

1 COMMITTEE SUBSTITUTE

2 FOR

3 **Senate Bill No. 4001**

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

5 By Request of the Executive)

6 _____
7 [Originating in the Committee on the Judiciary;

8 reported December 12, 2011.]
9 _____

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

1 and gas wells; requiring West Virginia Workforce Investment
2 Council to complete certain reviews and provide report to
3 Legislature; expanding powers of Secretary of the Department
4 of Environmental Protection; authorizing secretary to
5 determine number of oil and gas inspectors and supervisors and
6 to make investigations or inspections to ensure compliance
7 with applicable law; providing for inspector qualifications,
8 duties and minimum salaries; creating Natural Gas Horizontal
9 Well 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 rulemaking 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
25 approval for large pits or impoundment construction; requiring
26 application for certificate; establishing application

1 requirements and payment of fees; providing for modification,
2 revocation or suspension of certificate and hearing procedure,
3 including an administrative appeals process; providing
4 exceptions for certain farm ponds; authorizing secretary to
5 propose legislative rules governing large pits and
6 impoundments; providing notice to certain property owners of
7 certain applications, intent to enter property or conduct
8 seismic activity; clarifying that notice to certain
9 lienholders is not notice to certain landowners; clarifying
10 method of delivering of notice; establishing procedure for
11 filing written comments; establishing well location
12 restrictions; requiring promulgation of legislative rules for
13 plugging and abandonment of horizontal wells; establishing
14 reclamation requirements; requiring performance bonds or other
15 security; providing notice of planned operation and contents
16 of notice to certain surface owners; providing notice to
17 certain surface owner and offer for compensation for certain
18 damages to certain surface owner; providing for reimbursement
19 of property taxes to surface owner; providing for civil
20 action, rebuttable presumption and relief for water
21 contamination or deprivation; establishing water rights and
22 replacement procedure; establishing civil penalties and
23 offenses; requiring gas operations to submit certification
24 from Division of Highways that operator has entered into road
25 maintenance agreement pursuant to Division of Highways Oil and
26 Gas Road Policy; creating public website and electronic

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

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

24 That §22C-7-1, §22C-7-2 and §22C-7-3 of the Code of West
25 Virginia, 1931, as amended, be repealed; that said code be amended
26 by adding thereto a new section, designated §5B-2B-4a; that §22-6-1

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

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

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

15 **§5B-2B-4a. Report to Legislature.**

16 (a) The Legislature finds that:

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

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

25 (3) The state needs to take all necessary steps to retain,

1 educate and train West Virginians to have the skills necessary to
2 compete for job opportunities resulting from horizontal drilling.

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

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

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

14 (3) The average salary per job type;

15 (4) A review of the number of employees domiciled in the State
16 of West Virginia;

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

18 (6) The council's recommendations for the establishment of an
19 overall workforce investment public education agenda with goals and
20 benchmarks toward maximizing job creation opportunities in the
21 State of West Virginia.

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

1 **CHAPTER 22. ENVIRONMENTAL RESOURCES.**

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

3 **§22-6-1. Definitions.**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

22 ~~(r)~~ (t) "Shallow well" means any gas well, other than a
23 coalbed methane well, drilled and completed in a formation above
24 the top of the uppermost member of the "Onondaga Group" no deeper
25 than one hundred feet below the top of the "Onondaga Group":
26 *Provided, That in drilling a shallow well the operator may*

1 ~~penetrate into the "Onondaga Group" to a reasonable depth, not in~~
2 ~~excess of twenty feet, in order to allow for logging and completion~~
3 ~~operations, but~~ in no event may the "Onondaga Group" formation or
4 any formation below the "Onondaga Group" be ~~otherwise~~ produced,
5 perforated or stimulated in any manner;

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

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

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

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

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

24 ~~(v)~~ (y) "Well work" means the drilling, redrilling, deepening,
25 stimulating, pressuring by injection of any fluid, converting from
26 one type of well to another, combining or physically changing to

1 allow the migration of fluid from one formation to another or
2 plugging or replugging of any well; and

3 ~~(w)~~ (z) "Well operator" or "operator" means any person or
4 persons, firm, partnership, partnership association or corporation
5 that proposes to or does locate, drill, operate or abandon any well
6 as herein defined.

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

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

13 **§22-6-2. Secretary -- Powers and duties generally; department**
14 **records open to public; inspectors.**

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

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

23 (c) The secretary shall have full charge of the oil and gas
24 matters set out in this article and in articles six-a, eight, ~~and~~
25 nine, ten and twenty-one of this chapter. In addition to all other
26 powers and duties conferred upon him or her, the secretary shall

1 have the power and duty to:

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

5 (2) ~~Employ a supervising oil and gas inspector and oil and gas~~
6 ~~inspectors~~ Determine the number of supervising oil and gas
7 inspectors and oil and gas inspectors needed to carry out the
8 purposes of this article and articles six-a, eight, nine, ten, and
9 twenty-one of this chapter and appoint them as such. All
10 appointees must be qualified civil service employees, but no person
11 is eligible for appointment until he or she has served in a
12 probationary status for a period of six months to the satisfaction
13 of the secretary;

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

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

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

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

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

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

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

20 (10) Collect a permit fee of \$400 for each permit application
21 filed other than an application for a deep well, horizontal wells
22 regulated pursuant to article six-a of this chapter, or a coalbed
23 methane well; and collect a permit fee of \$650 for each permit
24 application filed for a deep well: *Provided*, That no permit
25 application fee ~~shall be~~ is required when an application is
26 submitted solely for the plugging or replugging of a well, or to

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

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

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

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

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

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

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

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

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

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

23 **§22-6-2a. Oil and gas inspectors qualifications and salary.**

24 (a) No person is eligible for appointment as an oil and gas
25 inspector or supervising inspector unless, at the time of
26 probationary appointment, the person: (1) is a citizen of West

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

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

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

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

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

8 **§22-6A-1. Short title.**

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

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

12 (a) The Legislature finds that:

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

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

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

25 (4) Existing laws and regulations developed for conventional

1 oil and gas operations do not adequately address these new
2 technologies and practices;

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

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

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

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

23 (b) The Legislature declares that the establishment of a new
24 regulatory scheme to address new and advanced natural gas
25 development technologies and drilling practices is in the public
26 interest and should be done in a manner that protects the

1 environment and our economy for current and future generations.

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

8 **§22-6A-3. Applicability; exceptions.**

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

19 **§22-6A-3a. Karst terrain; rulemaking.**

20 (a) Because drilling horizontal wells in naturally occurring
21 karst terrain may require precautions not necessary in other parts
22 of the state, the secretary may require additional safeguards to
23 protect this geological formation. When drilling horizontal wells
24 in naturally occurring karst terrain, such additional safeguards
25 may include changing proposed well locations to avoid damage to

1 water resources, special casing programs, and additional or special
2 review of drilling procedures.

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

12 (1) Require operators to perform certain predrilling testing
13 to identify the location of caves and other voids, faults and
14 relevant features in the strata and the location of surface
15 features prevalent in naturally occurring karst terrain such as
16 sink holes; and

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

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

23 **§22-6A-4. Definitions.**

24 (a) All definitions set forth in article six of this chapter
25 apply when those defined terms are used in this article, unless the
26 context in which the term is used clearly requires a different

1 meaning.

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

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

11 (2) "Department" means the Department of Environmental
12 Protection;

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

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

19 (5) "Horizontal drilling" means a method of drilling a well
20 for the production of natural gas that is intended to maximize the
21 length of wellbore that is exposed to the formation and in which
22 the wellbore is initially vertical but is eventually curved to
23 become horizontal, or nearly horizontal, to parallel a particular
24 geologic formation;

25 (6) "Horizontal well" means any well site, other than a
26 coalbed methane well, drilled using a horizontal drilling method,

1 and which disturbs three acres or more of surface, excluding
2 pipelines, gathering lines and roads, or utilizes more than two
3 hundred ten thousand gallons of water in any thirty day period;

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

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

11 (9) "Perennial stream" means a stream or portion of a stream
12 that flows year-round, is considered a permanent stream and for
13 which base flow is maintained by ground-water discharge to the
14 streambed due to the ground-water elevation adjacent to the stream
15 being higher than the elevation of the streambed;

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

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

26 (12) "Water purveyor" means any person engaged in the business

1 of selling water to another and who is regulated by the Bureau for
2 Public Health pursuant to title sixty-four, series three of the W.
3 Va. Code of State Rules.

4 **§22-6A-5. Application of article six of this chapter to horizontal**
5 **wells subject to this article.**

6 To the extent that horizontal wells governed by this article
7 are similar to conventional oil and gas wells regulated under
8 article six of this chapter, the following sections of article six
9 of this chapter are hereby incorporated by reference in this
10 article:

11 (a) The provisions of section three, article six of this
12 chapter relating to the findings and orders of inspectors
13 concerning violations, the determination of reasonable time for
14 abatement, extensions of time for abatement, special inspections
15 and notice of findings and orders.

16 (b) The provisions of section four, article six of this
17 chapter providing for the review of findings and orders by the
18 secretary, special inspections and applications for annulment or
19 revision of orders by the secretary.

20 (c) The provisions of section five, article six of this
21 chapter relating to the requirements for findings, orders and
22 notices, notice to the operator of findings and orders and judicial
23 review of final orders of the secretary.

24 (d) The provisions of section seven, article six of this
25 chapter relating to the issuance of water pollution control
26 permits, the powers and duties of the secretary related thereto and

1 penalties for violations of the same.

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

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

10 (1) Under subsection (a), section twelve, article six of this
11 chapter, the plat also shall identify all surface tract boundaries
12 within the scope of the plat proposed to be crossed by the
13 horizontal lateral of the horizontal well and the proposed path of
14 such horizontal lateral.

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

18 (g) The provisions of section thirteen, article six of this
19 chapter providing for notice of the operator's intention to
20 fracture wells, with the exception that under the third paragraph
21 of section thirteen, article six of this chapter, the applicable
22 periods shall be thirty days in lieu of fifteen days.

23 (h) The provisions of section fifteen, article six of this
24 chapter pertaining to objections to proposed deep well drilling
25 sites above seam or seams of coal, with the exception that the
26 applicable time for filing objections is within thirty days of

1 receipt by the secretary of the required plat and/or notice in lieu
2 of fifteen days.

3 (i) The provisions of section seventeen, article six of this
4 chapter pertaining to drilling of shallow gas wells, notice to be
5 provided to the chair of the review board, orders issued by the
6 review board and permits issued for such drilling, with the
7 exception that the applicable time for filing objections is thirty
8 days from the date of receipt by the secretary of the required plat
9 and notice in lieu of fifteen days.

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

14 (k) The provisions of section nineteen, article six of this
15 chapter providing for protective devices during the life of the
16 well and for dry or abandoned wells.

17 (l) The provisions of section twenty, article six of this
18 chapter providing for protective devices when a well is drilled
19 through the horizon of a coalbed from which the coal has been
20 removed.

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

23 (n) The provisions of section twenty-two, article six of this
24 chapter relating to the filing of a well completion log and the
25 contents thereof, confidentiality and permitted use and the
26 secretary's authority to promulgate rules.

1 (o) The provisions of section twenty-seven, article six of
2 this chapter regarding a cause of action for damages caused by an
3 explosion.

4 (p) The provisions of section twenty-eight, article six of
5 this chapter relating to supervision by the secretary over drilling
6 and reclamation operations, the filing of complaints, hearings on
7 the same and appeals.

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

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

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

22 (t) The provisions of section thirty-three, article six of
23 this chapter relating to circuit court actions to restrain waste.

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

1 notice.

2 (v) The provisions of section thirty-nine, article six of this
3 chapter relating to petitions for injunctive relief.

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

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

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

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

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

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

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

25 (4) To propose any necessary legislative rules, in accordance
26 with the provisions of chapter twenty-nine-a of this code to

1 implement the provisions of this article;

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

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

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

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

1 **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
25 drilled or deepened, or the actual depth if the well has been
26 drilled; the proposed angle and direction of the well; the actual

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

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

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

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

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

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

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

25 (12) The erosion and sediment control plan required under
26 subsection (c) of this section for applications for permits to

1 drill;

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

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

23 (15) Any other relevant information which the secretary may
24 reasonably require.

25 (c)(1) An erosion and sediment control plan shall accompany
26 each application for a well work permit under this article. The

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

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

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

22 (e) In addition to the other requirements of this section, if
23 the drilling, fracturing or stimulating of the horizontal well
24 requires the use of water obtained by withdrawals from waters of
25 this state in amounts that exceed two hundred ten thousand gallons
26 during any thirty day period, the application for a well work

1 permit shall include a water management plan, which may be
2 submitted on an individual well basis or on a watershed basis, and
3 which shall include the following information:

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

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

9 (3) The anticipated months when water withdrawals will be
10 made;

11 (4) The planned management and disposition of wastewater after
12 completion from fracturing, refracturing, stimulation and
13 production activities;

14 (5) A listing of the anticipated additives that may be used in
15 water utilized for fracturing or stimulating the well. Upon well
16 completion, a listing of the additives that were actually used in
17 the fracturing or stimulating of the well shall be submitted as
18 part of the completion log or report required by subsection (n),
19 section five of this article;

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

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

26 (B) For surface waters, a demonstration, using methods

1 acceptable to the secretary, that sufficient in-stream flow will be
2 available immediately downstream of the point of withdrawal. A
3 sufficient in-stream flow is maintained when a pass-by flow that is
4 protective of the identified use of the stream is preserved
5 immediately downstream of the point of withdrawal; and

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

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

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

16 (g) The application for a permit under this section shall be
17 accompanied by the applicable bond as required by section fifteen
18 of this article, the applicable plat required by subsection (f),
19 section five of this article and a permit fee of \$10,000 for the
20 initial horizontal well drilled at a location and a permit fee of
21 \$5,000 for each additional horizontal well drilled on a single well
22 pad at the same location.

23 (h) The well operator named in the application shall designate
24 the name and address of an agent for the operator who is the
25 attorney-in-fact for the operator and who is a resident of the
26 State of West Virginia upon whom notices, orders or other

1 communications issued pursuant to this article or article eleven of
2 this chapter may be served, and upon whom process may be served.
3 Every well operator required to designate an agent under this
4 section shall, within five days after the termination of the
5 designation, notify the secretary of the termination and designate
6 a new agent.

7 (i) The well owner or operator shall install the permit number
8 as issued by the secretary and a contact telephone number for the
9 operator in a legible and permanent manner to the well upon
10 completion of any permitted work. The dimensions, specifications,
11 and manner of installation shall be in accordance with the rules of
12 the secretary.

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

19 (k) The secretary shall deny the issuance of a permit if the
20 secretary determines that the applicant has committed a substantial
21 violation of a previously issued permit for a horizontal well,
22 including the applicable erosion and sediment control plan
23 associated with the previously issued permit, or a substantial
24 violation of one or more of the rules promulgated under this
25 article, and in each instance has failed to abate or seek review of
26 the violation within the time prescribed by the secretary pursuant

1 to the provisions of subsections (a) and (b), section five of this
2 article and the rules promulgated hereunder, which time may not be
3 unreasonable.

4 (1) In the event the secretary finds that a substantial
5 violation has occurred and that the operator has failed to abate or
6 seek review of the violation in the time prescribed, the secretary
7 may suspend the permit on which said violation exists, after which
8 suspension the operator shall forthwith cease all well work being
9 conducted under the permit. However, the secretary may reinstate
10 the permit without further notice, at which time the well work may
11 be continued. The secretary shall make written findings of any
12 such suspension and may enforce the same in the circuit courts of
13 this state. The operator may appeal a suspension pursuant to the
14 provisions of subsection (w), section five of this article. The
15 secretary shall make a written finding of any such determination.

16 **§22-6A-8. Review of application; issuance of permit; performance**
17 **standards; copy of permits to county assessor.**

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

20 (b) No permit may be issued less than thirty days after the
21 filing date of the application for any well work except plugging or
22 replugging; and no permit for plugging or replugging may be issued
23 less than five days after the filing date of the application except
24 a permit for plugging or replugging a dry hole: *Provided*, That if
25 the applicant certifies that all persons entitled to notice of the

1 application under the provisions of subsection (b), section ten of
2 this article have been served in person or by certified mail,
3 return receipt requested, with a copy of the well work application,
4 including the erosion and sediment control plan, if required, and
5 the well plat, and further files written statements of no objection
6 by all such persons, the secretary may issue the well work permit
7 at any time.

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

1 failure will not be used to preclude issuance of the permit.

2 (d) The secretary may cause such inspections to be made of the
3 proposed well work location as necessary to assure adequate review
4 of the application. The permit may not be issued, or be
5 conditioned including conditions with respect to the location of
6 the well and access roads prior to issuance if the director
7 determines that:

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

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

12 (3) Damage would occur to publicly owned lands or resources;
13 or

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

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

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

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

1 been received and approved.

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

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

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

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

26 (3) Grade, terrace and plant, seed or sod the area disturbed

1 that is not required in production of the horizontal well where
2 necessary to bind the soil and prevent substantial erosion and
3 sedimentation;

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

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

1 to identify appropriate methods for testing water flow and quality.

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

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

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

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

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

1 be recorded and retained by the well operator:

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

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

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

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

9 (I) The quantity of water transported;

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

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

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

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

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

26 (i) Upon the issuance of any permit pursuant to the provisions

1 of this article, the secretary shall transmit a copy of the permit
2 to the office of the assessor for the county in which the well is
3 located.

4 **§22-6A-9. Certificate of approval required for large pits or**
5 **impoundment construction; certificate of approval**
6 **and annual registration fees; application required**
7 **to obtain certificate; term of certificate;**
8 **revocation or suspension of certificates; appeals;**
9 **farm ponds.**

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

18 (b) It is unlawful for any person to place, construct,
19 enlarge, alter, repair, remove or abandon any freshwater
20 impoundment or pit with capacity of two hundred ten thousand
21 gallons or more used in association with any horizontal well
22 operation until he or she has first secured from the secretary a
23 certificate of approval for the same: *Provided*, That routine
24 repairs that do not affect the safety of the impoundment are not
25 subject to the application and approval requirements. A separate

1 application for a certificate of approval shall be submitted by a
2 person for each impoundment he or she desires to place, construct,
3 enlarge, alter, repair, remove or abandon, but one application may
4 be valid for more than one impoundment that supports one or more
5 well pads.

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

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

20 (e) The initial term of a certificate of approval issued
21 pursuant to this section is one year. Existing certificates of
22 approval shall be extended for one year upon receipt of the annual
23 registration fee, an inspection report, a monitoring and emergency
24 action plan, and a maintenance plan: *Provided*, That where an
25 approved, up-to-date inspection report, monitoring and emergency
26 action plan, and maintenance plan are on file with the department,

1 and where no outstanding violation of the requirements of the
2 certificate of approval or any plan submitted pursuant to this
3 article related to the impoundment exist, then the certificate of
4 approval shall be extended without resubmission of the foregoing
5 documents upon receipt of the annual registration fee.

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

14 (g) Plans and specifications for the placement, construction,
15 erosion and sediment control, enlargement, alteration, repair or
16 removal and reclamation of impoundments shall be the charge of a
17 registered professional engineer licensed to practice in West
18 Virginia. Any plans or specifications submitted to the department
19 shall bear the seal of a registered professional engineer.

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

23 (i) The secretary may revoke or suspend any certificate of
24 approval whenever the secretary determines that the impoundment for
25 which the certificate was issued constitutes an imminent danger to
26 human life or property. If necessary to safeguard human life or

1 property, the secretary may also amend the terms and conditions of
2 any certificate by issuing a new certificate containing the revised
3 terms and conditions.

4 (1) Before any certificate of approval is amended, suspended
5 or revoked by the secretary without the consent of the operator
6 holding the certificate, the secretary shall hold a hearing in
7 accordance with the provisions of article five, chapter twenty-
8 nine-a of this code.

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

13 (j) Upon expiration of the certificate of approval, the
14 operator shall within six months, or upon its revocation by the
15 secretary, the operator shall within sixty days, fill all
16 impoundments that are not required or allowed by state or federal
17 law or rule or agreement between the operator and the surface owner
18 allowing the impoundment to remain open for the use and benefit of
19 the surface owner and reclaim the site in accordance with the
20 approved erosion and sediment control plan.

21 (k) This section does not apply to:

22 (1) Farm ponds constructed by the operator with the written
23 consent of the surface owner, which will be used after completion
24 of the drilling activity primarily for agricultural purposes,
25 including without limitation livestock watering, irrigation,
26 retention of animal wastes and fish culture. Any impoundment that

1 is intended to be left permanent as a farm pond under this
2 subdivision shall meet the requirements set forth by the United
3 States Department of Agriculture's Natural Resources Conservation
4 Service "Conservation Practice Standard - Ponds" (Code 378).

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

7 (1) The secretary is authorized to propose rules for
8 legislative approval in accordance with the provisions of article
9 three, chapter twenty-nine-a of this code, necessary to effectuate
10 the provisions of this section.

11 **§22-6A-10. Notice to property owners.**

12 (a) Prior to filing a permit application, the operator shall
13 provide notice of planned entry, pursuant to the method of delivery
14 set forth in subsection (b) of this section, to the surface owner
15 and mineral owner of the tract of land underlying the designated
16 well pad at least seven days but no more than forty-five days prior
17 to entering the surface tract to conduct any plat surveys required
18 pursuant to this article.

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

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

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

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

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

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

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

25 (c) (1) If more than three tenants in common or other co-owners
26 of interests described in subsection (b) of this section hold

1 interests in the lands, the applicant may serve the documents
2 required upon the person described in the records of the sheriff
3 required to be maintained pursuant to section eight, article one,
4 chapter eleven-a of this code.

5 (2) Notwithstanding any provision of this article to the
6 contrary, notice to a lien holder is not notice to a landowner,
7 unless the lien holder is the landowner.

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

15 (e) Semiannually, the department shall publish a Class II
16 legal advertisement, as described in section two, article three,
17 chapter fifty-nine of this code, to appear in newspapers serving,
18 in the aggregate, every county of the state notifying the public of
19 the website required to be maintained by the department pursuant to
20 section twenty-one of this article six-a, and that members of the
21 public may register to receive electronic notifications of
22 horizontal well permit applications, filings and notices by county
23 of interest.

24 (f) Materials served upon persons described in subsection (b)
25 of this section shall contain a statement of the time limits for
26 filing written comments, who may file written comments, the name

1 and address of the secretary for the purpose of filing the comments
2 and obtaining additional information, and a statement that the
3 persons may request, at the time of submitting written comments,
4 notice of the permit decision and a list of persons qualified to
5 test water.

6 (g) Any person entitled to submit written comments to the
7 secretary pursuant to subsection (a), section eleven of this
8 article, shall also be entitled to receive from the secretary a
9 copy of the permit as issued or a copy of the order modifying or
10 denying the permit if the person requests receipt of them as a part
11 of the written comments submitted concerning the permit
12 application.

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

19 (i) Persons entitled to notice pursuant to subsection (b) of
20 this section may contact the department to ascertain the names and
21 locations of water testing laboratories in the subject area capable
22 and qualified to test water supplies in accordance with standard
23 accepted methods. In compiling that list of names the department
24 shall consult with the state Bureau for Public Health and local
25 health departments.

26 (j) (1) Prior to conducting any seismic activity for seismic

1 exploration for natural gas to be extracted using horizontal
2 drilling methods, the company or person performing the activity
3 shall provide notice to Miss Utility of West Virginia Inc. and to
4 all surface owners, coal owners and lessees, and natural gas
5 storage field operators on whose property blasting, percussion or
6 other seismic-related activities will occur.

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

9 (3) The notice shall also include a reclamation plan in
10 accordance with the erosion and sediment control manual that
11 provides for the reclamation of any areas disturbed as a result of
12 the seismic activity, including filling of shotholes used for
13 blasting.

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

17 §22-6A-10a. Method of Delivery of Notice.

18 Notwithstanding any provision of this article to the contrary,
19 all notices required by this article shall be delivered by the
20 method set forth in subsection (b), section ten of this article.

21 **§22-6A-11. Procedure for filing written comments; procedures for**
22 **considering objections and comments; issues to be**
23 **considered; and newspaper notice.**

24 (a) All persons described in subsection (b), section ten of
25 this article may file written comments with the secretary as to the

1 location or construction of the applicant's proposed well work
2 within thirty days after the application is filed with the
3 secretary.

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

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

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

1 of this article.

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

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

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

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

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

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

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

23 (3) For a groundwater source, the distance shall be measured
24 from the wellhead or spring. The department may, in its
25 discretion, waive these distance restrictions upon submission of a
26 plan identifying sufficient measures, facilities or practices to be

1 employed during well site construction, drilling and operations to
2 protect the waters of the state. A waiver, if granted, shall
3 impose any permit conditions as the secretary considers necessary.

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

10 (d) The well location restrictions set forth in this section
11 shall not apply to any well on a multiple well pad if at least one
12 of the wells was permitted prior to the effective date of this
13 article.

14 **§22-6A-13. Plugging of horizontal wells.**

15 The secretary shall propose legislative rules for promulgation
16 to govern the procedures for plugging horizontal wells, including
17 rules relating to the methods of plugging the wells and the notices
18 required to be provided in connection with plugging the wells.

19 **§22-6A-14. Reclamation requirements.**

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

24 (1) Except as provided elsewhere in this article, within six
25 months after a horizontal well is drilled and completed on a well
26 pad designed for a single horizontal well, the operator shall fill

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

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

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

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

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

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

1 pursuant to the provisions of subsection (v), section five of this
2 article.

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

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

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

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

21 (d) The form of the bond required by this article shall be
22 approved by the secretary and may include, at the option of the
23 operator, surety bonding, collateral bonding, including cash and
24 securities, letters of credit, establishment of an escrow account,
25 self-bonding or a combination of these methods. If collateral
26 bonding is used, the operator may elect to deposit cash, or

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

23 (e) When an operator has furnished a separate bond from a
24 corporate bonding or surety company to drill, fracture or stimulate
25 a horizontal well and the well produces oil or gas or both, its
26 operator may deposit with the secretary cash from the sale of the

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

18 (f) Any separate bond furnished for a particular well prior to
19 the effective date of this article continues to be valid for all
20 work on the well permitted prior to the effective date of this
21 article; but no permit may be issued on such a particular well
22 without a bond complying with the provisions of this section. Any
23 blanket bond furnished prior to the effective date of this article
24 shall be replaced with a new blanket bond conforming to the
25 requirements of this section, at which time the prior bond is
26 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
25 located, the names and addresses of the assignor or transferor, and
26 assignee or transferee, a copy of the instrument of assignment or

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

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

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

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

25 (k) All forfeitures shall be deposited in the Treasury of the
26 State of West Virginia in the Oil and Gas Reclamation Fund as

1 defined in section twenty-nine, article six of this chapter.

2 **§22-6A-16. Compensation of surface owners for drilling operations.**

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

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

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

26 (1) A copy of this code section;

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

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

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

11 **§22-6A-17. Reimbursement of property taxes of encumbered**
12 **properties.**

13 In addition to any compensation owed by the operator to the
14 surface owner pursuant to the provisions of article six-b of this
15 chapter, the operator shall pay the surface owner a one-time
16 payment of \$2,500 to compensate for payment of real property taxes
17 for surface lands and surrounding lands that are encumbered or
18 disturbed by construction or operation of the horizontal well pad
19 regardless of how many wells are drilled on a single pad or how
20 many permits are issued for the pad.

21 **§22-6A-18. Civil action for contamination or deprivation of fresh**
22 **water source or supply; presumption; water rights**
23 **and replacement; waiver of replacement.**

24 (a) Nothing in this article affects in any way the rights of
25 any person to enforce or protect, under applicable law, the

1 person's interest in water resources affected by an oil or gas
2 operation.

3 (b) Unless rebutted by one of the defenses established in
4 subsection (c) of this section, in any action for contamination or
5 deprivation of a fresh water source or supply within one thousand
6 five hundred feet of the center of the well pad for horizontal
7 well, there is a rebuttable presumption that the drilling and the
8 oil or gas well or either was the proximate cause of the
9 contamination or deprivation of the fresh water source or supply.

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

13 (1) The pollution existed prior to the drilling or alteration
14 activity as determined by a predrilling or prealteration water well
15 test.

16 (2) The landowner or water purveyor refused to allow the
17 operator access to the property to conduct a predrilling or
18 prealteration water well test.

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

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

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

25 (d) Any operator electing to preserve its defenses under
26 subdivision (1), subsection (c) of this section shall retain the

1 services of an independent certified laboratory to conduct the
2 predrilling or prealteration water well test. A copy of the
3 results of the test shall be submitted to the department and the
4 surface owner or water purveyor in a manner prescribed by the
5 secretary.

6 (e) Any operator shall replace the water supply of an owner of
7 interest in real property who obtains all or part of that owner's
8 supply of water for domestic, agricultural, industrial or other
9 legitimate use from an underground or surface source with a
10 comparable water supply where the secretary determines that the
11 water supply has been affected by contamination, diminution or
12 interruption proximately caused by the oil or gas operation, unless
13 waived in writing by that owner.

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

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

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

19 (3) Within thirty days begin activities to establish a
20 permanent water supply or submit a proposal to the secretary
21 outlining the measures and timetables to be used in establishing a
22 permanent supply. The total time in providing a permanent water
23 supply may not exceed two years. If the operator demonstrates that
24 providing a permanent replacement water supply cannot be completed
25 within two years, the secretary may extend the time frame on case-
26 by-case basis; and

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

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

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

9 (i) Notwithstanding the denial of the operator of
10 responsibility for the damage to the real property owner's water
11 supply or the status of any appeal on determination of liability
12 for the damage to the real property owner's water supply, the
13 operator may not discontinue providing the required water service
14 until authorized to do so by the secretary or a court of competent
15 jurisdiction.

16 **§22-6A-19. Offenses; civil penalties.**

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

1 of the state.

2 (b) Notwithstanding the provisions of subsection (a) of this
3 section, any person or persons, firm, partnership, partnership
4 association or corporation who willfully disposes of waste fluids,
5 drill cuttings or any other liquid substance generated in the
6 development of a horizontal well in violation of this article or
7 any rule or order promulgated under this article or in violation of
8 any other state or federal statutes, rules or regulations, and
9 which disposal was found to have had a significant adverse
10 environmental impact on surface or groundwater by the secretary, is
11 subject to a civil penalty not exceeding \$100,000. The penalty
12 shall be recovered by a civil action brought by the department, in
13 the name of the state, before the circuit court of the county in
14 which the subject well or facility is located. All the civil
15 penalties collected shall be credited to the General Fund of the
16 state.

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

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

23 As part of the permit application for horizontal wells, the
24 operator shall submit a letter of certification from the Division
25 of Highways that the operator has, pursuant to the Division of
26 Highways Oil and Gas Road Policy, entered into an agreement with

1 the Division of Highways pertaining to the state local service
2 roads associated with the proposed well work set forth in the
3 permit application or has certified that no such agreement is
4 required by the Oil and Gas Road Policy and the reasons therefor.

5 **§22-6A-21. Establishment of public website information and**
6 **electronic notification registry regarding**
7 **horizontal well permit applications.**

8 (a) No later than ninety days after the effective date of this
9 article, the secretary shall establish resources on the
10 department's public website which will list searchable information
11 related to all horizontal well applications filed in this state,
12 including information sufficient to identify the county and
13 approximate location of each horizontal well for which a permit
14 application is filed, the referenced well application number, date
15 of application and name of the applicant.

16 (b) The secretary shall also establish a registration and e-
17 notification process by which individuals, corporations and
18 agencies may register to receive electronic notice of horizontal
19 well applications filings and notices, by county of interest. Once
20 established, individuals, agencies and corporations interested who
21 are properly registered to receive e-notices of filings and actions
22 on horizontal well permits shall receive electronic notifications
23 of applications and notices of permits issued for horizontal
24 drilling in their designated county or counties of interest.

25 **§22-6A-22. Air quality study and rulemaking.**

1 The secretary shall, by July 1, 2013, report to the
2 Legislature on the need, if any, for further regulation of air
3 pollution occurring from well sites, including the possible health
4 impacts, the need for air quality inspections during drilling, the
5 need for inspections of compressors, pits and impoundments, and any
6 other potential air quality impacts that could be generated from
7 this type of drilling activity that could harm human health or the
8 environment. If he or she finds that specialized permit conditions
9 are necessary, the secretary shall promulgate legislative rules
10 establishing these new requirements.

11 **§22-6A-23. Impoundment and pit safety study; rulemaking.**

12 The secretary shall, by January 1, 2013, report to the
13 Legislature on the safety of pits and impoundments utilized
14 pursuant to section nine of this article including an evaluation of
15 whether testing and special regulatory provision is needed for
16 radioactivity or other toxins held in the pits and impoundments.
17 Upon a finding that greater monitoring, safety and design
18 requirements or other specialized permit conditions are necessary,
19 the secretary shall propose for promulgation legislative rules
20 establishing these new requirements.

21 **§22-6A-24. Casing and cement standards.**

22 (a) The operator may only drill through fresh groundwater
23 zones in a manner that will minimize any disturbance of the zones.
24 Further, the operator shall construct the well and conduct casing
25 and cementing activities for all horizontal wells in a manner that
26 will provide for control of the well at all times, prevent the

1 migration of gas and other fluids into the fresh groundwater and
2 coal seams, and prevent pollution of or diminution of fresh
3 groundwater.

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

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

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

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

13 (3) Prevention of pollution of or diminution of fresh
14 groundwater;

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

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

18 (d) Procedures for the filing, approval, and revision of
19 casing program:

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

23 (2) The rules regarding the casing program shall require the
24 following information:

25 (A) The anticipated depth and thickness of any producing
26 formation, expected pressures, anticipated fresh groundwater zones,

1 and the method or information by which the depth of the deepest
2 fresh groundwater was determined;

3 (B) The diameter of the borehole;

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

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

9 (E) The estimated location of centralizers;

10 (F) The proposed borehole conditioning procedures; and

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

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

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

26 (e) The rules promulgated by the secretary shall provide

1 procedures for the following:

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

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

8 (3) Installation of intermediate production casing;

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

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

15 (6) Any other procedure or requirements considered necessary
16 by the secretary.

17 (f) *Minimum casing standards.*

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

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

26 (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
25 determines that the casing program submitted with the application
26 is at least as protective of the environment as the casing and

1 cementing standards required by this section.

2 **CHAPTER 22. ENVIRONMENTAL RESOURCES.**

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

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

6 (a) The Legislature finds the following:

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

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

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

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

1 and regardless of who executed the document which gave the oil and
2 gas developer the right to conduct drilling operations on the land.
3 Section four of this article shall be interpreted to benefit all
4 persons.

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

12 **§22-6B-2. Definitions.**

13 (a) In this article:

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

19 (2) "Horizontal drilling" means a method of drilling a well
20 for the production of natural gas that is intended to maximize the
21 length of wellbore that is exposed to the formation and in which
22 the wellbore is initially vertical but is eventually curved to
23 become horizontal, or nearly horizontal, to parallel a particular
24 geologic formation;

25 (3) "Horizontal well" means any well site, other than a
26 coalbed methane well, drilled using a horizontal drilling method,

1 and which disturbs three acres or more of surface, excluding
2 pipelines, gathering lines and roads, or uses more than two hundred
3 ten thousand gallons of water in any thirty-day period;

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

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

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

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

16 **§22-6B-3. Compensation of surface owners for drilling operations.**

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

19 (1) Lost income or expenses incurred as a result of being
20 unable to dedicate land actually occupied by the driller's
21 operation, or to which access is prevented by the drilling
22 operation, to the uses to which it was dedicated prior to
23 commencement of the activity for which a permit was obtained,
24 measured from the date the operator enters upon the land and
25 commences drilling operations until the date reclamation is
26 completed;

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

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

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

7 (5) The diminution in value, if any, of the surface lands and
8 other property after completion of the surface disturbance done
9 pursuant to the activity for which the permit was issued determined
10 according to the market value of the actual use made thereof by the
11 surface owner immediately prior to the commencement of the
12 permitted activity.

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

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

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

26 **§22-6B-4. Common law right of action preserved; offsets.**

1 (a) Nothing in section three or elsewhere in this article
2 diminishes in any way the common law remedies, including damages,
3 of a surface owner or any other person against the oil and gas
4 developer for the unreasonable, negligent or otherwise wrongful
5 exercise of the contractual right, whether express or implied, to
6 use the surface of the land for the benefit of the developer's
7 mineral interest.

8 (b) An oil and gas developer is entitled to offset
9 compensation agreed to be paid or awarded to a surface owner under
10 section three of this article against any damages sought by or
11 awarded to the surface owner through the assertion of common law
12 remedies respecting the surface land actually occupied by the same
13 drilling operation.

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

20 **§22-6B-5. Notification of claim.**

21 Any surface owner, to receive compensation under section three
22 of this article, shall notify the oil and gas developer of the
23 damages sustained by the person within two years after the date
24 that the oil and gas developer files notice that final reclamation
25 is commencing under section fourteen, article six-a of this
26 chapter. The notice of reclamation shall be given to surface

1 owners by registered or certified mail, return receipt requested,
2 and is complete upon mailing. If more than three tenants in common
3 or other coowners hold interests in the lands, the oil and gas
4 developer may give the notice to the person described in the
5 records of the sheriff required to be maintained pursuant to
6 section eight, article one, chapter eleven-a of this code or
7 publish in the county in which the well is located or to be located
8 a Class II legal advertisement as described in section two, article
9 three, chapter fifty-nine of this code, containing the notice and
10 information the secretary prescribes by rule.

11 **§22-6B-6. Agreement; offer of settlement.**

12 Unless the parties provide otherwise by written agreement,
13 within sixty days after the oil and gas developer received the
14 notification of claim specified in section five of this article,
15 the oil and gas developer shall either make an offer of settlement
16 to the surface owner seeking compensation, or reject the claim.
17 The surface owner may accept or reject any offer so made:
18 *Provided*, That the oil and gas developer may make a final offer
19 within seventy-five days after receiving the notification of claim
20 specified in section five of this article.

21 **§22-6B-7. Rejection; legal action; arbitration; fees and costs.**

22 (a) (1) Unless the oil and gas developer has paid the surface
23 owner a negotiated settlement of compensation within seventy-five
24 days after the date the notification of claim was mailed under
25 section five of this article, the surface owner may, within eighty

1 days after the notification mail date, either (i) Bring an action
2 for compensation in the circuit court of the county in which the
3 well is located; or (ii) elect instead, by written notice delivered
4 by personal service or by certified mail, return receipt requested,
5 to the designated agent named by the oil and gas developer under
6 the provisions of section seven, article six-a of this chapter, to
7 have his, her or its compensation finally determined by binding
8 arbitration pursuant to article ten, chapter fifty-five of this
9 code.

10 (2) Settlement negotiations, offers and counter-offers between
11 the surface owner and the oil and gas developer are not admissible
12 as evidence in any arbitration or judicial proceeding authorized
13 under this article, or in any proceeding resulting from the
14 assertion of common law remedies.

15 (b) The compensation to be awarded to the surface owner shall
16 be determined by a panel of three disinterested arbitrators. The
17 first arbitrator shall be chosen by the surface owner in the
18 party's notice of election under this section to the oil and gas
19 developer; the second arbitrator shall be chosen by the oil and gas
20 developer within ten days after receipt of the notice of election;
21 and the third arbitrator shall be chosen jointly by the first two
22 arbitrators within twenty days thereafter. If they are unable to
23 agree upon the third arbitrator within twenty days, then the two
24 arbitrators shall immediately submit the matter to the court under
25 the provisions of section one, article ten, chapter fifty-five of
26 this code, so that, among other things, the third arbitrator can be

1 chosen by the judge of the circuit court of the county in which the
2 surface estate lies.

3 (c) The following persons are considered interested and may
4 not be appointed as arbitrators: Any person who is personally
5 interested in the land on which horizontal drilling is being
6 performed or has been performed, or in any interest or right
7 therein, or in the compensation and any damages to be awarded
8 therefor, or who is related by blood or marriage to any person
9 having such personal interest, or who stands in the relation of
10 guardian and ward, master and servant, principal and agent, or
11 partner, real estate broker, or surety to any person having such
12 personal interest, or who has enmity against or bias in favor of
13 any person who has such personal interest or who is the owner of,
14 or interested in, the land or the oil and gas development of the
15 land. A person is not considered interested or incompetent to act
16 as arbitrator by reason of being an inhabitant of the county,
17 district or municipal corporation in which the land is located, or
18 holding an interest in any other land therein.

19 (d) The panel of arbitrators shall hold hearings and take
20 testimony and receive exhibits necessary to determine the amount of
21 compensation to be paid to the surface owner. However, no award of
22 compensation may be made to the surface owner unless the panel of
23 arbitrators has first viewed the surface estate in question. A
24 transcript of the evidence may be made but is not required.

25 (e) Each party shall pay the compensation of the party's
26 arbitrator and one half of the compensation of the third

1 arbitrator, or each party's own court costs as the case may be.

2 **§22-6B-8. Application of article.**

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

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

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

8 **§22C-8-2. Definitions.**

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

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

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

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

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

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

24 (6) "Commissioner" means the Oil and Gas Conservation
25 Commissioner provided for in section four, article nine of this

1 chapter;

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

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

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

11 (10) "Director" means the ~~Director of the Division~~ Secretary
12 of the Department of Environmental Protection as established in
13 article one, chapter twenty-two of this code or ~~such~~ other person
14 to whom the ~~director~~ secretary delegates authority or duties
15 pursuant to sections six or eight, article one, chapter twenty-two
16 of this code;

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

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

22 (13) "Gas operator" means any person who owns or has the right
23 to develop, operate and produce gas from a pool and to appropriate
24 the gas produced therefrom either for ~~such~~ that person or for ~~such~~
25 that person and others. In the event that there is no gas lease in
26 existence with respect to the tract in question, the person who

1 owns or has the gas rights therein ~~shall be~~ is considered a "gas
2 operator" to the extent of seven-eighths of the gas in that portion
3 of the pool underlying the tract owned by such person, and a
4 "royalty owner" to the extent of one-eighth of ~~such~~ the gas;

5 (14) "Just and equitable share of production" means, as to
6 each person, an amount of gas in the same proportion to the total
7 gas production from a well as that person's acreage bears to the
8 total acreage in the drilling unit;

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

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

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

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

24 (19) "Pool" means an underground accumulation of gas in a
25 single and separate natural reservoir (ordinarily a porous
26 sandstone or limestone). It is characterized by a single natural-

1 pressure system so that production of gas from one part of the pool
2 tends to or does affect the reservoir pressure throughout its
3 extent. A pool is bounded by geologic barriers in all directions,
4 such as geologic structural conditions, impermeable strata, and
5 water in the formation, so that it is effectively separated from
6 any other pools which may be present in the same district or in the
7 same geologic structure;

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

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

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

24 (23) "Well" means any shaft or hole sunk, drilled, bored or
25 dug into the earth or into underground strata for the extraction,
26 injection or placement of any liquid or gas, or any shaft or hole

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

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

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

10 **§22C-9-2. Definitions.**

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

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

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

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

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

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

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

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

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

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

24 (9) "Pool" means an underground accumulation of petroleum or
25 gas in a single and separate reservoir (ordinarily a porous
26 sandstone or limestone). It is characterized by a single natural-

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

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

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

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

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

26 (14) "Waste" means and includes:

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

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

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

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

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

26 (b) Unless the context clearly indicates otherwise, the use of

1 the word "and" and the word "or" ~~shall be~~ are interchangeable, as,
for example, "oil and gas" ~~shall mean~~ means oil or gas or both.