

## H. B. 2878

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

[Introduced January 26, 2011; referred to the  
Committee on the Judiciary then Finance.]

**Interim  
Bill**

A BILL to amend and reenact the Code of West Virginia, 1931, as amended; by adding thereto a new article, designated §22-6A-1, §22-6A-2, §22-6A-3, §22-6A-4, §22-6A-5, §22-6A-6, §22-6A-7, §22-6A-8, §22-6A-9, §22-6A-10, §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, §22-6A-24, §22-6A-25, §22-6A-26, §22-6A-27, §22-6A-28, §22-6A-29, §22-6A-30, §22-6A-31, §22-6A-32, §22-6A-33, §22-6A-34, §22-6A-35, §22-6A-36, §22-6A-37, §22-6A-38, §22-6A-39, §22-6A-40, §22-6A-41, §22-6A-42, §22-6A-43, §22-6A-44, §22-6A-45, §22-6A-46 and §22-6A-47, all relating to regulating the construction and operation of gas wells utilizing hydraulic fracturing and horizontal drilling; providing declaration of public policy and legislative findings; providing for applicability; defining terms; granting Secretary of Department of Environmental Protection certain powers and duties; establishing permit requirements

1       and permit fees; requiring erosion and sediment control plan;  
2       providing for a water pollution control permit and terms and  
3       conditions; requiring compliance with other state and federal  
4       programs; requiring department of highways approval of well  
5       road access; requiring notice to property owners; providing  
6       for receipt and consideration of comments from affected  
7       persons; providing permit application requirements;  
8       establishing erosion and sediment control plan requirements;  
9       providing plat survey requirements; providing opportunity to  
10      object to plat design by others with interest in property;  
11      providing for issuance of permit; requiring bond prior to  
12      receipt of permit and establishing bonding amounts and  
13      conditions for release; establishing well location  
14      restrictions and exceptions thereto; establishing agency  
15      requirements for permit issuance; providing notice of permit  
16      issuance; establishing inspection authority and process for  
17      notice, opportunity of abatement and enforcement of  
18      violations; providing notice and review process for orders and  
19      findings of the secretary; providing site restoration  
20      requirements; establishing well design and casing requirements  
21      and for inspections and approval thereof; providing for  
22      protection of water supplies; requiring reporting, monitoring  
23      and recordkeeping of fracturing chemicals; providing surface  
24      impoundment and pit requirements; requiring performance bonds

1 or other security for each well; establishing time-frames and  
2 other conditions relating to reclamation of well sites;  
3 providing water management plans for use of water resources in  
4 fracturing process; providing for objections to proposed  
5 drilling location; providing for cement casings around coal  
6 seams; requiring wells be plugged upon completion of use, and  
7 establishing notice and processes related thereto;  
8 establishing special requirements for plugging around coal  
9 seams; providing for casings to protect fresh water;  
10 establishing reporting and documentation requirements;  
11 establishing methods of plugging; establishing notice and  
12 other requirements before entry upon surface lands; providing  
13 for notice of surface use and mediation agreements on surface  
14 use; establishing requirements for surface use and  
15 compensation agreements; providing for an appeal process to  
16 environmental quality board; establishing special fund for  
17 permitting and permit modification fees; creation of special  
18 reclamation fund; creating offenses for violations of this act  
19 and rules promulgated thereunder; providing for declaration of  
20 notice to owners and lessees of coal seams; and preempting  
21 local authority to regulate these operations, and providing  
22 exceptions thereto.

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

24 That the Code of West Virginia, 1931, as amended, be amended

1 by adding thereto a new article, designated §22-6A-1, §22-6A-2,  
 2 §22-6A-3, §22-6A-4, §22-6A-5, §22-6A-6, §22-6A-7, §22-6A-8,  
 3 §22-6A-9, §22-6A-10, §22-6A-11, §22-6A-12, §22-6A-13, §22-6A-14,  
 4 §22-6A-15, §22-6A-16, §22-6A-17, §22-6A-18, §22-6A-19, §22-6A-20,  
 5 §22-6A-21, §22-6A-22, §22-6A-23, §22-6A-24, §22-6A-25, §22-6A-26,  
 6 §22-6A-27, §22-6A-28, §22-6A-29, §22-6A-30, §22-6A-31, §22-6A-32,  
 7 §22-6A-33, §22-6A-34, §22-6A-35, §22-6A-36, §22-6A-37, §22-6A-38,  
 8 §22-6A-39, §22-6A-40, §22-6A-41, §22-6A-42, §22-6A-43, §22-6A-44,  
 9 §22-6A-45, §22-6A-46 and §22-6A-47, all to read as follows:

10 **ARTICLE 6A. GAS WELLS UTILIZING HYDRAULIC FRACTURING OR HORIZONTAL**  
 11 **DRILLING.**

12 **§22-6A-1. Short title.**

13 This article shall be known and cited as the "Hydraulic  
 14 Fracturing and Horizontal Drilling Gas Act."

15 **§22-6A-2. Declaration of public policy, legislative findings.**

16 (a) The advent of new technologies and drilling practices has  
 17 permitted the profitable development of natural gas encased within  
 18 shale and other underground geologic formations creating a new type  
 19 and scale of gas well operation that utilizes a fracturing process  
 20 of horizontally drilled multiple gas wells located in a single  
 21 drilling location; requires the use of large amounts of water to  
 22 conduct this hydraulic fracturing; creates large surface impacts  
 23 unlike traditional drilling operations; requires large water  
 24 withdrawals and large water and waste impoundments; and has

1 significant impact on local roads, bridges and other infrastructure  
2 to be used by large vehicles to construct well facilities and to  
3 transport water and other fluids used in the fracturing process.  
4 These operations are unlike any other gas drilling operations and  
5 require development of a new regulatory scheme to adequately  
6 regulate environmental and local community impacts for this new  
7 industrial activity.

8 (b) It is the policy of this state to protect and preserve all  
9 gas owners rights and interests by providing protections for the  
10 local community impacted by the construction and operation of these  
11 facilities, assure state water resources are protected, assure  
12 surface owner impacts are minimized and respected, while assuring  
13 the orderly development of this new drilling activity.

14 **§22-6A-3. Applicability.**

15 Notwithstanding any other provision of this code to the  
16 contrary, the provisions of this article shall apply to any gas  
17 operation in the Marcellus Shale formation or any gas operation  
18 which utilizes horizontal drilling or hydraulic fracturing  
19 involving a minimum of five thousand barrels. However, this  
20 article does not apply to coal bed methane wells and units  
21 regulated by article twenty-one of this chapter or deep wells  
22 regulated by article nine chapter twenty-two-c of this code:  
23 Provided, That if a deep well utilizes horizontal drilling or  
24 hydraulic fracturing involving a minimum of five thousand barrels,

1 the provisions of this article apply except for those relating to  
2 unitization.

3 **§22-6A-4. Definitions.**

4 Unless the context in which used clearly requires a different  
5 meaning, as used in this article:

6 (a) "12-Digit Hydrologic Unit Code" means a subwatershed,  
7 generally ranging in size from ten thousand to forty thousand  
8 acres, as designated by the United States Geological Survey and the  
9 United States Department of Agriculture Natural Resources  
10 Conservation Service.

11 (b) "Body of Water" means a natural or artificial lake, ponds,  
12 reservoir, swamp, marsh, or wetland;

13 (c) "Casing" means a string or strings of pipe commonly placed  
14 in wells drilled for natural gas;

15 (d) "Cement" means hydraulic cement properly mixed with water;

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

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

24 (g) "Department" means Department of Environmental Protection;

1       (h) "Expanding cement" means any cement approved by the  
2 department which expands during the hardening process, including,  
3 but not limited to, regular oil field cements with the proper  
4 additives;

5       (I) "Facility" means any facility utilized in the gas industry  
6 in this state and specifically named or referred to in this article  
7 or in article eight or nine of this chapter, other than a well or  
8 well site;

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

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

16       (l) "Owner" when used with reference to any well, shall  
17 include any person or persons, firm, partnership, partnership  
18 association or corporation that owns, manages, operates, controls  
19 or possesses such well as principal, or as lessee or contractor,  
20 employee or agent of such principal;

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

24       (n) "Person" means any natural person, corporation, firm,

1 partnership, partnership association, venture, receiver, trustee,  
2 executor, administrator, guardian, fiduciary or other  
3 representative of any kind, and includes any government or any  
4 political subdivision or any agency thereof;

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

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

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

22 (r) "Secretary" means the Secretary of the Department of  
23 Environmental Protection;

24 (s) "Stimulate" means any action taken by a well operator to



1 increase the inherent productivity of a gas well, including, but  
2 not limited to, fracturing, shooting or acidizing, but excluding  
3 cleaning out, bailing or workover operations;

4       (t) "Stream" means a watercourse.

5       (u) "Watercourse means a channel or conveyance of surface  
6 water having defined bed and banks, whether natural or artificial,  
7 with perennial or intermittent flow.

8       (v) "Well" means any shaft or hole sunk, drilled, bored or dug  
9 into the earth or into underground strata for the extraction or  
10 injection of any liquid or gas, or any shaft or hole sunk or used  
11 in conjunction with such extraction or injection or placement. The  
12 term "well" does not include any shaft or hole sunk, drilled, bored  
13 or dug into the earth for the sole purpose of core drilling or  
14 pumping or extracting therefrom potable, fresh or usable water for  
15 household, domestic, industrial, agricultural or public use;

16       (w) "Well work" means the drilling, redrilling, deepening,  
17 stimulating, pressuring by injection of any fluid, converting from  
18 one type of well to another, combining or physically changing to  
19 allow the migration of fluid from one formation to another or  
20 plugging or replugging of any well;

21       (x) "Well operator" or "operator" means any person or persons,  
22 firm, partnership, partnership association or corporation that  
23 proposes to or does locate, drill, operate or abandon any well as  
24 herein defined;

1 (y) "Pollutant" shall have the same meaning as provided in  
2 subsection (17), section three, article eleven, chapter twenty-two  
3 of this code; and

4 (z) "Waters of this state" shall have the same meaning as the  
5 term "waters" as provided in subsection (23), section three,  
6 article eleven, chapter twenty-two of this code.

7 **§22-6A-5. Secretary of the Department of Environmental Protection;**  
8 **powers and duties.**

9 The secretary is vested with jurisdiction over all aspects of  
10 this article, including, but not limited to, the following powers  
11 and duties:

12 (1) To control and exercise regulatory authority over all gas  
13 operations regulated by this article;

14 (2) To employ all necessary personnel to carry out the  
15 purposes and requirements of this article;

16 (3) To propose any necessary legislative rules, in accordance  
17 with the provisions of chapter twenty-nine-a of this code to  
18 implement the provisions of this article. After the enactment of  
19 this article following the 2011 regular session of the legislature,  
20 the secretary is authorized to file emergencies rules to implement  
21 the requirements of this article; and

22 (4) To make investigations and inspections necessary to ensure  
23 compliance with the provisions of this article.

24 **§22-6A-6. Well permit required; permit fee; application; soil**

1                   erosion control plan.

2           (a) It is unlawful for any person to commence any well work,  
3 including site preparation work which involves any disturbance of  
4 land, without first securing a well work permit from the secretary.  
5 An application may propose and a permit may approve two or more  
6 activities defined as well work.

7           (b) Each application for a well work permit shall be  
8 accompanied by a bond, fee, plat, erosion and sediment control  
9 plan, and Division of Highways certification and water management  
10 plan as required by this article.

11           (c) The well operator named in such application shall  
12 designate the name and address of an agent for such operator who  
13 shall be the attorney-in-fact for the operator and who shall be a  
14 resident of the State of West Virginia upon whom notices, orders or  
15 other communications issued pursuant to this article or article  
16 eleven, chapter twenty-two, may be served, and upon whom process  
17 may be served. Every well operator required to designate an agent  
18 under this section shall within five days after the termination of  
19 such designation notify the secretary of such termination and  
20 designate a new agent.

21           (d) The well owner or operator shall install the permit number  
22 as issued by the secretary in a legible and permanent manner to the  
23 well upon completion of any permitted work. The dimensions,  
24 specifications and manner of installation shall be in accordance

1 with the rules of the secretary.

2       (e) The secretary shall deny the issuance of a permit if the  
3 secretary determines that the applicant has committed a substantial  
4 violation of a previously issued permit, including the erosion and  
5 sediment control plan, or a substantial violation of one or more of  
6 the rules promulgated hereunder, and has failed to abate or seek  
7 review of the violation within the time prescribed by the secretary  
8 pursuant to the provisions of sections seventeen and eighteen of  
9 this article and the rules promulgated hereunder, which time may  
10 not be unreasonable: Provided, That in the event that the  
11 secretary does find that a substantial violation has occurred and  
12 that the operator has failed to abate or seek review of the  
13 violation in the time prescribed, the secretary may suspend the  
14 permit on which said violation exists, after which suspension the  
15 operator shall forthwith cease all well work being conducted under  
16 the permit: Provided, however, That the secretary may reinstate  
17 the permit without further notice, at which time the well work may  
18 be continued. The secretary shall make written findings of any  
19 such determination and may enforce the same in the circuit courts  
20 of this state and the operator may appeal such suspension pursuant  
21 to the provisions of section forty of this article. The secretary  
22 shall make a written finding of any such determination.

23 **§22-6A-7. Water pollution control permits; powers and duties of**  
24 **the secretary; penalties.**

1       (a) In addition to a permit for well work, the secretary,  
2 after public notice and an opportunity for public hearings, may  
3 either issue a separate permit, general permit or a permit  
4 consolidated with the well work permit for the discharge or  
5 disposition of any pollutant or combination of pollutants into  
6 waters of this state upon condition that such discharge or  
7 disposition meets or will meet all applicable state and federal  
8 water quality standards and effluent limitations and all other  
9 requirements of the secretary.

10       (b) It shall be unlawful for any person conducting activities  
11 which are subject to the requirements of this article, unless that  
12 person holds a water pollution control permit therefor from the  
13 secretary, which is in full force and effect to:

14       (1) Allow pollutants or the effluent therefrom, produced by or  
15 emanating from any point source, to flow into the water of this  
16 state;

17       (2) Make, cause or permit to be made any outlet, or  
18 substantially enlarge or add to the load of any existing outlet,  
19 for the discharge of pollutants or the effluent therefrom, into the  
20 waters of this state;

21       (3) Acquire, construct, install, modify or operate a disposal  
22 system or part thereof for the direct or indirect discharge or  
23 deposit of treated or untreated pollutants or the effluent  
24 therefrom, into the waters of this state, or any extension to or

1 addition to such disposal system;

2 (4) Increase in volume or concentration any pollutants in  
3 excess of the discharges or disposition specified or permitted  
4 under any existing permit;

5 (5) Extend, modify or add to any point source, the operation  
6 of which would cause an increase in the volume or concentration of  
7 any pollutants discharging or flowing into the waters of the state;

8 (6) Operate any disposal well for the injection or reinjection  
9 underground of any pollutant, including, but not limited to,  
10 liquids or gasses, or convert any well into such a disposal well or  
11 plug or abandon any such disposal well.

12 (c) Notwithstanding any provision of this article or articles  
13 seven, eight, nine or ten of this chapter to the contrary, the  
14 secretary shall have the same powers and duties relating to  
15 inspection and enforcement as those granted under article eleven,  
16 chapter twenty-two of this code in connection with the issuance of  
17 any water pollution control permit or any person required to have  
18 such permit.

19 (d) Any person who violates any provision of this section, any  
20 order issued under this section or any permit issued pursuant to  
21 this section or any rule of the secretary relating to water  
22 pollution or who willfully or negligently violates any provision of  
23 this section or any permit issued pursuant to this section or any  
24 rule or order of the secretary relating to water pollution or who

1 fails or refuses to apply for and obtain a permit or who  
2 intentionally misrepresents any material fact in an application,  
3 record, report, plan or other document files or required to be  
4 maintained under this section shall be subject to the same  
5 penalties for such violations as are provided for in sections  
6 twenty-two and twenty-four, article eleven, chapter twenty-two of  
7 this code: Provided, That the provisions of section twenty-six,  
8 article eleven, chapter twenty-two of this code relating to  
9 exceptions to criminal liability shall also apply.

10 All applications for injunction filed pursuant to section  
11 twenty-two, article eleven, chapter twenty-two of the code shall  
12 take priority on the docket of the circuit court in which pending,  
13 and shall take precedence over all other civil cases.

14 (e) Any water pollution control permit issued pursuant to this  
15 section or any order issued in connection with such permit for the  
16 purpose of implementing the "national pollutant discharge  
17 elimination system" established under the federal Clean Water Act  
18 shall be appealable to the environmental quality board pursuant to  
19 the provisions of section twenty-five, article eleven, chapter  
20 twenty-two and section seven, article one, chapter twenty-two-b of  
21 this code.

22 **§22-6A-8. Compliance with other programs required.**

23 (a) Prior to the issuance of any well work permit, the  
24 secretary shall ascertain from the Commissioner of the Division of

1 Labor whether the applicant is in compliance with the provisions of  
2 article one-b, chapter twenty-one of this code and section  
3 fourteen, article five, chapter twenty-one of this code. Upon  
4 issuance of the permit, the secretary shall forward a copy to the  
5 commissioner, who shall assure continued compliance under the  
6 permit.

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, each 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



1 quarterly basis after permit issuance.

2 **§22-6A-9. Division of Highways approval of well road access.**

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

16 **§22-6A-10. Notice to property owners.**

17 (a) No later than the filing date of the application, the  
18 applicant for a permit for any well work shall deliver by personal  
19 service or by certified mail, return receipt requested, copies of  
20 the application, well plat and erosion and sediment control plan  
21 required by section six of this article to each of the following  
22 persons:

23 (1) The owners of record of the surface of the tract on which  
24 the well is, or is to be located; and

1       (2) The owners of record of the surface tract or tracts  
2 overlying the gas leasehold being developed by the proposed well  
3 work, if such surface tract is to be utilized for roads or other  
4 land disturbance as described in the erosion and sediment control  
5 plan submitted pursuant to section six of this article.

6       (b) If more than three tenants in common or other coowners of  
7 interests described in subsection (a) of this section hold  
8 interests in such lands, the applicant may serve the documents  
9 required upon the person described in the records of the sheriff  
10 required to be maintained pursuant to section eight, article one,  
11 chapter eleven-a of this code, or publish in the county in which  
12 the well is located or to be located a Class II legal advertisement  
13 as described in section two, article three, chapter fifty-nine of  
14 this code, containing such notice and information as the secretary  
15 shall prescribe by rule, with the first publication date being at  
16 least ten days prior to the filing of the permit application:  
17 Provided, That all owners occupying the tracts where the well work  
18 is, or is proposed to be located at the filing date of the permit  
19 application shall receive actual service of the documents required  
20 by subsection (a) of this section.

21       (c) Materials served upon persons described in subsections (a)  
22 and (b) of this section shall contain a statement of the methods  
23 and time limits for filing comments, who may file comments and the  
24 name and address of the secretary for the purpose of filing

1 comments and obtaining additional information and a statement that  
2 such persons may request, at the time of submitting comments,  
3 notice of the permit decision and a list of persons qualified to  
4 test water as provided in this section.

5 (d) Any person entitled to submit comments shall also be  
6 entitled to receive a copy of the permit as issued or a copy of the  
7 order denying the permit if such person requests the receipt  
8 thereof as a part of the comments concerning said permit  
9 application.

10 (e) Persons entitled to notice may contact the district office  
11 of the division to ascertain the names and location of water  
12 testing laboratories in the area capable and qualified to test  
13 water supplies in accordance with standard accepted methods. In  
14 compiling such list of names the division shall consult with the  
15 state bureau of public health and local health departments.

16 **§22-6A-11. Procedure for filing comments; certification of notice.**

17 (a) All persons described in subsections (a) and (b), section  
18 nine of this article may file comments with the secretary as to the  
19 location or construction of the applicant's proposed well work  
20 within fifteen days after the application is filed with the  
21 secretary.

22 (b) Prior to the issuance of any permit for well work, the  
23 applicant shall certify to the secretary that the requirements of  
24 section nine of this article have been completed by the applicant.

1 Such certification may be by affidavit of personal service or the  
 2 return receipt card, or other postal receipt for certified mailing.

3 **§22-6A-12. Permit application requirements and contents.**

4 Every permit application filed under this article shall be  
 5 verified and shall contain the following:

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

12 (2) The name and address of every coal operator operating coal  
 13 seams under the tract of land on which the well is or may be  
 14 located, and the coal seam owner of record and lessee of record  
 15 required to be given notice by section fourteen, if any, if said  
 16 owner or lessee is not yet operating said coal seams;

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

19 (4) The type of well;

20 (5) The well work for which a permit is requested;

21 (6) The approximate depth to which the well is to be drilled  
 22 or deepened, or the actual depth if the well has been drilled;

23 (7) The permit application fee required by law;

24 (8) If the proposed well work will require casing or tubing to

1 be set, the entire casing program for the well, including the size  
2 of each string of pipe, the starting point and depth to which each  
3 string is to be set, and the extent to which each such string is to  
4 be cemented;

5 (9) If the proposed well work is to plug or replug the well,  
6 (I) Specifications in accordance with the data requirements of  
7 section thirty-seven of this article, (ii) a copy of all logs in  
8 the operator's possession as the secretary may require, and (iii)  
9 a work order showing in detail the proposed manner of plugging or  
10 unplugging the well, in order that a representative of the  
11 secretary and any interested persons may be present when the work  
12 is done. In the event of an application to drill, redrill or  
13 deepen a well, if the well work is unsuccessful so that the well  
14 must be plugged and abandoned, and if the well is one on which the  
15 well work has been continuously progressing pursuant to a permit,  
16 the operator may proceed to plug the well as soon as the operator  
17 has obtained the verbal permission of the secretary or the  
18 secretary's designated representative to plug and abandon the well,  
19 except that the operator shall make reasonable effort to notify as  
20 soon as practicable the surface owner and the coal owner, if any,  
21 of the land at the well location, and shall also timely file the  
22 plugging affidavit required by section twenty-three of this  
23 article;

24 (10) If the proposed well work is to stimulate a gas well,

1 specifications in accordance with the data requirements of section  
2 thirteen of this article;

3 (11) The erosion and sediment control plan required by section  
4 thirteen of this article for applications for permits to drill; and

5 (12) Any other relevant information which the secretary may  
6 require.

7 **§22-6A-13. Erosion and sediment control plan requirements.**

8 (a) An erosion and sediment control plan shall accompany each  
9 application for a well work permit. Such plan shall contain  
10 methods of stabilization and drainage, including a map of the  
11 project area indicating the amount of acreage disturbed. The  
12 erosion and sediment control plan shall meet the minimum  
13 requirements of the West Virginia erosion and sediment control  
14 manual as adopted and amended, from time to time, by the  
15 department, in consultation with the several soil conservation  
16 districts pursuant to the control program established in this state  
17 through section 208 of the federal Water Pollution Control Act  
18 Amendments of 1972 (33 U.S.C.1288).

19 (b) The erosion and sediment control plan shall become part of  
20 the terms and conditions of a well work permit which is issued and  
21 the provisions of the plan shall be carried out where applicable in  
22 the operation. The erosion and sediment control plan shall set out  
23 the proposed method of reclamation which shall comply with the  
24 requirements of section twenty-nine of this article.

1 §22-6A-14. Plats prerequisite to drilling or fracturing wells;  
2 preparation and contents; notice and information  
3 furnished to coal operators, owners or lessees;  
4 issuance of permits; performance bonds or  
5 securities in lieu thereof; bond forfeiture.

6 (a) Before drilling for gas, or before fracturing or  
7 stimulating a well on any tract of land, the well operator shall  
8 have a plat prepared by a professional surveyor or registered  
9 engineer showing the district and county in which the tract of land  
10 is located, the name and acreage of the same, the names of the  
11 owners of adjacent tracts, the proposed or actual location of the  
12 well determined by survey, the coordinates of the well, the courses  
13 and distances of such location from two permanent points or  
14 landmarks on said tract and the number to be given the well. In  
15 the event the tract of land on which the said well proposed to be  
16 drilled or fractured is located is known to be underlain by one or  
17 more coal seams, copies of the plat shall be forwarded by  
18 registered or certified mail to each and every coal operator  
19 operating said coal seams beneath said tract of land, who has  
20 mapped the same and filed such maps with the Office of Miners'  
21 Health, Safety and Training in accordance with chapter twenty-two-a  
22 of this code and the coal seam owner of record and lessee of  
23 record, if any, if said owner or lessee has recorded the  
24 declaration provided in section fifty-two of this article, and if

1 said owner or lessee is not yet operating said coal seams beneath  
2 said tract of land. With each of such plats there shall be  
3 enclosed a notice (form for which shall be furnished on request by  
4 the secretary) addressed to the secretary and to each such coal  
5 operator, owner and lessee, if any, at their respective addresses,  
6 informing them that such plat and notice are being mailed to them  
7 respectively by registered or certified mail, pursuant to the  
8 requirements of this article.

9 (b) If no objections are made, or are found by the secretary,  
10 to such proposed location or proposed fracturing within thirty days  
11 from receipt of such plat and notice by the secretary, the same  
12 shall be filed and become a permanent record of such location or  
13 fracturing subject to inspection at any time by any interested  
14 person, and the secretary may forthwith issue to the well operator  
15 a permit reciting the filing of such plat, that no objections have  
16 been made by the coal operators, owners and lessees, if any, or  
17 found thereto by the secretary, and authorizing the well operator  
18 to drill at such location, or to fracture the well. Unless the  
19 secretary has objections to such proposed location or proposed  
20 fracturing or stimulating, such permit may be issued prior to the  
21 expiration of such thirty-day period upon the obtaining by the well  
22 operator of the consent in writing of the coal operator or  
23 operators, owners and lessees, if any, to whom copies of the plat  
24 and notice shall have been mailed as herein required, and upon



1 presentation of such written consent to the secretary. The notice  
2 above provided for may be given to the coal operator by delivering  
3 or mailing it by registered or certified mail as above to any agent  
4 or superintendent in actual charge of mines.

5 (c) A permit to drill, or to fracture or stimulate a gas well,  
6 shall not be issued unless the application therefor is accompanied  
7 by a bond as provided in section twenty-eight of this article.

8 **§22-6A-15. Well location restrictions.**

9 (a) Wells may not be drilled within one thousand feet  
10 measured horizontally from any existing building or existing water  
11 well without the written consent of the owner thereof. Where the  
12 distance restriction would deprive the owner of the gas rights of  
13 the right to produce or share in the gas underlying said surface  
14 tract, the well operator may be granted a variance from said  
15 distance restriction upon submission of a plan which shall identify  
16 the additional measures, facilities or practices to be employed  
17 during well site construction, drilling and operations. The  
18 variance, if granted, shall include such additional terms and  
19 conditions as the department shall require to insure the safety and  
20 protection of affected persons and property. The provisions may  
21 include insurance, bonding and indemnification, as well as  
22 technical requirements.

23 (b) No well site may be prepared or well drilled within one  
24 hundred feet measured horizontally from any watercourse, natural or

1 artificial lake, pond or reservoir or within one hundred feet of  
2 the boundary of a wetland or the boundary that affects the  
3 functions and values of a wetland. However, no well may be drilled  
4 using hydraulic fracturing or horizontal drilling within two  
5 thousand five hundred feet of a surface water source, and within  
6 one thousand feet of a groundwater source, that serves a public  
7 water system. The distance from the public water supply source, as  
8 identified by the department, shall be measured as follows:

9       (1) For a surface water intake on a lake or reservoir, the  
10 distance shall be measured from the boundary of the lake or  
11 reservoir.

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

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

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

23       (c) On making a determination on a well permit, the  
24 department shall consider and may deny or condition a well permit

1 based on the impact of the proposed well on public resources to  
2 include, but not be limited to, the following:

3 (1) Publicly owned parks, forests, gamelands, recreational  
4 and wildlife areas.

5 (2) National or state scenic rivers.

6 (3) National natural landmarks.

7 (4) Habitats of rare and endangered flora and fauna and other  
8 critical communities.

9 (5) Historical and archaeological sites listed on the federal  
10 or state list of historic places.

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

14 (d) Prior to submitting a permit application to the  
15 department for a well or well site within a wild trout stream, high  
16 quality or exceptional value watershed as indicated by the  
17 twelve-digit Hydrologic Unit Code, the applicant shall consult with  
18 the West Virginia Division of Natural Resources.

19 **§22-6A-16. Review of application; issuance of permit in the**  
20 **absence of objections; copy of permits to county**  
21 **assessor.**

22 The secretary shall review each application for a well work  
23 permit and shall determine whether a permit should be issued.

24 No permit shall be issued less than sixty days after the

1 filing date of the application for any well work: Provided, That  
2 if the applicant certifies that all persons entitled to notice of  
3 the application under the provisions of this article have been  
4 served in person or by certified mail, return receipt requested,  
5 with a copy of the well work application, including the erosion and  
6 sediment control plan, water management plan, and the plat required  
7 by this article, and further files written statements of no  
8 objection by all such persons, the secretary may issue the well  
9 work permit thirty days after the filing date of the application.

10 The secretary may inspect the proposed well work location to  
11 assure adequate review of the application. The permit shall not be  
12 issued, or shall be conditioned including conditions with respect  
13 to the location of the well and access roads prior to issuance if  
14 the director determines that:

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

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

19 (3) The water management plan is inadequate;

20 (4) The plat is inadequate;

21 (5) The applicant has failed to demonstrate compliance with  
22 sections eight and nine of this article;

23 (6) Damage would occur to publicly owned lands or resources;

24 (7) The proposed well work fails to protect fresh water

1 sources or supplies; or

2 (8) Any other requirement of this article.

3 The secretary shall promptly review all comments filed. If  
4 after review of the application and all comments received, the  
5 application for a well work permit is approved, and no timely  
6 objection or comment has been filed with the secretary or made by  
7 the secretary, the permit shall be issued, with conditions, if any.

8 Nothing in this section shall be construed to supersede the  
9 provisions of sections fourteen and twenty-six of this article.

10 The secretary shall mail a copy of the permit as issued or a  
11 copy of the order denying a permit to any person who submitted  
12 comments to the secretary concerning the permit and requested a  
13 copy.

14 Upon the issuance of any permit pursuant to the provisions of  
15 this article, the secretary shall transmit a copy of the permit to  
16 the office of the assessor for the county in which the well is  
17 located.

18 **§22-6A-17. Findings and orders of inspectors concerning**  
19 **violations; determination of reasonable time for**  
20 **abatement; extensions of time for abatement;**  
21 **special inspections; notice of findings and**  
22 **orders.**

23 (a) If a gas inspector, upon making an inspection of a well or  
24 well site or any other gas facility, finds that any provision of

1 this article is being violated, the inspector shall also find  
2 whether or not an imminent danger to persons exists, or whether or  
3 not there exists an imminent danger that a fresh water source or  
4 supply will be contaminated or lost. If the inspector finds that  
5 an imminent danger exists, an order requiring the operator of the  
6 well, well site or other gas facility to cease further operations  
7 until the imminent danger has been abated shall be issued by the  
8 inspector. If the inspector finds that no imminent danger exists,  
9 the inspector shall determine what would be a reasonable period of  
10 time to totally abate the violation. The findings shall contain  
11 reference to the provisions of this article which the inspector  
12 finds are being violated, and a detailed description of the  
13 conditions which cause and constitute the violation.

14 (b) The period of time for abatement shall not exceed seven  
15 days, but may be extended from time to time, up to a total of  
16 thirty days for good cause shown: Provided, That the thirty-day  
17 period may be extended by the inspector when abatement cannot be  
18 accomplished because of circumstances or conditions beyond the  
19 control of the well operator.

20 (c) The secretary shall conduct a special inspection: (A)  
21 Whenever an operator of a well or well site or any other gas  
22 facility, prior to the expiration of any period of abatement;  
23 requests the secretary to conduct a special inspection; and (B)  
24 upon expiration of the period of time as originally fixed or as

1 extended, unless the director is satisfied that the violation has  
2 been abated. Upon conducted a special inspection, the inspector  
3 shall determine whether or not the violation has been totally  
4 abated. If the inspector determines that the violation has not  
5 been totally abated, the inspector shall determine whether or not  
6 the period of time should be extended. If the inspector determines  
7 that the period of time should be extended, the inspector shall  
8 determine what a reasonable extension would be. If the inspector  
9 determines that the violation has not been totally abated, and if  
10 the period of time as originally fixed, or as so fixed and  
11 extended, has then expired, and if the inspector also determines  
12 that such period of time should not be further extended, the  
13 inspector shall thereupon make an order requiring the operator of  
14 the well or well site or other gas facility to cease further  
15 operations of the well, well site or facility, as the case may be.  
16 The findings and order shall contain reference to the specific  
17 provisions of this article which are being violated.

18 (d) Notice of each finding and order made under this section  
19 shall promptly be given to the operator.

20 **§22-6A-18. Review of findings and orders by secretary.**

21 (a) Any well operator, complaining coal operator, owner or  
22 lessee, if any, aggrieved by findings or an order made by an  
23 inspector pursuant to section seventeen of this article, may within  
24 fifteen days apply to the secretary for annulment or revision of

1 the order. After receiving the application, the secretary shall  
2 conduct a special inspection of the well, well site or other gas  
3 facility affected by the order, or cause two duly authorized  
4 inspectors, other than the inspector who issued the order or the  
5 supervising inspector and one duly authorized inspector other than  
6 the inspector who made the order, to conduct the inspection of the  
7 well, or well site or other facility and to report thereon to them.  
8 After conducting the special inspection, or upon receiving the  
9 report of the special inspection, as the case may be, the secretary  
10 shall issue an order with findings and shall annul, revise or  
11 affirm the order of the inspector.

12 (b) Notice of each finding and order made under this section  
13 shall promptly be given to the operator of the well, well site or  
14 other facility, and the complainant under section three, if any.

15 (c) At any time while an order made pursuant to section three  
16 of this article is in effect, the operator of the well, well site  
17 or other gas facility affected by the order may apply to the  
18 secretary for annulment or revision of the order. The secretary  
19 shall thereupon proceed to act upon such application in the manner  
20 provided in this section.

21 **§22-6A-19. Requirements for findings, orders and notices; posting**  
22 **of findings and orders.**

23 (a) All findings and orders made pursuant to section seventeen  
24 or eighteen of this article, and all notices required to be given



1 regarding findings and orders, shall be in writing. All findings  
2 and orders shall be signed by the person issuing them, and all  
3 notices shall be signed by the person giving the notice. All  
4 notices shall contain a copy of the findings and orders referred to  
5 therein.

6 (b) Notice of any finding or order required by section three  
7 or four of this article to be given to an operator shall be given  
8 by causing the notice, addressed to the operator of the well, well  
9 site or other gas facility to which the finding or order pertains,  
10 to be delivered to the operator by causing a copy thereof to be  
11 sent by registered mail to the permanent address of the operator as  
12 filed with the department and by causing a copy thereof to be  
13 posted upon the drilling rig or other equipment at the well, well  
14 site or other gas facility, as the case may be. The specific name  
15 of the operator does not need to be set forth in the notice  
16 required by this subsection.

17 **§22-6A-20. Well site restoration.**

18 (a) Each gas well owner or operator shall restore the land  
19 surface within the area disturbed in siting, drilling, completing  
20 and producing the well, including pipeline and access road  
21 rights-of-way.

22 (b) During and after all earthmoving or soil disturbing  
23 activities, including, but not limited to, the activities related  
24 to siting, drilling, completing, producing and plugging the well;

1 erosion and sedimentation control measures shall be implemented in  
2 accordance with an erosion and sedimentation control plan prepared  
3 in accordance with all applicable provisions of the State Water  
4 Pollution Control Act or any applicable rule promulgated  
5 thereunder.

6 (c) Within nine months after completion of drilling of any  
7 well, the owner or operator shall restore the well site, remove or  
8 fill all pits used to contain produced fluids or industrial wastes  
9 and remove all drilling supplies and equipment not needed for  
10 production. Drilling supplies and equipment not needed for  
11 production may be stored on the well site if the express written  
12 consent of the surface landowner is obtained.

13 (d) Within nine months after plugging a well, the owner or  
14 operator shall remove all production or storage facilities,  
15 supplies and equipment and restore the well site.

16 (e) Restoration activities required by this article or in  
17 rules promulgated hereunder shall also comply with all applicable  
18 provisions of the State Water Pollution Control Act or any  
19 applicable rule promulgated thereunder.

20 (f) Failure to restore the well site as required in this  
21 article or in rules promulgated hereunder is a violation of this  
22 article.

23 (g) The restoration period may be extended by the department  
24 for an additional six months upon application of the well owner or

1 operator providing evidence of inability to comply due to adverse  
2 weather conditions or lack of essential fuel, equipment or labor.

3 **§22-6A-21. Protection of fresh groundwater; casing requirements.**

4 (a) To aid in the protection of fresh groundwater, the well  
5 operator shall control and dispose of brines produced from the  
6 drilling, alteration, or operation of a gas well in a manner  
7 consistent with all applicable provisions of the State Water  
8 Pollution Control Act or any applicable rule promulgated  
9 thereunder.

10 (b) To prevent the migration of gas or fluids into sources of  
11 fresh groundwater and to prevent pollution or diminution of fresh  
12 groundwaters, there shall be run and permanently cemented, a string  
13 or strings of casing in each well drilled through the fresh water  
14 bearing strata to a depth below the deepest fresh water aquifer in  
15 a manner prescribed by rule by the department.

16 (c) When a well is drilled at a location where the coal has  
17 been drilled and cased to prevent the migration of gas or fluids  
18 into the seam from which the coal has been removed in a manner  
19 prescribed by rule of the department. The department and the coal  
20 operator, owner or lessee shall be given at least seventy two  
21 hours' notice prior to commencement of the work protecting the  
22 mine.

23 (d) When a well is drilled at a location where the coal has  
24 not been removed, the well shall be drilled to such a depth and of

1 size as will permit the placing of casing, packers in, and vents  
2 on, the hole at such points and in such a manner prescribed by the  
3 department by rule as will exclude all gas or fluids from the coal  
4 seam, except such as may be found naturally in the coal seam itself  
5 and will enable the monitoring of the integrity of the production  
6 casing.

7 (e) The department shall inspect each permitted well drilled  
8 in any formation using hydraulic fracturing or horizontal drilling,  
9 or both, during each phase of cementing, completing and altering.  
10 The permittee may not proceed to the next phase of the drilling  
11 operation until an inspection by the department has been performed.  
12 The department shall allocate an appropriate portion of the well  
13 permit fees to fund the inspection and may increase the permit fees  
14 to meet an increase in the inspection costs.

15 **§22-6A-22. Protection of water supplies.**

16 (a) Any well operator who affects a public or private water  
17 supply by pollution or diminution shall restore or replace the  
18 affected supply with an alternate source of water adequate in  
19 quantity and quality for the purposes served by the supply.

20 (b) Any landowner or water purveyor suffering pollution or  
21 diminution of a water supply as a result of the drilling,  
22 alteration or operation of a gas well may so notify the department  
23 and request that an investigation be conducted. Within ten days of  
24 such notification, the department shall investigate any such claim

1 and shall, within forty five days following notification, make a  
2 determination. If the department finds that the pollution or  
3 diminution was caused by the drilling, alteration or operation  
4 activities, or if it presumes the well operator responsible for  
5 pollution pursuant to subsection (c), then it shall issue such  
6 orders to the well operator as are necessary to assure compliance  
7 with subsection (a). Such orders may include orders requiring the  
8 temporary replacement of a water supply where it is determined that  
9 the pollution or diminution may be of limited duration.

10 (c) Upon a written request by any landowner residing within  
11 five thousand five hundred feet but farther than two thousand five  
12 hundred feet of a proposed gas well using hydraulic fracturing, the  
13 well permit applicant shall conduct a predrilling or prealteration  
14 survey, using a facility or laboratory certified by the department,  
15 and send a copy of the survey by certified mail to the requestor.  
16 A predrilling or prealteration survey shall provide at a minimum  
17 the testing results for chemicals or chemical compounds known to be  
18 commonly used for hydraulic fracturing including, but not limited  
19 to, the following: all major cations and anions, arsenic, benzene,  
20 toluene, ethylbenzene, xylenes, manganese, dissolved methane, total  
21 dissolved solids, chlorides, nutrients and radionuclides.

22 (d) Unless rebutted by one of the five defenses established  
23 in subsection (f), it shall be presumed that a well operator is  
24 responsible for the pollution of a water supply that is within two

1 thousand five hundred feet of the gas well, where the pollution  
2 occurred within twelve months after the completion of drilling or  
3 alteration of such well.

4       (e) In case of horizontal drilling, the presumption under  
5 subsection (d) covers the entire length of the horizontal drilling  
6 and extends an additional two thousand five hundred feet from the  
7 end or sides of each horizontal well bore.

8       (f) In order to rebut the presumption of liability  
9 established in subsection (d), the well operator must affirmatively  
10 prove one of the following five defenses:

11       (1) The pollution existed prior to the drilling or alteration  
12 activity as determined by a predrilling or prealteration survey.

13       (2) The landowner or water purveyor refused to allow the  
14 operator access to conduct a predrilling or prealteration survey.

15       (3) The water supply is not within two thousand five hundred  
16 feet of the well.

17       (4) The pollution occurred more than twelve months after  
18 completion of drilling or alteration activities.

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

21       (g) Any operator electing to preserve its defenses under  
22 subsection (e) (1) or (2) shall retain the services of an  
23 independent certified laboratory to conduct the predrilling or  
24 prealteration survey of water supplies. A copy of the results of

1 any such survey shall be submitted to the department and the  
2 landowner or water purveyor in a manner prescribed by the  
3 department.

4 (h) Nothing herein shall prevent any landowner or water  
5 purveyor who claims pollution or diminution of a water supply from  
6 seeking any other remedy that may be provided at law or in equity.

7 **§22-6A-23. Hydraulic fracturing chemicals and surface**  
8 **impoundments.**

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

19 (b) In case of a medical emergency, the operator shall  
20 provide the concentration of each constituent chemical and the  
21 formula for each chemical compound to medical emergency personnel  
22 or local emergency personnel, or both.

23 (c) The well operator shall keep a copy of the report at the  
24 well site and produce it upon request by the department, local

1 emergency personnel or surface landowners residing within five  
2 thousand five hundred feet of the well.

3 **§22-6A-24. Hydraulic fracture fluids monitoring.**

4 For each individual hydraulic fracturing operation performed  
5 at a well site, the well operator shall maintain the data  
6 indicating the total volume of fracturing fluids used for the  
7 operation as well as the total volume of fluids that returned to  
8 the surface. The well operator shall compile the data and the  
9 necessary records to support the data, and submit it to the  
10 department on a semiannual basis.

11 **§22-6A-25. Use of surface impoundments for temporary flow-back**  
12 **storage.**

13 Where centralized flow-back impoundments are used to  
14 temporarily store flow-back water, the department shall require the  
15 use of dual liner systems with a leak detection system installed  
16 between the two liners. The department shall inspect such  
17 impoundments on a monthly basis.

18 **§22-6A-26. Notice to coal operators, owners or lessees and**  
19 **director of intention to fracture certain other**  
20 **wells; contents of such notice; bond; permit**  
21 **required.**

22 Before fracturing any well the operator shall, by registered  
23 or certified mail, forward a notice of intention to fracture the  
24 well to the secretary and to any coal operator operating any coal



1 seam beneath the tract of land on which the well is located, who  
2 has mapped the same and filed the maps with the office of miners'  
3 health, safety and training in accordance with chapter twenty-two-a  
4 of this code, and the coal seam owner and lessee, if any, if the  
5 coal owner of record or lessee of record has recorded the  
6 declaration provided in section fifty-two of this article, and if  
7 the coal owner or lessee is not yet operating the coal seams  
8 beneath the tract of land.

9       The notice shall be addressed to the secretary and to each  
10 such coal operator at their respective addresses, shall contain the  
11 number of the drilling permit for such well and such other  
12 information as may be required by the secretary to enable the  
13 department and the coal operators to locate and identify such well  
14 and shall inform them that such notice is being mailed to them,  
15 respectively, by registered or certified mail, pursuant to the  
16 requirements of this article. The form for such notice of  
17 intention shall be furnished on request by the director.

18       If no objections are made, or are found by the secretary to  
19 such proposed fracturing within thirty days from receipt of such  
20 notice by the secretary, the same shall be filed and become a  
21 permanent record of such fracturing, subject to inspection at any  
22 time by any interested person, and the secretary shall forthwith  
23 issue to the well operator a permit reciting the filing of such  
24 notice, that no objections have been made by the coal operators, or

1 found thereto by the secretary, and authorizing the well operator  
2 to fracture such well. Unless the secretary has objections to such  
3 proposed fracturing, such permit shall be issued prior to the  
4 expiration of such thirty-day period upon the obtaining by the well  
5 operator of the consent in writing of the coal operator or  
6 operators, owners or lessees, if any, to whom notice of intention  
7 to fracture shall have been mailed as herein required, and upon  
8 presentation of such written consent to the director. The notice  
9 above provided for may be given to the coal operator by delivering  
10 or mailing it by registered or certified mail as above to any agent  
11 or superintendent in actual charge of mines.

12 **§22-6A-27. Construction standards for pits and impoundments.**

13 All of the requirements set forth in 35 CSR §4-21 shall apply  
14 to pits and impoundments used in connection with gas operations  
15 regulated by this article, regardless of the capacity of the pit or  
16 impoundment. Moreover, all impoundments shall be constructed with  
17 an impermeable synthetic liner to prevent seepage or leakage, and  
18 all pits shall be constructed with a dual liner system with a leak  
19 detection system installed between the two liners.

20 **§22-6A-28. Performance Bonds; corporate surety or other security.**

21 (a) No permit shall be issued pursuant to this article unless  
22 a bond as described in subsection (d) of this section which is  
23 required for a particular activity by this article is or has been  
24 furnished as provided in this section.

1       (b) A separate bond as described in subsection (d) of this  
2 section may be furnished for a particular gas well. A separate  
3 bond as described in subsection (d) of this section shall be  
4 furnished for each well drilled or converted for the introduction  
5 of liquids for the disposal of pollutants or the effluent  
6 therefrom. Each of these bonds shall be in the sum of \$25,000,  
7 payable to the State of West Virginia, conditioned on full  
8 compliance with all laws, rules relating to the drilling,  
9 redrilling, deepening, casing, stimulating, and plugging of gas  
10 wells and to the plugging, abandonment and reclamation of wells and  
11 for furnishing such reports and information as may be required by  
12 the director.

13       (c) The form of the bond required by this article shall be  
14 approved by the director and may include, at the option of the  
15 operator, surety bonding, collateral bonding (including cash and  
16 securities) letters of credit, establishment of an escrow account,  
17 self-bonding or a combination of these methods. If collateral  
18 bonding is used, the operator may elect to deposit cash, or  
19 collateral securities or certificates as follows: Bonds of the  
20 United States or its possessions, of the federal land bank, or the  
21 homeowners' loan corporation; full faith and credit general  
22 obligation bonds of the State of West Virginia, or other states,  
23 and of any county, district or municipality of the State of West  
24 Virginia or other states; or certificates of deposit in a bank in

1 this state, which certificates shall be in favor of the division.  
2 The cash deposit or market value of such securities or certificates  
3 shall be equal to or greater than the amount of the bond. The  
4 director shall, upon receipt of any such deposit of cash,  
5 securities or certificates, promptly place the same with the  
6 Treasurer of the State of West Virginia whose duty it shall be to  
7 receive and hold the same in the name of the state in trust for the  
8 purpose of which the deposit is made when the permit is issued.  
9 The operator shall be entitled to all interest and income earned on  
10 the collateral securities filed by such operator. The operator  
11 making the deposit shall be entitled from time to time to receive  
12 from the State Treasurer, upon the written approval of the  
13 director, the whole or any portion of any cash, securities or  
14 certificates so deposited, upon depositing with the Treasurer in  
15 lieu thereof, cash or other securities or certificates of the  
16 classes herein specified having value equal to or greater than the  
17 amount of the bond.

18 (d) When an operator has furnished a separate bond from a  
19 corporate bonding or surety company to drill, fracture or stimulate  
20 a gas well and the well produces gas, its operator may deposit with  
21 the director cash from the sale of the gas or both until the total  
22 deposited is \$5,000. When the sum of the cash deposited is  
23 \$25,000, the separate bond for the well shall be released by the  
24 director. Upon receipt of such cash, the director shall

1 immediately deliver the same to the Treasurer of the State of West  
2 Virginia. The Treasurer shall hold such cash in the name of the  
3 state in trust for the purpose for which the bond was furnished and  
4 the deposit was made. The operator shall be entitled to all  
5 interest and income which may be earned on the cash deposited so  
6 long as the operator is in full compliance with all laws, rules  
7 relating to the drilling, redrilling, deepening, casing, plugging,  
8 abandonment and reclamation of the well for which the cash was  
9 deposited and so long as the operator has furnished all reports and  
10 information as may be required by the director. If the cash  
11 realized from the sale of gas from the well is not sufficient for  
12 the operator to deposit with the director the sum of \$25,000 within  
13 one year of the day the well started producing, the corporate or  
14 surety company which issued the bond on the well may notify the  
15 operator and the director of its intent to terminate its liability  
16 under its bond. The operator then shall have thirty days to  
17 furnish a new bond from a corporate bonding or surety company or  
18 collateral securities or other forms of security, as provided in  
19 the next preceding paragraph of this section with the director. If  
20 a new bond or collateral securities or other forms of security are  
21 furnished by the operator, the liability of the corporate bonding  
22 or surety company under the original bond shall terminate as to any  
23 acts and operations of the operator occurring after the effective  
24 date of the new bond or the date the collateral securities or other

1 forms of security are accepted by the Treasurer of the State of  
2 West Virginia. If the operator does not furnish a new bond or  
3 collateral securities or other forms of security, as provided in  
4 the next preceding paragraph of this section, with the director,  
5 the operator shall immediately plug, fill and reclaim the well in  
6 accordance with all of the provisions of law and rules applicable  
7 thereto. In such case, the corporate or surety company which  
8 issued the original bond shall be liable for any plugging, filling  
9 or reclamation not performed in accordance with such laws and  
10 rules.

11 (e) Any bond furnished for a well subject to the provisions of  
12 this article prior to the effective date of this article shall be  
13 valid for all work on the well permitting prior to the effective  
14 date of this article; but no permit shall hereafter be issued or  
15 renewed for the well without a bond complying with the provisions  
16 of this section.

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

23 (g) Whenever the right to operate a well is assigned or  
24 otherwise transferred, the assignor or transferor shall notify the

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

21 Upon compliance with the requirements of this section by  
22 assignor or transferor and assignee or transferee, the director  
23 shall release assignor or transferor from all duties and  
24 requirements of this article, and the deputy director shall give

1 written notice of release unto assignor or transferor of any bond  
2 and return unto assignor or transferor any cash or collateral  
3 securities deposited pursuant to section twelve, fourteen,  
4 twenty-three or twenty-six of this article.

5 (h) If any of the requirements of this article or rules  
6 promulgated pursuant thereto or the orders of the director have not  
7 been complied with within the time limit set by the violation  
8 notice as defined in sections seventeen, eighteen, and nineteen of  
9 this article, the performance bond shall then be forfeited. No  
10 well may be produced until the violation is abated and the  
11 permittee furnishes a new performance bond.

12 (I) When any bond is forfeited pursuant to the provisions of  
13 this article or rules promulgated pursuant thereto, the director  
14 shall give notice to the Attorney General who shall collect the  
15 forfeiture without delay.

16 (j) All forfeitures shall be deposited in the Treasury of the  
17 State of West Virginia in the special reclamation fund as defined  
18 in section twenty-nine of this article.

19 **§22-6A-29. Reclamation requirements.**

20 The operator of a well shall reclaim the land surface within  
21 the area disturbed in siting, drilling, completing or producing the  
22 well in accordance with the following requirements:

23 (a) Within six months after the completion of the drilling  
24 process, the operator shall fill all the pits for muds, cuttings,



1 salt water and hydrocarbons that are not needed for production  
2 purposes, or are not required or allowed by state or federal law or  
3 rule and remove all concrete bases, drilling supplies and drilling  
4 equipment. Within such period, the operator shall grade or terrace  
5 and plant, seed or sod the area disturbed that is not required in  
6 production of the well where necessary to bind the soil and prevent  
7 substantial erosion and sedimentation. No pit may be used for the  
8 ultimate disposal of salt water. Salt water shall be periodically  
9 drained or removed, and properly disposed of, from any pit that is  
10 retained so the pit is kept reasonably free of salt water.

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

19 The secretary may, upon written application by an operator  
20 showing reasonable cause, extend the period within which  
21 reclamation shall be completed, but not to exceed a further  
22 six-month period.

23 If the secretary refuses to approve a request for extension,  
24 the refusal shall be by order.

1       (c) It shall be the duty of an operator to commence the  
2 reclamation of the area of land disturbed in siting, drilling,  
3 completing or producing the well in accordance with soil erosion  
4 and sediment control plans approved by the director or the  
5 director's designate.

6       (d) The secretary shall promulgate rules setting forth  
7 requirements for the safe and efficient installation and burying of  
8 all production and gathering pipelines where practical and  
9 reasonable except that such rules shall not apply to those  
10 pipelines regulated by the Public Service Commission.

11 **§22-6A-30. Water management plan requirements for gas wells using**  
12 **water resources for fracturing or stimulating gas**  
13 **production.**

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

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

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

23       (3) The anticipated months when water withdrawals will be  
24 made;

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

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

6       (6) For all surface water withdrawals, a water resources  
7 protection plan that includes the information requested in  
8 subdivisions (1) through (5) of this subsection and includes  
9 documentation of measures that will be taken to allow the state to  
10 manage the quantity of its waters for present and future use and  
11 enjoyment and for the protection of the environment. The plan  
12 shall include the following:

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

16       (B) For surface waters, a demonstration that a sufficient in-  
17 stream flow will be available immediately downstream of the point  
18 of withdrawal. A sufficient in-stream flow is available:

19       (I) If the department's Water Use Guidance Tool demonstrates  
20 that the stream contains sufficient water for the withdrawal and a  
21 pass-by flow is maintained immediately downstream of the point of  
22 withdrawal that is protective of the environment. The Water Use  
23 Guidance Tool is a web based geographical information system that  
24 calculates the water resources available in streams located in

1 specific drainage basins based upon stream flow data obtained from  
2 the United States Geological Survey; and

3 (ii) When the department's Water Use Guidance Tool indicates  
4 that water withdrawals should be limited or restricted but local  
5 conditions suggest otherwise, only if the withdrawal rate is  
6 limited to maintain a pass-by flow in the stream immediately  
7 downstream of the point of withdrawal that is protective of the  
8 environment; and

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

11 (b) For all water used for hydraulic fracturing and for flow-  
12 back water from hydraulic fracturing activities and produced water  
13 from production activities, gas well operators shall comply with  
14 the following recordkeeping and reporting requirements:

15 (1) For production activities, the following information shall  
16 be recorded and retained by the well operator:

17 (A) The quantity of flow-back water from hydraulic fracturing  
18 the well;

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

20 (C) The method of management or disposal of the flow-back and  
21 produced well water.

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

24 (A) The quantity of water transported;

1       (B) The collection and delivery or disposal locations of  
2 water; and

3       (C) The name and address of the water hauler, and the company  
4 for which the hauler was hauling the water.

5       (3) The information maintained pursuant to this subsection by  
6 the gas well operator shall be available for reasonable inspection  
7 by the department along with other required permits and records and  
8 maintained for three years after the water withdrawal activity.

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

14 **§22-6A-31.     Objections to proposed drilling of gas wells;**  
15 **indication of changes on plats; issuance of**  
16 **permits.**

17       When a proposed well drilling site is above a seam or seams of  
18 coal, the owner of any such coal seam may, within thirty days from  
19 the receipt by the secretary of the plat and notice required by  
20 section fourteen of this article, file objections in writing to  
21 such proposed drilling with the secretary, setting out therein as  
22 definitely as is reasonably possible the ground or grounds on which  
23 such objections are based. The secretary may prepare a form for  
24 filing an objection.

1       Thereafter, no further action shall be taken on the permit  
2 application until the secretary issues a decision on the objection.

3       If a permit is issued, the secretary shall indicate the  
4 approved drilling location on the plat filed with the secretary in  
5 accordance with the provisions of section fourteen of this article  
6 and shall number and keep an index of and docket each plat and  
7 notice mailed to the secretary as provided in section fourteen of  
8 this article, and each notice mailed to the secretary as provided  
9 in section twenty-six of this article, entering in such docket the  
10 name of the well operator, and the names and addresses of all  
11 persons notified, the dates of conferences, hearings and all other  
12 actions taken by the secretary and the review board. The secretary  
13 shall also prepare a record of the proceedings, which record shall  
14 include all applications, plats and other documents filed with the  
15 director, all notices given and proof of service thereof, all  
16 orders issued, all permits issued and a transcript of the hearing.  
17 The record prepared by the secretary shall be open to inspection by  
18 the public.

19 **§22-6A-32. Protective devices -- When well penetrates workable**  
20 **coal bed; when gas is found beneath or between**  
21 **workable coal beds.**

22       (a) When a well penetrates one or more workable coal beds, the  
23 well operator shall run and cement a string of casing in the hole  
24 through the workable coal bed or beds in such a manner as will

1 exclude all liquids, gas or gas pressure from the coal bed or beds,  
2 except such gas or gas pressure as may be found in such coal bed or  
3 beds. Such string of casing shall be run to a point at least  
4 thirty feet below the lowest workable coal bed which the well  
5 penetrates and shall be circulated and cemented from such point to  
6 the surface in such a manner as provided for in reasonable rules  
7 promulgated by the director in accordance with the provisions of  
8 chapter twenty-nine-a. After any such string of casing has been so  
9 run and cemented to the surface, drilling may proceed to the  
10 permitted depth.

11 (b) In the event that gas is found beneath a workable coal bed  
12 before the hole has been reduced from the size it had at the coal  
13 bed, a packer shall be placed below the coal bed, and above the gas  
14 horizon, and the gas by this means diverted to the inside of the  
15 adjacent string of casing through perforations made in such casing,  
16 and through it passed to the surface without contact with the coal  
17 bed. Should gas be found between two workable beds of coal, in a  
18 hole, of the same diameter from bed to bed, two packers shall be  
19 placed, with perforations in the casing between them, permitting  
20 the gas to pass to the surface inside the adjacent casing. In  
21 either of the cases here specified, the strings of casing shall  
22 extend from their seats to the top of the well.

23 **§22-6A-33. Same -- Continuance during life of well; dry or**  
24 **abandoned wells.**

1 In the event that a well produces natural gas, or is drilled  
2 for or converted for the introduction of pressure, whether liquid  
3 or gas, all coal-protecting strings of casing and all  
4 water-protecting strings of casing shall remain in place until the  
5 well is plugged or abandoned. During the life of the well the  
6 annular spaces between the various strings of casing adjacent to  
7 workable beds of coal shall be kept open, and the top ends of all  
8 such strings shall be provided with casing heads, or such other  
9 suitable devices as will permit the free passage of gas and prevent  
10 filling of such annular spaces with dirt or debris.

11 Any well which is completed as a dry hole or which is not in  
12 use for a period of twelve consecutive months shall be presumed to  
13 have been abandoned and shall promptly be plugged by the operator  
14 in accordance with the provisions of this article, unless the  
15 operator furnishes satisfactory proof to the secretary that there  
16 is a bona fide future use for such well.

17 **§22-6A-34. Same -- When well is drilled through horizon of**  
18 **coalbed from which coal has been removed.**

19 When a well is drilled through the horizon of a coalbed from  
20 which the coal has been removed, the hole shall be drilled at least  
21 thirty feet below the coalbed, of a size sufficient to permit the  
22 placing of a liner which shall start not less than twenty feet  
23 beneath the horizon of the coalbed and extend not less than twenty  
24 feet above it. Within this liner, which may be welded to the



1 casing to be used, shall be centrally placed the largest-sized  
2 casing to be used in the well and the space between the liner and  
3 casing shall be filled with cement as they are lowered into the  
4 hole. Cement shall be placed in the bottom of the hole to a depth  
5 of twenty feet to form a sealed seat for both liner and casing:  
6 Provided, That the liner may extend back to the surface and serve  
7 as the freshwater or coal protection casing, if done in accordance  
8 with sections thirty-two and thirty-five of this article, as  
9 applicable. If the liner is constructed in this manner, the next  
10 string of casing to be run into the well shall extend at least  
11 twenty feet below the coalbed. Cement shall be placed between that  
12 string of casing and the liner from the bottom of the casing to a  
13 point at least twenty feet above the coalbed. Following the  
14 setting of the liner, drilling shall proceed in the manner provided  
15 above. Should it be found necessary to drill through the horizon  
16 of two or more workable coalbeds from which the coal has been  
17 removed, the liner shall be started not less than twenty feet below  
18 the lowest horizon penetrated and shall extend to a point not less  
19 than twenty feet above the highest horizon.

20 **§22-6A-35. Same -- Installation of fresh water casings.**

21 When a permit has been issued for the drilling of a gas well,  
22 each well operator shall run and permanently cement a string of  
23 casing in the hole through the fresh water bearing strata in such  
24 a manner and to the extent provided for in rules promulgated by the

1 secretary in accordance with the provisions of this chapter.

2 **§22-6A-36. Well report, logs, core samples and cuttings to be**  
3 **filed; confidentiality and permitted use; authority**  
4 **to promulgate rules.**

5 (a) Within a reasonable time after the completion of the  
6 drilling of a well, the well operator shall file with the secretary  
7 and with the state Geological and Economic Survey a completion  
8 report containing the following:

9 (1) The character, depth and thickness of geological  
10 formations encountered, including fresh water, coal seams, mineral  
11 beds, brine and oil and gas bearing formations; and

12 (2) Such other information as the secretary may require to  
13 effectuate the purposes of this chapter.

14 The secretary may promulgate such reasonable rules in  
15 accordance with article three, chapter twenty-nine-a of this code,  
16 as may be considered necessary to ensure that the character, depth  
17 and thickness of geological formations encountered are accurately  
18 logged: Provided, That the secretary shall not require logging by  
19 the use of an electrical logging device: Provided, however, That  
20 if electrical or mechanical or geophysical logs are recorded in the  
21 well, the secretary may request copies of these logs: Provided  
22 further, That mechanical or geophysical logs may not include  
23 vertical seismic profiles or two-dimensional or three-dimensional  
24 seismic information.

1       (b) If a well operator takes core samples, that activity shall  
2 be noted within the report, and, within sixty days after filing the  
3 completion report, the operator shall, subject to the terms of this  
4 article, provide the state Geological and Economic Survey with a  
5 complete set of cores, consisting of at least quarter slabs,  
6 correctly labeled and identified according to depth. The core  
7 samples requested by and provided to the state Geological and  
8 Economic Survey may not contain any materials or documents made  
9 with regard to analyzing or interpreting the core samples.

10       (c) If a well operator catches cuttings during the drilling of  
11 any deep or shallow well, that activity shall be noted within the  
12 report and, within sixty days after filing the completion report,  
13 the operator shall, subject to the terms of this article, provide  
14 the state Geological and Economic Survey with a sample of the  
15 cuttings, correctly labeled and identified according to depth.

16       (d) Any information, reports, cuttings and core samples  
17 requested by and provided to the state Geological and Economic  
18 Survey by the operator shall be kept confidential at the written  
19 request of the operator for a specified amount of time as follows:

20       (1) Except for core samples, any logs, drill cuttings, reports  
21 and other information or materials that reveal trade secrets or  
22 other confidential business information relating to the competitive  
23 interests of the operator or the operator's privy may not be  
24 disclosed to the public for one year following delivery, unless the

1 operator consents in writing to a shorter time. At the operator's  
2 written request, the period of confidentiality may be extended in  
3 annual increments: Provided, That the total period of  
4 confidentiality may not exceed three years.

5 (2) Any core samples may not be disclosed to the public for  
6 five years following delivery to the state Geological and Economic  
7 Survey, unless the operator consents in writing to a shorter time.  
8 At the operator's written request, the period of confidentiality  
9 may be extended for an additional five years: Provided, That the  
10 total period of confidentiality may not exceed ten years.

11 (e) Notwithstanding the provisions of subsection (d) of this  
12 section, the state Geological and Economic Survey may store and  
13 process confidential information within its minerals mapping or  
14 geographic information systems; however, that confidential  
15 information may not be revealed to the public until the lapsing of  
16 the period of confidentiality created pursuant to subsection (d) of  
17 this section. After the period of confidentiality has lapsed,  
18 statistics or other information generated as the result of storage  
19 and processing may be disclosed in the aggregate through articles,  
20 reports, maps, or lectures presented in accordance with generally  
21 accepted academic or scientific practices and in a manner to  
22 preclude the identification of a particular well or operator.

23 **§22-6A-37. Plugging, abandonment and reclamation of well; notice**  
24 **of intention; bonds; affidavit showing time and**

1                   manner.

2           All dry or abandoned wells or wells presumed to be abandoned  
3 under the provisions of section thirty-three of this article shall  
4 be plugged and reclaimed in accordance with this section and the  
5 other provisions of this article and in accordance with the rules  
6 promulgated by the secretary.

7           Prior to the commencement of plugging operations and the  
8 abandonment of any well, the well operator shall either: (a)  
9 Notify, by registered or certified mail, the secretary and the coal  
10 operator operating coal seams, the coal seam owner of record or  
11 lessee of record, if any, to whom notices are required to be given  
12 by section twelve of this article, and the coal operators to whom  
13 notices are required to be given by section thirteen of this  
14 article, of its intention to plug and abandon any such well (using  
15 such form of notice as the secretary may provide), giving the  
16 number of the well and its location and fixing the time at which  
17 the work of plugging and filling will be commenced, which time  
18 shall be not less than five days after the day on which such notice  
19 so mailed is received or in due course should be received by the  
20 secretary, in order that a representative or representatives of the  
21 secretary and such coal operator, owner or lessee, if any, may be  
22 present at the plugging and filling of the well: *Provided, That*  
23 whether such representatives appear or do not appear, the well  
24 operator may proceed at the time fixed to plug and fill the well in

1 the manner hereinafter described; or (b) first obtain the written  
2 approval of the secretary and such coal operator, owner or lessee,  
3 if any; or (c) in the event the well to be plugged and abandoned is  
4 one on which drilling or reworking operations have been  
5 continuously progressing pursuant to authorization granted by the  
6 secretary, first obtain the verbal permission of the secretary or  
7 the secretary's designated representative to plug and abandon the  
8 well, except that the well operator shall, within a reasonable  
9 period not to exceed five days after the commencement of the  
10 plugging operations, give the written notices required by  
11 subdivision (a) above.

12 The well operator shall not be required to prepare or submit  
13 to the director a plat prior to the commencement of plugging  
14 operations so long as a plat pertaining to the particular well is  
15 on file with the director and accurately identifies the location of  
16 the well, or so long as there is also on file with the director the  
17 coordinates of the well established by a global positioning system.  
18 The coordinates established by a global positioning system must be  
19 filed with the secretary in either a written or electronic form  
20 prescribed by the secretary. The global positioning system used to  
21 establish the coordinates shall be accurate within the variance  
22 allowed by law for the distance between the actual location of the  
23 well and location shown on the plat that is required to be filed  
24 with a well permit application, or the secretary may establish the

1 accuracy of the global positioning system by legislative rule  
2 promulgated pursuant to section five of this article.

3 No well may be plugged or abandoned unless prior to the  
4 commencement of plugging operations and the abandonment of any well  
5 the secretary is furnished a bond as provided in section  
6 twenty-eight of this article. In no event prior to the  
7 commencement of plugging operations shall a lessee under a lease  
8 covering a well be required to give or sell the well to any person  
9 owning an interest in the well, including, but not limited to, the  
10 respective lessor, or agent of the lessor, nor may the lessee be  
11 required to grant a person with an interest in the well, including,  
12 but not limited to, the respective lessor, or agent of the lessor,  
13 an opportunity to qualify under section twenty-eight of this  
14 article to continue operation of the well.

15 When the plugging, filling and reclamation of a well have been  
16 completed, an affidavit, in triplicate, shall be made (on a form to  
17 be furnished by the secretary) by two experienced persons who  
18 participated in the work, the secretary or the secretary's  
19 designated representative, in which affidavit shall be set forth  
20 the time and manner in which the well was plugged and filled and  
21 the land reclaimed. One copy of this affidavit shall be retained  
22 by the well operator, another (or true copies of same) shall be  
23 mailed to the coal operator or operators, if any, and the third to  
24 the secretary.

1 **§22-6A-38. Methods of plugging well.**

2 Upon the abandonment or cessation of the operation of any well  
3 drilled for natural gas, the well operator at the time of such  
4 abandonment or cessation, shall fill and plug the well in the  
5 following manner:

6 (a) Where the well does not penetrate workable coal beds, it  
7 shall either be filled with mud, clay or other nonporous material  
8 from the bottom of the well to a point twenty feet above the top of  
9 its lowest gas or water-bearing stratum; or a permanent bridge  
10 shall be anchored thirty feet below its lowest gas or water-bearing  
11 stratum, and from such bridge it shall be filled with mud, clay or  
12 other nonporous material to a point twenty feet above such stratum;  
13 at this point there shall be placed a plug of cement or other  
14 suitable material which will completely seal the hole. Between  
15 this sealing plug and a point twenty feet above the next higher gas  
16 or water-bearing stratum, the hole shall be filled, in the manner  
17 just described; and at such point there shall be placed another  
18 plug of cement or other suitable material which will completely  
19 seal the hole. In like manner the hole shall be filled and  
20 plugged, with reference to each of its gas or water-bearing strata.  
21 However, whenever such strata are not widely separated and are free  
22 from water, they may be grouped and treated as a single sand, gas  
23 or petroleum horizon, and the aforesaid filling and plugging be  
24 performed as though there were but one horizon. After the plugging



1 of all gas or water-bearing strata, as aforesaid, a final cement  
2 plug shall be placed approximately ten feet below the bottom of the  
3 largest casing in the well; from this point to the surface the well  
4 shall be filled with mud, clay or other nonporous material. In  
5 case any of the gas-bearing strata in a well shall have been shot,  
6 thereby creating cavities which cannot readily be filled in the  
7 manner above described, the well operator shall follow either of  
8 the following methods:

9       (1) Should the stratum which has been shot be the lowest one  
10 in the well, there shall be placed, at the nearest suitable point,  
11 but not less than twenty feet above the stratum, a plug of cement  
12 or other suitable material which will completely seal the hole. In  
13 the event, however, that the shooting has been done above one or  
14 more gas-bearing strata in the well, plugging in the manner  
15 specified shall be done at the nearest suitable point, but not less  
16 than twenty feet below and above the stratum shot; or

17       (2) When such cavity shall be in the lowest gas-bearing  
18 stratum in the well, a liner shall be placed which shall extend  
19 from below the stratum to a suitable point, but not less than  
20 twenty feet above the stratum in which shooting has been done. In  
21 the event, however, that the shooting has been done above one or  
22 more gas-bearing strata in the well, the liner shall be so placed  
23 that it will extend not less than twenty feet above, nor less than  
24 twenty feet below, the stratum in which shooting has been done.

1 Following the placing of the liner in the manner here specified it  
2 shall be compactly filled with cement, mud, clay or other nonporous  
3 sealing material.

4       (b) Where the well penetrates one or more workable coal beds  
5 and a coal protection string of casing has been circulated and  
6 cemented into the surface, the well shall be filled and securely  
7 plugged in the manner provided in subsection (a) of this section,  
8 except that expanding cement shall be used instead of regular  
9 hydraulic cement, to a point approximately one hundred feet below  
10 the bottom of the coal protection string of casing. A one hundred  
11 foot plug of expanding cement shall then be placed in the well so  
12 that the top of such plug is located at a point just below the coal  
13 protection string of casing. After such plug has been securely  
14 placed in the well, the coal protection string of casing shall be  
15 emptied of liquid from the surface to a point one hundred feet  
16 below the lowest workable coal bed or to the bottom of the coal  
17 protection string of casing, whichever is shallower. A vent or  
18 other device approved by the director shall then be installed on  
19 the top of the coal protection string of casing in such a manner  
20 that will prevent liquids and solids from entering the well but  
21 will permit ready access to the full internal diameter of the coal  
22 protection string of casing when required. The coal protection  
23 string of casing and the vent or other device approved by the  
24 director shall extend, when finally in place, a distance of not

1 less than thirty inches above ground level and shall be permanently  
2 marked with the well number assigned by the director;

3 (c) Where the well penetrates one or more workable coal beds  
4 and a coal protection string of casing has not been circulated and  
5 cemented in to the surface, the well shall be filled and securely  
6 plugged in the manner provided in subsection (a) of this section to  
7 a point fifty feet below the lowest workable coal bed. Thereafter,  
8 a plug of cement shall be placed in the well at a point not less  
9 than forty feet below the lowest workable coal bed. After the  
10 cement plug has been securely placed in the well, the well shall be  
11 filled with cement to a point twenty feet above the lowest workable  
12 coal bed. From this point the well shall be filled with mud, clay  
13 or other nonporous material to a point forty feet beneath the next  
14 overlying workable coal bed, if such there be, and the well shall  
15 then be filled with cement from this point to a point twenty feet  
16 above such workable coal bed, and similarly, in case there are more  
17 overlying workable coal beds. After the filling and plugging of  
18 the well to a point above the highest workable coal bed, filling  
19 and plugging of the well shall continue in the manner provided in  
20 subsection (a) of this section to a point fifty feet below the  
21 surface, and a plug of cement shall be installed from the point  
22 fifty feet below the surface to the surface with a monument  
23 installed therein extending thirty inches above ground level;

24 (d) (1) Where the well penetrates one or more workable coal

1 beds and a coal protection string of casing has not been circulated  
2 and cemented in to the surface, a coal operator or coal seam owner  
3 may request that the well be plugged in the manner provided in  
4 subdivision (3) of this subsection rather than by the method  
5 provided in subsection (c) of this section. Such request (forms  
6 for which shall be provided by the director) must be filed in  
7 writing with the director prior to the scheduled plugging of the  
8 well, and must include the number of the well to be plugged and the  
9 name and address of the well operator. At the time such request is  
10 filed with the director, a copy of such request must also be mailed  
11 by registered or certified mail to the well operator named in the  
12 request.

13 (2) Upon receipt of such request, the director shall issue an  
14 order staying the plugging of the well and shall promptly determine  
15 the cost of plugging the well in the manner provided in subdivision  
16 (3) of this subsection and the cost of plugging the well in the  
17 manner provided in subsection (c) of this section. In making such  
18 determination, the director shall take into consideration any  
19 agreement previously made between the well operator and the coal  
20 operator or coal seam owner making the request. If the director  
21 determines that the cost of plugging the well in the manner  
22 provided in subsection (c) of this section exceeds the cost of  
23 plugging the well in the manner provided in subdivision (3) of this  
24 subsection, the director shall grant the request of the coal

1 operator or owner and shall issue an order requiring the well  
2 operator to plug the well in the manner provided in subdivision (3)  
3 of this subsection. If the director determines that the cost of  
4 plugging the well in the manner provided in subsection (c) of this  
5 section is less than the cost of plugging the well in the manner  
6 provided in subdivision (3) of this subsection, the director shall  
7 request payment into escrow of the difference between the  
8 determined costs by the coal operator or coal seam owner making the  
9 request. Upon receipt of satisfactory notice of such payment, or  
10 upon receipt of notice that the well operator has waived such  
11 payment, the director shall grant the request of the coal operator  
12 or coal seam owner and shall issue an order requiring the well  
13 operator to plug the well in the manner provided in subdivision (3)  
14 of this subsection. If satisfactory notice of payment into escrow,  
15 or notice that the well operator has waived such payment, is not  
16 received by the director within fifteen days after the request for  
17 payment into escrow, the director shall issue an order permitting  
18 the plugging of the well in the manner provided in subsection (c)  
19 of this section. Copies of all orders issued by the director shall  
20 be sent by registered or certified mail to the coal operator or  
21 coal seam owner making the request and to the well operator. When  
22 the escrow agent has received certification from the director of  
23 the satisfactory completion of the plugging work and the  
24 reimbursable extra cost thereof (that is, the difference between

1 the director's determination of plugging cost in the manner  
2 provided in subsection (c) of this section and the well operator's  
3 actual plugging cost in the manner provided in subdivision (3) of  
4 this subsection), the escrow agent shall pay the reimbursable sum  
5 to the well operator or the well operator's nominee from the  
6 payment into escrow to the extent available. The amount by which  
7 the payment into escrow exceeds the reimbursable sum plus the  
8 escrow agent's fee, if any, shall be repaid to the coal owner. If  
9 the amount paid to the well operator or the well operator's nominee  
10 is less than the actual reimbursable sum, the escrow agent shall  
11 inform the coal owner, who shall pay the deficiency to the well  
12 operator or the well operator's nominee within thirty days. If the  
13 coal operator breaches this duty to pay the deficiency, the well  
14 operator shall have a right of action and be entitled to recover  
15 damages as if for wrongful conversion of personalty, and reasonable  
16 attorney fees.

17 (3) Where a request of a coal operator or coal seam owner  
18 filed pursuant to subdivision (1) of this subsection has been  
19 granted by the director, the well shall be plugged in the manner  
20 provided in subsection (a) of this section, except that expanding  
21 cement shall be used instead of regular hydraulic cement, to a  
22 point approximately two hundred feet below the lowest workable coal  
23 bed. A one hundred foot plug of expanding cement shall then be  
24 placed in the well beginning at the point approximately two hundred

1 feet below the lowest workable coal bed and extending to a point  
2 approximately one hundred feet below the lowest workable coal bed.  
3 A string of casing with an outside diameter no less than four and  
4 one-half inches shall then be run into the well to a point  
5 approximately one hundred feet below the lowest workable coal bed  
6 and such string of casing shall be circulated and cemented in to  
7 the surface. The casing shall then be emptied of liquid from a  
8 point approximately one hundred feet below the lowest workable coal  
9 bed to the surface, and a vent or other device approved by the  
10 director shall be installed on the top of the string of casing in  
11 such a manner that it will prevent liquids and solids from entering  
12 the well but will permit ready access to the full internal diameter  
13 of the coal protection string of casing when required. The string  
14 of casing and the vent or other device approved by the director  
15 shall extend, when finally in place, a distance of no less than  
16 thirty inches above ground level and shall be permanently marked  
17 with the well number assigned by the director. Notwithstanding the  
18 foregoing provisions of this subdivision, if under particular  
19 circumstances a different method of plugging is required to obtain  
20 the approval of another governmental agency for the safe mining  
21 through of said well, the director may approve such different  
22 method of plugging if the director finds the same to be as safe for  
23 mining through and otherwise adequate to prevent gas or other fluid  
24 migration from the gas reservoirs as the method above specified.

1       (e) Any person may apply to the secretary for an order to  
2 clean out and replug a previously plugged well in a manner which  
3 will permit the safe mining through of such well. Such application  
4 shall be filed with the director and shall contain the well number,  
5 a general description of the well location, the name and address of  
6 the owner of the surface land upon which the well is located, a  
7 copy of or record reference to a deed, lease or other document  
8 which entitles the applicant to enter upon the surface land, a  
9 description of the methods by which the well was previously  
10 plugged, and a description of the method by which such applicant  
11 proposes to clean out and replug the well. At the time an  
12 application is filed with the secretary, a copy shall be mailed by  
13 registered or certified mail to the owner or owners of the land,  
14 and the gas lessee of record, if any, of the site upon which the  
15 well is located. If no objection to the replugging of the well is  
16 filed by any such landowner or gas lessee within thirty days after  
17 the filing of the application, and if the director determines that  
18 the method proposed for replugging the well will permit the safe  
19 mining through of such well, the director shall grant the  
20 application by an order authorizing the replugging of the well.  
21 Such order shall specify the method by which the well shall be  
22 replugged, and copies thereof shall be mailed by certified or  
23 registered mail to the applicant and to the owner or owners of the  
24 land, and the gas lessee, if any, of the site upon which such well



1 is located. If any such landowner or gas lessee objects to the  
2 replugging of the well, the director shall notify the applicant of  
3 such objection. Thereafter, the director shall schedule a hearing  
4 to consider the objection, which hearing shall be held after notice  
5 by registered or certified mail to the objectors and the applicant.  
6 After consideration of the evidence presented at the hearing, the  
7 director shall issue an order authorizing the replugging of the  
8 well if the director determines that replugging of the well will  
9 permit the safe mining through of such well. Such order shall  
10 specify the manner in which the well shall be replugged and copies  
11 thereof shall be sent by registered or certified mail to the  
12 applicant and objectors. The secretary shall issue an order  
13 rejecting the application if the secretary determines that the  
14 proposed method for replugging the well will not permit the safe  
15 mining through of such well;

16 (f) All persons adversely affected, by a determination or  
17 order of the secretary issued pursuant to the provisions of this  
18 section shall be entitled to review in accordance with the  
19 provisions of section forty-nine of this article (EQB).

20 **§22-6A-39. Notice of initial entry upon surface lands.**

21 (a) At least fifteen days before entering upon the surface  
22 land for inspection, measurements, surveying or other evaluation of  
23 proposed access routes and sites for either new well work or roads  
24 or other work requiring disturbance of the surface that has not

1 been disturbed before by the operator of the gas well, an operator  
2 shall provide notice of the fact that the operator is entering the  
3 surface land and of the general purposes for such entry. The  
4 fifteen days begins to run from the surface owner's actual receipt  
5 of the notice or refusal to accept the notice. The fifteen days  
6 notice before entry may be waived by a surface owner in writing.  
7 A surface use and compensation agreement is not valid unless it is  
8 finalized and signed at least fifteen days after receipt of the  
9 notice provided in this section.

10 (b) The notice shall include:

11 (1) The name, mailing address and physical address of the  
12 operator, and a land line telephone number if one exists, a cell  
13 phone number if one exists, and an e-mail address or other  
14 electronic contact information if any exist for the actual person  
15 or persons who may come onto the land representing the operator,  
16 the person with authority to make decisions regarding the access  
17 road, well site and pipelines, and their supervisors;

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

20 (3) A document referencing this article and other statutes and  
21 rules regarding the surface owner's rights to notice of, and to  
22 comment upon, the well work permit, the soil erosion and sediment  
23 control manual of the department; and

24 (4) An offer to meet with the surface owner at an mutually

1 agreed location. The offer to meet shall be to meet prior to or at  
2 the time of the first entry.

3 (c) At the meeting the operator shall point out and explain  
4 his or her preference for locations of well sites, impoundments,  
5 access roads and pipelined proposed to be located on the surface,  
6 consider owner's suggestions for alternate locations, and if the  
7 surface owner's suggestion cannot be used, the operator shall make  
8 a record of the reasons these suggestions cannot be used.

9 **§22-6A-40. Notice of planned surface use; mediation.**

10 (a) This section does not apply if the operator and the  
11 surface owner have entered into an agreed surface use and  
12 compensation agreement in compliance with this article that, by  
13 separate signature, waives the requirements of this section.

14 (b) Before filing an application for a well work permit the  
15 operator shall give the surface owner notice of the planned well  
16 work.

17 (c) The notice of the planned well work is to include:

18 (1) The name of the operator, the mailing and physical address  
19 of the operator and the name, land line telephone number if any,  
20 cell phone number if any, and e-mail or other electronic contact  
21 information if any, of the individual with authority to negotiate  
22 a surface use and compensation agreement plus, at the option of the  
23 operator, any other individual working for the operator; and

24 (2) A proposed surface use and compensation agreement as set

1 out in section forty-seven of this article.

2 (d) The notice of planned well work shall include a statement  
3 that if the parties cannot agree to a surface use and compensation  
4 agreement, then either party may request that the parties enter  
5 into private mediation to attempt to reach an agreement not less  
6 than fifteen days nor more than thirty days from the receipt of the  
7 notice of planned well work by the surface owner, and a statement  
8 that the department may have an explanation of the agreed private  
9 mediation process.

10 (e) Either party may request that the parties enter into  
11 agreed private mediation not less than fifteen nor more than thirty  
12 days after the notice of planned well work is received. The  
13 mediator shall be a person mutually agreed to by both parties.

14 A mediation agreement shall include a method of sharing the  
15 cost of mediation. The private mediation agreement shall include  
16 an agreement on a mediator or on a person to select a mediator.  
17 The mediator shall schedule the mediation within twenty days of the  
18 agreement. The mediation shall follow standard mediation  
19 practices. Each party must send a person to the mediation with  
20 authority to enter into a surface use and compensation agreement.  
21 The mediation shall be completed within thirty days of the request  
22 for agreed private mediation. Agreements reached through mediation  
23 are binding and enforceable. If the parties cannot come to a  
24 private mediation agreement on the mediator or other aspects of the

1 process, then the mediation shall not proceed.

2 (f) Notwithstanding article six, chapter eleven of this code,  
3 unless the operator submits an agreed surface use and compensation  
4 agreement with the permit application that, by separate signature,  
5 waives the requirements of this section, no well work permit  
6 application shall be submitted to the department until forty-five  
7 days after the notice has been received by the surface owner.  
8 However, if a party makes a request for agreed private mediation  
9 within thirty days of receipt by the surface owner of the notice of  
10 planned well work, a permit application may not be submitted until  
11 sixty days after the service of the notice of planned surface use.  
12 The surface use agreement so submitted may include a separately  
13 signed statement of no objections as provided in this article.

14 **§22-6A-41. Surface use and compensation agreement.**

15 (a) A surface use agreement must be in writing or, if both  
16 parties agree, in the form of an authenticated electronic record.

17 (b) A surface use agreement is to include at a minimum:

18 (1) The name, physical address, telephone number of the  
19 operator, the surface owner and the mineral owner;

20 (2) Locations and dimensions of well sites, access roads,  
21 pipelines, land application sites and other uses set out in a  
22 format and in sufficient detail for the surface owner to determine  
23 and evaluate the effect of the operator's plan on the surface  
24 owner's interest, including what soil and timber or other

1 vegetation will be disturbed;

2       (3) Specifications for construction of the well site, pits,  
3 disposal areas, access roads, pipelines, and other facilities or  
4 uses associated with the well work or for entry on to land by  
5 motorized equipment, including without limitation temporary soil  
6 erosion and sediment control, dimensions of all cut and fill  
7 locations, top soil banking and road grades expressed as a percent  
8 of slope, side slope, drainage structures and their frequency, and  
9 whether the specifications will require a waiver from the state;

10       (4) Specifications applicable for the life of the well  
11 including reclamation of the well site, pits, disposal areas,  
12 access roads, pipelines, and other facilities, uses or disturbances  
13 of the surface lands associated with the well work including  
14 without limitation erosion and sediment control for the life of the  
15 well;

16       (5) Specifications for the temporary and permanent  
17 revegetation of the well site, pits, disposal areas, access roads,  
18 pipelines, and other facilities or uses associated with the well  
19 work, road surfaces, soil preparation, seed species;

20       (6) Specifications for maintenance of well sites, pipelines  
21 and access roads, including frequency or indicators of need for  
22 maintenance including, without limitation, gating appliance  
23 specifications and gate and access control practices;

24       (7) Particular specifications for maintenance at all times of

1 existing roads used by the surface owner that will also be utilized  
2 by the operator, including, without limitation, gating appliance  
3 specifications and gate practices;

4       (8) At a minimum, compensation to the surface owner for the  
5 value of the land disturbed by the operator pursuant to the  
6 activity for which the well work permit will be sought, the land  
7 foreseen for occupation of the land and used by the well site,  
8 access road and pipeline or other uses, and foreseen lost or  
9 damaged personal property, fixtures, timber and other crops and  
10 vegetation.

11       (c) A surface use and compensation agreement may include any  
12 other documents that will be included in the well permit  
13 application including those regarding casing and cementing and land  
14 application of pit waste.

15       (d) A surface use and compensation agreement may include a  
16 statement of no objection as provided in article twenty one,  
17 section twelve of this chapter.

18       (e) A surface use and compensation agreement may not waive  
19 damages for breach of the agreement, for pollution of water sources  
20 or supplies not identified in the agreement, for negligence or  
21 failure to perform tasks in a workmanlike manner, or for unforeseen  
22 damages.

23 **§22-6A-42. Effect of surface use and compensation agreement; bond.**

24       (a) If a statement of no objections is included in a surface

1 use and compensation agreement as provided in article six of this  
2 chapter, the director may issue a permit at any time without  
3 waiting for any comment from the surface owner. However, the  
4 surface owner may still comment: (1) On any provision of the  
5 permit that was not supplied to the surface owner prior to signing  
6 the statement of no objection; and (2) on any documents that  
7 contains provisions inconsistent with the surface use and  
8 compensation agreement or documents included with the surface use  
9 and compensation agreement. The director shall deny or condition  
10 a permit if it is inconsistent with a surface use and compensation  
11 agreement or document included with the surface use and  
12 compensation agreement.

13 (b) If an agreed upon surface use and compensation agreement  
14 is not submitted with the permit application, no permit may issue  
15 unless the operator submits proof that it has furnished a surety  
16 bond, letter of credit from a banking institution or a certificate  
17 of deposit for the benefit of the surface owner in the amount of  
18 \$50,000 for each permitted well work. The surety bond, letter of  
19 credit, cash or certificate of deposit shall only be released by  
20 the surety company, financial institution or state if:

21 (1) The operator and the surface owner enter into an agreed  
22 surface use and compensation agreement before reclamation has been  
23 completed;

24 (2) The surface owner signs a release after reclamation has



1 been completed regarding compensation for damages;

2 (3) The operator provides proof that it has paid an amount for  
 3 surface owner compensation determined by binding arbitration  
 4 pursuant to article seven of this chapter;

5 (4) The operator provides proof that it has paid a judgement  
 6 in favor of the surface owner entered by a magistrate court or a  
 7 circuit court of this state or a federal court; or

8 (5) As provided in section twenty-eight of this article.

9 **§22-6A-43. Appeal to environmental quality board.**

10 Any person adversely affected by a decision or order made and  
 11 entered by the secretary in accordance with the provisions of this  
 12 article, or aggrieved by failure or refusal of the secretary to act  
 13 within the specified time as provided in this article on an  
 14 application for a permit or aggrieved by the terms and conditions  
 15 of a permit granted under the provisions of this article, may  
 16 appeal to the environmental quality board, pursuant to the  
 17 provisions of article one, chapter twenty-two-b of this code.

18 **§22-6A-44. Hydraulic Fracturing and Horizontal Drilling Permit**

19 **Fund established; permit application fees; permit**  
 20 **modification fees; annual permit fees; Hydraulic**  
 21 **Fracturing and Horizontal Drilling Reclamation**  
 22 **Fund; dedication of proceeds.**

23 (a) There is hereby created within the State Treasury the  
 24 special revenue fund designated as the "Hydraulic Fracturing and

1 Horizontal Drilling Permit Fund."

2       (b) The permit application fees, permit modification fees,  
3 permit renewal fees and annual permit fees established and  
4 collected pursuant to this section; any interest or surcharge  
5 assessed and collected by the secretary; interest accruing on  
6 investments and deposits of the fund; and any other moneys  
7 designated by the secretary shall be deposited into the Hydraulic  
8 Fracturing and Horizontal Drilling Permit Fund. The secretary  
9 shall expend the proceeds of the Hydraulic Fracturing and  
10 Horizontal Drilling Permit Fund solely to administer the provisions  
11 of this article.

12       (c) The secretary shall file a quarterly report with the  
13 Governor and the Joint Committee on Government and Finance on the  
14 use of the fund, which shall include a detailed accounting of all  
15 deposits to and expenditures from the Hydraulic Fracturing and  
16 Horizontal Drilling Permit Fund.

17       (d) Every applicant shall pay to the secretary an initial  
18 application fee for a well work permit of \$15,000. For each  
19 application to modify a well work permit, the applicant shall pay  
20 a fee of \$10,000.

21       (e) In addition to the fees required by subsection (d) of this  
22 section, each person holding a well work permit shall pay to the  
23 secretary an annual permit fee of \$5,000. The annual fee shall be  
24 due yearly on the anniversary date of the issuance of the permit.

1 The secretary may suspend any permit issued pursuant to this  
2 article when the annual permit fee is more than thirty days past  
3 due. Permit suspension takes effect on the date the secretary  
4 mails, by certified mail, written notice to the permittee's last  
5 known address notifying the permittee that the permit has been  
6 suspended.

7 (f) In addition to the fees required by subsections (d) and  
8 (e) of this section, every applicant for a permit to drill a well  
9 shall pay to the secretary a reclamation fee of \$15,000. The  
10 reclamation fee shall be paid at the time the application for a  
11 drilling permit is filed with the secretary and the payment of such  
12 reclamation fee shall be a condition precedent to the issuance of  
13 said permit.

14 (g) There is hereby created within the State Treasury the  
15 special revenue fund designated as the "Hydraulic Fracturing and  
16 Horizontal Drilling Reclamation Fund." The secretary shall deposit  
17 with the State Treasurer to the credit of the Hydraulic Fracturing  
18 and Horizontal Drilling Reclamation Fund all reclamation fees  
19 collected. The proceeds of any bond forfeited under the provisions  
20 of this article shall inure to the benefit of and shall be  
21 deposited in the Hydraulic Fracturing and Horizontal Drilling  
22 Reclamation Fund.

23 (h) The Hydraulic Fracturing and Horizontal Drilling  
24 Reclamation Fund shall be administered by the secretary. The

1 secretary shall cause to be prepared plans for the reclaiming and  
2 plugging of wells which have not been reclaimed or plugged or which  
3 have been improperly reclaimed or plugged. As funds become  
4 available, the secretary shall reclaim and properly plug wells in  
5 accordance with said plans and specifications and in accordance  
6 with the provisions of this article relating to the reclaiming and  
7 plugging of wells and all rules promulgated thereunder. Such funds  
8 may also be utilized for the purchase of abandoned wells, where  
9 such purchase is necessary, and for the reclamation of such  
10 abandoned wells, and for any engineering, administrative and  
11 research costs as may be necessary to properly effectuate the  
12 reclaiming and plugging of all wells, abandoned or otherwise.

13 (I) The secretary may avail the department of any federal  
14 funds provided on a matching basis that may be made available for  
15 the purpose of reclaiming or plugging any wells.

16 (j) The secretary shall make an annual report to the Governor  
17 and to the Legislature setting forth the number of wells reclaimed  
18 or plugged through the use of this reclamation fund provided for  
19 herein. Such report shall identify each such reclamation and  
20 plugging project, state the number of wells reclaimed or plugged  
21 thereby, show the county wherein such wells are located and shall  
22 make a detailed accounting of all expenditures from the reclamation  
23 fund.

24 (k) All wells shall be reclaimed or plugged by contract

1 entered into by the secretary on a competitive bid basis as  
2 provided for under the provisions of article three, chapter five-a  
3 of this code and the rules promulgated thereunder.

4       (1) The department may not process any permit application  
5 pursuant to this article until all applicable fees required by this  
6 section have been received.

7 **§22-6A-45. Offenses; penalties.**

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

16       (b) In lieu of a civil action, the department may establish an  
17 administrative procedure for the assessment and collection of civil  
18 penalties by rules promulgated pursuant to the provisions of  
19 article three, chapter twenty-nine-a of this code.

20       (c) Any person or persons, firm, partnership, partnership  
21 association or corporation violating any of the provisions of this  
22 article shall be guilty of a misdemeanor and, upon conviction  
23 thereof, shall be punished by a fine not exceeding \$20,000, or  
24 confinement in jail up to twelve months, or both.

1 **§22-6A-46. Declaration of gas notice by owners and lessees of coal**  
2 **seams.**

3 For purposes of notification under this article, any owner or  
4 lessee of coal seams shall file a declaration of the owner's or  
5 lessee's interest in such coal seams with the clerk of the county  
6 commission in the county where such coal seams are located. Said  
7 clerk shall file and index such declaration in accordance with  
8 section two, article one, chapter thirty-nine of this code, and  
9 shall index the name of the owner or lessee of such coal seams in  
10 the grantor index of the record maintained for the indexing of  
11 leases.

12 The declaration shall entitle such owner or lessee to the  
13 notices provided in sections fourteen, twenty-six, and thirty-seven  
14 of this article: Provided, That the declaring owner shall be the  
15 record owner of the coal seam, and the declaring lessee shall be  
16 the record lessee with the owner's or lessee's source or sources of  
17 title recorded prior to recording such lessee's declaration.

18 The declaration shall be acknowledged by such owner or lessee,  
19 and in the case of a lessee, may be a part of the coal lease under  
20 which the lessee claims. Such declaration may be in the following  
21 language:

22 "DECLARATION OF GAS NOTICE"

23 "The undersigned hereby declares:

24 (1) The undersigned is the ('owner' or 'lessee') of one or

1 more coal seams or workable coal beds as those terms are defined in  
 2 section four of this article.

3 (2) The coal seam(s) or workable coal bed(s) owned or leased  
 4 partly or wholly by the undersigned lie(s) under the surface of  
 5 lands described as follows:

6 (Here insert a description legally adequate for a deed,  
 7 whether by metes and bounds or other locational description, or by  
 8 title references such as a book and page legally sufficient to  
 9 stand in lieu of a locational description.)

10 (3) The undersigned desires to be given all notices of gas  
 11 operations provided by sections fourteen, twenty-six, and  
 12 thirty-seven of this article, addressed as follows:

13 (Here insert the name and mailing address of the undersigned  
 14 owner or lessee.)

15

16 \_\_\_\_\_ (Signature)

17 (Here insert an acknowledgment legally adequate for a deed)."

18 The benefits of the foregoing declaration shall be personal to  
 19 the declaring owner or lessee, and not transferable or assignable  
 20 in any way.

21 **§22-6A-47. Local Ordinances.**

22 All local ordinances and enactments purporting to regulate gas  
 23 operations regulated by this act are hereby preempted and  
 24 superseded to the extent the ordinances and enactments regulate the

1 method of gas operations. Nothing in this act shall affect the  
2 traditional power of local government to regulate zoning and land  
3 development of gas activities as well as other aspects, such as the  
4 time and the place of operations to protect the health, safety and  
5 welfare of the general public through local ordinances and  
6 enactments.

NOTE: The purpose of this bill is to establish a new regulatory program for gas operations that drill in the Marcellus Shale formation or any gas operation which utilizes horizontal drilling or hydraulic fracturing involving a minimum of five thousand barrels of water for fracturing a geologic formation to stimulate gas production.

This article is new; therefore, strike-throughs and underscoring have been omitted.

This bill was recommended for introduction and passage during the Regular Session of the Legislature by the Joint Judiciary Committee.