

COMMITTEE SUBSTITUTE

FOR

COMMITTEE SUBSTITUTE

FOR

Senate Bill No. 424

(By Senators Kessler (Acting President), Klempa,
Green, Beach, Snyder and Stollings)

[Originating in the Committee on the Judiciary;
reported February 28, 2011.]

A BILL to amend and reenact §22-6-1 and §22-6-36 of the Code of West Virginia, 1931, as amended; to amend said code 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 and §22-6A-17; to amend and reenact §22C-8-2 of said code; and to amend and reenact

§22C-9-2 of said code, all relating generally to oil and gas and oil and gas wells; defining certain new terms and amending existing definitions of certain terms; requiring notice to coal owners and lessees of record; creating Natural Gas Horizontal Well Control Act; providing short title; making legislative findings and declarations of public policy; providing for application and exemptions of new act and special considerations for karst formations; defining terms used in said act; specifying powers and duties of Secretary of Department of Environmental Protection; incorporating by reference certain sections of existing code relating to oil and gas wells; requiring horizontal well permits; requiring application for permit; specifying content of application and required attachments; requiring posting of bond and payment of permit fees; permitting waiver of certain requirements under specified circumstances and for issuance of emergency permits; providing for suspension and reinstatement of permits; providing for appeals of certain actions of Secretary of Department of Environmental Protection; providing for review of permit applications and for issuance of permits; specifying operator performance standards; providing for copies of permits to be furnished to county assessors; requiring certificate of approval for large

impoundment construction; requiring application for certificate; specifying content of application and required attachments and payment of fees; providing for revocation or suspension of certificates; requiring hearing before certificate of approval is amended, suspended or revoked without consent of operator; providing for administrative appeals; providing exceptions for certain farm ponds; authorizing Secretary of Department of Environmental Protection to propose legislative rules for consideration by Legislature; providing for permit revocation and bond forfeiture; requiring notice to property owners when application for well permit is made or application for certificate of approval of impoundment is filed and providing property owners with certain rights; requiring promulgation of certain legislative rules for plugging and abandonment of horizontal wells; specifying reclamation requirements; requiring performance bonds; providing presumptions and rebuttals in water rights civil actions; imposing certain civil and criminal penalties for certain violations and offenses; specifying prospective application of act; preempting local ordinances; and requiring operator to enter into certain road maintenance agreement with Division of Highways.

Be it enacted by the Legislature of West Virginia:

That §22-6-1 and §22-6-36 of the Code of West Virginia, 1931, as amended, be amended and reenacted; that said code be 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 and §22-6A-17; that §22C-8-2 of said code be amended and reenacted; and that §22C-9-2 of said code be amended and reenacted, all to read as follows:

CHAPTER 22. ENVIRONMENTAL RESOURCES.

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

§22-6-1. Definitions.

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

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

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

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

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

13 (e) “Coal seam” and “workable coal bed” are interchange-
14 able terms and mean any seam of coal twenty inches or more
15 in thickness, unless a seam of less thickness is being com-
16 mercially worked, or can in the judgment of the department
17 foreseeably be commercially worked and will require
18 protection if wells are drilled through it;

19 (f) “Director” means the director of the division of environ-
20 mental protection as established in article one of this chapter
21 or such other person to whom the director has delegated
22 authority or duties pursuant to sections six or eight, article
23 one of this chapter;

24 (g) “Deep well” means any well other than a shallow well
25 or coalbed methane well, drilled ~~and completed in~~ to a
26 formation ~~at or~~ below the top of the uppermost member of
27 the “Onondaga Group”;

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

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

36 (j) "Gas" means all natural gas and all other fluid hydro-
37 carbons not defined as oil in this section;

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

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

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

51 (n) "Person" means any natural person, corporation, firm,
52 partnership, partnership association, venture, receiver,
53 trustee, executor, administrator, guardian, fiduciary or other

54 representative of any kind, and includes any government or
55 any political subdivision or any agency thereof;

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

58 (p) "Pollutant" shall have the same meaning as provided in
59 subsection (17), section three, article eleven of this chapter;
60 ~~chapter twenty-two of this code~~;

61 (q) "Review board" means the West Virginia shallow gas
62 well review board as provided for in section four, article
63 eight, chapter twenty-two-c of this code;

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

69 (s) "Shallow well" means any gas well, other than a
70 coalbed methane well, drilled no deeper than one hundred
71 feet below the top of the "Onondaga Group": and completed
72 ~~in a formation above the top of the uppermost member of the~~
73 ~~"Onondaga Group":~~ *Provided, That in drilling a shallow well*
74 ~~the operator may penetrate into the "Onondaga Group" to a~~
75 ~~reasonable depth, not in excess of twenty feet, in order to~~

76 ~~allow for logging and completion operations, but~~ in no event
77 may the “Onondaga Group” formation or any formation
78 below the “Onondaga Group” be ~~otherwise~~ produced,
79 perforated or stimulated in any manner;

80 (t) “Stimulate” means any action taken by a well operator
81 to increase the inherent productivity of an oil or gas well,
82 including, but not limited to, fracturing, shooting or
83 acidizing, but excluding cleaning out, bailing or workover
84 operations;

85 (u) “Waste” means (i) physical waste, as the term is
86 generally understood in the oil and gas industry; (ii) the
87 locating, drilling, equipping, operating or producing of any
88 oil or gas well in a manner that causes, or tends to cause a
89 substantial reduction in the quantity of oil or gas ultimately
90 recoverable from a pool under prudent and proper opera-
91 tions, or that causes or tends to cause a substantial or
92 unnecessary or excessive surface loss of oil or gas; or (iii) the
93 drilling of more deep wells than are reasonably required to
94 recover efficiently and economically the maximum amount
95 of oil and gas from a pool; (iv) substantially inefficient,
96 excessive or improper use, or the substantially unnecessary
97 dissipation of, reservoir energy, it being understood that

98 nothing in this chapter shall be construed to authorize any
99 agency of the state to impose mandatory spacing of shallow
100 wells except for the provisions of section eight, article nine,
101 chapter twenty-two-c of this code and the provisions of
102 article eight, chapter twenty-two-c of this code; (v) ineffi-
103 cient storing of oil or gas: *Provided*, That storage in accor-
104 dance with a certificate of public convenience issued by the
105 federal energy regulatory commission shall be conclusively
106 presumed to be efficient and (vi) other underground or
107 surface waste in the production or storage of oil, gas or
108 condensate, however caused. Waste does not include gas
109 vented or released from any mine areas as defined in section
110 two, article one, chapter twenty-two-a of this code, or from
111 adjacent coal seams which are the subject of a current permit
112 issued under article two of chapter twenty-two-a of this
113 code: *Provided, however*, That nothing in this exclusion is
114 intended to address ownership of the gas;

115 (v) "Waters of this state" shall have the same meaning as
116 the term "waters" as provided in subsection (23), section
117 three, article eleven, chapter twenty-two of this code-;

118 (w) "Well" means any shaft or hole sunk, drilled, bored or
119 dug into the earth or into underground strata for the extrac-

120 tion or injection or placement of any liquid or gas, or any
121 shaft or hole sunk or used in conjunction with such extrac-
122 tion or injection or placement. The term “well” does not
123 include any shaft or hole sunk, drilled, bored or dug into the
124 earth for the sole purpose of core drilling or pumping or
125 extracting therefrom potable, fresh or usable water for
126 household, domestic, industrial, agricultural or public use;

127 (x) “Well work” means the drilling, re-drilling, deepening,
128 stimulating, pressuring by injection of any fluid, converting
129 from one type of well to another, combining or physically
130 changing to allow the migration of fluid from one formation
131 to another or plugging or replugging of any well; and

132 (y) “Well operator” or “operator” means any person or
133 persons, firm, partnership, partnership association or
134 corporation that proposes to or does locate, drill, operate or
135 abandon any well as herein defined.

**§22-6-36. Declaration of oil and gas notice by owners and lessees
of coal seams.**

1 (a) For purposes of notification under this article, any
2 owner or lessee of coal seams ~~shall~~ may file a declaration of
3 the owner’s or lessee’s interest in ~~such~~ the coal seams with
4 the clerk of the county commission in the county where ~~such~~

5 the coal seams are located. ~~Said~~ The clerk shall file and
6 index ~~such~~ the declaration in accordance with section two,
7 article one, chapter thirty-nine of this code; and shall index
8 the name of the owner or lessee of ~~such~~ the coal seams in the
9 grantor index of the record maintained for the indexing of
10 leases. If the declaration of owner's or lessee's interest is not
11 filed, then notification pursuant to this article shall be made
12 to the owners or lessees of coal seams of record.

13 (b) The declaration, if filed, shall entitle ~~such~~ the owner or
14 lessee to the notices provided in sections twelve, thirteen,
15 fourteen, and twenty-three of this article: *Provided*, That the
16 declaring owner shall be the record owner of the coal seam,
17 and the declaring lessee shall be the record lessee with the
18 owner's or lessee's source or sources of title recorded prior to
19 recording ~~such~~ the lessee's declaration.

20 (c) The declaration, if filed, shall be acknowledged by ~~such~~
21 the owner or lessee and, in the case of a lessee, may be a part
22 of the coal lease under which the lessee claims. ~~Such~~ The
23 declaration may be in the following language:

24 "DECLARATION OF OIL AND GAS NOTICE"

25 "The undersigned hereby declares:

26 (1) The undersigned is the ('owner' or 'lessee') of one or
27 more coal seams or workable coal beds as those terms are
28 defined in section one of this article.

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

32 (Here insert a description legally adequate for a deed,
33 whether by metes and bounds or other locational description,
34 or by title references such as a book and page legally suffi-
35 cient to stand in lieu of a locational description.)

36 (3) The undersigned desires to be given all notices of oil
37 and gas operations provided by sections twelve, thirteen,
38 fourteen, and twenty-three of this article, addressed as
39 follows:

40 (Here insert the name and mailing address of the under-
41 signed owner or lessee.)

42 _____

43 (Signature)

44 (Here insert an acknowledgment legally adequate for a
45 deed).”

46 The benefits of the foregoing declaration shall be personal

47 to the declaring owner or lessee; and not transferable or
48 assignable in any way.

ARTICLE 6A. NATURAL GAS HORIZONTAL WELL CONTROL ACT.

§22-6A-1. Short title.

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

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

1 (a) The Legislature finds that:

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

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

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

14 (4) Existing laws and regulations developed for conven-
15 tional oil and gas operations are inadequate to address the

16 potential environmental impacts from these new technolo-
17 gies and practices; and

18 (5) Allowing the responsible development of our state's
19 natural gas resources will enhance the economy of our state
20 and the quality of life for our citizens while assuring the long
21 term protection of the environment.

22 (b) The Legislature declares that the establishment of a
23 new regulatory scheme to address new and advanced natural
24 gas development technologies and drilling practices is in the
25 public interest and should be done in a manner that protects
26 the environment and our economy for current and future
27 generations.

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

§22-6A-3. Applicability; exceptions; karst formations.

1 (a) Notwithstanding any other provision of this code to the
2 contrary, the provisions of this article shall apply to any
3 natural gas well that is a horizontal well as defined in

4 section four of this article: *Provided*, That this article shall
5 not apply to or affect any well work permitted for a horizon-
6 tal well or orders issued regarding horizontal wells prior to
7 the effective date of this article.

8 (b) Because karst geology may require precautions not
9 commonly needed in other parts of the state when exploring
10 for or producing oil and natural gas, the secretary shall
11 review the department's regulatory program to determine
12 whether the rules applicable to oil and gas wells need to be
13 revised to address drilling in areas of karst geology. If so, the
14 secretary may propose legislative rules, including emergency
15 rules if it is deemed necessary, in accordance with the
16 provisions of the administrative procedures act in chapter
17 twenty-nine-a of this code. The secretary may require such
18 additional safeguards as may be necessary to protect this
19 geological formation. Special safeguards may include
20 changing proposed well locations to avoid damage to water
21 resources, special casing programs and additional or special
22 review of drilling procedures. Nothing in this section shall be
23 construed to allow the department to prevent drilling in
24 karst geology.

§22-6A-4. Definitions.

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

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

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

14 (2) "Department" means the department of environmental
15 protection;

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

22 (4) "Horizontal well" means any well, other than a coalbed
23 methane well, drilled using a horizontal drilling method;

24 (5) "Flowback Recycle Impoundment" means an impound-
25 ment used for the retention of flowback and freshwater and
26 into which no other wastes of any kind are placed;

27 (6) "Freshwater Impoundment" means an impoundment
28 used for the retention of fresh water and into which no
29 wastes of any kind are placed;

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

32 (8) "Pit" means a man-made excavation or diked area that
33 contains or is intended to contain an accumulation of process
34 waste fluids, drill cuttings or any other liquid substance
35 generated in the development of a horizontal well and which
36 could impact surface or groundwater.; and

37 (9) "Secretary" means the Cabinet Secretary of the Depart-
38 ment of Environmental Protection as established in article
39 one of this chapter or such other person to whom the secre-
40 tary has delegated authority or duties pursuant to sections
41 six or eight, article one of this chapter.

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

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

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

11 (b) The provisions of section four, article six of this chapter
12 providing for the review of findings and orders by the
13 secretary, special inspections, and applications for annul-
14 ment or revision of orders by the secretary.

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

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

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

26 (f) The provisions of section ten, article six of this chapter
27 pertaining to the procedures for filing comments relating to
28 proposed well work and the applicant's obligation to certify
29 compliance with applicable notice requirements, with the
30 following exceptions:

31 (1) Under subsection (a), section ten, article six of this
32 chapter the persons described in subsections (a) and (b),
33 section ten of this article shall be entitled to file comments.

34 (2) Under subsection (a), section ten, article six of this
35 chapter the applicable time period for filing comments shall
36 be thirty days from the filing of an application with the
37 secretary.

38 (g) The provisions of section twelve, article six of this
39 chapter pertaining to plats prerequisite to drilling or
40 fracturing wells, the preparation and contents thereof, notice
41 furnished to coal operators, owners or lessees, the issuance
42 of permits, and required performance bonds, with the
43 following exceptions:

44 (1) Under subsection (a), section twelve, article six of this
45 chapter the plat also shall identify all mineral tract bound-
46 aries within the scope of the plat.

47 (2) Under subsection (b), section twelve, article six of this
48 chapter any reference to a time period shall be thirty days in
49 lieu of fifteen days.

50 (h) The provisions of section thirteen, article six of this
51 chapter providing for notice of the operator's intention to
52 fracture wells, with the exception that under subsection (c)
53 of section thirteen, article six of this chapter the applicable
54 time periods shall be thirty days in lieu of fifteen days.

55 (i) The provisions of section fifteen, article six of this
56 chapter pertaining to objections to proposed deep well
57 drilling sites above seam or seams of coal, with the exception
58 that the applicable time for filing objections shall be within
59 thirty days of receipt by the secretary of the required plat
60 and/or notice in lieu of fifteen days.

61 (j) The provisions of section seventeen, article six of this
62 chapter pertaining to drilling of shallow gas wells, notice to
63 be provided to the chair of the review board, orders issued by
64 the review board, and permits issued for such drilling, with
65 the exception that the applicable time for filing objections

66 shall be thirty days from the date of receipt by the secretary
67 of the required plat and notice in lieu of fifteen days.

68 (k) The provisions of section eighteen, article six of this
69 chapter providing for protective devices for when a well
70 penetrates one or more workable coal beds and when gas is
71 found beneath or between workable coal beds.

72 (l) The provisions of section nineteen, article six of this
73 chapter providing for protective devices during the life of the
74 well and for dry or abandoned wells.

75 (m) The provisions of section twenty, article six of this
76 chapter providing for protective devices when a well is
77 drilled through the horizon of a coalbed from which the coal
78 has been removed.

79 (n) The provisions of section twenty-one, article six of this
80 chapter requiring the installation of fresh water casings.

81 (o) The provisions of section twenty-two, article six of this
82 chapter relating to the filing of a well completion report and
83 the contents thereof, confidentiality and permitted use, and
84 the secretary's authority to promulgate rules.

85 (p) The provisions of section twenty-seven, article six of
86 this chapter regarding a cause of action for damages caused
87 by an explosion.

88 (q) The provisions of section twenty-eight, article six of
89 this chapter relating to supervision by the secretary over
90 drilling and reclamation operations, the filing of complaints,
91 hearings on the same, and appeals.

92 (r) The provisions of section twenty-nine, article six of this
93 chapter providing for the Operating Permit and Processing
94 Fund, the oil and gas reclamation fund, and associated fees,
95 with the exception that in the opening paragraph of subsec-
96 tion (a), section twenty-nine, article six of this chapter the
97 fees to be credited to the Oil and Gas Operating Permit and
98 Processing Fund shall be the permit fees collected pursuant
99 to subsection (f), section seven of this article.

100 (s) The provisions of section thirty-one, article six of this
101 chapter providing for preventing waste of gas, plans of
102 operation for wasting gas in the process of producing oil and
103 the secretary's rejection thereof.

104 (t) The provisions of section thirty-two, article six of this
105 chapter pertaining to the right of an adjacent owner or
106 operator to prevent waste of gas and the recovery of costs.

107 (u) The provisions of section thirty-three, article six of this
108 chapter relating to circuit court actions to restrain waste.

109 (v) The provisions of section thirty-six, article six of this
110 chapter providing for the declaration of oil and gas notice by
111 owners and lessees of coal seams and setting out the form of
112 such notice, with the exception that the owner or lessee of
113 coal seams shall be entitled only to the notices provided in
114 sections twelve and thirteen, of article six of this chapter.

115 (w) The provisions of section thirty-nine, article six of this
116 chapter relating to petitions for injunctive relief.

117 (x) The provisions of section forty, article six of this
118 chapter relating to appeals from orders issuing or refusing to
119 issue a permit to drill or fracture, and the procedure there-
120 fore.

121 Notwithstanding any other provision of this code to the
122 contrary, no provision of article six of this chapter shall
123 apply to horizontal wells subject to this article except as
124 expressly incorporated by reference in this article.

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

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

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

6 (2) To utilize any oil and gas inspectors or other employees
7 of the Office of Oil and Gas in the enforcement of the
8 provisions of this article;

9 (3) To propose any necessary legislative rules, in accor-
10 dance with the provisions of chapter twenty-nine-a of this
11 code to implement the provisions of this article; and

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

14 (5) Except for the duties and obligations conferred by
15 statute upon the shallow gas well review board pursuant to
16 article eight, chapter twenty-two-c of this code, the coalbed
17 methane review board pursuant to article twenty-one of this
18 chapter, and the oil and gas conservation commission
19 pursuant to article nine, chapter twenty-two-c of this code,
20 the secretary has sole and exclusive authority to regulate the
21 permitting, location, spacing drilling, operation and plugging
22 of oil and gas wells and production operations within the
23 state.

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

1 (a) It is unlawful for any person to commence any well
2 work, including site preparation work which involves any
3 disturbance of land, for a horizontal well without first
4 securing from the secretary a well work permit pursuant to
5 this article.

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

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

16 (2) The name and address of every coal operator operating
17 coal seams under the tract of land on which the well is or

18 may be located, and the coal seam owner of record and lessee
19 of record required to be given notice by subsection (f),
20 section five of this article, if any, if said owner or lessee is
21 not yet operating said coal seams;

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

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

25 (5) The approximate depth to which the well is to be drilled
26 or deepened, or the actual depth if the well has been drilled;

27 (6) Each formation in which the well will be completed if
28 applicable;

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

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

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

39 (10) If the proposed well work is to plug or replug the well,
40 all information necessary to demonstrate compliance with
41 the legislative rules promulgated by the secretary in accor-
42 dance with section eleven of this article;

43 (11) If the proposed well work is to stimulate a horizontal
44 well, all information necessary to demonstrate compliance
45 with the requirements of subsection (g), section five of this
46 article;

47 (12) The erosion and sediment control plan required under
48 subsection (c) of this section for applications for permits to
49 drill;

50 (13) A well site safety plan to address proper safety
51 measures to be employed for the protection of persons on the
52 site as well as the general public. The plan shall encompass
53 all aspects of the operation, including the actual well work
54 for which the permit was obtained, completion activities,
55 and production activities and shall provide an emergency
56 point of contact for the well operator. The well operator shall
57 provide a copy of the well site safety to the local emergency
58 planning committee established pursuant to section seven,
59 article five-a, chapter fifteen of this code, for the emergency
60 planning district in which the well work will occur at least

61 seven days before commencement of well work or site
62 preparation work that involves any disturbance of land; and

63 (14) Any other relevant information which the secretary
64 may reasonably require.

65 (c)(1) An erosion and sediment control plan shall accom-
66 pany each application for a well work permit under this
67 article. The plan shall contain methods of stabilization and
68 drainage, including a map of the project area indicating the
69 amount of acreage disturbed. The erosion and sediment
70 control plan shall meet the minimum requirements of the
71 West Virginia Erosion and Sediment Control Manual as
72 adopted and from time to time amended by the department.
73 The erosion and sediment control plan shall become part of
74 the terms and conditions of any well work permit that is
75 issued pursuant to this article and the provisions of the plan
76 shall be carried out where applicable in the operation. The
77 erosion and sediment control plan shall set out the proposed
78 method of reclamation which shall comply with the require-
79 ments of section twelve of this article.

80 (2) For horizontal well sites that disturb 5 acres or more of
81 surface, excluding pipelines, gathering lines, and roads, the
82 erosion and sediment control plan submitted in accordance

83 with this section shall be certified by a registered profes-
84 sional engineer.

85 (d) For well sites that disturb five acres or more of surface,
86 excluding pipelines, gathering lines, and roads, the operator
87 shall submit a site construction plan that shall be certified
88 by a registered professional engineer and contains informa-
89 tion that the secretary may require by rule.

90 (e) In addition to the other requirements of this section, if
91 the drilling, fracturing or stimulating of the horizontal well
92 requires the use of water obtained by withdrawals from
93 waters of this state in amounts that exceed 210,000 gallons
94 during any month, the application for a well work permit
95 shall include a water management plan, which shall include
96 the following information:

97 (1) The type of water source, such as surface or groundwa-
98 ter, the county of each source to be used by the operation for
99 water withdrawals, and the latitude and longitude of each
100 anticipated withdrawal location;

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

102 (3) The anticipated months when water withdrawals will
103 be made;

104 (4) The planned management and disposition of wastewater
105 from fracturing, stimulation, and production activities;

106 (5) A listing of the anticipated additives that may be used
107 in water used for fracturing or stimulating the well. Upon
108 well completion, a listing of the additives that were actually
109 used in the fracturing or stimulating of the well shall be
110 submitted as part of the completion report required by
111 subsection (n), section five of this article;

112 (6) For all surface water withdrawals, a water resources
113 protection plan that includes the information requested in
114 subdivisions (1) through (5) of this subsection (e) and
115 includes documentation of measures that will be taken to
116 allow the State to manage the quantity of its waters for
117 present and future use and enjoyment and for the protection
118 of the environment. The plan shall include the following:

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

122 (B) For surface waters, a demonstration, using methods
123 acceptable to the secretary, that sufficient in-stream flow
124 will be available immediately downstream of the point of
125 withdrawal. A sufficient in-stream flow is maintained when

126 a pass-by flow that is protective of the identified use of the
127 stream is preserved immediately downstream of the point of
128 withdrawal; and

129 (C) Methods to be used for surface water withdrawal to
130 minimize adverse impact to aquatic life.

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

136 (f) An application may propose and a permit may approve
137 two or more activities defined as well work, however a
138 separate permit must be obtained for each well drilled.

139 (g) The application for a permit under this section shall be
140 accompanied by the applicable bond as required by section
141 thirteen of this article, the applicable plat required by
142 subsection (f), section five of this article, and a permit fee of
143 \$5,000 for the initial horizontal well drilled at a location and
144 a permit fee of \$1,000 for each additional well drilled on a
145 single well pad at the same location.

146 (h) The well operator named in the application shall
147 designate the name and address of an agent for the operator

148 who shall be the attorney-in-fact for the operator and who
149 shall be a resident of the state of West Virginia upon whom
150 notices, orders or other communications issued pursuant to
151 this article or article eleven of chapter twenty-two may be
152 served, and upon whom process may be served. Every well
153 operator required to designate an agent under this section
154 shall, within 5 days after the termination of such designa-
155 tion, notify the secretary of such termination and designate
156 a new agent.

157 (i) The well owner or operator shall install the permit
158 number as issued by the secretary and a contact telephone
159 number for the operator in a legible and permanent manner
160 to the well upon completion of any permitted work. The
161 dimensions, specifications, and manner of installation shall
162 be in accordance with the rules of the secretary.

163 (j) The secretary may waive the requirements of this
164 section and sections eight and ten of this article and subsec-
165 tion (e), section five of this article in any emergency situa-
166 tion, if the secretary deems such action necessary. In such
167 case the secretary may issue an emergency permit which
168 shall be effective for not more than 30 days, unless reissued
169 by the secretary.

170 (k) The secretary shall deny the issuance of a permit if the
171 secretary determines that the applicant has committed a
172 substantial violation of a previously issued permit for a
173 horizontal well, including the applicable erosion and
174 sediment control plan associated with the previously issued
175 permit, or a substantial violation of one or more of the rules
176 promulgated under this article, and has failed to abate or
177 seek review of the violation within the time prescribed by
178 the secretary pursuant to the provisions of subsections (a)
179 and (b), section five of this article and the rules promulgated
180 hereunder, which time may not be unreasonable.

181 (l) In the event the secretary finds that a substantial
182 violation has occurred and that the operator has failed to
183 abate or seek review of the violation in the time prescribed,
184 the secretary may suspend the permit on which said violation
185 exists, after which suspension the operator shall forthwith
186 cease all well work being conducted under the permit.
187 However, the secretary may reinstate the permit without
188 further notice, at which time the well work may be contin-
189 ued. The secretary shall make written findings of any such
190 suspension and may enforce the same in the circuit courts of

191 this state. The operator may appeal a suspension pursuant to
192 the provisions of subsection (w), section five of this article.
193 The secretary shall make a written finding of any such
194 determination.

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

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

4 (b) No permit shall be issued less than 30 days after the
5 filing date of the application for any well work except
6 plugging or replugging; and no permit for plugging or
7 replugging shall be issued less than 5 days after the filing
8 date of the application except a permit for plugging or
9 replugging a dry hole: *Provided*, That if the applicant
10 certifies that all persons entitled to notice of the application
11 under the provisions of this article have been served in
12 person or by certified mail, return receipt requested, with a
13 copy of the well work application, including the erosion and
14 sediment control plan, if required, and the plat required by

15 section seven of this article, and further files written state-
16 ments of no objection by all such persons, the secretary may
17 issue the well work permit at any time.

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

37 days; otherwise, failure to respond timely is considered to
38 indicate the applicant is in compliance and the failure will
39 not be used to preclude issuance of the permit.

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

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

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

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

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

54 (e) The director shall promptly review all comments filed.
55 If after review of the application and all comments received,
56 the application for a well work permit is approved, and no
57 timely objection or comment has been filed with the director
58 or made by the director under the provisions of subsection

59 (h)and (i), section five of this article, the permit shall be
60 issued, with conditions, if any. Nothing in this section shall
61 be construed to supersede the provisions of section seven or
62 subsections (f) through (i), section five of this article.

63 (f) Each permit issued by the secretary pursuant to this
64 article shall require the operator at a minimum to:

65 (1) Adopt measures consistent with best management
66 practices in order to control fugitive particulate matter;

67 (2) Plug all wells in accordance with the requirements of
68 this article and the rules promulgated pursuant thereto when
69 such wells become abandoned pursuant to subsection (k),
70 section five of this article;

71 (3) With respect to disposal of cuttings at the well site,
72 stabilize all waste pits, including the use of impervious
73 materials, if necessary, to assure that any leachate therefrom
74 will not degrade surface or groundwaters below water
75 quality standards established pursuant to applicable federal
76 and State law and that the site is stabilized and revegetated
77 according to the provisions of this article and the rules
78 promulgated thereunder;

79 (4) Grade, terrace and plant, seed or sod the area disturbed
80 that is not required in production of the horizontal well

81 where necessary to bind the soil and prevent substantial
82 erosion and sedimentation;

83 (5) Protect off-site areas from damages that may result
84 from horizontal drilling operations;

85 (6) Take action in accordance with industry standards to
86 minimize fire hazards and other conditions which constitute
87 a hazard to health and safety of the public;

88 (7) Protect the quantity and the quality of water in surface
89 and groundwater systems both during and after drilling
90 operations and during reclamation by: (A) Withdrawing
91 water from surface waters of the State by methods deemed
92 appropriate by the secretary, so as to maintain sufficient in-
93 stream flow immediately downstream of the withdrawal
94 location. In no case shall an operator withdraw water from
95 ground or surface waters at volumes beyond which the
96 waters can sustain; (B) Casing, sealing or otherwise manag-
97 ing wells to keep returned fluids from entering ground and
98 surface waters; (C) Conducting oil and gas operations so as
99 to prevent, to the extent possible using the best management
100 practices, additional contributions of suspended or dissolved
101 solids to streamflow or runoff outside the permit area, but in
102 no event shall the contributions be in excess of requirements

103 set by applicable State or federal law; and (D) Identify all
104 water supply wells to the Office of Oil and Gas that are
105 required to be permitted by the Bureau for Public Health
106 under 64 CSR 19. All drinking water wells within 2,500 feet
107 of the water supply well shall be flow tested by the operator
108 upon request of the drinking well owner prior to operating
109 the water supply well.

110 (8) The construction of new roads or the improvement or
111 use of existing roads shall be conducted in accordance with
112 the standards established pursuant to this article or the rules
113 promulgated thereunder for such effects which result from
114 oil and gas operations; and

115 (9) In addition to the other requirements of this subsection,
116 an operator proposing to drill any horizontal well requiring
117 the withdrawal of more than 210,000 gallons in a month
118 shall have the following requirements added to its permit:

119 (A) Identification of water withdrawal locations. Within 48
120 hours prior to the withdrawal of water, the operator shall
121 identify the location of withdrawal by latitude and longitude
122 and verify that sufficient flow exists to protect designated
123 uses of the stream. The operator shall use methods deemed
124 appropriate by the secretary to determine if sufficient flow

125 is available and must check flows on a daily basis for the
126 duration of the withdrawal. Any variation from the methods
127 previously approved by the secretary for determining if
128 sufficient flow is available must be requested in writing by
129 the operator.

130 (B) Signage for water withdrawal locations. All water
131 withdrawal locations and facilities identified in the water
132 management plan shall be identified with a sign that
133 identifies that the location is a water withdrawal point, the
134 name and telephone number of the operator, and the permit
135 numbers(s) for which the water withdrawn will be utilized.

136 (C) Recordkeeping and reporting. For all water used for
137 hydraulic fracturing of horizontal wells and for flowback
138 water from hydraulic fracturing activities and produced
139 water from production activities from horizontal wells, an
140 operator shall comply with the following record keeping and
141 reporting requirements:

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

144 (I) The quantity of flowback water from hydraulic fractur-
145 ing the well;

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

147 (III) The method of management or disposal of the
148 flowback and produced water.

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

151 (I) The quantity of water transported;

152 (II) The collection and delivery or disposal locations of
153 water; and

154 (III) The name of the water hauler.

155 (iii) The information maintained pursuant to this subdivi-
156 sion shall be available for inspection by the department
157 along with other required permits and records and main-
158 tained for three years after the water withdrawal activity.

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

164 (g) The secretary shall mail a copy of the permit as issued
165 or a copy of the order denying a permit to any person who
166 submitted comments to the director concerning the permit
167 and requested a copy.

168 (h) Upon the issuance of any permit pursuant to the
169 provisions of this article, the secretary shall transmit a copy
170 of such permit to the office of the assessor for the county in
171 which the well is located.

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

1 (a) It is unlawful for any person to place, construct,
2 enlarge, alter, repair, remove or abandon any freshwater
3 impoundment or flowback recycle impoundment with
4 capacity of greater than 210,000 gallons used in association
5 with any horizontal well operation until he or she has first
6 secured from the secretary a certificate of approval for the
7 same: *Provided*, That routine repairs that do not affect the
8 safety of the impoundment are not subject to the application
9 and approval requirements. A separate application for a
10 certificate of approval must be submitted by a person for
11 each impoundment he or she desires to place, construct,
12 enlarge, alter, repair, remove or abandon, but one applica-

13 tion may be valid for more than one impoundment involved
14 in a single project.

15 (b) The application fee for placement, construction,
16 enlargement, alteration, repair or removal of an impound-
17 ment pursuant to this section is \$300, and such fee shall
18 accompany the application for certificate of approval.
19 Operators holding certificates of approval shall be assessed
20 an annual registration fee of \$100, which shall be valid for
21 more than one impoundment involved in a single project.

22 (c) Any certificate of approval required by this section
23 shall be issued or denied no later than sixty days from the
24 submission of an application containing the information
25 required by this section.

26 (d) The initial term of a certificate of approval issued
27 pursuant to this section shall be one year. Existing certifi-
28 cates of approval shall be extended for one year upon receipt
29 of the annual registration fee, an inspection report, a
30 monitoring and emergency action plan, and a maintenance
31 plan: *Provided*, That where an approved, up-to-date inspec-
32 tion report, monitoring and emergency action plan, and
33 maintenance plan are on file with the department, and where
34 no outstanding violation(s) of the requirements of the

35 certificate of approval or any plan submitted pursuant to this
36 article related to the impoundment exist, then the certificate
37 of approval shall be extended without resubmission of the
38 foregoing documents upon receipt of the annual registration
39 fee.

40 (e) Every application for a certificate of approval shall be
41 made in writing on a form prescribed by the secretary and
42 shall be signed and verified by the applicant. The application
43 shall include a monitoring and emergency action plan and a
44 maintenance plan, the required contents of which shall be
45 established by the secretary by legislative rule. The applica-
46 tion shall contain and provide information that may reason-
47 ably be required by the secretary to administer the provi-
48 sions of this article.

49 (f) Plans and specifications for the placement, construction,
50 erosion and sediment control, enlargement, alteration, repair
51 or removal and reclamation of impoundments shall be the
52 charge of a registered professional engineer licensed to
53 practice in West Virginia. Any plans or specifications
54 submitted to the department shall bear the seal of a regis-
55 tered professional engineer. *Provided*, That when a flowback
56 recycle impoundment will be used to store flowback water,

57 the impoundment shall be designed and constructed using a
58 single liner system.

59 (g) Each certificate of approval issued by the secretary
60 pursuant to the provisions of this article may contain other
61 terms and conditions as the secretary may prescribe.

62 (h) The secretary may revoke or suspend any certificate of
63 approval whenever the secretary determines that the im-
64 poundment for which the certificate was issued constitutes
65 an imminent danger to human life or property. If necessary
66 to safeguard human life or property, the secretary may also
67 amend the terms and conditions of any certificate by issuing
68 a new certificate containing the revised terms and condi-
69 tions.

70 (1) Before any certificate of approval is amended, sus-
71 pended, or revoked by the secretary without the consent of
72 the operator holding the certificate, the secretary shall hold
73 a hearing in accordance with the provisions of article five,
74 chapter twenty-nine-a of this code.

75 (2) Any person adversely affected by an order entered
76 following this hearing has the right to appeal to the Environ-
77 mental Quality Board pursuant to the provisions of article
78 one, chapter twenty-two-b of this code.

79 (i) Upon expiration of the certificate of approval, or upon
80 its revocation by the secretary, the operator shall, within 60
81 days, fill all impoundments that are not required or allowed
82 by state or federal law or rule or agreement between the
83 operator and the surface owner that allows the impoundment
84 to remain open for the use and benefit of the surface owner
85 and reclaim the site with the approved erosion and sediment
86 control plan.

87 (j) This section shall not apply to:

88 (A) Farm ponds constructed by the operator with the
89 written consent of the surface owner, which will be used
90 after completion of the drilling activity primarily for agricul-
91 tural purposes, including without limitation livestock
92 watering, irrigation, retention of animal wastes and fish
93 culture. Any impoundment that is intended to be left perma-
94 nent as a farm pond under this subdivision shall meet the
95 requirements set forth by the United States Department of
96 Agriculture's Natural Resources Conservation Service
97 "Conservation Practice Standard - Ponds" (Code 378).

98 (B) Farm ponds subject to certificates of approval under
99 article fourteen of this chapter.

100 (k) The secretary is authorized to propose rules for legisla-
101 tive approval in accordance with the provisions of article
102 three, chapter twenty-nine-a of this code, necessary to
103 effectuate the provisions of this section.

§22-6A-10. Notice to property owners.

1 (a) Prior to filing a permit application, the operator shall
2 provide notice to the surface owner of at least seventy-two
3 hours but no more than forty-five days prior to entering the
4 surface tract to conduct any plat surveys required pursuant
5 to this article.

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

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

16 (2) The owners of record of the surface tract or tracts
17 overlying the oil and gas leasehold being developed by the

18 proposed well work, if such surface tract is to be utilized for
19 roads or other land disturbance as described in the erosion
20 and sediment control plan submitted pursuant to subsection
21 (c), section seven of this article;

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

25 (4) The owners of record of the surface tract or tracts
26 overlying the oil and gas leasehold being developed by the
27 proposed well work, if such surface tract is to be utilized for
28 the placement, construction, enlargement, alteration, repair,
29 removal or abandonment of any impoundment as described
30 in section nine of this article; and

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

33 (c) If more than three tenants in common or other co-
34 owners of interests described in subsection (b) of this section
35 hold interests in such lands, the applicant may serve the
36 documents required upon the person described in the records
37 of the sheriff required to be maintained pursuant to section
38 eight, article one, chapter eleven-a of this code, or publish in
39 the county in which the well is located or is proposed to be

40 located a Class II legal advertisement as described in section
41 two, article three, chapter fifty-nine of this code, containing
42 such notice and information as the secretary shall prescribe
43 by rule, with the first publication date being at least ten days
44 prior to the filing of the permit application: *Provided*, That
45 all owners occupying the tracts where the well work is or is
46 proposed to be located on the filing date of the permit
47 application shall receive actual service of the documents
48 required by subsection (b) of this section.

49 (d) Materials served upon persons described in subsections
50 (b) and (c) of this section shall contain a statement of the
51 methods and time limits for filing comments, who may file
52 comments, the name and address of the secretary for the
53 purpose of filing comments and obtaining additional infor-
54 mation, and a statement that such persons may request, at
55 the time of submitting comments, notice of the permit
56 decision and a list of persons qualified to test water as
57 provided by the Office of Oil and Gas.

58 (e) Any person entitled to submit comments shall also be
59 entitled to receive from the secretary a copy of the permit as
60 issued or a copy of the order modifying or denying the permit

61 if such person requests receipt of them as a part of the
62 comments concerning the permit application.

63 (f) The surface owners described in subdivisions (1), (2) and
64 (4), subsection (b) of this section, and the coal owner,
65 operator or lessee described in subdivision (3) of said
66 subsection shall also be entitled to receive notice within
67 seven days but no less than two days before commencement
68 that well work or site preparation work that involves any
69 disturbance of land is expected to commence.

70 (g) Persons entitled to notice may contact the department
71 to ascertain the names and locations of water testing labora-
72 tories in the subject area capable and qualified to test water
73 supplies in accordance with standard accepted methods. In
74 compiling that list of names the department shall consult
75 with the state Bureau of Public Health and local health
76 departments.

77 (h)(1) Prior to conducting any seismic activity for seismic
78 exploration for natural gas to be extracted using horizontal
79 drilling methods, the company or person performing the
80 activity must provide notice to Miss Utility of West Virginia
81 Inc. and to all surface owners, mineral owners, and storage
82 field operators on whose property blasting, percussion or

83 other seismic-related activities will occur or whose property
84 interests are within the geographic area encompassed by the
85 seismic study.

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

88 (3) The notice shall also include a reclamation plan in
89 accordance with the erosion and sediment control manual
90 that provides for the reclamation of any areas disturbed as a
91 result of the seismic activity, including filling of shotholes
92 utilized for blasting.

93 (4) Nothing in this subdivision shall be construed to decide
94 questions as to whether seismic activity may be secured by
95 mineral owners, surface owners or other ownership interests.

§22-6A-11. Plugging and abandonment of horizontal wells.

1 The secretary shall promulgate legislative rules governing
2 the procedures for plugging horizontal wells, including rules
3 relating to the methods of plugging such wells and the
4 notices required to be provided in connection therewith.

§22-6A-12. Reclamation requirements.

1 The operator of a horizontal well shall reclaim the land
2 surface within the area disturbed in siting, drilling, complet-

3 ing or producing the well in accordance with the following
4 requirements:

5 (a) Except as provided elsewhere in this section, within six
6 months after the completion of the drilling process the
7 operator shall fill all the pits and impoundments that are not
8 required or allowed by state or federal law or rule or agree-
9 ment between the operator and the surface owner that allows
10 the impoundment to remain open for the use and benefit of
11 the surface owner (i.e. a farm pond as described in section
12 nine of this article) and remove all concrete bases, drilling
13 supplies, and drilling equipment. Within that period, the
14 operator shall grade or terrace and plant, seed or sod the
15 area disturbed that is not required in production of the
16 horizontal well where necessary to bind the soil and prevent
17 substantial erosion and sedimentation. No pit may be used
18 for the ultimate disposal of salt water. Salt water and oil
19 shall be periodically drained or removed and properly
20 disposed of from any pit that is retained so the pit is kept
21 reasonably free of salt water and oil. No pits may be left
22 permanent.

23 (b) For well pads containing multiple horizontal wells,
24 reclamation shall be completed within six months after the

25 completion of the drilling process for a well, unless the
26 operator commences drilling on a subsequent well at that
27 location within that six-month period.

28 (c) Within six months after a horizontal well that has
29 produced oil or gas is plugged or after the plugging of a dry
30 hole, the operator shall remove all production and storage
31 structures, supplies and equipment and any oil, salt water
32 and debris and fill any remaining excavations. Within that
33 period, the operator shall grade or terrace and plant, seed or
34 sod the area disturbed where necessary to bind the soil and
35 prevent substantial erosion and sedimentation.

36 (d)(1) It shall be the duty of the operator to commence the
37 reclamation of the area of land disturbed in siting, drilling,
38 completing or producing the horizontal well in accordance
39 with soil erosion and sediment control plans approved by the
40 secretary or the secretary's designee pursuant to this article.

41 (2) The secretary, upon written application by an operator
42 showing reasonable cause, may extend the period within
43 which reclamation shall be completed, but not to exceed a
44 further six-month period.

45 (3) If the secretary refuses to approve a request for exten-
46 sion, the refusal shall be by order, which may be appealed

47 pursuant to the provisions of subsection (w), section five of
48 this article.

§22-6A-13. Performance bonds; corporate surety or other security.

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

5 (b) A separate bond as described in subsection (d) of this
6 section may be furnished for each horizontal well drilled.
7 Each of these bonds shall be in the sum of \$5,000 payable to
8 the State of West Virginia, conditioned on full compliance
9 with all laws, rules relating to the drilling, redrilling,
10 deepening, casing, and stimulating of horizontal wells and to
11 the plugging, abandonment, and reclamation of horizontal
12 wells and for furnishing such reports and information as may
13 be required by the secretary.

14 (c) When an operator makes or has made application for
15 permits to drill or stimulate a number of horizontal wells, the
16 operator may, in lieu of furnishing a separate bond, furnish
17 a blanket bond in the sum of \$50,000 payable to the State of
18 West Virginia, and conditioned as aforesaid in subsection (b)
19 of this section.

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

42 on the collateral securities filed by such operator. The
43 operator making the deposit shall be entitled from time to
44 time to receive from the State Treasurer, upon the written
45 approval of the secretary, the whole or any portion of any
46 cash, securities or certificates so deposited, upon depositing
47 with the State Treasurer in lieu thereof, cash or other
48 securities or certificates of the classes herein specified
49 having value equal to or greater than the amount of the
50 bond.

51 (e) When an operator has furnished a separate bond from
52 a corporate bonding or surety company to drill, fracture or
53 stimulate a horizontal well and the well produces oil or gas
54 or both, its operator may deposit with the secretary cash
55 from the sale of the oil or gas or both until the total depos-
56 ited is \$5,000. When the sum of the cash deposited is \$5,000,
57 the separate bond for the well shall be released by the
58 secretary. Upon receipt of that cash, the secretary shall
59 immediately deliver that amount to the Treasurer of the
60 State of West Virginia. The State Treasurer shall hold the
61 cash in the name of the state in trust for the purpose for
62 which the bond was furnished and the deposit was made. The
63 operator shall be entitled to all interest and income which

64 may be earned on the cash deposited so long as the operator
65 is in full compliance with all laws and rules relating to the
66 drilling, redrilling, deepening, casing, plugging, abandon-
67 ment, and reclamation of the well for which the cash was
68 deposited and so long as the operator has furnished all
69 reports and information as may be required by the secretary.
70 If the cash realized from the sale of oil or gas or both from
71 the well is not sufficient for the operator to deposit with the
72 secretary the sum of \$10,000 within one year of the day the
73 well started producing, the corporate or surety company
74 which issued the bond on the well may notify the operator
75 and the secretary of its intent to terminate its liability under
76 its bond. The operator then shall have thirty days to furnish
77 a new bond from a corporate bonding or surety company or
78 collateral securities or other forms of security, as provided in
79 this section with the secretary. If a new bond or collateral
80 securities or other forms of security are furnished by the
81 operator, the liability of the corporate bonding or surety
82 company under the original bond shall terminate as to any
83 acts and operations of the operator occurring after the
84 effective date of the new bond or the date the collateral
85 securities or other forms of security are accepted by the

86 Treasurer of the State of West Virginia. If the operator does
87 not furnish a new bond or collateral securities or other forms
88 of security with the secretary, as provided in this section, the
89 operator shall immediately plug, fill and reclaim the well in
90 accordance with all of the provisions of law and rules
91 applicable thereto. In such case, the corporate or surety
92 company which issued the original bond shall be liable for
93 any plugging, filling or reclamation not performed in
94 accordance with such laws and rules.

95 (f) Any separate bond furnished for a particular well prior
96 to the effective date of this article shall continue to be valid
97 for all work on the well permitted prior to the effective date
98 of this article; but no permit shall hereafter be issued on such
99 a particular well without a bond complying with the provi-
100 sions of this section. Any blanket bond furnished prior to the
101 effective date of this article shall be replaced with a new
102 blanket bond conforming to the requirements of this section,
103 at which time the prior bond shall be discharged by opera-
104 tion of law; and if the secretary determines that any operator
105 has not furnished a new blanket bond, the secretary shall
106 notify the operator by registered mail or by any method of
107 delivery that requires a receipt or signature confirmation of

108 the requirement for a new blanket bond, and failure to
109 submit a new blanket bond within sixty days after receipt of
110 the notice from the secretary shall work a forfeiture under
111 subsection (i) of this section of the blanket bond furnished
112 prior to the effective date of this article.

113 (g) Any such bond shall remain in force until released by
114 the secretary, and the secretary shall release the same upon
115 satisfaction that the conditions thereof have been fully
116 performed. Upon the release of any such bond, any cash or
117 collateral securities deposited shall be returned by the
118 secretary to the operator who deposited it.

119 (h) Whenever the right to operate a well is assigned or
120 otherwise transferred, the assignor or transferor shall notify
121 the department of the name and address of the assignee or
122 transferee by registered mail or by any method of delivery
123 that requires a receipt or signature confirmation not later
124 than thirty days after the date of the assignment or transfer.
125 No assignment or transfer by the owner shall relieve the
126 assignor or transferor of the obligations and liabilities unless
127 and until the assignee or transferee files with the department
128 the well name and the permit number of the subject well, the
129 county and district in which the subject well is located, the

130 names and addresses of the assignor or transferor, and
131 assignee or transferee, a copy of the instrument of assign-
132 ment or transfer accompanied by the applicable bond, cash,
133 collateral security or other forms of security, described in
134 this section, and the name and address of the assignee's or
135 transferee's designated agent if assignee or transferee would
136 be required to designate such an agent under this article, if
137 assignee or transferee were an applicant for a permit under
138 this article. Every well operator required to designate an
139 agent under this section shall, within five days after the
140 termination of such designation, notify the department of
141 such termination and designate a new agent.

142 Upon compliance with the requirements of this section by
143 assignor or transferor and assignee or transferee, the secre-
144 tary shall release assignor or transferor from all duties and
145 requirements of this article and shall give written notice of
146 release to assignor or transferor of any bond and return to
147 assignor or transferor any cash or collateral securities
148 deposited pursuant to this section.

149 (i) If any of the requirements of this article or rules
150 promulgated pursuant thereto or the orders of the secretary
151 has not been complied with within the time limit set by any

152 notice of violation issued pursuant to this article, the
153 performance bond shall then be forfeited.

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

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

**§22-6A-14. Civil action for contamination or deprivation of fresh
water source or supply; presumption.**

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

5 (b) Unless rebutted by one of the defenses established in
6 subsection (c) below, in any action for contamination or
7 deprivation of a fresh water source or supply within one
8 thousand feet of the site of drilling for a horizontal well,
9 there shall be a rebuttable presumption that the drilling and
10 the well or either, was the proximate cause of the contamina-
11 tion or deprivation of the fresh water source or supply.

12 (c) In order to rebut the presumption of liability estab-
13 lished in subsection (b) of this section, the operator must
14 affirmatively prove one of the following defenses:

15 (1) The pollution existed prior to the drilling or alteration
16 activity as determined by a pre-drilling or pre-alteration
17 survey.

18 (2) The landowner or water purveyor refused to allow the
19 operator access to the property to conduct a pre-drilling or
20 pre-alteration survey.

21 (3) The water supply is not within one thousand feet of the
22 well.

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

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

§22-6A-15. Offenses; civil and criminal penalties.

1 (a) Any person or persons, firm, partnership, partnership
2 association or corporation who willfully violates any provi-
3 sion of this article or any rule or order promulgated hereun-
4 der shall be subject to a civil penalty not exceeding \$5,000.
5 Each day a violation continues after notice by the depart-
6 ment constitutes a separate offense. The penalty shall be

7 recovered by a civil action brought by the department, in the
8 name of the state, before the circuit court of the county in
9 which the subject well or facility is located. All such civil
10 penalties collected shall be credited to the general fund of
11 the state.

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

26 (c) Any person or persons, firm, partnership, partnership
27 association or corporation willfully violating any of the
28 provisions of this article which prescribe the manner of

29 drilling and casing or plugging and filling any well, or which
30 prescribe the methods of conserving gas from waste, shall be
31 guilty of a misdemeanor, and, upon conviction thereof, shall
32 be punished by a fine not exceeding \$5,000, or imprisonment
33 in a regional jail for not more than 12 months, or both, in the
34 discretion of the court, and prosecutions under this section
35 may be brought in the name of the state of West Virginia in
36 the court exercising criminal jurisdiction in the county in
37 which the violation of such provisions of the article or terms
38 of such order was committed.

39 (d) Any person who intentionally misrepresents any
40 material fact in an application, record, report plan or other
41 document filed or required to be maintained under the
42 provisions of this article or any rules promulgated by the
43 secretary thereunder is guilty of a misdemeanor and, upon
44 conviction thereof, shall be fined not less than \$1,000 nor
45 more than \$10,000, or imprisoned in a county or regional jail
46 not more than six months, or both fined and imprisoned.

47 (e) Any person who willfully violates any provision of any
48 permit issued under or subject to the provisions of this
49 article or who willfully violates any provision of this article
50 or any rule of the secretary or any order of the secretary or

51 board is guilty of a misdemeanor and, upon conviction
52 thereof, shall be fined not less than \$2,500 dollars nor more
53 than \$25,000 per day of violation, or imprisoned in a county
54 or regional jail not more than one year, or both fined and
55 imprisoned.

§22-6A-16. Local ordinances.

1 All local ordinances and enactments purporting to regulate
2 gas operations regulated by this act are hereby preempted
3 and superseded to the extent the ordinances and enactments
4 regulate the method of gas operations. Nothing in this act
5 shall affect the traditional power of local government to
6 regulate zoning and land development of gas activities as
7 well as other aspects, such as the time and the place of
8 operations to protect the health, safety and welfare of the
9 general public through local ordinances and enactments.

§22-6A-17. Division of Highways approval of well road access.

1 As part of the permit application, the operator shall
2 provide a letter of certification from the Division of High-
3 ways that the operator has entered into a required Division
4 of Highways road maintenance agreement for horizontal
5 drilling operations and is in compliance with all laws,
6 regulations and conditions required by the Division of

7 Highways relating to use, maintenance and repair of all state
8 and 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
11 materials related to the construction and operation of the
12 well. The operator shall be responsible and liable for all
13 actions of the operator's agents, employees, subcontractors
14 and others under the direction of the operator regarding
15 performance under the agreement provided herein above.
16 Upon notice that the operator is failing to comply with the
17 letter of certification as required by this section, the division
18 shall deem such violation as a violation of a permit condition
19 for construction or operation of the well pursuant to this
20 article.

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

ARTICLE 8. SHALLOW GAS WELL REVIEW BOARD.

§22C-8-2. Definitions.

1 Unless the context in which used clearly requires a
2 different meaning, as used in this article:
3 (1) "Board" means the shallow gas well review board
4 provided for in section four of this article;

5 (2) "Chair" means the chair of the shallow gas well review
6 board provided for in section four of this article;

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

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

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

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

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

25 (8) "Deep well" means any well other than a shallow well
26 or coalbed methane well, drilled and completed in to a

27 formation ~~at or~~ below the top of the uppermost member of
28 the “Onondaga Group”;

29 (9) “Division” means the state Division of Environmental
30 Protection provided for in chapter twenty-two of this code;

31 (10) “Director” means the Director of the Division of
32 Environmental Protection as established in article one,
33 chapter twenty-two of this code or such other person to
34 whom the division department delegates authority or duties
35 pursuant to sections six or eight, article one, chapter
36 twenty-two of this code;

37 (11) “Drilling unit” means the acreage on which the board
38 decides one well may be drilled under section ten of this
39 article;

40 (12) “Gas” means all natural gas and all other fluid
41 hydrocarbons not defined as oil in subdivision (15) of this
42 section;

43 (13) “Gas operator” means any person who owns or has the
44 right to develop, operate and produce gas from a pool and to
45 appropriate the gas produced therefrom either for such
46 person or for such person and others. In the event that there
47 is no gas lease in existence with respect to the tract in
48 question, the person who owns or has the gas rights therein

49 shall be considered a “gas operator” to the extent of
50 seven-eighths of the gas in that portion of the pool underlying
51 the tract owned by such person, and a “royalty owner” to the
52 extent of one-eighth of such gas;

53 (14) “Just and equitable share of production” means, as to
54 each person, an amount of gas in the same proportion to the
55 total gas production from a well as that person’s acreage
56 bears to the total acreage in the drilling unit;

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

62 (16) “Owner” when used with reference to any coal seam,
63 shall include any person or persons who own, lease or
64 operate such coal seam;

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

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

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

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

85 (21) "Shallow well" means any gas well other than a
86 coalbed methane well, drilled no deeper than one hundred
87 feet below the top of the "Onondaga Group": and completed
88 in a formation above the top of the uppermost member of the
89 "Onondaga Group." *Provided, That in drilling a shallow well*
90 *the well operator may penetrate into the "Onondaga Group"*
91 *to a reasonable depth, not in excess of twenty feet, in order*

92 ~~to allow for logging and completion operations, but~~ in no
93 event may the “Onondaga Group” formation or any forma-
94 tion below the “Onondaga Group” be otherwise produced,
95 perforated or stimulated in any manner;

96 (22) “Tracts comprising a drilling unit” means that all
97 separately owned tracts or portions thereof which are
98 included within the boundary of a drilling unit;

99 (23) “Well” means any shaft or hole sunk, drilled, bored or
100 dug into the earth or into underground strata for the extrac-
101 tion, injection or placement of any liquid or gas, or any shaft
102 or hole sunk or used in conjunction with such extraction,
103 injection or placement. The term “well” does not include any
104 shaft or hole sunk, drilled, bored or dug into the earth for the
105 sole purpose of core drilling or pumping or extracting
106 therefrom potable, fresh or usable water for household,
107 domestic, industrial, agricultural or public use; and

108 (24) “Well operator” means any person who proposes to or
109 does locate, drill, operate or abandon any well.

ARTICLE 9. OIL AND GAS CONSERVATION.

§22C-9-2. Definitions.

- 1 (a) Unless the context in which used clearly requires a
- 2 different meaning, as used in this article:

3 (1) "Commission" means Oil and Gas Conservation
4 Commission and "commissioner" means the oil and gas
5 conservation commissioner as provided for in section four of
6 this article;

7 (2) "Director" means the Director of the Division of
8 Environmental Protection and "chief" means the chief of the
9 Office of Oil and Gas;

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

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

25 oil is owned separately from the gas, the owner of the
26 substance being produced or sought to be produced from the
27 pool shall be considered as “operator” as to such pool;

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

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

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

40 (8) “Gas” means all natural gas and all other fluid hydro-
41 carbons not defined as oil in subdivision (7) of this section;

42 (9) “Pool” means an underground accumulation of petro-
43 leum or gas in a single and separate reservoir (ordinarily a
44 porous sandstone or limestone). It is characterized by a
45 single natural-pressure system so that production of petro-
46 leum or gas from one part of the pool affects the reservoir

47 pressure throughout its extent. A pool is bounded by geologic
48 barriers in all directions, such as geologic structural condi-
49 tions, impermeable strata, and water in the formations, so
50 that it is effectively separated from any other pools that may
51 be presented in the same district or on the same geologic
52 structure;

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

56 (11) "Shallow well" means any well other than a coalbed
57 methane well, drilled no deeper than one hundred feet below
58 the top of the "Onondaga Group": ~~and completed in a~~
59 ~~formation above the top of the uppermost member of the~~
60 ~~"Onondaga Group:"~~ *Provided, That in drilling a shallow well*
61 *the operator may penetrate into the "Onondaga Group" to a*
62 *reasonable depth, not in excess of twenty feet, in order to*
63 *allow for logging and completion operations, but in no event*
64 *may the "Onondaga Group" formation or any formation*
65 *below the "Onondaga Group" be otherwise produced,*
66 *perforated or stimulated in any manner;*

67 (12) "Deep well" means any well, other than a shallow well
68 or coalbed methane well, drilled and completed in to a

69 formation ~~at or~~ below the top of the uppermost member of
70 the “Onondaga Group;”

71 (13) “Drilling unit” means the acreage on which one well
72 may be drilled;

73 (14) “Waste” means and includes:

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

76 (B) The locating, drilling, equipping, operating or produc-
77 ing of any oil or gas well in a manner that causes, or tends to
78 cause, a reduction in the quantity of oil or gas ultimately
79 recoverable from a pool under prudent and proper opera-
80 tions, or that causes or tends to cause unnecessary or
81 excessive surface loss of oil or gas; or

82 (C) The drilling of more deep wells than are reasonably
83 required to recover efficiently and economically the maxi-
84 mum amount of oil and gas from a pool. Waste does not
85 include gas vented or released from any mine areas as
86 defined in section two, article one, chapter twenty-two-a of
87 this code or from adjacent coal seams which are the subject
88 of a current permit issued under article two of chapter
89 twenty-two-a of this code: *Provided*, That nothing in this
90 exclusion is intended to address ownership of the gas;

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

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

99 (b) Unless the context clearly indicates otherwise, the use
100 of the word “and” and the word “or” shall be interchange-
101 able, as, for example, “oil and gas” shall mean oil or gas or
102 both.

(NOTE: The purpose of this bill is to add a new article to Chapter 22 of the West Virginia Code to regulate the growing practice of drilling horizontal wells for recovery of natural gas. This new article would be known as the “Natural Gas Horizontal Well Control Act.” It complements established requirements governing conventional oil and gas wells while adopting additional new requirements to address issues unique to horizontal wells. The definition sections in Article 6, Chapter 22 of the Code, and in Articles 8 and 9, Chapter 22C of the Code, would be amended by modifying certain existing definitions and by adding new definitions.

Strike-throughs indicate language that would be stricken from the present law, and underscoring indicates new language that would be added.

Article 22-6A is new; therefore, strike-throughs and underscoring have been omitted.)