gas in place which is not inherently related to the volume of oil
7 and gas so extracted, produced and marketed.

8 ~~(e)~~ (f) To avoid the permit prohibition of subsection (d), the
9 applicant may file with ~~such~~ the application an affidavit which
10 certifies that the affiant is authorized by the owner of the
11 working interest in the well to state that it shall tender to the
12 owner of the oil or gas in place not less than one-eighth of the
13 total amount paid to or received by or allowed to the owner of the
14 working interest at the wellhead for the oil or gas so extracted,
15 produced or marketed before deducting the amount to be paid to or
16 set aside for the owner of the oil or gas in place, on all such oil
17 or gas to be extracted, produced or marketed from the well. If
18 ~~such~~ that affidavit ~~be~~ is filed with ~~such~~ the application, then
19 ~~such~~ the application for permit shall be treated as if ~~such~~ the
20 lease or leases or other continuing contract or contracts comply
21 with the provisions of this section.

22 ~~(f)~~ (g) The owner of the oil or gas in place shall have a
23 cause of action to enforce the owner's rights established by this
24 section.

25 ~~(g)~~ (h) The provisions of this section shall not affect or
26 apply to any lease or leases or other continuing contract or

1 contracts for the underground storage of gas or any well utilized
2 in connection therewith or otherwise subject to the provisions of
3 article nine of this chapter.

4 ~~(h)~~ (i) The ~~director~~ secretary shall enforce this requirement
5 ~~irrespective~~ regardless of when the lease or other continuing
6 contract was executed.

7 ~~(i)~~(j) The provisions of this section shall not adversely
8 affect any rights to free gas.

9 **§22-6-9. Notice to property owners.**

10 (a) At least 30 days before entering upon the surface land for
11 surveying or staking for either proposed access routes on drill
12 sites, new well work or roads or other work requiring disturbance
13 of the surface that has not been disturbed before by the operator
14 of the gas well, an operator shall provide notice of the fact that
15 the operator is entering the surface land and of the general
16 purposes for such entry. The 30 days begins to run from the
17 surface owner's actual receipt of the notice or refusal to accept
18 the notice. The 30 days notice before entry may be waived by a
19 surface owner in writing.

20 (b) The notice shall include:

21 (1) The name, mailing address and physical address of the
22 operator, and a land line telephone number if one exists, a cell
23 phone number if one exists, and an e-mail address or other
24 electronic contact information if any exist for the actual person
25 or persons who may come onto the land representing the operator,

1 the person with authority to make decisions regarding the access
2 road, well site and pipelines, and their supervisors;

3 (2) The anticipated, approximate dates and times of entry onto
4 the surface land;

5 (3) A document referencing this article and other statutes and
6 rules regarding the surface owner's rights to notice of, and to
7 comment upon, the well work permit, the soil erosion and sediment
8 control manual of the division, the oil and gas production damages
9 compensation act; and

10 (4) An offer to meet with the surface owner at an mutually
11 agreed location. The offer to meet shall be to meet prior to or at
12 the time of the first entry.

13 (c) At the meeting the operator shall point out and explain
14 his or her preference for locations of well sites, impoundments,
15 access roads and pipeline proposed to be located on the surface,
16 consider owner's suggestions for alternate locations, and if the
17 surface owner's suggestion cannot be used, the operator shall make
18 a record of the reasons these suggestions cannot be used.

19 ~~(a)~~ (d) No later than the filing date of the application, the
20 applicant for a permit for any well work or for a certificate of
21 approval for the construction of an impoundment shall deliver, by
22 personal service or by ~~certified mail, return receipt requested~~
23 registered or certified mail or by any method of delivery that
24 requires a receipt or signature confirmation, copies of the
25 application, well plat, and erosion and sediment control plan

1 required by section ~~six~~ three of this article to each of the
2 following persons:

3 (1) The owners of record of the surface of the tract on which
4 the well is or is proposed to be located; ~~and~~

5 (2) The owners of record of the surface tract or tracts
6 overlying the oil and gas leasehold being developed by the proposed
7 well work, if ~~such~~ the surface tract is to be utilized for roads or
8 other land disturbance as described in the erosion and sediment
9 control plan submitted pursuant to section ~~six~~ three of this
10 article;

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

14 (4) The owners of record of the surface tract or tracts
15 overlying the oil and gas leasehold being developed by the proposed
16 well work, if the surface tract is to be utilized for the
17 placement, construction, enlargement, alteration, repair, removal
18 or abandonment of any impoundment as described in section five of
19 this article; and

20 (5) The operator of any storage field within which the
21 proposed well work activity is to take place.

22 ~~(b)~~ (e) If more than three tenants in common or other coowners
23 of interests described in subsection ~~(a)~~ (d) of this section hold
24 interests in ~~such~~ the lands, the applicant may serve the documents
25 required upon the person described in the records of the sheriff
26 required to be maintained pursuant to section eight, article one,

1 chapter eleven-a of this code, or publish in the county in which
2 the well is located or is proposed to be located a Class II legal
3 advertisement as described in section two, article three, chapter
4 fifty-nine of this code, containing such notice and information as
5 the ~~director~~ secretary shall prescribe by rule, with the first
6 publication date being at least ten days prior to the filing of the
7 permit application: *Provided*, That all owners occupying the tracts
8 where the well work is or is proposed to be located ~~at~~ on the
9 filing date of the permit application shall receive actual service
10 of the documents required by subsection (a) of this section.

11 ~~(c)~~ (f) Materials served upon persons described in subsections
12 ~~(a)~~ (e) and ~~(b)~~ (f) of this section shall contain a statement of
13 the methods and time limits for filing comments, who may file
14 comments, ~~and~~ the name and address of the ~~director~~ secretary for
15 the purpose of filing comments and obtaining additional
16 information, and a statement that ~~such~~ those persons may request,
17 at the time of submitting comments, notice of the permit decision
18 and a list of persons qualified to test water as provided in this
19 section.

20 ~~(d)~~ (g) Any person entitled to submit comments shall also be
21 entitled to receive a copy of the permit as issued or a copy of the
22 order modifying or denying the permit if ~~such~~ that person requests
23 ~~the receipt thereof~~ of them as a part of ~~the~~ his or her comments
24 concerning ~~said~~ the permit application.

25 ~~(e)~~ (h) Persons entitled to notice may contact the ~~district~~
26 ~~office of the division~~ department to ascertain the names and

1 locations of water testing laboratories in the subject area capable
2 and qualified to test water supplies in accordance with standard
3 accepted methods. In compiling ~~such~~ that list of names the ~~division~~
4 department shall consult with the state Bureau of Public Health
5 and local health departments.

6 **ARTICLE 6A. HORIZONTAL SHALLOW WELLS.**

7 **§22-6A-1. Applicability.**

8 The provisions of this article apply to all horizontal shallow
9 wells as defined in section one of article six of this chapter and
10 are additional regulatory requirements for horizontal shallow wells
11 in addition to the provisions of article six of this chapter. The
12 provisions of section eight, article eight, chapter twenty-two -c
13 of this code also apply to all horizontal shallow wells.

14 **§22-6A-2. Purpose and legislative findings.**

15 (a) Findings. The drilling, transportation and processing of
16 the gas from wells using hydraulic fracturing and horizontal
17 drilling will result in billions of dollars' worth of gas being
18 harvested, will require the investment of billions of dollars in
19 West Virginia and will generate thousands of jobs. It is the
20 policy of this state to ensure that natural resources are harvested
21 in an environmentally sound manner and in a manner that benefits
22 the people and the economy of the West Virginia through the hiring
23 of fully trained, local workers for the drilling, transport and
24 processing of this important natural resource.

1 (b) Purpose. The Legislature declares that the purpose of
2 this article is to establish additional specialized regulatory
3 requirements for the newly developed extraction techniques
4 associated with horizontal gas well drilling, providing further
5 requirements to address new industry practices relating to the
6 construction and completion of these well developments. Unlike
7 traditional oil and gas drilling activities, horizontal gas
8 drilling in the Marcellus formation are concentrated on large
9 drilling pads, use large volumes of water, exist for longer times
10 and otherwise have an significantly larger impact on the
11 surrounding area than traditional oil and gas drilling, creating
12 impacts to local water resources, air and noise pollution
13 associated with construction and operation of these well sites, and
14 necessitating additional regulatory requirements. Therefore, the
15 Legislature hereby enacts the Horizontal Oil and Gas Well Act to
16 provide, in addition to general regulatory requirments this chapter
17 otherwise applicable to these activities, a regulatory program to
18 fully address the impacts of this newly developed drilling
19 technology to our state.

20 **§22-6A-3. Compliance with other programs required.**

21 (a) Prior to the issuance of any well work permit the
22 secretary shall ascertain from the Commissioner of the Division of
23 Labor whether the applicant is in compliance with the provisions of
24 article one-b, chapter twenty-one of this code; article one-c and
25 one-d, chapter twenty-one of this code; article one-d and section
26 fourteen, article five, chapter twenty-one of this code and whether

1 the applicant requires all contractors hired to work under the
2 permit have bona-fide apprenticeship and training programs
3 registered with the United States Department of Labor. The
4 secretary shall not issue any well work permit unless the
5 Commissioner of Labor ascertains that the applicant is in
6 compliance with all of the provisions listed herein.

7 (b) Prior to the issuance of any well work permit, the
8 secretary shall ascertain from the Executive Director of Workforce
9 West Virginia and the Insurance Commissioner whether the applicant
10 is in compliance with the provisions of section six-c, article two,
11 chapter twenty-one-a of this code and section five, article two,
12 chapter twenty-three of this code regarding any required
13 subscription to the Unemployment Compensation Fund or to the
14 Workers' Compensation Fund, the payment of premiums and other
15 charges to the fund, the timely filing of payroll reports and the
16 maintenance of adequate deposits. If the applicant is delinquent
17 or has defaulted, or has been terminated by the executive director
18 or the Insurance Commissioner, the permit may not be issued until
19 the applicant returns to compliance or is restored by the executive
20 director or the Insurance Commissioner under a reinstatement
21 agreement.

22 (c) After issuance of a well work permit, the operator must
23 maintain continued compliance with the programs set forth in this
24 section and provide proof of compliance to the secretary on a
25 quarterly basis after permit issuance.

26 **§22-6A-4. Department of Highways approval of well road access.**

1 As part of the permit application, the operator shall provide
2 a letter of certification from the department of highways that the
3 operator has entered into an agreement and is in compliance with
4 all laws, regulations and conditions required by the department of
5 highways relating to posting bond, use, maintenance and repair of
6 all state and county roads to be utilized for access to a well
7 location, including, but not limited to, those roads used for the
8 transportation of water, machinery or any other items or materials
9 related to the construction and operation of the well. Upon notice
10 that the operator is failing to comply with the letter of
11 certification as required by this section, the department shall
12 deem such violation as a violation of a permit condition for
13 construction or operation of the well pursuant to this article.

14 **§22-6A-5. Well location restrictions.**

15 (a) Wells may not be drilled within 1000 feet measured
16 horizontally from any existing occupied dwelling or existing water
17 well without the written consent of the owner thereof. Where the
18 distance restriction would deprive the owner of the oil and gas
19 rights of the right to produce or share in the oil or gas
20 underlying said surface tract, the well operator may be granted a
21 variance from said distance restriction upon submission of a plan
22 which shall identify the additional measures, facilities or
23 practices to be employed during well site construction, drilling
24 and operations. The variance, if granted, shall include such
25 additional terms and conditions as the department shall require to
26 insure the safety and protection of affected persons and property.

1 The provisions may include insurance, bonding and indemnification,
2 as well as technical requirements.

3 (b) No well site may be prepared or well drilled within 100
4 feet measured horizontally from any watercourse, natural or
5 artificial lake, pond or reservoir or within 100 feet of the
6 boundary of a wetland or the boundary that affects the functions
7 and values of a wetland. However, no well may be drilled using
8 hydraulic fracturing and horizontal drilling within 2,500 feet of
9 a surface water source, and within 1,000 feet of a groundwater
10 source, that serves a public water system. The distance from the
11 public water supply source, as identified by the department, shall
12 be measured as follows:

13 (1) For a surface water intake on a lake or reservoir, the
14 distance shall be measured from the boundary of the lake or
15 reservoir.

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

19 (3) For a groundwater source, the distance shall be measured
20 from the wellhead or spring.

21 The department may waive such distance restrictions upon
22 submission of a plan which shall identify the additional measures,
23 facilities or practices to be employed during well site
24 construction, drilling and operations. Such waiver, if granted,
25 shall impose such permit conditions as are necessary to protect the
26 waters of the State.

1 (c) On making a determination on a well permit, the
2 department shall consider and may deny or condition a well permit
3 based on the impact of the proposed well on public resources to
4 include, but not be limited to, the following:

5 (1) Publicly owned parks, forests, gamelands, recreational
6 and wildlife areas.

7 (2) National or State scenic rivers.

8 (3) National natural landmarks.

9 (4) Habitats of rare and endangered flora and fauna and other
10 critical communities.

11 (5) Historical and archaeological sites listed on the Federal
12 or State list of historic places.

13 (6) Bodies of water and watercourses, including, but not
14 limited to, wetlands, wild trout streams and wilderness trout
15 streams.

16 (d) Prior to submitting a permit application to the
17 department for a well or well site within a wild trout stream, High
18 Quality or Exceptional Value watershed as indicated by the 12-digit
19 Hydrologic Unit Code, the applicant shall consult with the West
20 Virginia Division of Natural Resources.

21 (e) The department shall inspect each permitted well drilled
22 in any formation using hydraulic fracturing or horizontal drilling,
23 or both, during each phase of cementing, completing and altering.
24 The permittee may not proceed to the next phase of the drilling
25 operation until an inspection by the department has been performed.
26 The department shall allocate an appropriate portion of the well

1 permit fees to fund the inspection and may increase the permit fees
2 to meet an increase in the inspection costs.

3 (f) Upon a written request by any landowner residing within
4 5,500 feet of a proposed gas well using hydraulic fracturing, the
5 well permit applicant shall conduct a predrilling or prealteration
6 survey, using a facility or laboratory certified by the department,
7 and send a copy of the survey by certified mail to the requestor.
8 A predrilling or prealteration survey shall provide at a minimum
9 the testing results for chemicals or chemical compounds known to be
10 commonly used for hydraulic fracturing including, but not limited
11 to, the following: all major cations and anions, arsenic, benzene,
12 toluene, ethylbenzene, xylenes, manganese, dissolved methane, total
13 dissolved solids, chlorides, nutrients and radionuclides.

14 **§22-6A-6. Hydraulic fracturing chemicals and surface impoundments.**

15 (a) Notwithstanding a trade secret claim, a well operator
16 shall file a report with the department for each well that is
17 drilled using the hydraulic fracturing process within 30 days of
18 completion of such well. The report shall include, without
19 limitation, the complete list of the chemicals and chemical
20 compounds used in the fracturing fluid products, specifying the
21 volume of fluid utilized in each separate hydraulic fracturing
22 operation and the Chemical Abstract Service registry number for
23 each constituent chemical. The department shall make the report
24 available to the public upon a written request.

25 (b) In case of a medical emergency, the operator shall
26 provide the concentration of each constituent chemical and the

1 formula for each chemical compound to medical emergency personnel
2 or local emergency personnel, or both.

3 (c) The well operator shall keep a copy of the report at the
4 well site and produce it upon request by the department, local
5 emergency personnel or surface landowners residing within 5,500
6 feet of the well.

7 **§22-6A-7. Hydraulic fracture fluids monitoring.**

8 For each individual hydraulic fracturing operation performed
9 at a well site, the well operator shall maintain the data
10 indicating the total volume of fracturing fluids used for the
11 operation as well as the total volume of fluids that returned to
12 the surface. The well operator shall compile the data and the
13 necessary records to support the data, and submit it to the
14 department.

15 **§22-6A-8. Construction standards for pits and impoundments.**

16 All of the requirements set forth in 35 CSR §4-21 shall apply
17 to pits and impoundments used in connection with operations
18 regulated by this article, regardless of the capacity of the pit or
19 impoundment. In addition, the secretary shall conduct a study on
20 the safety of these pits and impoundments and upon a finding that
21 greater monitoring, safety requirements or other conditions are
22 necessary, shall promulgate a legislative rule establishing these
23 new requirements. The secretary shall provide a report of this
24 study to the Legislature's joint committee on government and
25 finance, on or before December 31, 2011.

26 **§22-6A-9. Water management plan requirements for gas wells using**

1 water resources for fracturing or stimulating gas
2 production.

3 (a) Prior to drilling, fracturing or stimulating gas wells
4 which use water obtained from withdrawals of water resources of the
5 state, gas well operators shall submit to the secretary a water
6 management plan containing the following information:

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

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

12 (3) The anticipated months when water withdrawals will be
13 made;

14 (4) The planned management and or disposition of wastewater
15 from the fracturing, stimulation and production activities;

16 (5) A listing of the additives as presented on material safety
17 data sheets that are used in water used for fracturing or
18 stimulating the well;

19 (6) For all surface water withdrawals, a water resources
20 protection plan that includes the information requested in
21 subdivisions (1) through (5) of this subsection and includes
22 documentation of measures that will be taken to allow the state to
23 manage the quantity of its waters for present and future use and
24 enjoyment and for the protection of the environment. The plan
25 shall include the following:

26 (A) Identification of the current designated and existing

1 water uses, including any public water intakes within one mile
2 downstream of the withdrawal location;

3 (B) For surface waters, a demonstration that a sufficient
4 instream flow will be available immediately downstream of the point
5 of withdrawal. A sufficient instream flow is available:

6 (i) If the department's Water Use Guidance Tool demonstrates
7 that the stream contains sufficient water for the withdrawal and a
8 passby flow is maintained immediately downstream of the point of
9 withdrawal that is protective of the environment. The Water Use
10 Guidance Tool is a web based geographical information system that
11 calculates the water resources available in streams located in
12 specific drainage basins based upon stream flow data obtained from
13 the United States Geological Survey; and

14 (ii) When the department's Water Use Guidance Tool indicates
15 that water withdrawals should be limited or restricted but local
16 conditions suggest otherwise, only if the withdrawal rate is
17 limited to maintain a passby flow in the stream immediately
18 downstream of the point of withdrawal that is protective of the
19 environment; and

20 (C) Methods to be used for surface water withdrawal to
21 minimize the impact of entrainment and impingement of fish.

22 (b) For all water used for hydraulic fracturing and for
23 flowback water from hydraulic fracturing activities and produced
24 water from production activities, gas well operators shall comply
25 with the following recordkeeping and reporting requirements:

26 (1) For production activities, the following information shall

1 be recorded and retained by the well operator:

2 (A) The quantity of flowback water from hydraulic fracturing
3 the well;

4 (B) The quantity of produced water from the well; and

5 (C) The method of management or disposal of the flowback and
6 produced well water.

7 (2) For transportation activities, the following information
8 shall be recorded and maintained by the operator:

9 (A) The quantity of water transported;

10 (B) The name and address of the water hauler, and the company
11 for which the hauler was hauling the water;

12 (3) The information maintained pursuant to this subsection by
13 the gas well operator shall be available for reasonable inspection
14 by the division of oil and gas along with other required permits
15 and records and maintained for three years after the water
16 withdrawal activity.

17 (c) Within at least twenty-four hours, but no more than forty-
18 eight hours, prior to the withdrawal of water, the operator shall
19 identify the location of withdrawal by latitude and longitude and
20 verify that sufficient flow exists to protect designated uses of
21 the stream. The operator shall use methods deemed appropriate by
22 the secretary to determine if sufficient flow is available and must
23 check flows on a daily basis for the duration of the withdrawal.
24 Any variation from the methods previously approved by the secretary
25 for determining if sufficient flow is available must be requested
26 in writing by the operator.

1 (d) All water withdrawal locations and facilities identified
2 in the water management plan shall be identified with a sign that
3 discloses that the location is a water withdrawal point and the
4 name and telephone number of the operator for which the water
5 withdrawn will be utilized.

6 (e) This section is intended to be consistent with and does
7 not supersede, revise, repeal or otherwise modify, articles eleven
8 and twenty-six, of this chapter, and does not revise, repeal or
9 otherwise modify the common law doctrine of riparian rights under
10 West Virginia law.

11 (f) In the event that an oil and gas driller or operator
12 contaminates the aquifer through the process of hydraulic
13 fracturing of the well, or contaminates the aquifer through a
14 surface spill or spills, the secretary shall require remediation of
15 the aquifer to clean water act standards.

16 **§22-6A-10. Local Ordinances.**

17 All local ordinances and enactments purporting to regulate gas
18 operations regulated by this act are hereby preempted and
19 superseded to the extent the ordinances and enactments regulate the
20 method of oil and gas operations. Nothing in this act shall affect
21 the traditional power of local government to regulate zoning and
22 land development of gas activities as well as other aspects, such
23 as the time and the place of operations to protect the health,
24 safety and welfare of the general public through local ordinances
25 and enactments.

26 **§22-6A-11. Prohibition on drilling pad construction without**

1 surface owners consent.

2 The Legislature finds that the unconventional drilling
3 practices associated with horizontal oil and gas development have
4 only very recently been technologically feasible, require the use
5 of substantially large areas of land previously unseen in
6 traditional oil and gas well development, and utilize significantly
7 more surface area than drilling methods in use when the vast
8 majority of mineral estates in the state were severed from the fee
9 tract. Specifically, the drilling of wells using large volumes of
10 water, utilize large impoundments, place multiple wells on a single
11 well pad, with a significantly longer time period of development,
12 and the many trucking, construction and operational activities
13 associated with the development of horizontal shallow wells have
14 been and may still be unknown to many persons who purchase either
15 fee simple of surface ownership of tracts of land where drilling
16 may occur. Further, because pooling agreements encompass several
17 tracts, the surface owner's property may be used to extract gas and
18 oil from land that is not owned by that surface or mineral owner,
19 where the surface owner is not subservient to other mineral owners
20 interests. The Legislature finds that it is inherently unfair to
21 force a surface owner to allow, without his or her consent, the
22 construction and operation of a well pad for a horizontal shallow
23 well unit. Therefore, the Legislature declares it against public
24 policy to authorize a well pad to be constructed on the surface of
25 a property as part of a pooling agreement without the surface
26 owner's consent: *Provided, That, if the owner of a mineral interest*

1 has pooled his or her interest with other mineral interests,
2 surface disturbance for all other activities associated with
3 construction of a well pad, such as access roads and gas lines may
4 be conducted upon the surface of any leased property within the
5 pool without consent from the surface owner, with just and proper
6 compensation as provided pursuant to article seven of this chapter
7 is authorized.

8 **§22-6A-12. Reports to the Legislature.**

9 The secretary shall, by December 31 of each year through and
10 including the year 2016, report to the joint committee on
11 government and finance on the horizontal shallow wells permitting
12 and inspection activities of the division of oil and gas.
13 Specifically, reports that include, but are not limited to, the
14 number of well inspections undertaken in the prior year, the number
15 of inspections required by law to be undertaken in the prior year,
16 an analysis of whether permitting fees for the horizontal shallow
17 gas and oil wells are sufficient to fund the necessary wells permit
18 writers and inspectors adequate to fulfill their statutory duties,
19 including time-frames associated with issuing permits, and a
20 recommendation to whether the permit fees should be increased or
21 decreased to provide adequate funding to the office to meet its
22 statutory duties regarding the permitting and inspection process
23 associated with horizontal shallow gas and oil wells.

24 **§22-6A-13. Rulemaking.**

25 Notwithstanding the provisions of section six, article six,
26 there is imposed up each operator of a Horizontal shallow well

1 permit fee for new permits, permit renewals and permit
2 modifications. The Division shall propose legislative rules for
3 promulgation in accordance with article three, chapter twenty-nine-
4 a of this code establishing the fees required by this section. The
5 fees shall be calculated to generate sufficient money to provide
6 for the fulfillment of the duties of the division, as provided in
7 this article.

8 **ARTICLE 7. OIL AND GAS PRODUCTION DAMAGE COMPENSATION.**

9 **§22-7-3. Compensation of surface owners for drilling operations.**

10 (a) The oil and gas developer shall be obligated to pay the
11 surface owner compensation for:

12 (1) Lost income or expenses incurred as a result of being
13 unable to dedicate land actually occupied by the driller's
14 operation or to which access is prevented by ~~such~~ the drilling
15 operation to the uses to which it was dedicated prior to
16 commencement of the activity for which a permit was obtained
17 measured from the date the operator enters upon the land until the
18 date reclamation is completed, (2) the market value of crops
19 destroyed, damaged or prevented from reaching market, (3) timber
20 which must be cleared from a surface site in order to make that
21 site useable for the development or extraction of oil, gas or
22 mineral interests, including that cleared for access roads, shall
23 be appraised by a certified appraiser of timber who shall be
24 compensated by the extractor, and, such timber shall be valued at
25 a minimum of two times the value of the present appraised value,
26 which value shall be paid by the extractor, for the purpose of

1 adequately compensating the surface landowner for losing the future
2 use of this resource. Additionally, the surface owner shall retain
3 all of the cleared timber, ~~(3)~~ (4) any damage to a water supply in
4 use prior to the commencement of the permitted activity, ~~(4)~~ (5)
5 the cost of repair of personal property up to the value of
6 replacement by personal property of like age, wear and quality, and
7 ~~(5)~~ (6) the diminution in value, if any, of the surface lands and
8 other property after completion of the surface disturbance done
9 pursuant to the activity for which the permit was issued determined
10 according to the actual use made thereof by the surface owner
11 immediately prior to the commencement of the permitted activity.

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

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

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