

1 ENGROSSED

2 COMMITTEE SUBSTITUTE

3 FOR

4 COMMITTEE SUBSTITUTE

5 FOR

6 **Senate Bill No. 424**

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

9 _____
10 [Originating in the Committee on the Judiciary;
11 reported February 28, 2011.]
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16 A BILL to amend and reenact §22-6-1, §22-6-12, §22-6-14 and §22-6-
17 36 of the Code of West Virginia, 1931, as amended; to amend
18 said code by adding thereto a new article, designated §22-6A-
19 1, §22-6A-2, §22-6A-3, §22-6A-4, §22-6A-5, §22-6A-6, §22-6A-7,
20 §22-6A-8, §22-6A-9, §22-6A-10, §22-6A-11, §22-6A-12, §22-6A-
21 13, §22-6A-14, §22-6A-15, §22-6A-16 and §22-6A-17; to amend
22 and reenact §22C-8-2 of said code; and to amend and reenact
23 §22C-9-2 of said code, all relating generally to oil and gas
24 and oil and gas wells; defining certain new terms and amending

1 existing definitions of certain terms; providing the
2 Department of Environmental Protection, in consultation with
3 the West Virginia Board of Professional Surveyors, with the
4 authority to promulgate rules to govern methods of survey and
5 information to be present on the plats and reports related to
6 oil and gas permit maps; requiring notice to coal owners and
7 lessees of record; creating Natural Gas Horizontal Well
8 Control Act; providing short title; making legislative
9 findings and declarations of public policy; providing for
10 application and exemptions of new act and special
11 considerations for karst formations; defining terms used in
12 said act; specifying powers and duties of Secretary of
13 Department of Environmental Protection; incorporating by
14 reference certain sections of existing code relating to oil
15 and gas wells; requiring horizontal well permits; requiring
16 application for permit; specifying content of application and
17 required attachments; requiring posting of bond and payment of
18 permit fees; permitting waiver of certain requirements under
19 specified circumstances and for issuance of emergency permits;
20 providing for suspension and reinstatement of permits;
21 providing for appeals of certain actions of Secretary of
22 Department of Environmental Protection; providing for review
23 of permit applications and for issuance of permits; specifying
24 operator performance standards; providing for copies of

1 permits to be furnished to county assessors; requiring
2 certificate of approval for large impoundment construction;
3 requiring application for certificate; specifying content of
4 application and required attachments and payment of fees;
5 providing for revocation or suspension of certificates;
6 requiring hearing before certificate of approval is amended,
7 suspended or revoked without consent of operator; providing
8 for administrative appeals; providing exceptions for certain
9 farm ponds; authorizing Secretary of Department of
10 Environmental Protection to propose legislative rules for
11 consideration by Legislature; providing for permit revocation
12 and bond forfeiture; requiring notice to property owners when
13 application for well permit is made or application for
14 certificate of approval of impoundment is filed and providing
15 property owners with certain rights; requiring promulgation of
16 certain legislative rules for plugging and abandonment of
17 horizontal wells; specifying reclamation requirements;
18 requiring performance bonds; providing presumptions and
19 rebuttals in water rights civil actions; imposing certain
20 civil and criminal penalties for certain violations and
21 offenses; specifying prospective application of act;
22 preempting local ordinances; and requiring operator to enter
23 into certain road maintenance agreement with Division of
24 Highways.

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

2 That §22-6-1, §22-6-12, §22-6-14 and §22-6-36 of the Code of
3 West Virginia, 1931, as amended, be amended and reenacted; that
4 said code be amended by adding thereto a new article, designated
5 §22-6A-1, §22-6A-2, §22-6A-3, §22-6A-4, §22-6A-5, §22-6A-6, §22-6A-
6 7, §22-6A-8, §22-6A-9, §22-6A-10, §22-6A-11, §22-6A-12, §22-6A-13,
7 §22-6A-14, §22-6A-15, §22-6A-16 and §22-6A-17; that §22C-8-2 of
8 said code be amended and reenacted; and that §22C-9-2 of said code
9 be amended and reenacted, all to read as follows:

10 **CHAPTER 22. ENVIRONMENTAL RESOURCES.**

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

12 **§22-6-1. Definitions.**

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

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

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

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

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

24 (e) "Coal seam" and "workable coal bed" are interchangeable

1 terms and mean any seam of coal twenty inches or more in thickness,
2 unless a seam of less thickness is being commercially worked, or
3 can in the judgment of the department foreseeably be commercially
4 worked and will require protection if wells are drilled through it;

5 (f) "Director" means the director of the division of
6 environmental protection as established in article one of this
7 chapter or such other person to whom the director has delegated
8 authority or duties pursuant to sections six or eight, article one
9 of this chapter.;

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

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

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

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

23 (k) "Oil" means natural crude oil or petroleum and other
24 hydrocarbons, regardless of gravity, which are produced at the well

1 in liquid form by ordinary production methods and which are not the
2 result of condensation of gas after it leaves the underground
3 reservoirs;

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

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

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

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

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

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

1 (r) "Safe mining through of a well" means the mining of coal
2 in a workable coal bed up to a well which penetrates such workable
3 coal bed and through such well so that the casing or plug in the
4 well bore where the well penetrates the workable coal bed is
5 severed;

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

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

20 (u) "Waste" means (i) physical waste, as the term is generally
21 understood in the oil and gas industry; (ii) the locating,
22 drilling, equipping, operating or producing of any oil or gas well
23 in a manner that causes, or tends to cause a substantial reduction
24 in the quantity of oil or gas ultimately recoverable from a pool

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

24 (v) "Waters of this state" shall have the same meaning as the

1 term "waters" as provided in subsection (23), section three,
2 article eleven, chapter twenty-two of this code;

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

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

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

21 **§22-6-12. Plats prerequisite to drilling or fracturing wells;**
22 **preparation and contents; notice and information furnished to**
23 **coal operators, owners or lessees; issuance of permits;**
24 **performance bonds or securities in lieu thereof; bond**

1 **forfeiture.**

2 (a) Before drilling for oil or gas, or before fracturing or
3 stimulating a well on any tract of land, the well operator shall
4 have a plat prepared by a ~~licensed land~~ professional surveyor ~~or~~
5 ~~registered engineer~~ showing the district and county in which the
6 tract of land is located, the name and acreage of the same, the
7 names of the owners of adjacent tracts, the proposed or actual
8 location of the well determined by survey, the courses and
9 distances of such location from two permanent points or landmarks
10 on said tract and the number to be given the well. In the event
11 the tract of land on which the said well proposed to be drilled or
12 fractured is located is known to be underlain by one or more coal
13 seams, copies of the plat shall be forwarded by registered or
14 certified mail to each and every coal operator operating said coal
15 seams beneath said tract of land, who has mapped the same and filed
16 such maps with the Office of Miners' Health, Safety and Training in
17 accordance with chapter twenty-two-a of this code and the coal seam
18 owner of record and lessee of record, if any, if said owner or
19 lessee has recorded the declaration provided in section thirty-six
20 of this article, and if said owner or lessee is not yet operating
21 said coal seams beneath said tract of land. With each of ~~such~~ the
22 plats there shall be enclosed a notice (form for which shall be
23 furnished on request by the secretary) addressed to the secretary
24 and to each ~~such~~ coal operator, owner and lessee, if any, at their

1 respective addresses, informing them that ~~such~~ the plat and notice
2 are being mailed to them respectively by registered or certified
3 mail, pursuant to the requirements of this article: Provided, That
4 the Department of Environmental Protection, with advice from the
5 West Virginia Board of Professional Surveyors, may promulgate rules
6 to govern methods of survey and information to be present on the
7 plats and reports related to oil and gas permit maps including but
8 not limited to requiring a north arrow, tax map and parcel numbers
9 for surface tracts, mineral boundary lines, mineral owner name and
10 title reference, surface owner name and title reference, named
11 waterways, state highway and county numbered route numbers, and the
12 plat shall be drawn to a scale large enough for the information to
13 be legible.

14 (b) If no objections are made, or are found by the secretary,
15 to ~~such~~ the proposed location or proposed fracturing within fifteen
16 days from receipt of such plat and notice by the secretary, the
17 same shall be filed and become a permanent record of ~~such~~ the
18 location or fracturing subject to inspection at any time by any
19 interested person, and the secretary may ~~forthwith~~ immediately
20 issue to the well operator a permit reciting the filing of ~~such~~ the
21 plat, that no objections have been made by the coal operators,
22 owners and lessees, if any, or found thereto by the secretary, and
23 authorizing the well operator to drill at ~~such~~ the location, or to
24 fracture the well. Unless the secretary has objections to ~~such~~ the

1 proposed location or proposed fracturing or stimulating, ~~such the~~
2 permit may be issued ~~prior to~~ before the expiration of ~~such the~~
3 fifteen-day period upon the obtaining by the well operator of the
4 consent in writing of the coal operator or operators, owners and
5 lessees, if any, to whom copies of the plat and notice ~~shall~~ have
6 been mailed as herein required, and upon presentation of ~~such the~~
7 written consent to the secretary. The notice above provided ~~for~~
8 may be given to the coal operator by delivering or mailing it by
9 registered or certified mail as above to any agent or
10 superintendent in actual charge of mines.

11 (c) A permit to drill, or to fracture or stimulate an oil or
12 gas well, ~~shall~~ may not be issued unless the application therefor
13 is accompanied by a bond as provided in section twenty-six of this
14 article.

15 **§22-6-14. Plats prerequisite to introducing liquids or waste into**
16 **wells; preparation and contents; notice and information**
17 **furnished to coal operators, owners or lessees and director;**
18 **issuance of permits; performance bonds or security in lieu**
19 **thereof.**

20 (a) Before drilling a well for the introduction of liquids for
21 the purposes provided ~~for~~ in section twenty-five of this article or
22 for the introduction of liquids for the disposal of pollutants or
23 the effluent therefrom on any tract of land, or before converting
24 an existing well for such purposes, the well operator shall have a

1 plat prepared by a ~~registered engineer or licensed land~~
2 professional surveyor showing the district and county in which the
3 tract of land is located, the name and acreage of the same, the
4 names of the owners of all adjacent tracts, the proposed or actual
5 location of the well or wells determined by a survey, the courses
6 and distances of ~~such~~ the location from two permanent points of
7 land marked on said tract and the number to be given to the well,
8 and shall forward by registered or certified mail the original and
9 one copy of the plat to the director. In addition, the well
10 operator shall provide the following information on the plat or by
11 way of attachment thereto to the director in the manner and form
12 prescribed by the director's rules: (1) The location of all wells,
13 abandoned or otherwise located within the area to be affected; (2)
14 where available, the casing records of all ~~such~~ those wells; (3)
15 where available, the drilling log of all ~~such~~ those wells; (4) the
16 maximum pressure to be introduced; (5) the geological formation
17 into which ~~such~~ that liquid or pressure is to be introduced; (6) a
18 general description of the liquids to be introduced; and (7) the
19 location of all water-bearing horizons above and below the
20 geological formation into which ~~such~~ that pressure, liquid or waste
21 is to be introduced; (8) ~~such~~ other information as the director
22 requires by rule: ~~may require~~ Provided, That the Department of
23 Environmental Protection, with advice from the West Virginia Board
24 of Professional Surveyors may promulgate rules to govern methods of

1 survey and information to be present on the plats and reports
2 related to oil and gas permit maps including but not limited to
3 requiring a north arrow, tax map and parcel numbers for surface
4 tracts, mineral boundary lines, mineral owner name and title
5 reference, surface owner name and title reference, named waterways,
6 state highway and county numbered route numbers, and the plat shall
7 be drawn to a scale large enough for the information to be legible.

8 (b) ~~In the event~~ If the tract of land on which ~~said~~ the well
9 proposed to be drilled or converted for the purposes provided ~~for~~
10 in this section is located is known to be underlaid with coal
11 seams, copies of the plat and all information required by this
12 section shall be forwarded by the operator by registered or
13 certified mail to each and every coal operator operating coal seams
14 beneath ~~said~~ the tract of land, who has mapped the same and filed
15 such maps with the Office of Miners' Health, Safety and Training in
16 accordance with chapter twenty-two-a of this code, and the coal
17 seam owner of record and lessee of record, if any, if ~~said~~ the
18 owner or lessee has recorded the declaration provided in section
19 thirty-six of this article, and if ~~said~~ the owner or lessee is not
20 yet operating ~~said~~ those seams beneath ~~said~~ the tract of land.

21 With each of ~~such~~ the plats, there shall be enclosed a notice (form
22 for which shall be furnished on request by the director) addressed
23 to the director and to each ~~such~~ coal operator, owner or lessee, if
24 any, at their respective addresses, informing them that ~~such~~ the

1 plat and notice are being mailed to them, respectively, by
2 registered or certified mail, pursuant to the requirements of this
3 section.

4 (c) If no objections are made by any such coal operator, owner
5 or lessee, or the director, ~~such~~ the proposed drilling or
6 converting of the well or wells for the purposes provided ~~for~~ in
7 this section within thirty days from the receipt of ~~such~~ the plat
8 and notice by the director, the same shall be filed and become a
9 permanent record of ~~such~~ the location or well, subject to
10 inspection at any time by any interested person, and the director
11 may after public notice and opportunity to comment, issue ~~such~~ a
12 permit authorizing the well operator to drill at ~~such~~ the location
13 or convert ~~such~~ the existing well or wells for the purposes
14 provided ~~for~~ in this section. The notice above provided ~~for~~ may be
15 given to the coal operator by delivering or mailing it by
16 registered or certified mail as above to any agent or
17 superintendent in actual charge of the mines.

18 (d) A permit to drill a well or wells or convert an existing
19 well or wells for the purposes provided ~~for~~ in this section ~~shall~~
20 may not be issued until all of the bonding provisions required by
21 the provisions of section twelve of this article have been fully
22 complied with and all ~~such~~ those bonding provisions ~~shall~~
23 all wells drilled or converted for the purposes provided ~~for~~ in
24 this section as if ~~such~~ those wells had been drilled for the

1 purposes provided ~~for~~ in section twelve of this article, except
2 that ~~such~~ the bonds shall be conditioned upon full compliance with
3 all laws and rules relating to the drilling of a well or the
4 converting of an existing well for the purposes provided ~~for~~ in
5 ~~said~~ section twenty-five of this article, or introducing of liquids
6 for the disposal of pollutants including the redrilling, deepening,
7 casing, plugging or abandonment of all such wells.

8 **§22-6-36. Declaration of oil and gas notice by owners and lessees**
9 **of coal seams.**

10 (a) For purposes of notification under this article, any owner
11 or lessee of coal seams ~~shall~~ may file a declaration of the owner's
12 or lessee's interest in ~~such~~ the coal seams with the clerk of the
13 county commission in the county where ~~such~~ the coal seams are
14 located. ~~Said~~ The clerk shall file and index ~~such~~ the declaration
15 in accordance with section two, article one, chapter thirty-nine of
16 this code, and shall index the name of the owner or lessee of ~~such~~
17 the coal seams in the grantor index of the record maintained for
18 the indexing of leases. If the declaration of owner's or lessee's
19 interest is not filed, then notification pursuant to this article
20 shall be made to the owners or lessees of coal seams of record.

21 (b) The declaration, if filed, ~~shall~~ entitles ~~such~~ the owner
22 or lessee to the notices provided in sections twelve, thirteen,
23 fourteen, and twenty-three of this article: *Provided*, That the
24 declaring owner shall be the record owner of the coal seam, and the

1 declaring lessee shall be the record lessee with the owner's or
2 lessee's source or sources of title recorded prior to recording
3 ~~such~~ the lessee's declaration.

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

8 "DECLARATION OF OIL AND GAS NOTICE"

9 "The undersigned hereby declares:

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

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

16 (Here insert a description legally adequate for a deed,
17 whether by metes and bounds or other locational description, or by
18 title references such as a book and page legally sufficient to
19 stand in lieu of a locational description.)

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

23 (Here insert the name and mailing address of the undersigned
24 owner or lessee.)

1
2 _____
(Signature)

3 (Here insert an acknowledgment legally adequate for a deed)."

4 The benefits of the foregoing declaration shall be personal to
5 the declaring owner or lessee, and not transferable or assignable
6 in any way.

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

8 **§22-6A-1. Short title.**

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

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

12 (a) The Legislature finds that:

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

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

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

1 (4) Existing laws and regulations developed for conventional
2 oil and gas operations are inadequate to address the potential
3 environmental impacts from these new technologies and practices;
4 and

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

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

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

20 **§22-6A-3. Applicability; exceptions; karst formations.**

21 (a) Notwithstanding any other provision of this code to the
22 contrary, the provisions of this article shall apply to any natural
23 gas well that is a horizontal well as defined in section four of
24 this article: *Provided*, That this article shall not apply to or

1 affect any well work permitted for a horizontal well or orders
2 issued regarding horizontal wells prior to the effective date of
3 this article.

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

19 **22-6A-4. Definitions.**

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

24 (b) Unless the context in which used clearly requires a

1 different meaning, as used in this article:

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

8 (2) "Department" means the department of environmental
9 protection;

10 (3) "Horizontal drilling" means a method of drilling a well
11 for the production of natural gas that is intended to maximize the
12 length of wellbore that is exposed to the formation and in which
13 the wellbore is initially vertical but eventually is curved to
14 become horizontal, or nearly horizontal, to parallel a particular
15 geologic formation;

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

18 (5) "Flowback Recycle Impoundment" means an impoundment used
19 for the retention of flowback and freshwater and into which no
20 other wastes of any kind are placed;

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

24 (7) "Impoundment" means a man-made excavation or diked area

1 for the retention of fluids;

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

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

12 **§22-6A-5. Application of article six of this chapter to horizontal**
13 **wells subject to this article.**

14 To the extent that horizontal wells governed by this article
15 are similar to conventional oil and gas wells regulated under
16 article six of this chapter, the following sections of article six
17 of this chapter are hereby incorporated by reference in this
18 article:

19 (a) The provisions of section three, article six of this
20 chapter relating to the findings and orders of inspectors
21 concerning violations, the determination of reasonable time for
22 abatement, extensions of time for abatement, special inspections,
23 notice of findings and orders.

24 (b) The provisions of section four, article six of this

1 chapter providing for the review of findings and orders by the
2 secretary, special inspections, and applications for annulment or
3 revision of orders by the secretary.

4 (c) The provisions of section five, article six of this
5 chapter relating to the requirements for findings, orders and
6 notices, notice to the operator of findings and orders, and
7 judicial review of final orders of the secretary.

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

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

15 (f) The provisions of section ten, article six of this chapter
16 pertaining to the procedures for filing comments relating to
17 proposed well work and the applicant's obligation to certify
18 compliance with applicable notice requirements, with the following
19 exceptions:

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

23 (2) Under subsection (a), section ten, article six of this
24 chapter the applicable time period for filing comments shall be

1 thirty days from the filing of an application with the secretary.

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

7 (1) Under subsection (a), section twelve, article six of this
8 chapter the plat also shall identify all surface tract boundaries
9 within the scope of the plat.

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

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

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

24 (j) The provisions of section seventeen, article six of this

1 chapter pertaining to drilling of shallow gas wells, notice to be
2 provided to the chair of the review board, orders issued by the
3 review board, and permits issued for such drilling, with the
4 exception that the applicable time for filing objections shall be
5 thirty days from the date of receipt by the secretary of the
6 required plat and notice in lieu of fifteen days.

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

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

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

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

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

24 (p) The provisions of section twenty-seven, article six of

1 this chapter regarding a cause of action for damages caused by an
2 explosion.

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

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

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

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

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

24 (v) The provisions of section thirty-six, article six of this

1 chapter providing for the declaration of oil and gas notice by
2 owners and lessees of coal seams and setting out the form of such
3 notice, with the exception that the owner or lessee of coal seams
4 shall be entitled only to the notices provided in sections twelve
5 and thirteen, of article six of this chapter.

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

8 (x) The provisions of section forty, article six of this
9 chapter relating to appeals from orders issuing or refusing to
10 issue a permit to drill or fracture, and the procedure therefore.

11 Notwithstanding any other provision of this code to the
12 contrary, no provision of article six of this chapter shall apply
13 to horizontal wells subject to this article except as expressly
14 incorporated by reference in this article.

15 **§22-6A-6. Secretary of Department of Environmental Protection;**
16 **powers and duties.**

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

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

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

1 (3) To propose any necessary legislative rules, in accordance
2 with the provisions of chapter twenty-nine-a of this code to
3 implement the provisions of this article; and

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

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

15 **§22-6A-7. Horizontal well permit required; permit fee; application;**
16 **soil erosion control plan; well site safety plan; site**
17 **construction plan; water management plan; permit fee;**
18 **installation of permit number; suspension of a permit.**

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

23 (b) Every permit application filed under this section shall be
24 on such form as may be prescribed by the secretary, shall be

1 verified, and shall contain the following information:

2 (1) The names and addresses of (i) the well operator, (ii) the
3 agent required to be designated under subsection (h) of this
4 section, and (iii) every person whom the applicant must notify
5 under any section of this article, together with a certification
6 and evidence that a copy of the application and all other required
7 documentation has been delivered to all such persons;

8 (2) The name and address of every coal operator operating coal
9 seams under the tract of land on which the well is or may be
10 located, and the coal seam owner of record and lessee of record
11 required to be given notice by subsection (f), section five of this
12 article, if any, if said owner or lessee is not yet operating said
13 coal seams;

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

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

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

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

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

22 (8) If the proposed well work will require casing or tubing to
23 be set, the entire casing program for the well, including the size
24 of each string of pipe, the starting point and depth to which each

1 string is to be set, and the extent to which each such string is to
2 be cemented;

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

7 (10) If the proposed well work is to plug or replug the well,
8 all information necessary to demonstrate compliance with the
9 legislative rules promulgated by the secretary in accordance with
10 section eleven of this article;

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

14 (12) The erosion and sediment control plan required under
15 subsection (c) of this section for applications for permits to
16 drill;

17 (13) A well site safety plan to address proper safety measures
18 to be employed for the protection of persons on the site as well as
19 the general public. The plan shall encompass all aspects of the
20 operation, including the actual well work for which the permit was
21 obtained, completion activities, and production activities and
22 shall provide an emergency point of contact for the well operator.
23 The well operator shall provide a copy of the well site safety to
24 the local emergency planning committee established pursuant to

1 section seven, article five-a, chapter fifteen of this code, for
2 the emergency planning district in which the well work will occur
3 at least seven days before commencement of well work or site
4 preparation work that involves any disturbance of land; and

5 (14) Any other relevant information which the secretary may
6 reasonably require.

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

21 (2) For horizontal well sites that disturb 5 acres or more of
22 surface, excluding pipelines, gathering lines, and roads, the
23 erosion and sediment control plan submitted in accordance with this
24 section shall be certified by a registered professional engineer.

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

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

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

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

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

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

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

1 part of the completion report required by subsection (n), section
2 five of this article;

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

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

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

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

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

1 Virginia law.

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

5 (g) The application for a permit under this section shall be
6 accompanied by the applicable bond as required by section thirteen
7 of this article, the applicable plat required by subsection (f),
8 section five of this article, and a permit fee of \$5,000 for the
9 initial horizontal well drilled at a location and a permit fee of
10 \$1,000 for each additional well drilled on a single well pad at the
11 same location.

12 (h) The well operator named in the application shall designate
13 the name and address of an agent for the operator who shall be the
14 attorney-in-fact for the operator and who shall be a resident of
15 the state of West Virginia upon whom notices, orders or other
16 communications issued pursuant to this article or article eleven of
17 chapter twenty-two may be served, and upon whom process may be
18 served. Every well operator required to designate an agent under
19 this section shall, within 5 days after the termination of such
20 designation, notify the secretary of such termination and designate
21 a new agent.

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

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

4 (j) The secretary may waive the requirements of this section
5 and sections eight and ten of this article and subsection (e),
6 section five of this article in any emergency situation, if the
7 secretary deems such action necessary. In such case the secretary
8 may issue an emergency permit which shall be effective for not more
9 than 30 days, unless reissued by the secretary.

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

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

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

9 **§22-6A-8. Review of application; issuance of permit in the absence**
10 **of objections; performance standards; copy of permits to**
11 **county assessor.**

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

15 (b) No permit shall be issued less than 30 days after the
16 filing date of the application for any well work except plugging or
17 replugging; and no permit for plugging or replugging shall be
18 issued less than 5 days after the filing date of the application
19 except a permit for plugging or replugging a dry hole: *Provided,*
20 That if the applicant certifies that all persons entitled to notice
21 of the application under the provisions of this article have been
22 served in person or by certified mail, return receipt requested,
23 with a copy of the well work application, including the erosion and
24 sediment control plan, if required, and the plat required by

1 section seven of this article, and further files written statements
2 of no objection by all such persons, the secretary may issue the
3 well work permit at any time.

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

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

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

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

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

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

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

14 (e) The director shall promptly review all comments filed. If
15 after review of the application and all comments received, the
16 application for a well work permit is approved, and no timely
17 objection or comment has been filed with the director or made by
18 the director under the provisions of subsection (h) and (i), section
19 five of this article, the permit shall be issued, with conditions,
20 if any. Nothing in this section shall be construed to supersede the
21 provisions of section seven or subsections (f) through (i), section
22 five of this article.

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

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

3 (2) Plug all wells in accordance with the requirements of this
4 article and the rules promulgated pursuant thereto when such wells
5 become abandoned pursuant to subsection (k), section five of this
6 article;

7 (3) With respect to disposal of cuttings at the well site,
8 stabilize all waste pits, including the use of impervious
9 materials, if necessary, to assure that any leachate therefrom will
10 not degrade surface or groundwaters below water quality standards
11 established pursuant to applicable federal and State law and that
12 the site is stabilized and revegetated according to the provisions
13 of this article and the rules promulgated thereunder;

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

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

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

23 (7) Protect the quantity and the quality of water in surface
24 and groundwater systems both during and after drilling operations

1 and during reclamation by: (A) Withdrawing water from surface
2 waters of the State by methods deemed appropriate by the secretary,
3 so as to maintain sufficient in-stream flow immediately downstream
4 of the withdrawal location. In no case shall an operator withdraw
5 water from ground or surface waters at volumes beyond which the
6 waters can sustain; (B) Casing, sealing or otherwise managing wells
7 to keep returned fluids from entering ground and surface waters;
8 (C) Conducting oil and gas operations so as to prevent, to the
9 extent possible using the best management practices, additional
10 contributions of suspended or dissolved solids to streamflow or
11 runoff outside the permit area, but in no event shall the
12 contributions be in excess of requirements set by applicable State
13 or federal law; and (D) Identify all water supply wells to the
14 Office of Oil and Gas that are required to be permitted by the
15 Bureau for Public Health under 64 CSR 19. All drinking water wells
16 within 2,500 feet of the water supply well shall be flow tested by
17 the operator upon request of the drinking well owner prior to
18 operating the water supply well.

19 (8) The construction of new roads or the improvement or use of
20 existing roads shall be conducted in accordance with the standards
21 established pursuant to this article or the rules promulgated
22 thereunder for such effects which result from oil and gas
23 operations; and

24 (9) In addition to the other requirements of this subsection,

1 an operator proposing to drill any horizontal well requiring the
2 withdrawal of more than 210,000 gallons in a month shall have the
3 following requirements added to its permit:

4 (A) Identification of water withdrawal locations. Within 48
5 hours prior to the withdrawal of water, the operator shall identify
6 the location of withdrawal by latitude and longitude and verify
7 that sufficient flow exists to protect designated uses of the
8 stream. The operator shall use methods deemed appropriate by the
9 secretary to determine if sufficient flow is available and must
10 check flows on a daily basis for the duration of the withdrawal.
11 Any variation from the methods previously approved by the secretary
12 for determining if sufficient flow is available must be requested
13 in writing by the operator.

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 hauler.

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

1 a copy of the order denying a permit to any person who submitted
2 comments to the director concerning the permit and requested a
3 copy.

4 (h) Upon the issuance of any permit pursuant to the provisions
5 of this article, the secretary shall transmit a copy of such 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 impoundment**
9 **construction; certificate of approval and annual registration**
10 **fees; application required to obtain certificate; term of**
11 **certificate; revocation or suspension of certificates;**
12 **appeals; farm ponds; criminal penalty.**

13 (a) It is unlawful for any person to place, construct,
14 enlarge, alter, repair, remove or abandon any freshwater
15 impoundment or flowback recycle impoundment with capacity of
16 greater than 210,000 gallons used in association with any
17 horizontal well operation until he or she has first secured from
18 the secretary a certificate of approval for the same: *Provided,*
19 That routine repairs that do not affect the safety of the
20 impoundment are not subject to the application and approval
21 requirements. A separate application for a certificate of approval
22 must be submitted by a person for each impoundment he or she
23 desires to place, construct, enlarge, alter, repair, remove or
24 abandon, but one application may be valid for more than one

1 impoundment involved in a single project.

2 (b) The application fee for placement, construction,
3 enlargement, alteration, repair or removal of an impoundment
4 pursuant to this section is \$300, and such fee shall accompany the
5 application for certificate of approval. Operators holding
6 certificates of approval shall be assessed an annual registration
7 fee of \$100, which shall be valid for more than one impoundment
8 involved in a single project.

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

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

24 (e) Every application for a certificate of approval shall be

1 made in writing on a form prescribed by the secretary and shall be
2 signed and verified by the applicant. The application shall include
3 a monitoring and emergency action plan and a maintenance plan, the
4 required contents of which shall be established by the secretary by
5 legislative rule. The application shall contain and provide
6 information that may reasonably be required by the secretary to
7 administer the provisions of this article.

8 (f) Plans and specifications for the placement, construction,
9 erosion and sediment control, enlargement, alteration, repair or
10 removal and reclamation of impoundments shall be the charge of a
11 registered professional engineer licensed to practice in West
12 Virginia. Any plans or specifications submitted to the department
13 shall bear the seal of a registered professional engineer.
14 *Provided,* That when a flowback recycle impoundment will be used to
15 store flowback water, the impoundment shall be designed and
16 constructed using a single liner system.

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

20 (h) The secretary may revoke or suspend any certificate of
21 approval whenever the secretary determines that the impoundment for
22 which the certificate was issued constitutes an imminent danger to
23 human life or property. If necessary to safeguard human life or
24 property, the secretary may also amend the terms and conditions of

1 any certificate by issuing a new certificate containing the revised
2 terms and conditions.

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

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

12 (i) Upon expiration of the certificate of approval, or upon
13 its revocation by the secretary, the operator shall, within 60
14 days, fill all impoundments that are not required or allowed by
15 state or federal law or rule or agreement between the operator and
16 the surface owner that allows the impoundment to remain open for
17 the use and benefit of the surface owner and reclaim the site with
18 the approved erosion and sediment control plan.

19 (j) This section shall not apply to:

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

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

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

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

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

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

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

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

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

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

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

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

20 (c) If more than three tenants in common or other co-owners of
21 interests described in subsection (b) of this section hold
22 interests in such lands, the applicant may serve the documents
23 required upon the person described in the records of the sheriff
24 required to be maintained pursuant to section eight, article one,

1 chapter eleven-a of this code, or publish in the county in which
2 the well is located or is proposed to be located a Class II legal
3 advertisement as described in section two, article three, chapter
4 fifty-nine of this code, containing such notice and information as
5 the secretary shall prescribe by rule, with the first publication
6 date being at least ten days prior to the filing of the permit
7 application: *Provided*, That all owners occupying the tracts where
8 the well work is or is proposed to be located on the filing date of
9 the permit application shall receive actual service of the
10 documents required by subsection (b) of this section.

11 (d) Materials served upon persons described in subsections (b)
12 and (c) of this section shall contain a statement of the methods
13 and time limits for filing comments, who may file comments, the
14 name and address of the secretary for the purpose of filing
15 comments and obtaining additional information, and a statement that
16 such persons may request, at the time of submitting comments,
17 notice of the permit decision and a list of persons qualified to
18 test water as provided by the Office of Oil and Gas.

19 (e) Any person entitled to submit comments shall also be
20 entitled to receive from the secretary a copy of the permit as
21 issued or a copy of the order modifying or denying the permit if
22 such person requests receipt of them as a part of the comments
23 concerning the permit application.

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

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

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

13 (h) (1) Prior to conducting any seismic activity for seismic
14 exploration for natural gas to be extracted using horizontal
15 drilling methods, the company or person performing the activity
16 must provide notice to Miss Utility of West Virginia Inc. and to
17 all surface owners, mineral owners, and storage field operators on
18 whose property blasting, percussion or other seismic-related
19 activities will occur or whose property interests are within the
20 geographic area encompassed by the seismic study.

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 utilized for
3 blasting.

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

7 **§22-6A-11. Plugging and abandonment of horizontal wells.**

8 The secretary shall promulgate legislative rules governing the
9 procedures for plugging horizontal wells, including rules relating
10 to the methods of plugging such wells and the notices required to
11 be provided in connection therewith.

12 **§22-6A-12. Reclamation requirements.**

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

17 (a) Except as provided elsewhere in this section, within six
18 months after the completion of the drilling process the operator
19 shall fill all the pits and impoundments that are not required or
20 allowed by state or federal law or rule or agreement between the
21 operator and the surface owner that allows the impoundment to
22 remain open for the use and benefit of the surface owner (i.e. a
23 farm pond as described in section nine of this article) and remove
24 all concrete bases, drilling supplies, and drilling equipment.

1 Within that period, the operator shall grade or terrace and plant,
2 seed or sod the area disturbed that is not required in production
3 of the horizontal well where necessary to bind the soil and prevent
4 substantial erosion and sedimentation. No pit may be used for the
5 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. No pits may be left permanent.

9 (b) For well pads containing multiple horizontal wells,
10 reclamation shall be completed within six months after the
11 completion of the drilling process for a well, unless the operator
12 commences drilling on a subsequent well at that location within
13 that six-month period.

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

22 (d) (1) It shall be the duty of the operator to commence the
23 reclamation of the area of land disturbed in siting, drilling,
24 completing or producing the horizontal well in accordance with soil

1 erosion and sediment control plans approved by the secretary or the
2 secretary's designee pursuant to this article.

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

7 (3) If the secretary refuses to approve a request for
8 extension, the refusal shall be by order, which may be appealed
9 pursuant to the provisions of subsection (w), section five of this
10 article.

11 **§22-6A-13. Performance bonds; corporate surety or other security.**

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

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

24 (c) When an operator makes or has made application for permits

1 to drill or stimulate a number of horizontal wells, the operator
2 may, in lieu of furnishing a separate bond, furnish a blanket bond
3 in the sum of \$50,000 payable to the State of West Virginia, and
4 conditioned as aforesaid in subsection (b) of this section.

5 (d) The form of the bond required by this article shall be
6 approved by the secretary and may include, at the option of the
7 operator, surety bonding, collateral bonding (including cash and
8 securities) letters of credit, establishment of an escrow account,
9 self-bonding or a combination of these methods. If collateral
10 bonding is used, the operator may elect to deposit cash, or
11 collateral securities or certificates as follows: Bonds of the
12 United States or its possessions, of the federal land bank, or of
13 the homeowners' loan corporation; full faith and credit general
14 obligation bonds of the State of West Virginia or other states or
15 of any county, district or municipality of the State of West
16 Virginia or other states; or certificates of deposit in a bank in
17 this state, which certificates shall be in favor of the department.
18 The cash deposit or market value of the securities or certificates
19 shall be equal to or greater than the amount of the bond. The
20 secretary shall, upon receipt of any deposit of cash, securities or
21 certificates, promptly place the same with the Treasurer of the
22 State of West Virginia whose duty it shall be to receive and hold
23 the same in the name of the state in trust for the purpose of which
24 the deposit is made when the permit is issued. The operator shall

1 be entitled to all interest and income earned on the collateral
2 securities filed by such operator. The operator making the deposit
3 shall be entitled from time to time to receive from the State
4 Treasurer, upon the written approval of the secretary, the whole or
5 any portion of any cash, securities or certificates so deposited,
6 upon depositing with the State Treasurer in lieu thereof, cash or
7 other securities or certificates of the classes herein specified
8 having value equal to or greater than the amount of the bond.

9 (e) When an operator has furnished a separate bond from a
10 corporate bonding or surety company to drill, fracture or stimulate
11 a horizontal well and the well produces oil or gas or both, its
12 operator may deposit with the secretary cash from the sale of the
13 oil or gas or both until the total deposited is \$5,000. When the
14 sum of the cash deposited is \$5,000, the separate bond for the well
15 shall be released by the secretary. Upon receipt of that cash, the
16 secretary shall immediately deliver that amount to the Treasurer of
17 the State of West Virginia. The State Treasurer shall hold the cash
18 in the name of the state in trust for the purpose for which the
19 bond was furnished and the deposit was made. The operator shall be
20 entitled to all interest and income which may be earned on the cash
21 deposited so long as the operator is in full compliance with all
22 laws and rules relating to the drilling, redrilling, deepening,
23 casing, plugging, abandonment, and reclamation of the well for
24 which the cash was deposited and so long as the operator has

1 furnished all reports and information as may be required by the
2 secretary. If the cash realized from the sale of oil or gas or both
3 from the well is not sufficient for the operator to deposit with
4 the secretary the sum of \$10,000 within one year of the day the
5 well started producing, the corporate or surety company which
6 issued the bond on the well may notify the operator and the
7 secretary of its intent to terminate its liability under its bond.
8 The operator then shall have thirty days to furnish a new bond from
9 a corporate bonding or surety company or collateral securities or
10 other forms of security, as provided in this section with the
11 secretary. If a new bond or collateral securities or other forms of
12 security are furnished by the operator, the liability of the
13 corporate bonding or surety company under the original bond shall
14 terminate as to any acts and operations of the operator occurring
15 after the effective date of the new bond or the date the collateral
16 securities or other forms of security are accepted by the Treasurer
17 of the State of West Virginia. If the operator does not furnish a
18 new bond or collateral securities or other forms of security with
19 the secretary, as provided in this section, the operator shall
20 immediately plug, fill and reclaim the well in accordance with all
21 of the provisions of law and rules applicable thereto. In such
22 case, the corporate or surety company which issued the original
23 bond shall be liable for any plugging, filling or reclamation not
24 performed in accordance with such laws and rules.

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

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

24 (h) Whenever the right to operate a well is assigned or

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

22 Upon compliance with the requirements of this section by
23 assignor or transferor and assignee or transferee, the secretary
24 shall release assignor or transferor from all duties and

1 requirements of this article and shall give written notice of
2 release to assignor or transferor of any bond and return to
3 assignor or transferor any cash or collateral securities deposited
4 pursuant to this section.

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

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

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

16 **§22-6A-14. Civil action for contamination or deprivation of fresh**
17 **water source or supply; presumption.**

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

22 (b) Unless rebutted by one of the defenses established in
23 subsection (c) below, in any action for contamination or
24 deprivation of a fresh water source or supply within one thousand

1 feet of the site of drilling for a horizontal well, there shall be
2 a rebuttable presumption that the drilling and the well or either,
3 was the proximate cause of the contamination or deprivation of the
4 fresh water source or supply.

5 (c) In order to rebut the presumption of liability established
6 in subsection (b) of this section, the operator must affirmatively
7 prove one of the following defenses:

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

10 (2) The landowner or water purveyor refused to allow the
11 operator access to the property to conduct a pre-drilling or pre-
12 alteration survey.

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

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

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

19 **§22-6A-15. Offenses; civil and criminal penalties.**

20 (a) Any person or persons, firm, partnership, partnership
21 association or corporation who willfully violates any provision of
22 this article or any rule or order promulgated hereunder shall be
23 subject to a civil penalty not exceeding \$5,000. Each day a
24 violation continues after notice by the department constitutes a

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

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

19 (c) Any person or persons, firm, partnership, partnership
20 association or corporation willfully violating any of the
21 provisions of this article which prescribe the manner of drilling
22 and casing or plugging and filling any well, or which prescribe the
23 methods of conserving gas from waste, shall be guilty of a
24 misdemeanor, and, upon conviction thereof, shall be punished by a

1 fine not exceeding \$5,000, or imprisonment in a regional jail for
2 not more than 12 months, or both, in the discretion of the court,
3 and prosecutions under this section may be brought in the name of
4 the state of West Virginia in the court exercising criminal
5 jurisdiction in the county in which the violation of such
6 provisions of the article or terms of such order was committed.

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

15 (e) Any person who willfully violates any provision of any
16 permit issued under or subject to the provisions of this article or
17 who willfully violates any provision of this article or any rule of
18 the secretary or any order of the secretary or board is guilty of
19 a misdemeanor and, upon conviction thereof, shall be fined not less
20 than \$2,500 dollars nor more than \$25,000 per day of violation, or
21 imprisoned in a county or regional jail not more than one year, or
22 both fined and imprisoned.

23 **§22-6A-16. Local ordinances.**

24 All local ordinances and enactments purporting to regulate gas

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

9 **§22-6A-17. Division of Highways approval of well road access.**

10 As part of the permit application, the operator shall provide
11 a letter of certification from the Division of Highways that the
12 operator has entered into a required Division of Highways road
13 maintenance agreement for horizontal drilling operations and is in
14 compliance with all laws, regulations and conditions required by
15 the Division of Highways relating to use, maintenance and repair of
16 all state and county roads to be utilized for access to a well
17 location, including, but not limited to, those roads used for the
18 transportation of water, machinery or any other items or materials
19 related to the construction and operation of the well. The
20 operator shall be responsible and liable for all actions of the
21 operator's agents, employees, subcontractors and others under the
22 direction of the operator regarding performance under the agreement
23 provided herein above. Upon notice that the operator is failing to
24 comply with the letter of certification as required by this

1 section, the division shall deem such violation as a violation of
2 a permit condition for construction or operation of the well
3 pursuant to this article.

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

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

7 **§22C-8-2. Definitions.**

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

10 (1) "Board" means the shallow gas well review board provided
11 for in section four of this article;

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

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

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

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

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

1 chapter;

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

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

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

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

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

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

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

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

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

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

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

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

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

24 (19) "Pool" means an underground accumulation of gas in a

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

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

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

23 (22) "Tracts comprising a drilling unit" means that all
24 separately owned tracts or portions thereof which are included

1 within the boundary of a drilling unit;

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

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

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

14 **§22C-9-2. Definitions.**

15 (a) Unless the context in which used clearly requires a
16 different meaning, as used in this article:

17 (1) "Commission" means Oil and Gas Conservation Commission and
18 "commissioner" means the oil and gas conservation commissioner as
19 provided for in section four of this article;

20 (2) "Director" means the Director of the Division of
21 Environmental Protection and "chief" means the chief of the Office
22 of Oil and Gas;

23 (3) "Person" means any natural person, corporation,
24 partnership, receiver, trustee, executor, administrator, guardian,

1 fiduciary or other representative of any kind, and includes any
2 government or any political subdivision or any agency thereof;

3 (4) "Operator" means any owner of the right to develop,
4 operate and produce oil and gas from a pool and to appropriate the
5 oil and gas produced therefrom, either for such person or for such
6 person and others; in the event that there is no oil and gas lease
7 in existence with respect to the tract in question, the owner of
8 the oil and gas rights therein shall be considered as "operator" to
9 the extent of seven-eighths of the oil and gas in that portion of
10 the pool underlying the tract owned by such owner, and as "royalty
11 owner" as to one-eighth interest in such oil and gas; and in the
12 event the oil is owned separately from the gas, the owner of the
13 substance being produced or sought to be produced from the pool
14 shall be considered as "operator" as to such pool;

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

18 (6) "Independent producer" means a producer of crude oil or
19 natural gas whose allowance for depletion is determined under
20 Section 613A of the federal Internal Revenue Code in effect on July
21 1, 1997;

22 (7) "Oil" means natural crude oil or petroleum and other
23 hydrocarbons, regardless of gravity, which are produced at the well
24 in liquid form by ordinary production methods and which are not the

1 result of condensation of gas after it leaves the underground
2 reservoir;

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

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

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

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

1 in no event may the "Onondaga Group" formation or any formation
2 below the "Onondaga Group" be ~~otherwise~~ produced, perforated or
3 stimulated in any manner;

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

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

9 (14) "Waste" means and includes:

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

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

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

1 this exclusion is intended to address ownership of the gas;

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

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

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