

Senate Bill No. 4001

(By Senators Kessler (Mr. President) and Hall,

By Request of the Executive)

[Introduced December 11, 2012; referred to the Committee on the
Judiciary; and then to the Committee on Finance.]

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

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

1 approval for large pits or impoundment construction; requiring
2 application for certificate; establishing application
3 requirements and payment of fees; providing for modification,
4 revocation or suspension of certificate and hearing procedure,
5 including an administrative appeals process; providing
6 exceptions for certain farm ponds; authorizing secretary to
7 propose legislative rules governing large pits and
8 impoundment; providing notice to certain property owners of
9 certain applications, intent to enter property or conduct
10 seismic activity; establishing procedure for filing written
11 comments; establishing well location restrictions; requiring
12 promulgation of legislative rules for plugging and abandonment
13 of horizontal wells; establishing reclamation requirements;
14 requiring performance bonds or other security; providing
15 notice of planned operation and contents of notice to certain
16 surface owners; providing notice to certain surface owner and
17 offer for compensation for certain damages to certain surface
18 owner; providing for reimbursement of property taxes to
19 surface owner; providing for civil action, rebuttable
20 presumption and relief for water contamination or deprivation;
21 establishing water rights and replacement procedure;
22 establishing civil penalties and offenses; requiring gas
23 operations to submit certification from Division of Highways
24 that operator has entered into road maintenance agreement

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

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

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

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

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

18 **§5B-2B-4a. Report to Legislature.**

19 (a) The Legislature finds that:

20 (1) The advent and advancement of new technologies in
 21 horizontal drilling and the production of horizontal wells defined
 22 in article six-a, chapter twenty-two of this code has created
 23 thousands and has the potential to create thousands of additional
 24 drilling, production, construction, manufacturing, and related jobs

1 in West Virginia and in the Appalachian Basin;

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

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

7 (b) To assist in maximizing the economic opportunities
8 available with horizontal drilling, the council shall make a report
9 to the Joint Committee on Government and Finance and the
10 Legislative Oversight Commission on Education Accountability on or
11 before November 1 of each year through 2016, detailing a
12 comprehensive review of the direct and indirect economic impact of
13 employers engaged in the production of horizontal wells in the
14 State of West Virginia, as more specifically defined in article
15 six-a, chapter twenty-two of this code, which shall include:

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

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

18 (3) The average salary per job type;

19 (4) A review of the number of employees domiciled in the State
20 of West Virginia;

21 (5) A review of total economic impact; and

22 (6) The council's recommendations for the establishment of an
23 overall workforce investment public education agenda with goals and
24 benchmarks toward maximizing job creation opportunities in the

1 State of West Virginia.

2 (c) To the extent permitted by federal law, and to the extent
3 necessary for the council to comply with this section, the Council,
4 Workforce West Virginia, the Division of Labor, and the Office of
5 the Insurance Commissioner may enter into agreements providing for
6 the sharing of job data and related information.

7 **CHAPTER 22. ENVIRONMENTAL RESOURCES.**

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

9 **§22-6-1. Definitions.**

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

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

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

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

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

21 (e) "Coal seam" and "workable coal bed" are interchangeable
22 terms and mean any seam of coal twenty inches or more in thickness,
23 unless a seam of less thickness is being commercially worked, or
24 can in the judgment of the department foreseeably be commercially

1 worked and will require protection if wells are drilled through it;

2 (f) "Director" means the ~~director of the division~~ Secretary of
3 the Department of Environmental Protection as established in
4 article one of this chapter or ~~such~~ other person to whom the
5 ~~director~~ secretary has delegated authority or duties pursuant to
6 sections six or eight, article one of this chapter.

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

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

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

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

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

1 (l) "Owner" when used with reference to any well, shall
2 include any person or persons, firm, partnership, partnership
3 association or corporation that owns, manages, operates, controls
4 or possesses such well as principal, or as lessee or contractor,
5 employee or agent of such principal;

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

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

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

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

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

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

1 severed;

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

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

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

21 ~~(t)~~ (v) "Waste" means (i) physical waste, as the term is
22 generally understood in the oil and gas industry; (ii) the
23 locating, drilling, equipping, operating or producing of any oil or
24 gas well in a manner that causes, or tends to cause a substantial

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

1 (w) "Waters of this state" has the same meaning as the term
2 "waters" as provided in subsection (23), section three, article
3 eleven of this chapter;

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

13 ~~(v)~~ (y) "Well work" means the drilling, redrilling, deepening,
14 stimulating, pressuring by injection of any fluid, converting from
15 one type of well to another, combining or physically changing to
16 allow the migration of fluid from one formation to another or
17 plugging or replugging of any well; and

18 ~~(w)~~ (z) "Well operator" or "operator" means any person or
19 persons, firm, partnership, partnership association or corporation
20 that proposes to or does locate, drill, operate or abandon any well
21 as herein defined.

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

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

4 **§22-6-2. Secretary -- Powers and duties generally; department**
5 **records open to public; inspectors.**

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

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

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

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

22 (2) ~~Employ a supervising oil and gas inspector and oil and gas~~
23 ~~inspectors~~ Determine the number of supervising oil and gas
24 inspectors and oil and gas inspectors needed to carry out the

1 purposes of this article and articles six-a, eight, nine, ten, and
2 twenty-one of this chapter and appoint them as such. All
3 appointees must be qualified civil service employees, but no person
4 is eligible for appointment until he or she has served in a
5 probationary status for a period of six months to the satisfaction
6 of the secretary;

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

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

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

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

24 (7) Hear and determine applications made by owners, well

1 operators and coal operators for the annulment or revision of
2 orders made by oil and gas inspectors or the supervising inspector,
3 and to make inspections, in accordance with the provisions of this
4 article and articles eight and nine of this chapter;

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

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

15 (10) Collect a permit fee of \$400 for each permit application
16 filed other than an application for a deep well, horizontal wells
17 regulated pursuant to article six-a of this chapter, or a coalbed
18 methane well; and collect a permit fee of \$650 for each permit
19 application filed for a deep well: *Provided*, That no permit
20 application fee ~~shall be~~ is required when an application is
21 submitted solely for the plugging or replugging of a well, or to
22 modify an existing application for which the operator previously
23 has submitted a permit fee under this section. All application
24 fees required hereunder ~~shall be~~ are in lieu of and not in addition

1 to any fees imposed under article eleven of this chapter relating
2 to discharges of stormwater but ~~shall be~~ are in addition to any
3 other fees required by the provisions of this article: *Provided,*
4 *however,* That upon a final determination by the United States
5 Environmental Protection Agency regarding the scope of the
6 exemption under section 402(1)(2) of the federal Clean Water Act
7 (33 U.S.C. 1342(1)(2)), which determination requires a "national
8 pollutant discharge elimination system" permit for stormwater
9 discharges from the oil and gas operations described therein, any
10 permit fees for stormwater permits required under article eleven of
11 this chapter for such operations ~~shall~~ may not exceed \$100.

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

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

18 (13) Adopt rules with respect to the issuance, denial,
19 retention, suspension or revocation of permits, authorizations and
20 requirements of this chapter, which rules shall assure that the
21 rules, permits and authorizations issued by the secretary are
22 adequate to satisfy the purposes of this article and articles six-
23 a, seven, eight, nine, ~~and~~ ten and twenty-one of this chapter
24 particularly with respect to the consolidation of the various state

1 and federal programs which place permitting requirements on the
2 exploration, development, production, storage and recovery of this
3 state's oil and gas ~~Provided, That notwithstanding any provisions~~
4 ~~of this article and articles seven, eight, nine and ten of this~~
5 ~~chapter to the contrary, the Environmental Quality Board shall have~~
6 ~~the sole authority pursuant to section three, article three,~~
7 ~~chapter twenty-two-b to promulgate rules setting standards of water~~
8 ~~quality applicable to waters of the state; and~~

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

14 (d) The secretary shall have authority to visit and inspect
15 any well or well site and any other oil or gas facility in this
16 state and may call for the assistance of any oil and gas inspector
17 or inspectors or supervising inspector whenever such assistance is
18 necessary in the inspection of any such well or well site or any
19 other oil or gas facility. Similarly, all oil and gas inspectors
20 and the supervising inspector or supervising inspectors shall have
21 authority to visit and inspect any well or well site and any other
22 oil or gas facility in this state. Such inspectors shall make all
23 necessary inspections of oil and gas operations required by this
24 article and articles six-a, eight, nine, ten and twenty-one of this

1 chapter; administer and enforce all oil and gas laws and rules; and
2 perform other duties and services as may be prescribed by the
3 secretary. The inspectors shall note and describe all violations
4 of this article and articles six-a, eight, nine, ten or twenty-one
5 of this chapter and promptly report those violations to the
6 secretary in writing, furnishing at the same time a copy of the
7 report to the operator concerned. Any well operator, coal operator
8 operating coal seams beneath the tract of land, or the coal seam
9 owner or lessee, if any, if said owner or lessee is not yet
10 operating said coal seams beneath said tract of land may request
11 the secretary to have an immediate inspection made. The operator
12 or owner of every well or well site or any other oil or gas
13 facility shall cooperate with the secretary, all oil and gas
14 inspectors and the supervising inspector in making inspections or
15 obtaining information.

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

21 (f) (e) Subject to the provisions of article one, chapter
22 twenty-nine-b of this code, all records of the office shall be open
23 to the public.

24 **§22-6-2a. Oil and gas inspectors qualifications and salary.**

1 (a) No person is eligible for appointment as an oil and gas
2 inspector or supervising inspector unless, at the time of
3 probationary appointment, the person: (1) is a citizen of West
4 Virginia, in good health and of good character, reputation and
5 temperate habits; (2) has had at least two years actual relevant
6 experience in the oil and gas industry: *Provided*, That no more
7 than one year of the experience requirement may be satisfied by any
8 of following: (i) A bachelor of science degree in science or
9 engineering; (ii) an associate degree in petroleum technology; or
10 (iii) actual relevant environmental experience including, without
11 limitation, experience in wastewater, solid waste or reclamation,
12 each full year of which shall be considered as a year of actual
13 relevant experience in the oil and gas industry; and (3) has good
14 theoretical and practical knowledge of oil and gas drilling and
15 production methods, practices and techniques, sound safety
16 practices and applicable water and mining laws.

17 (b) In order to qualify for appointment as an oil and gas
18 inspector or supervising inspector by the secretary, an eligible
19 applicant shall submit to a written and oral examination by the
20 Division of Personnel within the Department of Administration and
21 shall furnish any evidence of good health, character and other
22 facts establishing eligibility required by the Division of
23 Personnel. The Office of Oil and Gas shall determine the substance
24 of the examinations administered to candidates for the positions of

1 oil and gas inspector and supervising oil and gas inspector by the
2 Division of Personnel. If the Division of Personnel finds after
3 investigation and examination that an applicant: (1) is eligible
4 for appointment; and (2) has passed all written and oral
5 examinations, the division shall add the applicant's name and grade
6 to the register of qualified eligible candidates and certify its
7 action to the secretary. No candidate's name may remain on the
8 register for more than three years without requalifying.

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

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

13 **§22-6A-1. Short title.**

14 This article shall be known and cited as the "Horizontal Well
15 Act".

16 **§22-6A-2. Legislative findings; declaration of public policy.**

17 (a) The Legislature finds that:

18 (1) The advent and advancement of new and existing
19 technologies and drilling practices have created the opportunity
20 for the efficient development of natural gas contained in
21 underground shales and other geologic formations;

22 (2) These practices have resulted in a new type and scale of
23 natural gas development that utilize horizontal drilling
24 techniques, allow the development of multiple wells from a single

1 surface location, and may involve fracturing processes that use and
2 produce large amounts of water;

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

6 (4) Existing laws and regulations developed for conventional
7 oil and gas operations do not adequately address these new
8 technologies and practices;

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

15 (6) Concomitant with the broad powers to condition the
16 issuance of well work permits, the secretary should also have broad
17 authority to waive certain minimum requirements of this article
18 when, in his or her discretion, such waiver is appropriate;

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

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

1 protection of the environment.

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

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

13 **§22-6A-3. Applicability; exceptions.**

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

24 **§22-6A-3a. Karst terrain; rulemaking.**

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

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

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

23 (2) Provide any other requirements deemed necessary by the
24 secretary to protect the unique characteristics of naturally

1 occurring karst geology, which requirements may include baseline
2 water testing within an established distance from a drilling site.

3 (c) Nothing in this section allows the department to prevent
4 drilling in naturally occurring karst geology.

5 **§22-6A-4. Definitions.**

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

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

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

19 (2) "Department" means the Department of Environmental
20 Protection;

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

24 (4) "Freshwater Impoundment" means an impoundment used for the

1 retention of fresh water and into which no wastes of any kind are
2 placed;

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

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

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

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

21 (9) "Perennial stream" means a stream or portion of a stream
22 that flows year-round, is considered a permanent stream and for
23 which base flow is maintained by ground-water discharge to the
24 streambed due to the ground-water elevation adjacent to the stream

1 being higher than the elevation of the streambed;

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

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

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

16 **§22-6A-5. Application of article six of this chapter to horizontal**
17 **wells subject to this article.**

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

23 (1) The provisions of section three, article six of this
24 chapter relating to the findings and orders of inspectors

1 concerning violations, the determination of reasonable time for
2 abatement, extensions of time for abatement, special inspections
3 and notice of findings and orders.

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

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

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

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

19 (6) The provisions of section twelve, article six of this
20 chapter pertaining to plats prerequisite to drilling or fracturing
21 wells, the preparation and contents thereof, notice furnished to
22 coal operators, owners or lessees, the issuance of permits and
23 required performance bonds, with the following exceptions:

24 (A) Under subsection (a), section twelve, article six of this

1 chapter, the plat also shall identify all surface tract boundaries
2 within the scope of the plat proposed to be crossed by the
3 horizontal lateral of the horizontal well and the proposed path of
4 such horizontal lateral.

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

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

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

19 (9) The provisions of section seventeen, article six of this
20 chapter pertaining to drilling of shallow gas wells, notice to be
21 provided to the chair of the review board, orders issued by the
22 review board and permits issued for such drilling, with the
23 exception that the applicable time for filing objections is thirty
24 days from the date of receipt by the secretary of the required plat

1 and notice in lieu of fifteen days.

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

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

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

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

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

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

22 (16) The provisions of section twenty-eight, article six of
23 this chapter relating to supervision by the secretary over drilling
24 and reclamation operations, the filing of complaints, hearings on

1 the same and appeals.

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

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

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

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

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

23 (22) The provisions of section thirty-nine, article six of
24 this chapter relating to petitions for injunctive relief.

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

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

10 **§22-6A-6. Secretary of Department of Environmental Protection;**
11 **powers and duties.**

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

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

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

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

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

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

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

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

22 **§22-6A-7. Horizontal well permit required; permit fee;**
23 **application; soil erosion control plan; well site safety plan;**
24 **site construction plan; water management plan; permit fee;**

1 **installation of permit number; suspension of a permit.**

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

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

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

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

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

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

24 (5) The approximate total depth to which the well is to be

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

8 (6) Each formation in which the well will be completed if
9 applicable;

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

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

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

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

24 (11) If the proposed well work is to stimulate a horizontal

1 well, all information necessary to demonstrate compliance with the
2 requirements of subsection (g), section five of this article;

3 (12) The erosion and sediment control plan required under
4 subsection (c) of this section for applications for permits to
5 drill;

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

18 (14) A certification from the operator that (i) it has
19 provided the owners of the surface described in subdivisions (1),
20 (2) and (4), subsection (b), section ten of this article, the
21 information required by subsections (b) and (c), section sixteen of
22 this article; (ii) that the requirement was deemed satisfied as a
23 result of giving the surface owner notice of entry to survey
24 pursuant to subsection (a), section ten of this article six-a; or

1 (iii) the notice requirements of subsection (b), section sixteen of
2 this article were waived in writing by the surface owner; and

3 (15) Any other relevant information which the secretary may
4 reasonably require.

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

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

23 (d) For well sites that disturb three acres or more of
24 surface, excluding pipelines, gathering lines and roads, the

1 operator shall submit a site construction plan that shall be
2 certified by a registered professional engineer and contains
3 information that the secretary may require by rule.

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

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

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

17 (3) The anticipated months when water withdrawals will be
18 made;

19 (4) The planned management and disposition of wastewater after
20 completion from fracturing, refracturing, stimulation and
21 production activities;

22 (5) A listing of the anticipated additives that may be used in
23 water utilized for fracturing or stimulating the well. Upon well
24 completion, a listing of the additives that were actually used in

1 the fracturing or stimulating of the well shall be submitted as
2 part of the completion log or report required by subsection (n),
3 section five of this article;

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

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

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

16 (C) Methods to be used for surface water withdrawal to
17 minimize adverse impact to aquatic life;

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

23 (f) An application may propose and a permit may approve two or
24 more activities defined as well work, however, a separate permit

1 shall be obtained for each horizontal well drilled.

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

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

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

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

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

18 (l) In the event the secretary finds that a substantial
19 violation has occurred and that the operator has failed to abate or
20 seek review of the violation in the time prescribed, the secretary
21 may suspend the permit on which said violation exists, after which
22 suspension the operator shall forthwith cease all well work being
23 conducted under the permit. However, the secretary may reinstate
24 the permit without further notice, at which time the well work may

1 be continued. The secretary shall make written findings of any
2 such suspension and may enforce the same in the circuit courts of
3 this state. The operator may appeal a suspension pursuant to the
4 provisions of subsection (w), section five of this article. The
5 secretary shall make a written finding of any such determination.

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

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

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

23 (c) Prior to the issuance of any permit, the secretary shall
24 ascertain from the Executive Director of Workforce West Virginia

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

19 (d) The secretary may cause such inspections to be made of the
20 proposed well work location as necessary to assure adequate review
21 of the application. The permit may not be issued, or be
22 conditioned including conditions with respect to the location of
23 the well and access roads prior to issuance if the director
24 determines that:

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

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

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

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

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

13 (1) The well location restrictions of section twelve of this
14 article have been satisfied, unless the requirements have been
15 waived by written consent of the surface owner or the secretary has
16 granted a variance to the restrictions, each in accordance with
17 section twelve of this article;

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

21 (f) The secretary shall promptly review all written comments
22 filed by persons entitled to notice pursuant to subsection (b),
23 section ten of this article. If after review of the application
24 and all written comments received from persons entitled to notice

1 pursuant to subsection (b), section ten of this article, the
2 application for a well work permit is approved, and no timely
3 objection has been filed with the secretary by the coal operator
4 operating coal seams beneath the tract of land, or the coal seam
5 owner or lessee, if any, if said owner or lessee is not yet
6 operating said coal seams, or made by the secretary under the
7 provisions of section ten and eleven of this article, the permit
8 shall be issued, with conditions, if any. This section does not
9 supersede the provisions of section seven or subsections (f)
10 through (i), section five of this article.

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

13 (1) Plug all wells in accordance with the requirements of this
14 article and the rules promulgated pursuant thereto when the wells
15 become abandoned;

16 (2) With respect to disposal of cuttings at the well site, all
17 drill cuttings and associated drilling mud generated from
18 horizontal well sites shall be disposed of in an approved solid
19 waste facility or managed on-site in a manner approved by the
20 secretary;

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

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

4 (5) Protect the quantity and the quality of water in surface
5 and groundwater systems both during and after drilling operations
6 and during reclamation by: (A) Withdrawing water from surface
7 waters of the state by methods deemed appropriate by the secretary,
8 so as to maintain sufficient in-stream flow immediately downstream
9 of the withdrawal location. In no case shall an operator withdraw
10 water from ground or surface waters at volumes beyond which the
11 waters can sustain; (B) Casing, sealing or otherwise managing wells
12 to keep returned fluids from entering ground and surface waters;
13 (C) Conducting oil and gas operations so as to prevent, to the
14 extent possible using the best management practices, additional
15 contributions of suspended or dissolved solids to streamflow or
16 runoff outside the permit area, but in no event shall the
17 contributions be in excess of requirements set by applicable state
18 or federal law; and (D) Registering all water supply wells drilled
19 and operated by the operator with the Office of Oil and Gas. All
20 drinking water wells within one thousand five hundred feet of a
21 water supply well shall be flow and quality tested by the operator
22 upon request of the drinking well owner prior to operating the
23 water supply well. The secretary shall propose legislative rules
24 to identify appropriate methods for testing water flow and quality.

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

6 (A) Identification of water withdrawal locations. Within
7 forty-eight hours prior to the withdrawal of water, the operator
8 shall identify to the department the location of withdrawal by
9 latitude and longitude and verify that sufficient flow exists to
10 protect designated uses of the stream. The operator shall use
11 methods deemed appropriate by the secretary to determine if
12 sufficient flow exists to protect designated uses of the stream.

13 (B) Signage for water withdrawal locations. All water
14 withdrawal locations and facilities identified in the water
15 management plan shall be identified with a sign that identifies
16 that the location is a water withdrawal point, the name and
17 telephone number of the operator and the permit numbers(s) for
18 which the water withdrawn will be utilized.

19 (C) Recordkeeping and reporting. For all water used for
20 hydraulic fracturing of horizontal wells and for flowback water
21 from hydraulic fracturing activities and produced water from
22 production activities from horizontal wells, an operator shall
23 comply with the following record keeping and reporting
24 requirements:

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

3 (I) The quantity of flowback water from hydraulic fracturing
4 the well;

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

6 (III) The method of management or disposal of the flowback and
7 produced water.

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

10 (I) The quantity of water transported;

11 (II) The collection and delivery or disposal locations of
12 water; and

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

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

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

23 (h) The secretary shall mail a copy of the permit as issued or
24 a copy of the order denying a permit to any person entitled to

1 submit written comments pursuant to subsection (a), section eleven
2 of this article and who requested a copy.

3 (i) Upon the issuance of any permit pursuant to the provisions
4 of this article, the secretary shall transmit a copy of the permit
5 to the office of the assessor for the county in which the well is
6 located.

7 **§22-6A-9. Certificate of approval required for large pits or**
8 **impoundment construction; certificate of approval**
9 **and annual registration fees; application required**
10 **to obtain certificate; term of certificate;**
11 **revocation or suspension of certificates; appeals;**
12 **farm ponds.**

13 (a) The Legislature finds that large impoundments and pits
14 (i.e. impoundments or pits with a capacity of two hundred ten
15 thousand gallons or more) not associated with a specific well work
16 permit must be properly regulated and controlled. It is the intent
17 of the Legislature by this section to provide for the regulation
18 and supervision of large impoundments or pits not associated with
19 a well work permit. This section does not apply to large pits or
20 impoundments authorized under a well work permit.

21 (b) It is unlawful for any person to place, construct,
22 enlarge, alter, repair, remove or abandon any freshwater
23 impoundment or pit with capacity of two hundred ten thousand
24 gallons or more used in association with any horizontal well

1 operation until he or she has first secured from the secretary a
2 certificate of approval for the same: *Provided*, That routine
3 repairs that do not affect the safety of the impoundment are not
4 subject to the application and approval requirements. A separate
5 application for a certificate of approval shall be submitted by a
6 person for each impoundment he or she desires to place, construct,
7 enlarge, alter, repair, remove or abandon, but one application may
8 be valid for more than one impoundment that supports one or more
9 well pads.

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

17 (d) Any certificate of approval required by this section shall
18 be issued or denied no later than sixty days from the submission of
19 an application containing the information required by this section.
20 However, if the application for a certificate of approval is
21 submitted with the application for a horizontal well permit, the
22 certificate shall be issued or denied no later than thirty days
23 from the submission of the permit application.

24 (e) The initial term of a certificate of approval issued

1 pursuant to this section is one year. Existing certificates of
2 approval shall be extended for one year upon receipt of the annual
3 registration fee, an inspection report, a monitoring and emergency
4 action plan, and a maintenance plan: *Provided*, That where an
5 approved, up-to-date inspection report, monitoring and emergency
6 action plan, and maintenance plan are on file with the department,
7 and where no outstanding violation of the requirements of the
8 certificate of approval or any plan submitted pursuant to this
9 article related to the impoundment exist, then the certificate of
10 approval shall be extended without resubmission of the foregoing
11 documents upon receipt of the annual registration fee.

12 (f) Every application for a certificate of approval shall be
13 made in writing on a form prescribed by the secretary and shall be
14 signed and verified by the applicant. The application shall
15 include a monitoring and emergency action plan and a maintenance
16 plan, the required contents of which shall be established by the
17 secretary by legislative rule. The application shall contain and
18 provide information that may reasonably be required by the
19 secretary to administer the provisions of this article.

20 (g) Plans and specifications for the placement, construction,
21 erosion and sediment control, enlargement, alteration, repair or
22 removal and reclamation of impoundments shall be the charge of a
23 registered professional engineer licensed to practice in West
24 Virginia. Any plans or specifications submitted to the department

1 shall bear the seal of a registered professional engineer.

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

5 (i) The secretary may revoke or suspend any certificate of
6 approval whenever the secretary determines that the impoundment for
7 which the certificate was issued constitutes an imminent danger to
8 human life or property. If necessary to safeguard human life or
9 property, the secretary may also amend the terms and conditions of
10 any certificate by issuing a new certificate containing the revised
11 terms and conditions.

12 (1) Before any certificate of approval is amended, suspended
13 or revoked by the secretary without the consent of the operator
14 holding the certificate, the secretary shall hold a hearing in
15 accordance with the provisions of article five, chapter twenty-
16 nine-a of this code.

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

21 (j) Upon expiration of the certificate of approval, the
22 operator shall within six months, or upon its revocation by the
23 secretary, the operator shall within sixty days, fill all
24 impoundments that are not required or allowed by state or federal

1 law or rule or agreement between the operator and the surface owner
2 allowing the impoundment to remain open for the use and benefit of
3 the surface owner and reclaim the site in accordance with the
4 approved erosion and sediment control plan.

5 (k) This section does not apply to:

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

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

17 (l) The secretary is authorized to propose rules for
18 legislative approval in accordance with the provisions of article
19 three, chapter twenty-nine-a of this code, necessary to effectuate
20 the provisions of this section.

21 **§22-6A-10. Notice to property owners.**

22 (a) Prior to filing a permit application, the operator shall
23 provide notice of planned entry to the surface owner of at least
24 seventy-two hours but no more than forty-five days prior to

1 entering the surface tract to conduct any plat surveys required
2 pursuant to this article.

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

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

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

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

22 (4) The owners of record of the surface tract or tracts
23 overlying the oil and gas leasehold being developed by the proposed
24 well work, if the surface tract is to be used for the placement,

1 construction, enlargement, alteration, repair, removal or
2 abandonment of any impoundment or pit as described in section nine
3 of this article;

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

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

11 (c) If more than three tenants in common or other coowners of
12 interests described in subsection (b) of this section hold
13 interests in the lands, the applicant may serve the documents
14 required upon the person described in the records of the sheriff
15 required to be maintained pursuant to section eight, article one,
16 chapter eleven-a of this code.

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

24 (e) Semiannually, the department shall publish a Class II

1 legal advertisement, as described in section two, article three,
2 chapter fifty-nine of this code, to appear in newspapers serving,
3 in the aggregate, every county of the state notifying the public of
4 the website required to be maintained by the department pursuant to
5 section twenty-one of this article six-a, and that members of the
6 public may register to receive electronic notifications of
7 horizontal well permit applications, filings and notices by county
8 of interest.

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

17 (g) Any person entitled to submit written comments to the
18 secretary pursuant to subsection (a), section eleven of this
19 article, shall also be entitled to receive from the secretary a
20 copy of the permit as issued or a copy of the order modifying or
21 denying the permit if the person requests receipt of them as a part
22 of the written comments submitted concerning the permit
23 application.

24 (h) The surface owners described in subdivisions (1), (2) and

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

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

13 (j) (1) Prior to conducting any seismic activity for seismic
14 exploration for natural gas to be extracted using horizontal
15 drilling methods, the company or person performing the activity
16 shall provide notice to Miss Utility of West Virginia Inc. and to
17 all surface owners, coal owners and lessees, and natural gas
18 storage field operators on whose property blasting, percussion or
19 other seismic-related activities will occur.

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

22 (3) The notice shall also include a reclamation plan in
23 accordance with the erosion and sediment control manual that
24 provides for the reclamation of any areas disturbed as a result of

1 the seismic activity, including filling of shotholes used for
2 blasting.

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

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

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

14 (b) The applicant shall tender proof of and certify to the
15 secretary that the notice requirements of section ten of this
16 article have been completed by the applicant. The certification of
17 notice to the person may be made by affidavit of personal service,
18 the return receipt card or other postal receipt for certified
19 mailing.

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

1 (2) Any objections of the affected coal operators and coal
2 seam owners and lessees shall be addressed through the processes
3 and procedures that exist under sections fifteen, seventeen and
4 forty, article six of this chapter, as applicable and as
5 incorporated into this article by section five of this article.
6 The written comments filed by the parties entitled to notice under
7 subdivisions (1), (2), (4), (5) and (6), subsection (b), section
8 ten of this article shall be considered by the secretary in the
9 permit issuance process, but the parties are not entitled to
10 participate in the processes and proceedings that exist under
11 sections fifteen, seventeen or forty, article six of this chapter,
12 as applicable and as incorporated into this article by section five
13 of this article.

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

20 **§22-6A-12. Well location restrictions.**

21 (a) Wells may not be drilled within two hundred fifty feet
22 measured horizontally from any existing water well or developed
23 spring used for human or domestic animal consumption. The center of
24 well pads may not be located within six hundred twenty-five feet of

1 an occupied dwelling structure, or a building two thousand five
2 hundred square feet or larger used to house or shelter dairy cattle
3 or poultry husbandry. This limitation is applicable to those
4 wells, developed springs, dwellings or agricultural buildings that
5 existed on the date a notice to the surface owner of planned entry
6 for surveying or staking as provided in section ten of this article
7 or a notice of intent to drill a horizontal well as provided in
8 subsection (b), section sixteen of this article was provided,
9 whichever occurs first, and to any dwelling under construction
10 prior to that date. This limitation may be waived by written
11 consent of the surface owner transmitted to the department and
12 recorded in the real property records maintained by the clerk of
13 the county commission for the county in which such property is
14 located. Furthermore, the well operator may be granted a variance
15 by the secretary from these distance restrictions upon submission
16 of a plan which identifies the sufficient measures, facilities or
17 practices to be employed during well site construction, drilling
18 and operations. The variance, if granted, shall include terms and
19 conditions the department requires to ensure the safety and
20 protection of affected persons and property. The terms and
21 conditions may include insurance, bonding and indemnification, as
22 well as technical requirements.

23 (b) No well pad may be prepared or well drilled within one
24 hundred feet measured horizontally from any perennial stream,

1 natural or artificial lake, pond or reservoir, or a wetland, or
2 within three hundred feet of a naturally reproducing trout stream.
3 No wellpad may be located within one thousand feet of a surface or
4 ground water intake of a public water supply. The distance from
5 the public water supply as identified by the department shall be
6 measured as follows:

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

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

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

20 (c) Notwithstanding the foregoing provisions of this section,
21 nothing contained in this section prevents an operator from
22 conducting the activities permitted or authorized by a Clean Water
23 Act Section 404 permit or other approval from the United States
24 Army Corps of Engineers within any waters of the state or within

1 the restricted areas referenced in this section.

2 **§22-6A-13. Plugging of horizontal wells.**

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

7 **§22-6A-14. Reclamation requirements.**

8 (a) The operator of a horizontal well shall reclaim the land
9 surface within the area disturbed in siting, drilling, completing
10 or producing the well in accordance with the following
11 requirements:

12 (1) Except as provided elsewhere in this article, within six
13 months after a horizontal well is drilled and completed on a well
14 pad designed for a single horizontal well, the operator shall fill
15 all the pits and impoundments that are not required or allowed by
16 state or federal law or rule or agreement between the operator and
17 the surface owner that allows the impoundment to remain open for
18 the use and benefit of the surface owner (i.e. a farm pond as
19 described in section nine of this article) and remove all concrete
20 bases, drilling supplies and drilling equipment: *Provided, That*
21 impoundments or pits for which certificates have been approved
22 pursuant to section nine of this article shall be reclaimed at a
23 time and in a manner as provided in the applicable certificate and
24 section nine. Within that six-month period, the operator shall

1 grade or terrace and plant, seed or sod the area disturbed that is
2 not required in production of the horizontal well in accordance
3 with the erosion and sediment control plan. No pit may be used for
4 the ultimate disposal of salt water. Salt water and oil shall be
5 periodically drained or removed and properly disposed of from any
6 pit that is retained so the pit is kept reasonably free of salt
7 water and oil. Pits may not be left open permanently.

8 (2) For well pads designed to contain multiple horizontal
9 wells, partial reclamation shall begin upon completion of the
10 construction of the well pad. For purposes of this section, the
11 term partial reclamation means grading or terracing and planting,
12 or seeding the area disturbed that is not required in drilling,
13 completing or producing any of the horizontal wells on the well pad
14 in accordance with the erosion and sediment control plan. This
15 partial reclamation satisfies the reclamation requirements of this
16 section for a maximum of twenty-four months between the drilling of
17 horizontal wells on a well pad designed to contain multiple
18 horizontal wells: *Provided*, That the maximum aggregate period in
19 which partial reclamation satisfies the reclamation requirements of
20 this section is five years from completion of the construction of
21 the well pad. Within six months after the completion of the final
22 horizontal well on the pad or the expiration of the five-year
23 maximum aggregate partial reclamation period, whichever occurs
24 first, the operator shall complete final reclamation of the well

1 pad as set forth in this subsection.

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

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

14 (b) The secretary, upon written application by an operator
15 showing reasonable cause, may extend the period within which
16 reclamation must be completed, but not to exceed a further six-
17 month period. If the secretary refuses to approve a request for
18 extension, the refusal shall be by order, which may be appealed
19 pursuant to the provisions of subsection (v), section five of this
20 article.

21 **§22-6A-15. Performance bonds; corporate surety or other security.**

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

1 furnished as provided in this section.

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

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

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

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

19 (e) When an operator has furnished a separate bond from a
20 corporate bonding or surety company to drill, fracture or stimulate
21 a horizontal well and the well produces oil or gas or both, its
22 operator may deposit with the secretary cash from the sale of the
23 oil or gas or both until the total deposited is \$50,000. When the
24 sum of the cash deposited is \$50,000, the separate bond for the

1 well shall be released by the secretary. Upon receipt of that cash,
2 the secretary shall immediately deliver that amount to the State
3 Treasurer, who shall hold the cash in the name of the state in
4 trust for the purpose for which the bond was furnished and the
5 deposit was made. The operator is entitled to all interest and
6 income which may be earned on the cash deposited so long as the
7 operator is in full compliance with all laws and rules relating to
8 the drilling, redrilling, deepening, casing, plugging, abandonment
9 and reclamation of the well for which the cash was deposited and so
10 long as the operator has furnished all reports and information
11 required by the secretary. The secretary may establish procedures
12 under which an operator may substitute a new bond for an existing
13 bond or provide a new bond under certain circumstances specified in
14 a legislative rule promulgated in accordance with chapter twenty-
15 nine-a of this code.

16 (f) Any separate bond furnished for a particular well prior to
17 the effective date of this article continues to be valid for all
18 work on the well permitted prior to the effective date of this
19 article; but no permit may be issued on such a particular well
20 without a bond complying with the provisions of this section. Any
21 blanket bond furnished prior to the effective date of this article
22 shall be replaced with a new blanket bond conforming to the
23 requirements of this section, at which time the prior bond is
24 discharged by operation of law; and if the secretary determines

1 that any operator has not furnished a new blanket bond, the
2 secretary shall notify the operator by registered mail or by any
3 method of delivery that requires a receipt or signature
4 confirmation of the requirement for a new blanket bond, and failure
5 to submit a new blanket bond within sixty days after receipt of the
6 notice from the secretary works a forfeiture under subsection (i)
7 of this section of the blanket bond furnished prior to the
8 effective date of this article.

9 (g) Any such bond shall remain in force until released by the
10 secretary, and the secretary shall release the same upon
11 satisfaction that the conditions thereof have been fully performed.
12 Upon the release of that bond, any cash or collateral securities
13 deposited shall be returned by the secretary to the operator who
14 deposited it.

15 (h) (1) Whenever the right to operate a well is assigned or
16 otherwise transferred, the assignor or transferor shall notify the
17 department of the name and address of the assignee or transferee by
18 registered mail or by any method of delivery that requires a
19 receipt or signature confirmation not later than thirty days after
20 the date of the assignment or transfer. No assignment or transfer
21 by the owner relieves the assignor or transferor of the obligations
22 and liabilities unless and until the assignee or transferee files
23 with the department the well name and the permit number of the
24 subject well, the county and district in which the subject well is

1 located, the names and addresses of the assignor or transferor, and
2 assignee or transferee, a copy of the instrument of assignment or
3 transfer accompanied by the applicable bond, cash, collateral
4 security or other forms of security described in this section, and
5 the name and address of the assignee's or transferee's designated
6 agent if the assignee or transferee would be required to designate
7 an agent under this article if the assignee or transferee were an
8 applicant for a permit under this article. Every well operator
9 required to designate an agent under this section shall, within
10 five days after the termination of the designation, notify the
11 department of the termination and designate a new agent.

12 (2) Upon compliance with the requirements of this section by
13 the assignor or transferor and assignee or transferee, the
14 secretary shall release the assignor or transferor from all duties
15 and requirements of this article and shall give written notice of
16 release to the assignor or transferor of any bond and return to the
17 assignor or transferor any cash or collateral securities deposited
18 pursuant to this section.

19 (i) If any of the requirements of this article or rules
20 promulgated pursuant thereto or the orders of the secretary has not
21 been complied with within the time limit set by any notice of
22 violation issued pursuant to this article, the performance bond
23 shall then be forfeited.

24 (j) When any bond is forfeited pursuant to the provisions of

1 this article or rules promulgated pursuant thereto, the secretary
2 shall collect the forfeiture without delay.

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

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

7 (a) The provisions of article seven of this chapter do not
8 apply to horizontal wells governed by this article. In lieu
9 thereof, the provisions of article six-b of this chapter shall
10 provide for the compensation of surface owners for damage caused by
11 drilling horizontal wells.

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

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

6 (1) A copy of this code section;

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

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

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

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

19 In addition to any compensation owed by the operator to the
20 surface owner pursuant to the provisions of article six-b of this
21 chapter, the operator shall pay the surface owner a one-time
22 payment of \$2,500 to compensate for payment of real property taxes
23 for surface lands and surrounding lands that are encumbered or
24 disturbed by construction or operation of the horizontal well pad

1 regardless of how many wells are drilled on a single pad or how
2 many permits are issued for the pad.

3 **§22-6A-18. Civil action for contamination or deprivation of fresh**
4 **water source or supply; presumption; water rights**
5 **and replacement; waiver of replacement.**

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

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

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

20 (1) The pollution existed prior to the drilling or alteration
21 activity as determined by a predrilling or prealteration water well
22 test.

23 (2) The landowner or water purveyor refused to allow the
24 operator access to the property to conduct a predrilling or

1 prealteration water well test.

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

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

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

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

15 (e) Any operator shall replace the water supply of an owner of
16 interest in real property who obtains all or part of that owner's
17 supply of water for domestic, agricultural, industrial or other
18 legitimate use from an underground or surface source with a
19 comparable water supply where the secretary determines that the
20 water supply has been affected by contamination, diminution or
21 interruption proximately caused by the oil or gas operation, unless
22 waived in writing by that owner.

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

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

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

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

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

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

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

20 (i) Notwithstanding the denial of the operator of
21 responsibility for the damage to the real property owner's water
22 supply or the status of any appeal on determination of liability
23 for the damage to the real property owner's water supply, the
24 operator may not discontinue providing the required water service

1 until authorized to do so by the secretary or a court of competent
2 jurisdiction.

3 **§22-6A-19. Offenses; civil penalties.**

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

15 (b) Notwithstanding the provisions of subsection (a) of this
16 section, any person or persons, firm, partnership, partnership
17 association or corporation who willfully disposes of waste fluids,
18 drill cuttings or any other liquid substance generated in the
19 development of a horizontal well in violation of this article or
20 any rule or order promulgated under this article or in violation of
21 any other state or federal statutes, rules or regulations, and
22 which disposal was found to have had a significant adverse
23 environmental impact on surface or groundwater by the secretary, is
24 subject to a civil penalty not exceeding \$100,000. The penalty

1 shall be recovered by a civil action brought by the department, in
2 the name of the state, before the circuit court of the county in
3 which the subject well or facility is located. All the civil
4 penalties collected shall be credited to the General Fund of the
5 state.

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

11 **§22-6A-20. Division of Highways certification.**

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

20 **§22-6A-21. Establishment of public website information and**
21 **electronic notification registry regarding**
22 **horizontal well permit applications.**

23 (a) No later than ninety days after the effective date of this
24 article, the secretary shall establish resources on the

1 department's public website which will list searchable information
2 related to all horizontal well applications filed in this state,
3 including information sufficient to identify the county and
4 approximate location of each horizontal well for which a permit
5 application is filed, the referenced well application number, date
6 of application and name of the applicant.

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

16 **§22-6A-22. Air quality study and rulemaking.**

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

1 are necessary, the secretary shall promulgate legislative rules
2 establishing these new requirements.

3 **§22-6A-23. Impoundment and pit safety study; rulemaking.**

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

13 **§22-6A-24. Casing and cement standards.**

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

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

1 section.

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

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

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

7 (3) Prevention of pollution of or diminution of fresh
8 groundwater;

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

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

12 (d) Procedures for the filing, approval, and revision of
13 casing program:

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

17 (2) The rules regarding the casing program shall require the
18 following information:

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

23 (B) The diameter of the borehole;

24 (C) The casing type, whether the casing to be utilized is new

1 or used, and the depth, diameter, wall thickness, and burst
2 pressure rating for the casing;

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

5 (E) The estimated location of centralizers;

6 (F) The proposed borehole conditioning procedures; and

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

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

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

22 (e) The rules promulgated by the secretary shall provide
23 procedures for the following:

24 (1) Appropriate installation and use of conductor pipe, which

1 shall be installed in a manner that prevents the subsurface
2 infiltration of surface water or fluids;

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

6 (3) Installation of intermediate production casing;

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

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

13 (6) Any other procedure or requirements considered necessary
14 by the secretary.

15 (f) *Minimum casing standards.*

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

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

24 (3) Centralizers shall be used, with the proper spacing for

1 such well, during the casing installation to ensure that the casing
2 is centered in the hole.

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

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

7 (g) *Minimum cement standards.*

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

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

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

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

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

1 determines that the casing program submitted with the application
2 is at least as protective of the environment as the casing and
3 cementing standards required by this section.

4 **CHAPTER 22. ENVIRONMENTAL RESOURCES.**

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

7 **§22-6B-1. Legislative findings and purpose; applicability.**

8 (a) The Legislature finds the following:

9 (1) Exploration for and development of oil and gas reserves in
10 this state must coexist with the use, agricultural or otherwise, of
11 the surface of certain land.

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

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

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

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

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

15 **§22-6B-2. Definitions.**

16 (a) In this article:

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

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

1 the wellbore is initially vertical but is eventually curved to
2 become horizontal, or nearly horizontal, to parallel a particular
3 geologic formation;

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

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

11 (5) "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 agency thereof;

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

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

21 **§22-6B-3. Compensation of surface owners for drilling operations.**

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

24 (1) Lost income or expenses incurred as a result of being

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

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

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

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

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

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

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

1 the surface estate is prohibited.

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

9 **§22-6B-4. Common law right of action preserved; offsets.**

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

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

23 (c) An oil and gas developer is entitled to offset damages
24 agreed to be paid or awarded to a surface owner through the

1 assertion of common-law remedies against compensation sought by or
2 awarded to the surface owner under section three of this article
3 respecting the surface land actually occupied by the same drilling
4 operation.

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

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

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

23 Unless the parties provide otherwise by written agreement,
24 within sixty days after the oil and gas developer received the

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

8 **§22-6B-7. Rejection; legal action; arbitration; fees and costs.**

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

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

1 under this article, or in any proceeding resulting from the
2 assertion of common law remedies.

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

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

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

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

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

18 **§22-6B-8. Application of article.**

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

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

22 **COMMISSIONS AND COMPACTS.**

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

24 **§22C-8-2. Definitions.**

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

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

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

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

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

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

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

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

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

1 (9) "Division" means the state ~~Division~~ Department of
2 Environmental Protection provided for in chapter twenty-two of this
3 code;

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

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

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

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

24 (14) "Just and equitable share of production" means, as to

1 each person, an amount of gas in the same proportion to the total
2 gas production from a well as that person's acreage bears to the
3 total acreage in the drilling unit;

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

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

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

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

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

1 such as geologic structural conditions, impermeable strata, and
2 water in the formation, so that it is effectively separated from
3 any other pools which may be present in the same district or in the
4 same geologic structure;

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

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

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

21 (23) "Well" means any shaft or hole sunk, drilled, bored or
22 dug into the earth or into underground strata for the extraction,
23 injection or placement of any liquid or gas, or any shaft or hole
24 sunk or used in conjunction with ~~such~~ the extraction, injection or

1 placement. The term "well" does not include any shaft or hole
 2 sunk, drilled, bored or dug into the earth for the sole purpose of
 3 core drilling or pumping or extracting therefrom potable, fresh or
 4 usable water for household, domestic, industrial, agricultural or
 5 public use; and

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

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

9 **§22C-9-2. Definitions.**

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

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

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

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

22 (4) "Operator" means any owner of the right to develop,
 23 operate and produce oil and gas from a pool and to appropriate the
 24 oil and gas produced therefrom, either for ~~such~~ that person or for

1 ~~such that~~ person and others; in the event that there is no oil and
2 gas lease in existence with respect to the tract in question, the
3 owner of the oil and gas rights therein ~~shall be considered as~~ is
4 the "operator" to the extent of seven-eighths of the oil and gas in
5 that portion of the pool underlying the tract owned by such owner,
6 and as "royalty owner" as to one-eighth interest in such oil and
7 gas; and in the event the oil is owned separately from the gas, the
8 owner of the substance being produced or sought to be produced from
9 the pool ~~shall be considered as~~ is the "operator" as to ~~such that~~
10 pool;

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

14 (6) "Independent producer" means a producer of crude oil or
15 natural gas whose allowance for depletion is determined under
16 Section 613A of the federal Internal Revenue Code in effect on July
17 1, 1997;

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

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

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

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

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

24 (12) "Deep well" means any well, other than a shallow well or

1 coalbed methane well, drilled ~~and completed in to~~ a formation ~~at or~~
2 below the top of the uppermost member of the "Onondaga Group;"

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

5 (14) "Waste" means and includes:

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

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

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

23 (15) "Correlative rights" means the reasonable opportunity of
24 each person entitled thereto to recover and receive without waste

1 the oil and gas in and under his tract or tracts, or the equivalent
2 thereof; and

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

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

NOTE: The purpose of this bill is to establish a specialized regulatory process for large gas drilling operations conducting horizontal drilling activities that disturb three acres or more or use more than 210,000 gallons of water in 30 days; establishes additional permitting conditions to provide requirements particular to this activity; and provide procedures for fair compensation to surface owners.

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

§5B-2B-4a, §22-6-2a, §22-6A-1, §22-6A-2, §22-6A-3, §22-6A-3a, §22-6A-4, §22-6A-5, §22-6A-6, §22-6A-7, §22-6A-8, §22-6A-9, §22-6A-10, §22-6A-11, §22-6A-12, §22-6A-13, §22-6A-14, §22-6A-15, §22-6A-16, §22-6A-17, §22-6A-18, §22-6A-19, §22-6A-20, §22-6A-21, §22-6A-22, §22-6A-23, §22-6A-24, §22-6B-1, §22-6B-2, §22-6B-3, §22-6B-4, §22-6B-5, §22-6B-6, §22-6B-7 and §22-6B-8 are new; therefore, strike-throughs and underscoring have been omitted.