

**H. B. 401**

(By Mr Speaker, (Mr. Thompson))

(By Request of the Executive)

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[Introduced December 11, 2011.]  
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10 A BILL to repeal §22C-7-1, §22C-7-2 and §22C-7-3 of the Code of  
11 West Virginia, 1931, as amended; to amend and reenact said  
12 code by adding thereto a new section, designated §5B-2B-4a;  
13 to amend and reenact §22-6-1 and §22-6-2 of said code; to  
14 amend and reenact said code by adding thereto a new section,  
15 designated §22-6-2a; to amend said code by adding thereto a  
16 new article, designated §22-6A-1, §22-6A-2, §22-6A-3, §22-6A-  
17 3a, §22-6A-4, §22-6A-5, §22-6A-6, §22-6A-7, §22-6A-8, §22-6A-  
18 9, §22-6A-10, §22-6A-11, §22-6A-12, §22-6A-13, §22-6A-14, §22-  
19 6A-15, §22-6A-16, §22-6A-17, §22-6A-18, §22-6A-19, §22-6A-20,  
20 §22-6A-21, §22-6A-22, §22-6A-23 and §22-6A-24; to amend and  
21 reenact said code by adding thereto a new article, designated  
22 §22-6B-1, §22-6B-2, §22-6B-3, §22-6B-4, §22-6B-5, §22-6B-6,  
23 §22-6B-7 and §22-6B-8; to amend and reenact §22C-8-2 of said  
24 code; and to amend and reenact §22C-9-2 of said code, all

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

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

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

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

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

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

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

19 **§5B-2B-4a. Report to Legislature.**

20       (a) The Legislature finds that:

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

1 drilling, production, construction, manufacturing, and related jobs  
2 in West Virginia and in the Appalachian Basin;

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

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

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

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

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

19 (3) The average salary per job type;

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

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

23 (6) The council's recommendations for the establishment of an  
24 overall workforce investment public education agenda with goals and

1 benchmarks toward maximizing job creation opportunities in the  
2 State of West Virginia.

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

8 **CHAPTER 22. ENVIRONMENTAL RESOURCES.**

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

10 **§22-6-1. Definitions.**

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

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

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

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

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

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

1 can in the judgment of the department foreseeably be commercially  
2 worked and will require protection if wells are drilled through it;

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

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

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

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

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

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



1 reservoirs;

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

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

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

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

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

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

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

1 in the well bore where the well penetrates the workable coal bed is  
2 severed;

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

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

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

22 ~~(t)~~ (v) "Waste" means (i) physical waste, as the term is  
23 generally understood in the oil and gas industry; (ii) the  
24 locating, drilling, equipping, operating or producing of any oil or

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

1 intended to address ownership of the gas;

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

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

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

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

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

1 ~~of this code; and~~

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

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

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

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

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

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

23 (2) ~~Employ a supervising oil and gas inspector and oil and gas~~  
 24 ~~inspectors~~ Determine the number of supervising oil and gas

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

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

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

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

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

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

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

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

16           (10) Collect a permit fee of \$400 for each permit application  
17 filed other than an application for a deep well, horizontal wells  
18 regulated pursuant to article six-a of this chapter, or a coalbed  
19 methane well; and collect a permit fee of \$650 for each permit  
20 application filed for a deep well: *Provided*, That no permit  
21 application fee ~~shall be~~ is required when an application is  
22 submitted solely for the plugging or replugging of a well, or to  
23 modify an existing application for which the operator previously  
24 has submitted a permit fee under this section. All application

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

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

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

19 (13) Adopt rules with respect to the issuance, denial,  
20 retention, suspension or revocation of permits, authorizations and  
21 requirements of this chapter, which rules shall assure that the  
22 rules, permits and authorizations issued by the secretary are  
23 adequate to satisfy the purposes of this article and articles six-  
24 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

1 article and articles six-a, eight, nine, ten and twenty-one of this  
2 chapter; administer and enforce all oil and gas laws and rules; and  
3 perform other duties and services as may be prescribed by the  
4 secretary. The inspectors shall note and describe all violations  
5 of this article and articles six-a, eight, nine, ten or twenty-one  
6 of this chapter and promptly report those violations to the  
7 secretary in writing, furnishing at the same time a copy of the  
8 report to the operator concerned. Any well operator, 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 beneath said tract of land may request  
12 the secretary to have an immediate inspection made. The operator  
13 or owner of every well or well site or any other oil or gas  
14 facility shall cooperate with the secretary, all oil and gas  
15 inspectors and the supervising inspector in making inspections or  
16 obtaining information.

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

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

1 **§22-6-2a. Oil and gas inspectors qualifications and salary.**

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

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

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

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

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

14 **§22-6A-1. Short title.**

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

17 **§22-6A-2. Legislative findings; declaration of public policy.**

18 (a) The Legislature finds that:

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

23 (2) These practices have resulted in a new type and scale of  
24 natural gas development that utilize horizontal drilling

1 techniques, allow the development of multiple wells from a single  
2 surface location, and may involve fracturing processes that use and  
3 produce large amounts of water;

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

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

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

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

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

23 (8) Allowing the responsible development of our state's  
24 natural gas resources will enhance the economy of our state and the

1 quality of life for our citizens while assuring the long term  
2 protection of the environment.

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

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

14 **§22-6A-3. Applicability; exceptions.**

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

1 §22-6A-3a. Karst terrain; rulemaking.

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

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

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

24 (2) Provide any other requirements deemed necessary by the

1 secretary to protect the unique characteristics of naturally  
2 occurring karst geology, which requirements may include baseline  
3 water testing within an established distance from a drilling site.

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

6 **§22-6A-4. Definitions.**

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

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

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

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

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



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

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

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

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

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

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

1 streambed due to the ground-water elevation adjacent to the stream  
2 being higher than the elevation of the streambed;

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

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

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

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

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

24 (1) The provisions of section three, article six of this

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

23 (16) The provisions of section twenty-eight, article six of  
24 this chapter relating to supervision by the secretary over drilling

1 and reclamation operations, the filing of complaints, hearings on  
2 the same and appeals.

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

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

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

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

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

24 (22) The provisions of section thirty-nine, article six of

1 this chapter relating to petitions for injunctive relief.

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 pursuant to subsection (a), section ten of this article six-a; or  
2 (iii) the notice requirements of subsection (b), section sixteen of  
3 this article were waived in writing by the surface owner; and

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

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

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

24 (d) For well sites that disturb three acres or more of

1 surface, excluding pipelines, gathering lines and roads, the  
2 operator shall submit a site construction plan that shall be  
3 certified by a registered professional engineer and contains  
4 information that the secretary may require by rule.

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

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

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

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

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

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

1 completion, a listing of the additives that were actually used in  
2 the fracturing or stimulating of the well shall be submitted as  
3 part of the completion log or report required by subsection (n),  
4 section five of this article;

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

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

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

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

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

24 (f) An application may propose and a permit may approve two or

1 more activities defined as well work, however, a separate permit  
2 shall be obtained for each horizontal well drilled.

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

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

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

1 the secretary.

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

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

19 (l) In the event the secretary finds that a substantial  
20 violation has occurred and that the operator has failed to abate or  
21 seek review of the violation in the time prescribed, the secretary  
22 may suspend the permit on which said violation exists, after which  
23 suspension the operator shall forthwith cease all well work being  
24 conducted under the permit. However, the secretary may reinstate



1 the permit without further notice, at which time the well work may  
2 be continued. The secretary shall make written findings of any  
3 such suspension and may enforce the same in the circuit courts of  
4 this state. The operator may appeal a suspension pursuant to the  
5 provisions of subsection (w), section five of this article. The  
6 secretary shall make a written finding of any such determination.

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

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

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

24 (c) Prior to the issuance of any permit, the secretary shall

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

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

1 determines that:

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

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

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

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

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

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

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

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

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

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

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

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

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

1 sedimentation;

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

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

1 requirements:

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

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

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

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

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

11 (I) The quantity of water transported;

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

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

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

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

24 (h) The secretary shall mail a copy of the permit as issued or

1 a copy of the order denying a permit to any person entitled to  
 2 submit written comments pursuant to subsection (a), section eleven  
 3 of this article and who requested a copy.

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

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

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

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



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

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

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

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

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

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

1 Virginia. Any plans or specifications submitted to the department  
2 shall bear the seal of a registered professional engineer.

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

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

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

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

22 (j) Upon expiration of the certificate of approval, the  
23 operator shall within six months, or upon its revocation by the  
24 secretary, the operator shall within sixty days, fill all

1 impoundments that are not required or allowed by state or federal  
2 law or rule or agreement between the operator and the surface owner  
3 allowing the impoundment to remain open for the use and benefit of  
4 the surface owner and reclaim the site in accordance with the  
5 approved erosion and sediment control plan.

6 (k) This section does not apply to:

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

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

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

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

23 (a) Prior to filing a permit application, the operator shall  
24 provide notice of planned entry to the surface owner of at least

1 seventy-two hours but no more than forty-five days prior to  
2 entering the surface tract to conduct any plat surveys required  
3 pursuant to this article.

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

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

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

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

23 (4) The owners of record of the surface tract or tracts  
24 overlying the oil and gas leasehold being developed by the proposed

1 well work, if the surface tract is to be used for the placement,  
2 construction, enlargement, alteration, repair, removal or  
3 abandonment of any impoundment or pit as described in section nine  
4 of this article;

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

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

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

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

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

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

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

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

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

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

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

23       (3) The notice shall also include a reclamation plan in  
24 accordance with the erosion and sediment control manual that



1 provides for the reclamation of any areas disturbed as a result of  
2 the seismic activity, including filling of shotholes used for  
3 blasting.

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

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

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

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

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

1 later than fifteen days after the close of the comment period.

2 (2) Any objections of the affected coal operators and coal  
3 seam owners and lessees shall be addressed through the processes  
4 and procedures that exist under sections fifteen, seventeen and  
5 forty, article six of this chapter, as applicable and as  
6 incorporated into this article by section five of this article.

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

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

21 **§22-6A-12. Well location restrictions.**

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

1 well pads may not be located within six hundred twenty-five feet of  
2 an occupied dwelling structure, or a building two thousand five  
3 hundred square feet or larger used to house or shelter dairy cattle  
4 or poultry husbandry. This limitation is applicable to those  
5 wells, developed springs, dwellings or agricultural buildings that  
6 existed on the date a notice to the surface owner of planned entry  
7 for surveying or staking as provided in section ten of this article  
8 or a notice of intent to drill a horizontal well as provided in  
9 subsection (b), section sixteen of this article was provided,  
10 whichever occurs first, and to any dwelling under construction  
11 prior to that date. This limitation may be waived by written  
12 consent of the surface owner transmitted to the department and  
13 recorded in the real property records maintained by the clerk of  
14 the county commission for the county in which such property is  
15 located. Furthermore, the well operator may be granted a variance  
16 by the secretary from these distance restrictions upon submission  
17 of a plan which identifies the sufficient measures, facilities or  
18 practices to be employed during well site construction, drilling  
19 and operations. The variance, if granted, shall include terms and  
20 conditions the department requires to ensure the safety and  
21 protection of affected persons and property. The terms and  
22 conditions may include insurance, bonding and indemnification, as  
23 well as technical requirements.

24 (b) No well pad may be prepared or well drilled within one

1 hundred feet measured horizontally from any perennial stream,  
2 natural or artificial lake, pond or reservoir, or a wetland, or  
3 within three hundred feet of a naturally reproducing trout stream.

4 No wellpad may be located within one thousand feet of a surface or  
5 ground water intake of a public water supply. The distance from  
6 the public water supply as identified by the department shall be  
7 measured as follows:

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

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

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

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

1 Army Corps of Engineers within any waters of the state or within  
2 the restricted areas referenced in this section.

3 **§22-6A-13. Plugging of horizontal wells.**

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

8 **§22-6A-14. Reclamation requirements.**

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

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

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

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

1 first, the operator shall complete final reclamation of the well  
2 pad as set forth in this subsection.

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

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

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

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

23 (a) No permit may be issued pursuant to this article unless a  
24 bond as described in subsection (d) of this section which is

1 required for a particular activity by this article is or has been  
2 furnished as provided in this section.

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

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

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



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

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

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

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

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

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

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

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

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

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

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

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

7 **§22-6A-16. Compensation of surface owners for drilling operations.**

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

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

1 representative.

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

6 The notice required by this subsection shall include:

7 (1) A copy of this code section;

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

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

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

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

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

1 disturbed by construction or operation of the horizontal well pad  
2 regardless of how many wells are drilled on a single pad or how  
3 many permits are issued for the pad.

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

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

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

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

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

24 (2) The landowner or water purveyor refused to allow the

1 operator access to the property to conduct a predrilling or  
2 prealteration water well test.

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

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

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

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

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

24 (f) The secretary may order the operator conducting the oil or



1 gas operation to:

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

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

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

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

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

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

21 (i) Notwithstanding the denial of the operator of  
22 responsibility for the damage to the real property owner's water  
23 supply or the status of any appeal on determination of liability  
24 for the damage to the real property owner's water supply, the

1 operator may not discontinue providing the required water service  
2 until authorized to do so by the secretary or a court of competent  
3 jurisdiction.

4 **§22-6A-19. Offenses; civil penalties.**

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

16 (b) Notwithstanding the provisions of subsection (a) of this  
17 section, any person or persons, firm, partnership, partnership  
18 association or corporation who willfully disposes of waste fluids,  
19 drill cuttings or any other liquid substance generated in the  
20 development of a horizontal well in violation of this article or  
21 any rule or order promulgated under this article or in violation of  
22 any other state or federal statutes, rules or regulations, and  
23 which disposal was found to have had a significant adverse  
24 environmental impact on surface or groundwater by the secretary, is

1 subject to a civil penalty not exceeding \$100,000. The penalty  
2 shall be recovered by a civil action brought by the department, in  
3 the name of the state, before the circuit court of the county in  
4 which the subject well or facility is located. All the civil  
5 penalties collected shall be credited to the General Fund of the  
6 state.

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

12 **§22-6A-20. Division of Highways certification.**

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

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

24 (a) No later than ninety days after the effective date of this

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

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

17 **§22-6A-22. Air quality study and rulemaking.**

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

1 environment. If he or she finds that specialized permit conditions  
2 are necessary, the secretary shall promulgate legislative rules  
3 establishing these new requirements.

4 **§22-6A-23. Impoundment and pit safety study; rulemaking.**

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

14 **§22-6A-24. Casing and cement standards.**

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

23 (b) The secretary shall propose legislative and emergency  
24 rules in accordance with the provisions of article three, chapter

1 twenty-nine-a of this code to carry out the purposes of this  
2 section.

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

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

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

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

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

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

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

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

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

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

24 (B) The diameter of the borehole;

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

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

6       (E) The estimated location of centralizers;

7       (F) The proposed borehole conditioning procedures; and

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

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

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

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

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

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

7 (3) Installation of intermediate production casing;

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

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

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

16 (f) *Minimum casing standards.*

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

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



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

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

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

8       (g) *Minimum cement standards.*

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

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

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

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

24       (2) Approve alternative casing programs submitted with

1 applications for well work permits so long as the secretary  
2 determines that the casing program submitted with the application  
3 is at least as protective of the environment as the casing and  
4 cementing standards required by this section.

5 **CHAPTER 22. ENVIRONMENTAL RESOURCES.**

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

7 **COMPENSATION.**

8 **§22-6B-1. Legislative findings and purpose; applicability.**

9 (a) The Legislature finds the following:

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

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

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

21 (d) It is the purpose of this article to provide  
22 Constitutionally permissible protection and compensation to surface  
23 owners of lands on which horizontal wells are drilled from the  
24 burden resulting from drilling operations commenced after January

1 1, 2012. This article is to be interpreted in the light of the  
2 legislative intent expressed herein. This article shall be  
3 interpreted to benefit surface owners, regardless of whether the  
4 oil and gas mineral estate was separated from the surface estate  
5 and regardless of who executed the document which gave the oil and  
6 gas developer the right to conduct drilling operations on the land.  
7 Section four of this article shall be interpreted to benefit all  
8 persons.

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

16 **§22-6B-2. Definitions.**

17 (a) In this article:

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

23 (2) "Horizontal drilling" means a method of drilling a well  
24 for the production of natural gas that is intended to maximize the

1 length of wellbore that is exposed to the formation and in which  
2 the wellbore is initially vertical but is eventually curved to  
3 become horizontal, or nearly horizontal, to parallel a particular  
4 geologic formation;

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

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

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

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

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

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

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

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

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

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

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

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

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

24       (b) Any reservation or assignment of the compensation provided

1 in this section apart from the surface estate except to a tenant of  
2 the surface estate is prohibited.

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

10 **§22-6B-4. Common law right of action preserved; offsets.**

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

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

24 (c) An oil and gas developer is entitled to offset damages

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

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

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

23 **§22-6B-6. Agreement; offer of settlement.**

24 Unless the parties provide otherwise by written agreement,

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

9 **§22-6B-7. Rejection; legal action; arbitration; fees and costs.**

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

23 (2) Settlement negotiations, offers and counter-offers between  
24 the surface owner and the oil and gas developer are not admissible



1 as evidence in any arbitration or judicial proceeding authorized  
2 under this article, or in any proceeding resulting from the  
3 assertion of common law remedies.

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

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

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

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

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

19 **§22-6B-8. Application of article.**

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

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

23 **COMMISSIONS AND COMPACTS.**

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

1 **§22C-8-2. Definitions.**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 extent. A pool is bounded by geologic barriers in all directions,  
2 such as geologic structural conditions, impermeable strata, and  
3 water in the formation, so that it is effectively separated from  
4 any other pools which may be present in the same district or in the  
5 same geologic structure;

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

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

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

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

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

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

15 (6) "Independent producer" means a producer of crude oil or  
16 natural gas whose allowance for depletion is determined under  
17 Section 613A of the federal Internal Revenue Code in effect on July  
18 1, 1997;

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

24 (8) "Gas" means all natural gas and all other fluid



1 hydrocarbons not defined as oil in subdivision (7) of this section;

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

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

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

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

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

6 (14) "Waste" means and includes:

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

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

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

24 (15) "Correlative rights" means the reasonable opportunity of

1 each person entitled thereto to recover and receive without waste  
 2 the oil and gas in and under his tract or tracts, or the equivalent  
 3 thereof; and

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

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

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

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

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