

ENGROSSED

H. B. 401

(By Mr Speaker, (Mr. Thompson))

(By Request of the Executive)

[Introduced December 11, 2011.]

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

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

1 in certain circumstances; providing for application review,
2 requirements for issuance of permit and permit requirements;
3 establishing performance standards; providing for copies of
4 permits to be furnished to county assessors; requiring
5 certificate of approval for large pits or impoundments
6 construction; requiring application for certificate;
7 establishing application requirements and payment of fees;
8 providing for modification, revocation or suspension of
9 certificate and hearing procedure, including an administrative
10 appeals process; providing exceptions for certain farm ponds;
11 authorizing secretary to propose legislative rules governing
12 large pits and impoundment; providing certain notices to
13 certain property owners regarding certain applications and
14 intent to enter property to survey or to conduct seismic
15 activity; requiring the submission of certain documents and
16 information to be provided with such notice; clarifying that
17 notice to certain lienholders is not notice to certain
18 landowners; providing for public notice and comment; requiring
19 applicant to file Class II ad and allowing submission of
20 written comments to Department of Environmental Protection;
21 establishing certain information to be contained in the
22 published newspaper notice; providing for the publishing
23 public comment received by the Department of Environmental
24 Protection on the department's public website; clarifying

1 method of delivery of notice; establishing procedure for
2 filing written comments; establishing well location
3 restrictions; requiring the secretary to prepare a report to
4 the legislature on noise, light dust and volatile organic
5 compounds and their relationship to well location restrictions
6 for occupied dwellings; allowing the secretary to propose
7 guidelines and procedures for controlling and mitigating
8 levels of noise, light, dust and volatile organic compounds
9 in relation to horizontal drilling activities; requiring
10 promulgation of legislative rules for plugging and abandonment
11 of horizontal wells; exempting certain wells from Natural Gas
12 Horizontal Well Control Act; establishing reclamation
13 requirements; requiring performance bonds or other security;
14 providing notice of planned operation and contents of notice
15 to certain surface owners; providing notice to certain surface
16 owner and offer for compensation for certain damages to
17 certain surface owner; providing for reimbursement of property
18 taxes to surface owner; providing for civil action, rebuttable
19 presumption and relief for water contamination or deprivation;
20 establishing water rights and replacement procedure;
21 establishing civil penalties and offenses; establishing
22 criminal penalties and offenses; requiring gas operations to
23 submit certification from Division of Highways that operator
24 has entered into road maintenance agreement pursuant to

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

1 "deep wells".

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

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

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

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

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

21 (a) The Legislature finds that:

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

1 thousands and has the potential to create thousands of additional
2 drilling, production, construction, manufacturing, and related jobs
3 in West Virginia and in the Appalachian Basin;

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

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

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

18 (b) To assist in maximizing the economic opportunities
19 available with horizontal drilling, the council shall make a report
20 to the Joint Committee on Government and Finance and the
21 Legislative Oversight Commission on Education Accountability on or
22 before November 1 of each year through 2016, detailing a
23 comprehensive review of the direct and indirect economic impact of
24 employers engaged in the production of horizontal wells in the

1 State of West Virginia, as more specifically defined in article
2 six-a, chapter twenty-two of this code, which shall include:

- 3 (1) A review of the total number of jobs created;
- 4 (2) A review of total payroll of all jobs created;
- 5 (3) The average salary per job type;
- 6 (4) A review of the number of employees domiciled in the State
7 of West Virginia;
- 8 (5) A review of total economic impact;
- 9 (6) The council's recommendations for the establishment of an
10 overall workforce investment public education agenda with goals and
11 benchmarks toward maximizing job creation opportunities in the
12 State of West Virginia;
- 13 (7) A review of number of jobs created for minorities based on
14 race, ethnicity and gender;
- 15 (8) A review of number of jobs created for individuals re-
16 employed from the state of West Virginia's unemployment rosters;
- 17 (9) A review of number of jobs created for returning veterans;
18 and
- 19 (10) A review of number of jobs created for legal West
20 Virginia residents and non-West Virginia residents.

21 (c) To the extent permitted by federal law, and to the extent
22 necessary for the council to comply with this section, the council,
23 Workforce West Virginia, the Division of Labor, and the Office of
24 the Insurance Commissioner may enter into agreements providing for

1 the sharing of job data and related information.

2 **CHAPTER 22. ENVIRONMENTAL RESOURCES.**

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

4 **§22-6-1. Definitions.**

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

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

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

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

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

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

21 (f) "Director" means the ~~director of the division~~ Secretary of
22 the Department of Environmental Protection as established in
23 article one of this chapter or ~~such~~ other person to whom the
24 ~~director~~ secretary has delegated authority or duties pursuant to

1 sections six or eight, article one of this chapter.

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

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

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

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

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

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

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

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

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

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

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

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

21 (s) "Secretary" means the Secretary of the Department of
22 Environmental Protection as established in article one of this
23 chapter or other person to whom the secretary has delegated
24 authority or duties pursuant to sections six or eight, article one

1 of this chapter;

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

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

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

1 maximum amount of oil and gas from a pool; (iv) substantially
2 inefficient, excessive or improper use, or the substantially
3 unnecessary dissipation of, reservoir energy, it being understood
4 that nothing in this chapter ~~shall be construed to authorize~~
5 authorizes any agency of the state to impose mandatory spacing of
6 shallow wells except for the provisions of section eight, article
7 nine, chapter twenty-two-c of this code and the provisions of
8 article eight, chapter twenty-two-c of this code; (v) inefficient
9 storing of oil or gas: *Provided*, That storage in accordance with
10 a certificate of public convenience issued by the Federal Energy
11 Regulatory Commission ~~shall be~~ is conclusively presumed to be
12 efficient; and (vi) other underground or surface waste in the
13 production or storage of oil, gas or condensate, however caused.
14 Waste does not include gas vented or released from any mine areas
15 as defined in section two, article one, chapter twenty-two-a of
16 this code, or from adjacent coal seams which are the subject of a
17 current permit issued under article two of chapter twenty-two-a of
18 this code: *Provided, however*, That nothing in this exclusion is
19 intended to address ownership of the gas;

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

23 ~~(u)~~ (x) "Well" means any shaft or hole sunk, drilled, bored or
24 dug into the earth or into underground strata for the extraction or

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

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

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

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

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

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

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

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

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

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

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

1 of the secretary;

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

4 ~~(4) Suspend for good cause any oil and gas inspector or~~
5 ~~supervising inspector without compensation for a period not~~
6 ~~exceeding thirty days in any calendar year~~ Make investigations or
7 inspections necessary to ensure compliance with and to enforce the
8 provisions of this article and articles six-a, eight, nine, ten,
9 and twenty-one of this chapter;

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

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

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

24 (8) Cause a properly indexed permanent and public record to be

1 kept of all inspections made by the secretary or by oil and gas
2 inspectors or the supervising inspector;

3 (9) Conduct ~~such~~ research and studies as the secretary shall
4 deem necessary to aid in protecting the health and safety of
5 persons employed within or at potential or existing oil or gas
6 production fields within this state, to improve drilling and
7 production methods and to provide for the more efficient protection
8 and preservation of oil and gas-bearing rock strata and property
9 used in connection therewith;

10 (10) Collect a permit fee of \$400 for each permit application
11 filed other than an application for a deep well, horizontal wells
12 regulated pursuant to article six-a of this chapter, or a coalbed
13 methane well; and collect a permit fee of \$650 for each permit
14 application filed for a deep well: *Provided,* That no permit
15 application fee ~~shall be~~ is required when an application is
16 submitted solely for the plugging or replugging of a well, or to
17 modify an existing application for which the operator previously
18 has submitted a permit fee under this section. All application
19 fees required hereunder ~~shall be~~ are in lieu of and not in addition
20 to any fees imposed under article eleven of this chapter relating
21 to discharges of stormwater but ~~shall be~~ are in addition to any
22 other fees required by the provisions of this article: *Provided,*
23 *however,* That upon a final determination by the United States
24 Environmental Protection Agency regarding the scope of the

1 exemption under section 402(1)(2) of the federal Clean Water Act
2 (33 U.S.C. 1342(1)(2)), which determination requires a "national
3 pollutant discharge elimination system" permit for stormwater
4 discharges from the oil and gas operations described therein, any
5 permit fees for stormwater permits required under article eleven of
6 this chapter for such operations ~~shall~~ may not exceed \$100.

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

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

13 (13) Adopt rules with respect to the issuance, denial,
14 retention, suspension or revocation of permits, authorizations and
15 requirements of this chapter, which rules shall assure that the
16 rules, permits and authorizations issued by the secretary are
17 adequate to satisfy the purposes of this article and articles six-
18 a, seven, eight, nine, ~~and~~ ten and twenty-one of this chapter
19 particularly with respect to the consolidation of the various state
20 and federal programs which place permitting requirements on the
21 exploration, development, production, storage and recovery of this
22 state's oil and gas ~~Provided, That notwithstanding any provisions~~
23 ~~of this article and articles seven, eight, nine and ten of this~~
24 ~~chapter to the contrary, the Environmental Quality Board shall have~~

1 ~~the sole authority pursuant to section three, article three,~~
2 ~~chapter twenty-two-b to promulgate rules setting standards of water~~
3 ~~quality applicable to waters of the state; and~~

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

9 (d) The secretary shall have authority to visit and inspect
10 any well or well site and any other oil or gas facility in this
11 state and may call for the assistance of any oil and gas inspector
12 or inspectors or supervising inspector whenever such assistance is
13 necessary in the inspection of any such well or well site or any
14 other oil or gas facility. Similarly, all oil and gas inspectors
15 and ~~the supervising inspector~~ supervising inspectors shall have
16 authority to visit and inspect any well or well site and any other
17 oil or gas facility in this state. Such inspectors shall make all
18 necessary inspections of oil and gas operations required by this
19 article and articles six-a, eight, nine, ten and twenty-one of this
20 chapter; administer and enforce all oil and gas laws and rules; and
21 perform other duties and services as may be prescribed by the
22 secretary. The inspectors shall note and describe all violations
23 of this article and articles six-a, eight, nine, ten or twenty-one
24 of this chapter and promptly report those violations to the

1 secretary in writing, furnishing at the same time a copy of the
2 report to the operator concerned. Any well operator, coal operator
3 operating coal seams beneath the tract of land, or the coal seam
4 owner or lessee, if any, if said owner or lessee is not yet
5 operating said coal seams beneath said tract of land may request
6 the secretary to have an immediate inspection made. The operator
7 or owner of every well or well site or any other oil or gas
8 facility shall cooperate with the secretary, all oil and gas
9 inspectors and the supervising inspector in making inspections or
10 obtaining information.

11 ~~(e) Oil and gas inspectors shall devote their full time and~~
12 ~~undivided attention to the performance of their duties, and they~~
13 ~~shall be responsible for the inspection of all wells or well sites~~
14 ~~or other oil or gas facilities in their respective districts as~~
15 ~~often as may be required in the performance of their duties.~~

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

19 **§22-6-2a. Oil and gas inspectors qualifications and salary.**

20 (a) No person is eligible for appointment as an oil and gas
21 inspector or supervising inspector unless, at the time of
22 probationary appointment, the person: (1) is a citizen of West
23 Virginia, in good health and of good character, reputation and
24 temperate habits; (2) has had at least two years actual relevant

1 experience in the oil and gas industry: *Provided*, That no more
2 than one year of the experience requirement may be satisfied by any
3 of following: (i) A bachelor of science degree in science or
4 engineering; (ii) an associate degree in petroleum technology; or
5 (iii) actual relevant environmental experience including, without
6 limitation, experience in wastewater, solid waste or reclamation,
7 each full year of which shall be considered as a year of actual
8 relevant experience in the oil and gas industry; and (3) has good
9 theoretical and practical knowledge of oil and gas drilling and
10 production methods, practices and techniques, sound safety
11 practices and applicable water and mining laws.

12 (b) In order to qualify for appointment as an oil and gas
13 inspector or supervising inspector by the secretary, an eligible
14 applicant shall submit to a written and oral examination by the
15 Division of Personnel within the Department of Administration and
16 shall furnish any evidence of good health, character and other
17 facts establishing eligibility required by the Division of
18 Personnel. The Office of Oil and Gas shall determine the substance
19 of the examinations administered to candidates for the positions of
20 oil and gas inspector and supervising oil and gas inspector by the
21 Division of Personnel. If the Division of Personnel finds after
22 investigation and examination that an applicant: (1) is eligible
23 for appointment; and (2) has passed all written and oral
24 examinations, the division shall add the applicant's name and grade

1 to the register of qualified eligible candidates and certify its
2 action to the secretary. No candidate's name may remain on the
3 register for more than three years without requalifying.

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

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

8 **§22-6A-1. Short title.**

9 This article shall be known and cited as the "Horizontal Well
10 Act".

11 **§22-6A-2. Legislative findings; declaration of public policy.**

12 (a) The Legislature finds that:

13 (1) The advent and advancement of new and existing
14 technologies and drilling practices have created the opportunity
15 for the efficient development of natural gas contained in
16 underground shales and other geologic formations;

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

22 (3) In some instances these practices may require the
23 construction of large impoundments or pits for the storage of water
24 or wastewater;

1 (4) Existing laws and regulations developed for conventional
2 oil and gas operations do not adequately address these new
3 technologies and practices;

4 (5) The secretary should have broad authority to condition the
5 issuance of well work permits when, in the secretary's discretion,
6 it is necessary to protect the safety of persons, to prevent
7 inadequate or ineffective erosion and sediment control plans, to
8 prevent damage to publicly owned lands or resources, to protect
9 fresh water sources or supplies or to otherwise protect the
10 environment;

11 (6) Concomitant with the broad powers to condition the
12 issuance of well work permits, the secretary should also have broad
13 authority to waive certain minimum requirements of this article
14 when, in his or her discretion, such waiver is appropriate:
15 *Provided*, That the secretary shall submit a written report of the
16 number of waivers granted to the Legislature commencing January 1,
17 2013, and each year thereafter;

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

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

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

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

12 **§22-6A-3. Applicability; exceptions.**

13 Notwithstanding any other provision of this code to the
14 contrary, the provisions of this article shall apply to any natural
15 gas well, other than a coalbed methane well, drilled using a
16 horizontal drilling method, and which disturbs three acres or more
17 of surface, excluding pipelines, gathering lines and roads, or
18 utilizes more than two hundred ten thousand gallons of water in any
19 thirty day period: *Provided*, That this article does not apply to
20 or affect any well work permitted for a horizontal well or orders
21 issued regarding horizontal wells or permit applications pending
22 prior to the effective date of this article: *Provided, further*,
23 That this article shall not apply to or affect any rights bargained
24 for in any agreement between a surface owner and operator made

1 prior to the effective date of this article.

2 **§22-6A-3a. Karst terrain; rulemaking.**

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

11 (b) In order to carry out the purposes of this section, the
12 secretary, in consultation with the state geologist, shall propose
13 emergency and legislative rules in accordance with the provisions
14 of chapter twenty-nine-a of this code to establish designated
15 geographic regions of the state where the provisions of this
16 section are applicable and to establish standards for drilling
17 horizontal wells in naturally occurring karst terrain. For
18 horizontal wells drilled into naturally occurring karst terrain in
19 such designated geographic regions, the rules shall, at a minimum:

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

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

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

7 **§22-6A-4. Definitions.**

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

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

14 (1) "Best management practices" means schedules of activities,
15 prohibitions of practices, maintenance procedures and other
16 management practices established by the department to prevent or
17 reduce pollution of waters of this state. For purposes of this
18 article, best management practices also includes those practices
19 and procedures set out in the Erosion and Sediment Control Manual
20 of the Office of Oil and Gas;

21 (2) "Department" means the Department of Environmental
22 Protection;

23 (3) "Flowback Recycle Pit" means a pit used for the retention
24 of flowback and freshwater and into which no other wastes of any

1 kind are placed;

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

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

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

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

18 (8) "Karst terrain" means a terrain, generally underlain by
19 limestone or dolomite, in which the topography is formed chiefly by
20 the dissolving of rock, and which may be characterized by
21 sinkholes, sinking streams, closed depressions, subterranean
22 drainage and caves;

23 (9) "Perennial stream" means a stream or portion of a stream
24 that flows year-round, is considered a permanent stream and for

1 which base flow is maintained by ground-water discharge to the
2 streambed due to the ground-water elevation adjacent to the stream
3 being higher than the elevation of the streambed;

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

9 (11) "Secretary" means the Secretary of the Department of
10 Environmental Protection as established in article one of this
11 chapter or other person to whom the secretary has delegated
12 authority or duties pursuant to sections six or eight, article one
13 of this chapter; and

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

18 **§22-6A-5. Application of article six of this chapter to horizontal**
19 **wells subject to this article.**

20 (a) To the extent that horizontal wells governed by this
21 article are similar to conventional oil and gas wells regulated
22 under article six of this chapter, the following sections of
23 article six of this chapter are hereby incorporated by reference in
24 this article:

1 (1) The provisions of section three, article six of this
2 chapter relating to the findings and orders of inspectors
3 concerning violations, the determination of reasonable time for
4 abatement, extensions of time for abatement, special inspections
5 and notice of findings and orders;

6 (2) The provisions of section four, article six of this
7 chapter providing for the review of findings and orders by the
8 secretary, special inspections and applications for annulment or
9 revision of orders by the secretary;

10 (3) The provisions of section five, article six of this
11 chapter relating to the requirements for findings, orders and
12 notices, notice to the operator of findings and orders and judicial
13 review of final orders of the secretary;

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

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

21 (6) The provisions of section twelve, article six of this
22 chapter pertaining to plats prerequisite to drilling or fracturing
23 wells, the preparation and contents thereof, notice furnished to
24 coal operators, owners or lessees, the issuance of permits and

1 required performance bonds, with the following exceptions:

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

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

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

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

21 (9) The provisions of section seventeen, article six of this
22 chapter pertaining to drilling of shallow gas wells, notice to be
23 provided to the chair of the review board, orders issued by the
24 review board and permits issued for such drilling, with the

1 exception that the applicable time for filing objections is thirty
2 days from the date of receipt by the secretary of the required plat
3 and notice in lieu of fifteen days;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

12 **§22-6A-6. Secretary of Department of Environmental Protection;**
13 **powers and duties.**

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

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

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

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

24 (4) To propose any necessary legislative rules, in accordance

1 with the provisions of chapter twenty-nine-a of this code to
2 implement the provisions of this article;

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

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

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

23 **§22-6A-7. Horizontal well permit required; permit fee;**

24 **application; soil erosion control plan; well site**

1 **safety plan; site construction plan; water**
2 **management plan; permit fee; installation of**
3 **permit number; suspension of a permit.**

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

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

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

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

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

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

2 (5) The approximate total depth to which the well is to be
3 drilled or deepened, or the actual depth if the well has been
4 drilled; the proposed angle and direction of the well; the actual
5 depth or the approximate depth at which the well to be drilled
6 deviates from vertical, the angle and direction of the nonvertical
7 well bore until the well reaches its total target depth or its
8 actual final depth and the length and direction of any actual or
9 proposed horizontal lateral or well bore;

10 (6) Each formation in which the well will be completed if
11 applicable;

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

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

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

22 (10) If the proposed well work is to plug or replug the well,
23 all information necessary to demonstrate compliance with the
24 legislative rules promulgated by the secretary in accordance with

1 section thirteen of this article;

2 (11) If the proposed well work is to stimulate a horizontal
3 well, all information necessary to demonstrate compliance with the
4 requirements of subdivision (7), subsection (a), section five of
5 this article;

6 (12) The erosion and sediment control plan required under
7 subsection (c) of this section for applications for permits to
8 drill;

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

21 (14) A certification from the operator that (i) it has
22 provided the owners of the surface described in subdivisions (1),
23 (2) and (4), subsection (b), section ten of this article, the
24 information required by subsections (b) and (c), section sixteen of

1 this article; (ii) that the requirement was deemed satisfied as a
2 result of giving the surface owner notice of entry to survey
3 pursuant to subsection (a), section ten of this article; or (iii)
4 the notice requirements of subsection (b), section sixteen of this
5 article were waived in writing by the surface owner; and

6 (15) Any other relevant information which the secretary may
7 reasonably require.

8 (c) (1) An erosion and sediment control plan shall accompany
9 each application for a well work permit under this article. The
10 plan shall contain methods of stabilization and drainage, including
11 a map of the project area indicating the amount of acreage
12 disturbed. The erosion and sediment control plan shall meet the
13 minimum requirements of the West Virginia Erosion and Sediment
14 Control Manual as adopted and from time to time amended by the
15 department. The erosion and sediment control plan shall become
16 part of the terms and conditions of any well work permit that is
17 issued pursuant to this article and the provisions of the plan
18 shall be carried out where applicable in the operation. The
19 erosion and sediment control plan shall set out the proposed method
20 of reclamation which shall comply with the requirements of section
21 fourteen of this article.

22 (2) For well sites that disturb three acres or more of
23 surface, excluding pipelines, gathering lines and roads, the
24 erosion and sediment control plan submitted in accordance with this

1 section shall be certified by a registered professional engineer.

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

7 (e) In addition to the other requirements of this section, if
8 the drilling, fracturing or stimulating of the horizontal well
9 requires the use of water obtained by withdrawals from waters of
10 this state in amounts that exceed two hundred ten thousand gallons
11 during any thirty day period, the application for a well work
12 permit shall include a water management plan, which may be
13 submitted on an individual well basis or on a watershed basis, and
14 which shall include the following information:

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

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

20 (3) The anticipated months when water withdrawals will be
21 made;

22 (4) The planned management and disposition of wastewater after
23 completion from fracturing, refracturing, stimulation and
24 production activities;

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

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

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

13 (B) For surface waters, a demonstration, using methods
14 acceptable to the secretary, that sufficient in-stream flow will be
15 available immediately downstream of the point of withdrawal. A
16 sufficient in-stream flow is maintained when a pass-by flow that is
17 protective of the identified use of the stream is preserved
18 immediately downstream of the point of withdrawal; and

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

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

1 Virginia law.

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

5 (g) The application for a permit under this section shall be
6 accompanied by the applicable bond as required by section fifteen
7 of this article, the applicable plat required by subdivision (6),
8 subsection (a), section five of this article and a permit fee of
9 \$10,000 for the initial horizontal well drilled at a location and
10 a permit fee of \$5,000 for each additional horizontal well drilled
11 on a single well pad at the same location.

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

22 (i) The well owner or operator shall install the permit number
23 as issued by the secretary and a contact telephone number for the
24 operator in a legible and permanent manner to the well upon

1 completion of any permitted work. The dimensions, specifications,
2 and manner of installation shall be in accordance with the rules of
3 the secretary.

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

10 (k) The secretary shall deny the issuance of a permit if the
11 secretary determines that the applicant has committed a substantial
12 violation of a previously issued permit for a horizontal well,
13 including the applicable erosion and sediment control plan
14 associated with the previously issued permit, or a substantial
15 violation of one or more of the rules promulgated under this
16 article, and in each instance has failed to abate or seek review of
17 the violation within the time prescribed by the secretary pursuant
18 to the provisions of subdivisions (1) and (2), subsection (a),
19 section five of this article and the rules promulgated hereunder,
20 which time may not be unreasonable.

21 (l) In the event the secretary finds that a substantial
22 violation has occurred and that the operator has failed to abate or
23 seek review of the violation in the time prescribed, the secretary
24 may suspend the permit on which said violation exists, after which

1 suspension the operator shall forthwith cease all well work being
2 conducted under the permit. However, the secretary may reinstate
3 the permit without further notice, at which time the well work may
4 be continued. The secretary shall make written findings of any
5 such suspension and may enforce the same in the circuit courts of
6 this state. The operator may appeal a suspension pursuant to the
7 provisions of subdivision (23), subsection (a), section five of
8 this article. The secretary shall make a written finding of any
9 such determination.

10 **§22-6A-8. Review of application; issuance of permit; performance**
11 **standards; copy of permits to county assessor.**

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

14 (b) No permit may be issued less than thirty days after the
15 filing date of the application for any well work except plugging or
16 replugging; and no permit for plugging or replugging may be issued
17 less than five days after the filing date of the application except
18 a permit for plugging or replugging a dry hole: *Provided*, That if
19 the applicant certifies that all persons entitled to notice of the
20 application under the provisions of subsection (b), section ten of
21 this article have been served in person or by certified mail,
22 return receipt requested, with a copy of the well work application,
23 including the erosion and sediment control plan, if required, and
24 the well plat, and further files written statements of no objection

1 by all such persons, the secretary may issue the well work permit
2 at any time.

3 (c) Prior to the issuance of any permit, the secretary shall
4 ascertain from the Executive Director of Workforce West Virginia
5 and the Insurance Commissioner whether the applicant is in default
6 pursuant to the provisions of section six-c, article two, chapter
7 twenty-one-a of this code, and in compliance with section five,
8 article two, chapter twenty-three of this code, with regard to any
9 required subscription to the Unemployment Compensation Fund or
10 mandatory Workers' Compensation insurance, the payment of premiums
11 and other charges to the fund, the timely filing of payroll reports
12 and the maintenance of adequate deposits. If the applicant is
13 delinquent or defaulted, or has been terminated by the executive
14 director or the Insurance Commissioner, the permit may not be
15 issued until the applicant returns to compliance or is restored by
16 the executive director or the Insurance Commissioner under a
17 reinstatement agreement: *Provided*, That in all inquiries the
18 Executive Director of Workforce West Virginia and the Insurance
19 Commissioner shall make response to the Department of Environmental
20 Protection within fifteen calendar days; otherwise, failure to
21 respond timely is considered to indicate the applicant is in
22 compliance and the failure will not be used to preclude issuance of
23 the permit.

24 (d) The secretary may cause such inspections to be made of the

1 proposed well work location as necessary to assure adequate review
2 of the application. The permit may not be issued, or may be
3 conditioned including conditions with respect to the location of
4 the well and access roads prior to issuance if the director
5 determines that:

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

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

10 (3) Damage would occur to publicly owned lands or resources;
11 or

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

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

18 (1) The well location restrictions of section twelve of this
19 article have been satisfied, unless the requirements have been
20 waived by written consent of the surface owner or the secretary has
21 granted a variance to the restrictions, each in accordance with
22 section twelve of this article;

23 (2) The water management plan submitted to the secretary, if
24 required by subdivision (e), section seven of this article, has

1 been received and approved.

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

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

18 (1) Plug all wells in accordance with the requirements of this
19 article and the rules promulgated pursuant thereto when the wells
20 become abandoned;

21 (2) With respect to disposal of cuttings at the well site, all
22 drill cuttings and associated drilling mud generated from
23 horizontal well sites shall be disposed of in an approved solid
24 waste facility, or if the surface owner consents, the drill

1 cuttings and associated drilling mud may be managed on-site in a
2 manner approved by the secretary;

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

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

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

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

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

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

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

1 (C) Recordkeeping and reporting. For all water used for
2 hydraulic fracturing of horizontal wells and for flowback water
3 from hydraulic fracturing activities and produced water from
4 production activities from horizontal wells, an operator shall
5 comply with the following record keeping and reporting
6 requirements:

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

9 (I) The quantity of flowback water from hydraulic fracturing
10 the well;

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

12 (III) The method of management or disposal of the flowback and
13 produced water.

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

16 (I) The quantity of water transported;

17 (II) The collection and delivery or disposal locations of
18 water; and

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

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

24 (iv) This subdivision is intended to be consistent with and

1 does not supersede, revise, repeal or otherwise modify articles
2 eleven, twelve or twenty-six of this chapter and does not revise,
3 repeal or otherwise modify the common law doctrine of riparian
4 rights in West Virginia law.

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

9 (i) Upon the issuance of any permit pursuant to the provisions
10 of this article, the secretary shall transmit a copy of the permit
11 to the office of the assessor for the county in which the well is
12 located.

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

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

1 a well work permit. This section does not apply to large pits or
2 impoundments authorized under a well work permit.

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

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

23 (d) Any certificate of approval required by this section shall
24 be issued or denied no later than sixty days from the submission of

1 an application containing the information required by this section.
2 However, if the application for a certificate of approval is
3 submitted with the application for a horizontal well permit, the
4 certificate shall be issued or denied no later than thirty days
5 from the submission of the permit application.

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

18 (f) Every application for a certificate of approval shall be
19 made in writing on a form prescribed by the secretary and shall be
20 signed and verified by the applicant. The application shall
21 include a monitoring and emergency action plan and a maintenance
22 plan, the required contents of which shall be established by the
23 secretary by legislative rule. The application shall contain and
24 provide information that may reasonably be required by the

1 secretary to administer the provisions of this article.

2 (g) Plans and specifications for the placement, construction,
3 erosion and sediment control, enlargement, alteration, repair or
4 removal and reclamation of impoundments shall be the charge of a
5 registered professional engineer licensed to practice in West
6 Virginia. Any plans or specifications submitted to the department
7 shall bear the seal of a registered professional engineer.

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

11 (i) The secretary may revoke or suspend any certificate of
12 approval whenever the secretary determines that the impoundment for
13 which the certificate was issued constitutes an imminent danger to
14 human life or property. If necessary to safeguard human life or
15 property, the secretary may also amend the terms and conditions of
16 any certificate by issuing a new certificate containing the revised
17 terms and conditions.

18 (1) Before any certificate of approval is amended, suspended
19 or revoked by the secretary without the consent of the operator
20 holding the certificate, the secretary shall hold a hearing in
21 accordance with the provisions of article five, chapter twenty-
22 nine-a of this code.

23 (2) Any person adversely affected by an order entered
24 following this hearing has the right to appeal to the Environmental

1 Quality Board pursuant to the provisions of article one, chapter
2 twenty-two-b of this code.

3 (j) Upon expiration of the certificate of approval, the
4 operator shall within six months, or upon its revocation by the
5 secretary, the operator shall within sixty days, fill all
6 impoundments that are not required or allowed by state or federal
7 law or rule or agreement between the operator and the surface owner
8 allowing the impoundment to remain open for the use and benefit of
9 the surface owner and reclaim the site in accordance with the
10 approved erosion and sediment control plan.

11 (k) This section does not apply to:

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

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

23 (1) The secretary is authorized to propose rules for
24 legislative approval in accordance with the provisions of article

1 three, chapter twenty-nine-a of this code, necessary to effectuate
2 the provisions of this section.

3 **§22-6A-10. Notice to property owners.**

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

19 (b) No later than the filing date of the application, the
20 applicant for a permit for any well work or for a certificate of
21 approval for the construction of an impoundment or pit as required
22 by this article shall deliver, by personal service or by registered
23 mail or by any method of delivery that requires a receipt or
24 signature confirmation, copies of the application, the erosion and

1 sediment control plan required by section seven of this article,
2 and the well plat to each of the following persons:

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

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

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

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

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

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

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

9 (2) Notwithstanding any provision of this article to the
10 contrary, notice to a lien holder is not notice to a landowner,
11 unless the lien holder is the landowner.

12 (d) With respect to surface landowners identified in
13 subsection (b) or water purveyors identified in subdivision (5),
14 subsection (b) of this section, notification shall be made on forms
15 and in a manner prescribed by the secretary sufficient to identify,
16 for those persons, the rights afforded them under sections eleven
17 and twelve of this article, and the opportunity for testing their
18 water well.

19 (e) Prior to filing an application for a permit for a
20 horizontal well under this article, the applicant shall publish in
21 the county in which the well is located or is proposed to be
22 located a Class II legal advertisement as described in section two,
23 article three, chapter fifty-nine of this code, containing notice
24 of the public website required to be established and maintained

1 pursuant to section twenty-one of this article and language
2 indicating the ability of the public to submit written comments on
3 the proposed permit, with the first publication date being at least
4 ten days prior to the filing of the permit application. The
5 secretary shall consider, in the same manner required by subsection
6 (f), section eight of this article and subdivision one, subsection
7 (c), section eleven of this article, written comments submitted in
8 response to the legal advertisement received by the secretary
9 within thirty days following the last required publication date:
10 *Provided*, That such parties submitting written comments pursuant to
11 this subsection are not entitled to participate in the processes
12 and proceedings that exist under sections fifteen, seventeen or
13 forty, article six of this chapter, as applicable and incorporated
14 into this article by section five of this article.

15 (f) Materials served upon persons described in subsection (b)
16 of this section shall contain a statement of the time limits for
17 filing written comments, who may file written comments, the name
18 and address of the secretary for the purpose of filing the comments
19 and obtaining additional information, and a statement that the
20 persons may request, at the time of submitting written comments,
21 notice of the permit decision and a list of persons qualified to
22 test water.

23 (g) Any person entitled to submit written comments to the
24 secretary pursuant to subsection (a), section eleven of this

1 article, shall also be entitled to receive from the secretary a
2 copy of the permit as issued or a copy of the order modifying or
3 denying the permit if the person requests receipt of them as a part
4 of the written comments submitted concerning the permit
5 application.

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

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

19 (j) (1) Prior to conducting any seismic activity for seismic
20 exploration for natural gas to be extracted using horizontal
21 drilling methods, the company or person performing the activity
22 shall provide notice to Miss Utility of West Virginia Inc. and to
23 all surface owners, coal owners and lessees, and natural gas
24 storage field operators on whose property blasting, percussion or

1 other seismic-related activities will occur.

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

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

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

12 **§22-6A-10a. Method of Delivery of Notice.**

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

18 **§22-6A-11. Procedure for filing written comments; procedures for**
19 **considering objections and comments; issues to be**
20 **considered; and newspaper notice.**

21 (a) All persons described in subsection (b), section ten of
22 this article may file written comments with the secretary as to the
23 location or construction of the applicant's proposed well work
24 within thirty days after the application is filed with the

1 secretary.

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

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

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

1 of this article.

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

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

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

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

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

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

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

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

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

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

18 (e) The secretary shall, by December 31, 2012, report to the
19 Legislature on the noise, light, dust and volatile organic
20 compounds generated by the drilling of horizontal wells as they
21 relate to the well location restrictions regarding occupied
22 dwelling structures pursuant to this section. Upon a finding, if
23 any, by the secretary that the well location restrictions regarding
24 occupied dwelling structures are inadequate or otherwise require

1 alteration to address the items examined in the study required by
2 this subsection, the secretary shall have the authority to propose
3 for promulgation legislative rules establishing guidelines and
4 procedures regarding reasonable levels of noise, light, dust and
5 volatile organic compounds relating to drilling horizontal wells,
6 including reasonable means of mitigating such factors, if
7 necessary.

8 **§22-6A-13. Plugging of horizontal wells.**

9 The secretary shall propose legislative rules for promulgation
10 to govern the procedures for plugging horizontal wells, including
11 rules relating to the methods of plugging the wells and the notices
12 required to be provided in connection with plugging the wells.

13 **§22-6A-14. Reclamation requirements.**

14 (a) The operator of a horizontal well shall reclaim the land
15 surface within the area disturbed in siting, drilling, completing
16 or producing the well in accordance with the following
17 requirements:

18 (1) Except as provided elsewhere in this article, within six
19 months after a horizontal well is drilled and completed on a well
20 pad designed for a single horizontal well, the operator shall fill
21 all the pits and impoundments that are not required or allowed by
22 state or federal law or rule or agreement between the operator and
23 the surface owner that allows the impoundment to remain open for
24 the use and benefit of the surface owner (i.e. a farm pond as

1 described in section nine of this article) and remove all concrete
2 bases, drilling supplies and drilling equipment: *Provided, That*
3 impoundments or pits for which certificates have been approved
4 pursuant to section nine of this article shall be reclaimed at a
5 time and in a manner as provided in the applicable certificate and
6 section nine. Within that six-month period, the operator shall
7 grade or terrace and plant, seed or sod the area disturbed that is
8 not required in production of the horizontal well in accordance
9 with the erosion and sediment control plan. No pit may be used for
10 the ultimate disposal of salt water. Salt water and oil shall be
11 periodically drained or removed and properly disposed of from any
12 pit that is retained so the pit is kept reasonably free of salt
13 water and oil. Pits may not be left open permanently.

14 (2) For well pads designed to contain multiple horizontal
15 wells, partial reclamation shall begin upon completion of the
16 construction of the well pad. For purposes of this section, the
17 term partial reclamation means grading or terracing and planting,
18 or seeding the area disturbed that is not required in drilling,
19 completing or producing any of the horizontal wells on the well pad
20 in accordance with the erosion and sediment control plan. This
21 partial reclamation satisfies the reclamation requirements of this
22 section for a maximum of twenty-four months between the drilling of
23 horizontal wells on a well pad designed to contain multiple
24 horizontal wells: *Provided, That* the maximum aggregate period in

1 which partial reclamation satisfies the reclamation requirements of
2 this section is five years from completion of the construction of
3 the well pad. Within six months after the completion of the final
4 horizontal well on the pad or the expiration of the five-year
5 maximum aggregate partial reclamation period, whichever occurs
6 first, the operator shall complete final reclamation of the well
7 pad as set forth in this subsection.

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

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

20 (b) The secretary, upon written application by an operator
21 showing reasonable cause, may extend the period within which
22 reclamation must be completed, but not to exceed a further six-
23 month period. If the secretary refuses to approve a request for
24 extension, the refusal shall be by order, which may be appealed

1 pursuant to the provisions of subdivision twenty-three, subsection
2 (a), section five of this article.

3 **§22-6A-15. Performance bonds; corporate surety or other security.**

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

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

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

21 (d) The form of the bond required by this article shall be
22 approved by the secretary and may include, at the option of the
23 operator, surety bonding, collateral bonding, including cash and
24 securities, letters of credit, establishment of an escrow account,

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

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

22 (f) Any separate bond furnished for a particular well prior to
23 the effective date of this article continues to be valid for all
24 work on the well permitted prior to the effective date of this

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

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

21 (h) (1) Whenever the right to operate a well is assigned or
22 otherwise transferred, the assignor or transferor shall notify the
23 department of the name and address of the assignee or transferee by
24 registered mail or by any method of delivery that requires a

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

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

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

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

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

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

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

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

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

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

12 (1) A copy of this code section;

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

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

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

23 **§22-6A-17. Reimbursement of property taxes of encumbered**
24 **properties.**

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

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

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

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

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

1 preponderance of the evidence one of the following defenses:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

23 (h) The secretary shall propose rules for legislative approval
24 in accordance with the provisions of article three, chapter twenty-

1 nine-a of this code to implement the requirements of this section.

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

9 **§22-6A-19. Offenses; civil and criminal penalties.**

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

21 (b) Notwithstanding the provisions of subsection (a) and (c)
22 of this section, any person or persons, firm, partnership,
23 partnership association or corporation who willfully disposes of
24 waste fluids, drill cuttings or any other liquid substance

1 generated in the development of a horizontal well in violation of
2 this article or any rule or order promulgated under this article or
3 in violation of any other state or federal statutes, rules or
4 regulations, and which disposal was found to have had a significant
5 adverse environmental impact on surface or groundwater by the
6 secretary, is subject to a civil penalty not exceeding \$100,000.
7 The penalty shall be recovered by a civil action brought by the
8 department, in the name of the state, before the circuit court of
9 the county in which the subject well or facility is located. All
10 the civil penalties collected shall be credited to the General Fund
11 of the state.

12 (c) Notwithstanding the provisions of subsections (a) and (b)
13 of this section, any person or persons, firm, partnership,
14 partnership association or corporation willfully violating any of
15 the provisions of this article which prescribe the manner of
16 drilling and casing or plugging and filling any well or which
17 prescribe the methods of conserving gas from waste, shall be guilty
18 of a misdemeanor, and, upon conviction thereof shall be punished by
19 a fine not exceeding five thousand dollars, or imprisonment in jail
20 not exceeding twelve months, or both, in the discretion of the
21 court, and prosecution under this section may be brought in the
22 name of the State of West Virginia in the court exercising criminal
23 jurisdiction in the county in which the violation of such
24 provisions of the article or terms of such order was committed, and

1 at the instance and upon the relation of any citizens of this
2 state.

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

8 **§22-6A-20. Division of Highways certification.**

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

17 **§22-6A-21. Establishment of public website information and**
18 **electronic notification registry regarding**
19 **horizontal well permit applications.**

20 (a) No later than ninety days after the effective date of this
21 article, the secretary shall establish resources on the
22 department's public website which will list searchable information
23 related to all horizontal well applications filed in this state,
24 including information sufficient to identify the county and

1 approximate location of each horizontal well for which a permit
2 application is filed, the referenced well application number, date
3 of application, name of the applicant, and any written comments
4 submitted by the public.

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

14 **§22-6A-22. Air quality study and rulemaking.**

15 The secretary shall, by July 1, 2013, report to the
16 Legislature on the need, if any, for further regulation of air
17 pollution occurring from well sites, including the possible health
18 impacts, the need for air quality inspections during drilling, the
19 need for inspections of compressors, pits and impoundments, and any
20 other potential air quality impacts that could be generated from
21 this type of drilling activity that could harm human health or the
22 environment. If he or she finds that specialized permit conditions
23 are necessary, the secretary shall promulgate legislative rules
24 establishing these new requirements.

1 **§22-6A-23. Impoundment and pit safety study; rulemaking.**

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

11 **§22-6A-24. Casing and cement standards.**

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

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

24 (c) Rules promulgated by the secretary pursuant to this

1 section shall include provisions to accomplish the following:

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

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

5 (3) Prevention of pollution of or diminution of fresh
6 groundwater;

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

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

10 (d) Procedures for the filing, approval, and revision of
11 casing program:

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

15 (2) The rules regarding the casing program shall require the
16 following information:

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

21 (B) The diameter of the borehole;

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

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

3 (E) The estimated location of centralizers;

4 (F) The proposed borehole conditioning procedures; and

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

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

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

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

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

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

4 (3) Installation of intermediate production casing;

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

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

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

13 (f) *Minimum casing standards.*

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

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

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

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

3 (5) No gas or oil production or pressure may exist on the
4 surface casing or the annulus or the coal protection casing
5 annulus.

6 (g) *Minimum cement standards.*

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

12 (2) Cement used in conjunction with surface and coal
13 protection casing must provide zonal isolation in the casing
14 annulus.

15 (h) Notwithstanding the minimum casing and cementing standards
16 set forth in subsections (f) and (g) of this section, the secretary
17 may:

18 (1) Revise the casing and cementing standards applicable to
19 horizontal wells from time to time through the legislative
20 rulemaking process so long as the revised casing and cementing
21 standards are at least as protective of the environment; and

22 (2) Approve alternative casing programs submitted with
23 applications for well work permits so long as the secretary
24 determines that the casing program submitted with the application

1 is at least as protective of the environment as the casing and
2 cementing standards required by this section.

3 **ARTICLE 6B. OIL AND GAS HORIZONTAL WELL PRODUCTION DAMAGE**
4 **COMPENSATION.**

5 **§22-6B-1. Legislative findings and purpose; applicability.**

6 (a) The Legislature finds the following:

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

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

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

19 (c) It is the purpose of this article to provide
20 Constitutionally permissible protection and compensation to surface
21 owners of lands on which horizontal wells are drilled from the
22 burden resulting from drilling operations commenced after January
23 1, 2012. This article is to be interpreted in the light of the
24 legislative intent expressed herein. This article shall be

1 interpreted to benefit surface owners, regardless of whether the
2 oil and gas mineral estate was separated from the surface estate
3 and regardless of who executed the document which gave the oil and
4 gas developer the right to conduct drilling operations on the land.
5 Section four of this article shall be interpreted to benefit all
6 persons.

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

14 **§22-6B-2. Definitions.**

15 In this article:

16 (1) "Drilling operations" means the actual drilling or
17 redrilling of a horizontal well commenced subsequent to the
18 effective date of this article, and the related preparation of the
19 drilling site and access road, which requires entry, upon the
20 surface estate;

21 (2) "Horizontal drilling" means a method of drilling a well
22 for the production of natural gas that is intended to maximize the
23 length of wellbore that is exposed to the formation and in which
24 the wellbore is initially vertical but is eventually curved to

1 become horizontal, or nearly horizontal, to parallel a particular
2 geologic formation;

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

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

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

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

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

20 **§22-6B-3. Compensation of surface owners for drilling operations.**

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

23 (1) Lost income or expenses incurred as a result of being
24 unable to dedicate land actually occupied by the driller's

1 operation, or to which access is prevented by the drilling
2 operation, to the uses to which it was dedicated prior to
3 commencement of the activity for which a permit was obtained,
4 measured from the date the operator enters upon the land and
5 commences drilling operations until the date reclamation is
6 completed;

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

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

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

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

19 The amount of damages may be determined by any formula
20 mutually agreeable between the surface owner and the oil and gas
21 developer.

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

1 (c) In the case of surface lands owned by more than one person
2 as tenants in common, joint tenants or other co-ownership, any
3 claim for compensation under this article shall be for the benefit
4 of all co-owners. The resolution of a claim for compensation
5 provided in this article operates as a bar to the assertion of
6 additional claims under this section arising out of the same
7 drilling operations.

8 **§22-6B-4. Common law right of action preserved; offsets.**

9 (a) Nothing in section three or elsewhere in this article
10 diminishes in any way the common law remedies, including damages,
11 of a surface owner or any other person against the oil and gas
12 developer for the unreasonable, negligent or otherwise wrongful
13 exercise of the contractual right, whether express or implied, to
14 use the surface of the land for the benefit of the developer's
15 mineral interest.

16 (b) An oil and gas developer is entitled to offset
17 compensation agreed to be paid or awarded to a surface owner under
18 section three of this article against any damages sought by or
19 awarded to the surface owner through the assertion of common law
20 remedies respecting the surface land actually occupied by the same
21 drilling operation.

22 (c) An oil and gas developer is entitled to offset damages
23 agreed to be paid or awarded to a surface owner through the
24 assertion of common-law remedies against compensation sought by or

1 awarded to the surface owner under section three of this article
2 respecting the surface land actually occupied by the same drilling
3 operation.

4 **§22-6B-5. Notification of claim.**

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

21 **§22-6B-6. Agreement; offer of settlement.**

22 Unless the parties provide otherwise by written agreement,
23 within sixty days after the oil and gas developer received the
24 notification of claim specified in section five of this article,

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

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

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

21 (2) Settlement negotiations, offers and counter-offers between
22 the surface owner and the oil and gas developer are not admissible
23 as evidence in any arbitration or judicial proceeding authorized
24 under this article, or in any proceeding resulting from the

1 assertion of common law remedies.

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

16 (c) The following persons are considered interested and may
17 not be appointed as arbitrators: Any person who is personally
18 interested in the land on which horizontal drilling is being
19 performed or has been performed, or in any interest or right
20 therein, or in the compensation and any damages to be awarded
21 therefor, or who is related by blood or marriage to any person
22 having such personal interest, or who stands in the relation of
23 guardian and ward, master and servant, principal and agent, or
24 partner, real estate broker, or surety to any person having such

1 personal interest, or who has enmity against or bias in favor of
 2 any person who has such personal interest or who is the owner of,
 3 or interested in, the land or the oil and gas development of the
 4 land. A person is not considered interested or incompetent to act
 5 as arbitrator by reason of being an inhabitant of the county,
 6 district or municipal corporation in which the land is located, or
 7 holding an interest in any other land therein.

8 (d) The panel of arbitrators shall hold hearings and take
 9 testimony and receive exhibits necessary to determine the amount of
 10 compensation to be paid to the surface owner. However, no award of
 11 compensation may be made to the surface owner unless the panel of
 12 arbitrators has first viewed the surface estate in question. A
 13 transcript of the evidence may be made but is not required.

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

17 **§22-6B-8. Application of article.**

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

20 **CHAPTER 22C. ENVIRONMENTAL RESOURCES; BOARDS, AUTHORITIES,**

21 **COMMISSIONS AND COMPACTS.**

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

23 **§22C-8-2. Definitions.**

24 ~~Unless the context in which used clearly requires a different~~

1 ~~meaning,~~ As used in this article:

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

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

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

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

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

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

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

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

24 (9) "Division" means the state ~~Division~~ Department of

1 Environmental Protection provided for in chapter twenty-two of this
2 code;

3 (10) "Director" means the ~~Director of the Division~~ Secretary
4 of the Department of Environmental Protection as established in
5 article one, chapter twenty-two of this code or ~~such~~ other person
6 to whom the ~~director~~ secretary delegates authority or duties
7 pursuant to sections six or eight, article one, chapter twenty-two
8 of this code;

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

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

14 (13) "Gas operator" means any person who owns or has the right
15 to develop, operate and produce gas from a pool and to appropriate
16 the gas produced therefrom either for ~~such~~ that person or for ~~such~~
17 that person and others. In the event that there is no gas lease in
18 existence with respect to the tract in question, the person who
19 owns or has the gas rights therein ~~shall be~~ is considered a "gas
20 operator" to the extent of seven-eighths of the gas in that portion
21 of the pool underlying the tract owned by such person, and a
22 "royalty owner" to the extent of one-eighth of ~~such~~ the gas;

23 (14) "Just and equitable share of production" means, as to
24 each person, an amount of gas in the same proportion to the total

1 gas production from a well as that person's acreage bears to the
2 total acreage in the drilling unit;

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

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

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

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

18 (19) "Pool" means an underground accumulation of gas in a
19 single and separate natural reservoir (ordinarily a porous
20 sandstone or limestone). It is characterized by a single natural-
21 pressure system so that production of gas from one part of the pool
22 tends to or does affect the reservoir pressure throughout its
23 extent. A pool is bounded by geologic barriers in all directions,
24 such as geologic structural conditions, impermeable strata, and

1 water in the formation, so that it is effectively separated from
2 any other pools which may be present in the same district or in the
3 same geologic structure;

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

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

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

20 (23) "Well" means any shaft or hole sunk, drilled, bored or
21 dug into the earth or into underground strata for the extraction,
22 injection or placement of any liquid or gas, or any shaft or hole
23 sunk or used in conjunction with ~~such~~ the extraction, injection or
24 placement. The term "well" does not include any shaft or hole

1 sunk, drilled, bored or dug into the earth for the sole purpose of
 2 core drilling or pumping or extracting therefrom potable, fresh or
 3 usable water for household, domestic, industrial, agricultural or
 4 public use; and

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

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

8 **§22C-9-2. Definitions.**

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

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

14 (2) "Director" means the ~~Director~~ Secretary of the ~~Division~~
 15 Department of Environmental Protection and "chief" means the Chief
 16 of the Office of Oil and Gas;

17 (3) "Person" means any natural person, corporation,
 18 partnership, receiver, trustee, executor, administrator, guardian,
 19 fiduciary or other representative of any kind, and includes any
 20 government or any political subdivision or any agency thereof;

21 (4) "Operator" means any owner of the right to develop,
 22 operate and produce oil and gas from a pool and to appropriate the
 23 oil and gas produced therefrom, either for ~~such~~ that person or for
 24 ~~such~~ that person and others; in the event that there is no oil and

1 gas lease in existence with respect to the tract in question, the
2 owner of the oil and gas rights therein ~~shall be considered as~~ is
3 the "operator" to the extent of seven-eighths of the oil and gas in
4 that portion of the pool underlying the tract owned by such owner,
5 and as "royalty owner" as to one-eighth interest in such oil and
6 gas; and in the event the oil is owned separately from the gas, the
7 owner of the substance being produced or sought to be produced from
8 the pool ~~shall be considered as~~ is the "operator" as to ~~such~~ that
9 pool;

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

13 (6) "Independent producer" means a producer of crude oil or
14 natural gas whose allowance for depletion is determined under
15 Section 613A of the federal Internal Revenue Code in effect on July
16 1, 1997;

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

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

24 (9) "Pool" means an underground accumulation of petroleum or

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

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

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

23 (12) "Deep well" means any well, other than a shallow well or
24 coalbed methane well, ~~drilled and completed in to~~ a formation ~~at or~~

1 below the top of the uppermost member of the "Onondaga Group;"

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

4 (14) "Waste" means and includes:

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

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

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

22 (15) "Correlative rights" means the reasonable opportunity of
23 each person entitled thereto to recover and receive without waste
24 the oil and gas in and under his tract or tracts, or the equivalent

1 thereof; and

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

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