

Senate Bill No. 258

(By Senators Snyder, Kessler (Acting President),
Browning, Foster, Laird, Yost, Beach, Plymale, McCabe and Klempa)

[Introduced January 25, 2011; referred to the Committee on the
Judiciary; and then to the Committee on Finance.]

**Interim
Bill**

A BILL to amend the Code of West Virginia, 1931, as amended, by
adding thereto a new article, designated §22-6A-1, §22-6A-2,
§22-6A-3, §22-6A-4, §22-6A-5, §22-6A-6, §22-6A-7, §22-6A-8,
§22-6A-9, §22-6A-10, §22-6A-11, §22-6A-12, §22-6A-13,
§22-6A-14, §22-6A-15, §22-6A-16, §22-6A-17, §22-6A-18,
§22-6A-19, §22-6A-20, §22-6A-21, §22-6A-22, §22-6A-23,
§22-6A-24, §22-6A-25, §22-6A-26, §22-6A-27, §22-6A-28,
§22-6A-29, §22-6A-30, §22-6A-31, §22-6A-32, §22-6A-33,
§22-6A-34, §22-6A-35, §22-6A-36, §22-6A-37, §22-6A-38,
§22-6A-39, §22-6A-40, §22-6A-41, §22-6A-42, §22-6A-43,
§22-6A-44, §22-6A-45, §22-6A-46 and §22-6A-47, all relating to
regulating the construction and operation of gas wells
utilizing hydraulic fracturing and horizontal drilling;
providing declaration of public policy and legislative
findings; providing for applicability; defining terms;

1 granting Secretary of Department of Environmental Protection
2 certain powers and duties; establishing permit requirements
3 and permit fees; requiring erosion and sediment control plan;
4 providing for a water pollution control permit and terms and
5 conditions; requiring compliance with other state and federal
6 programs; requiring Division of Highways approval of well road
7 access; requiring notice to property owners; providing for
8 receipt and consideration of comments from affected persons;
9 providing permit application requirements; establishing
10 erosion and sediment control plan requirements; providing plat
11 survey requirements; providing opportunity to object to plat
12 design by others with interest in property; providing for
13 issuance of permit; requiring bond prior to receipt of permit
14 and establishing bonding amounts and conditions for release;
15 establishing well location restrictions and exceptions
16 thereto; establishing agency requirements for permit issuance;
17 providing notice of permit issuance; establishing inspection
18 authority and process for notice, opportunity of abatement and
19 enforcement of violations; providing notice and review process
20 for orders and findings of the secretary; providing site
21 restoration requirements; establishing well design and casing
22 requirements and for inspections and approval thereof;
23 providing for protection of water supplies; requiring
24 reporting, monitoring and recordkeeping of fracturing

1 chemicals; providing surface impoundment and pit requirements;
2 requiring performance bonds or other security for each well;
3 establishing time frames and other conditions relating to
4 reclamation of well sites; providing water management plans
5 for use of water resources in fracturing process; providing
6 for objections to proposed drilling location; providing for
7 cement casings around coal seams; requiring wells be plugged
8 upon completion of use and establishing notice and processes
9 related thereto; establishing special requirements for
10 plugging around coal seams; providing for casings to protect
11 fresh water; establishing reporting and documentation
12 requirements; establishing methods of plugging; establishing
13 notice and other requirements before entry upon surface lands;
14 providing for notice of surface use and mediation agreements
15 on surface use; establishing requirements for surface use and
16 compensation agreements; providing for an appeal process to
17 Environmental Quality Board; establishing special fund for
18 permitting and permit modification fees; creating special
19 reclamation fund; creating offenses for violations of this act
20 and rules promulgated thereunder; providing for declaration of
21 notice to owners and lessees of coal seams; and preempting
22 local authority to regulate these operations and providing
23 exceptions thereto.

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

1 That the Code of West Virginia, 1931, as amended, be amended
2 and reenacted by adding thereto a new article, designated §22-6A-1,
3 §22-6A-2, §22-6A-3, §22-6A-4, §22-6A-5, §22-6A-6, §22-6A-7,
4 §22-6A-8, §22-6A-9, §22-6A-10, §22-6A-11, §22-6A-12, §22-6A-13,
5 §22-6A-14, §22-6A-15, §22-6A-16, §22-6A-17, §22-6A-18, §22-6A-19,
6 §22-6A-20, §22-6A-21, §22-6A-22, §22-6A-23, §22-6A-24, §22-6A-25,
7 §22-6A-26, §22-6A-27, §22-6A-28, §22-6A-29, §22-6A-30, §22-6A-31,
8 §22-6A-32, §22-6A-33, §22-6A-34, §22-6A-35, §22-6A-36, §22-6A-37,
9 §22-6A-38, §22-6A-39, §22-6A-40, §22-6A-41, §22-6A-42, §22-6A-43,
10 §22-6A-44, §22-6A-45, §22-6A-46 and §22-6A-47, all to read as
11 follows:

12 **ARTICLE 6A. GAS WELLS UTILIZING HYDRAULIC FRACTURING OR HORIZONTAL**
13 **DRILLING.**

14 **§22-6A-1. Short title.**

15 This article shall be known and cited as the "Hydraulic
16 Fracturing and Horizontal Drilling Gas Act."

17 **§22-6A-2. Declaration of public policy, legislative findings.**

18 (a) The advent of new technologies and drilling practices has
19 permitted the profitable development of natural gas encased within
20 shale and other underground geologic formations creating a new type
21 and scale of gas well operation that utilizes a fracturing process
22 of horizontally drilled multiple gas wells located in a single
23 drilling location; requires the use of large amounts of water to
24 conduct this hydraulic fracturing; creates large surface impacts

1 unlike traditional drilling operations; requires large water
2 withdrawals and large water and waste impoundments; and has
3 significant impact on local roads, bridges and other infrastructure
4 to be used by large vehicles to construct well facilities and to
5 transport water and other fluids used in the fracturing process.
6 These operations are unlike any other gas drilling operations and
7 require development of a new regulatory scheme to adequately
8 regulate environmental and local community impacts for this new
9 industrial activity.

10 (b) It is the policy of this state to protect and preserve all
11 gas owners rights and interests by providing protections for the
12 local community impacted by the construction and operation of these
13 facilities, assure state water resources are protected, assure
14 surface owner impacts are minimized and respected, while assuring
15 the orderly development of this new drilling activity.

16 **§22-6A-3. Applicability.**

17 Notwithstanding any other provision of this code to the
18 contrary, the provisions of this article shall apply to any gas
19 operation in the Marcellus Shale formation or any gas operation
20 which utilizes horizontal drilling or hydraulic fracturing
21 involving a minimum of five thousand barrels. However, this
22 article does not apply to coal bed methane wells and units
23 regulated by article twenty-one of this chapter or deep wells
24 regulated by article nine chapter twenty-two-c of this code:

1 *Provided, That* if a deep well utilizes horizontal drilling or
2 hydraulic fracturing involving a minimum of five thousand barrels,
3 the provisions of this article apply except for those relating to
4 unitization.

5 **§22-6A-4. Definitions.**

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

8 (a) "12-Digit Hydrologic Unit Code" means a subwatershed,
9 generally ranging in size from ten thousand to forty thousand
10 acres, as designated by the United States Geological Survey and the
11 United States Department of Agriculture Natural Resources
12 Conservation Service.

13 (b) "Body of Water" means a natural or artificial lake, ponds,
14 reservoir, swamp, marsh, or wetland;

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

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

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

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

1 will require protection if wells are drilled through it;

2 (g) "Department" means Department of Environmental Protection;

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

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

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

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

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

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

1 seam;

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

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

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

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

24 (r) "Secretary" means the Secretary of the Department of

1 Environmental Protection;

2 (s) "Stimulate" means any action taken by a well operator to
3 increase the inherent productivity of a gas well, including, but
4 not limited to, fracturing, shooting or acidizing, but excluding
5 cleaning out, bailing or workover operations;

6 (t) "Stream" means a watercourse.

7 (u) "Watercourse means a channel or conveyance of surface
8 water having defined bed and banks, whether natural or artificial,
9 with perennial or intermittent flow.

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

18 (w) "Well work" means the drilling, redrilling, deepening,
19 stimulating, pressuring by injection of any fluid, converting from
20 one type of well to another, combining or physically changing to
21 allow the migration of fluid from one formation to another or
22 plugging or replugging of any well;

23 (x) "Well operator" or "operator" means any person or persons,
24 firm, partnership, partnership association or corporation that

1 proposes to or does locate, drill, operate or abandon any well as
2 herein defined;

3 (y) "Pollutant" shall have the same meaning as provided in
4 subsection (17), section three, article eleven, chapter twenty-two
5 of this code; and

6 (z) "Waters of this state" shall have the same meaning as the
7 term "waters" as provided in subsection (23), section three,
8 article eleven, chapter twenty-two of this code.

9 **§22-6A-5. Secretary of the Department of Environmental Protection;**
10 **powers and duties.**

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

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

16 (2) To employ all necessary personnel to carry out the
17 purposes and requirements of this article;

18 (3) To propose any necessary legislative rules, in accordance
19 with the provisions of chapter twenty-nine-a of this code to
20 implement the provisions of this article. After the enactment of
21 this article following the 2011 regular session of the legislature,
22 the secretary is authorized to file emergencies rules to implement
23 the requirements of this article; and

24 (4) To make investigations and inspections necessary to ensure

1 compliance with the provisions of this article.

2 **§22-6A-6. Well permit required; permit fee; application; soil**
3 **erosion control plan.**

4 (a) It is unlawful for any person to commence any well work,
5 including site preparation work which involves any disturbance of
6 land, without first securing a well work permit from the secretary.
7 An application may propose and a permit may approve two or more
8 activities defined as well work.

9 (b) Each application for a well work permit shall be
10 accompanied by a bond, fee, plat, erosion and sediment control
11 plan, and Division of Highways certification and water management
12 plan as required by this article.

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

23 (d) The well owner or operator shall install the permit number
24 as issued by the secretary in a legible and permanent manner to the

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

4 (e) The secretary shall deny the issuance of a permit if the
5 secretary determines that the applicant has committed a substantial
6 violation of a previously issued permit, including the erosion and
7 sediment control plan, or a substantial violation of one or more of
8 the rules promulgated hereunder, and has failed to abate or seek
9 review of the violation within the time prescribed by the secretary
10 pursuant to the provisions of sections seventeen and eighteen of
11 this article and the rules promulgated hereunder, which time may
12 not be unreasonable: Provided, That in the event that the
13 secretary does find that a substantial violation has occurred and
14 that the operator has failed to abate or seek review of the
15 violation in the time prescribed, the secretary may suspend the
16 permit on which said violation exists, after which suspension the
17 operator shall forthwith cease all well work being conducted under
18 the permit: Provided, however, That the secretary may reinstate
19 the permit without further notice, at which time the well work may
20 be continued. The secretary shall make written findings of any
21 such determination and may enforce the same in the circuit courts
22 of this state and the operator may appeal such suspension pursuant
23 to the provisions of section forty of this article. The secretary
24 shall make a written finding of any such determination.

1 **§22-6A-7. Water pollution control permits; powers and duties of**
2 **the secretary; penalties.**

3 (a) In addition to a permit for well work, the secretary,
4 after public notice and an opportunity for public hearings, may
5 either issue a separate permit, general permit or a permit
6 consolidated with the well work permit for the discharge or
7 disposition of any pollutant or combination of pollutants into
8 waters of this state upon condition that such discharge or
9 disposition meets or will meet all applicable state and federal
10 water quality standards and effluent limitations and all other
11 requirements of the secretary.

12 (b) It shall be unlawful for any person conducting activities
13 which are subject to the requirements of this article, unless that
14 person holds a water pollution control permit therefor from the
15 secretary, which is in full force and effect to:

16 (1) Allow pollutants or the effluent therefrom, produced by or
17 emanating from any point source, to flow into the water of this
18 state;

19 (2) Make, cause or permit to be made any outlet, or
20 substantially enlarge or add to the load of any existing outlet,
21 for the discharge of pollutants or the effluent therefrom, into the
22 waters of this state;

23 (3) Acquire, construct, install, modify or operate a disposal
24 system or part thereof for the direct or indirect discharge or

1 deposit of treated or untreated pollutants or the effluent
2 therefrom, into the waters of this state, or any extension to or
3 addition to such disposal system;

4 (4) Increase in volume or concentration any pollutants in
5 excess of the discharges or disposition specified or permitted
6 under any existing permit;

7 (5) Extend, modify or add to any point source, the operation
8 of which would cause an increase in the volume or concentration of
9 any pollutants discharging or flowing into the waters of the state;

10 (6) Operate any disposal well for the injection or reinjection
11 underground of any pollutant, including, but not limited to,
12 liquids or gasses, or convert any well into such a disposal well or
13 plug or abandon any such disposal well.

14 (c) Notwithstanding any provision of this article or articles
15 seven, eight, nine or ten of this chapter to the contrary, the
16 secretary shall have the same powers and duties relating to
17 inspection and enforcement as those granted under article eleven,
18 chapter twenty-two of this code in connection with the issuance of
19 any water pollution control permit or any person required to have
20 such permit.

21 (d) Any person who violates any provision of this section, any
22 order issued under this section or any permit issued pursuant to
23 this section or any rule of the secretary relating to water
24 pollution or who willfully or negligently violates any provision of

1 this section or any permit issued pursuant to this section or any
2 rule or order of the secretary relating to water pollution or who
3 fails or refuses to apply for and obtain a permit or who
4 intentionally misrepresents any material fact in an application,
5 record, report, plan or other document files or required to be
6 maintained under this section shall be subject to the same
7 penalties for such violations as are provided for in sections
8 twenty-two and twenty-four, article eleven, chapter twenty-two of
9 this code: Provided, That the provisions of section twenty-six,
10 article eleven, chapter twenty-two of this code relating to
11 exceptions to criminal liability shall also apply.

12 All applications for injunction filed pursuant to section
13 twenty-two, article eleven, chapter twenty-two of the code shall
14 take priority on the docket of the circuit court in which pending,
15 and shall take precedence over all other civil cases.

16 (e) Any water pollution control permit issued pursuant to this
17 section or any order issued in connection with such permit for the
18 purpose of implementing the "national pollutant discharge
19 elimination system" established under the federal Clean Water Act
20 shall be appealable to the environmental quality board pursuant to
21 the provisions of section twenty-five, article eleven, chapter
22 twenty-two and section seven, article one, chapter twenty-two-b of
23 this code.

24 **§22-6A-8. Compliance with other programs required.**

1 (a) Prior to the issuance of any well work permit, the
2 secretary shall ascertain from the Commissioner of the Division of
3 Labor whether the applicant is in compliance with the provisions of
4 article one-b, chapter twenty-one of this code and section
5 fourteen, article five, chapter twenty-one of this code. Upon
6 issuance of the permit, the secretary shall forward a copy to the
7 commissioner, who shall assure continued compliance under the
8 permit.

9 (b) Prior to the issuance of any well work permit the
10 secretary shall ascertain from the Executive Director of Workforce
11 West Virginia and the Insurance Commissioner whether the applicant
12 is in compliance with the provisions of section six-c, article two,
13 chapter twenty-one-a of this code and section five, article two,
14 chapter twenty-three of this code regarding any required
15 subscription to the Unemployment Compensation Fund or to the
16 Workers' Compensation Fund, the payment of premiums and other
17 charges to the fund, the timely filing of payroll reports and the
18 maintenance of adequate deposits. If the applicant is delinquent
19 or has defaulted, or has been terminated by the Executive Director
20 or the Insurance Commissioner, the permit may not be issued until
21 the applicant returns to compliance or is restored by the Executive
22 Director or the Insurance Commissioner under a reinstatement
23 agreement.

24 (c) After issuance of a well work permit, each operator must

1 maintain continued compliance with the programs set forth in this
2 section and provide proof of compliance to the secretary on a
3 quarterly basis after permit issuance.

4 **§22-6A-9. Division of Highways approval of well road access.**

5 As part of the permit application, the operator shall provide
6 a letter of certification from the Division of Highways that the
7 operator has entered into an agreement and is in compliance with
8 all laws, regulations and conditions required by the Division of
9 Highways relating to use, maintenance and repair of all state and
10 county roads to be utilized for access to a well location,
11 including, but not limited to, those roads used for the
12 transportation of water, machinery or any other items or materials
13 related to the construction and operation of the well. Upon
14 notice that the operator is failing to comply with the letter of
15 certification as required by this section, the division shall deem
16 such violation as a violation of a permit condition for
17 construction or operation of the well pursuant to this article.

18 **§22-6A-10. Notice to property owners.**

19 (a) No later than the filing date of the application, the
20 applicant for a permit for any well work shall deliver by personal
21 service or by certified mail, return receipt requested, copies of
22 the application, well plat and erosion and sediment control plan
23 required by section six of this article to each of the following
24 persons:

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

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

8 (b) If more than three tenants in common or other coowners of
9 interests described in subsection (a) of this section hold
10 interests in such lands, the applicant may serve the documents
11 required upon the person described in the records of the sheriff
12 required to be maintained pursuant to section eight, article one,
13 chapter eleven-a of this code, or publish in the county in which
14 the well is located or to be located a Class II legal advertisement
15 as described in section two, article three, chapter fifty-nine of
16 this code, containing such notice and information as the secretary
17 shall prescribe by rule, with the first publication date being at
18 least ten days prior to the filing of the permit application:
19 Provided, That all owners occupying the tracts where the well work
20 is, or is proposed to be located at the filing date of the permit
21 application shall receive actual service of the documents required
22 by subsection (a) of this section.

23 (c) Materials served upon persons described in subsections (a)
24 and (b) of this section shall contain a statement of the methods

1 and time limits for filing comments, who may file comments and the
2 name and address of the secretary for the purpose of filing
3 comments and obtaining additional information and a statement that
4 such persons may request, at the time of submitting comments,
5 notice of the permit decision and a list of persons qualified to
6 test water as provided in this section.

7 (d) Any person entitled to submit comments shall also be
8 entitled to receive a copy of the permit as issued or a copy of the
9 order denying the permit if such person requests the receipt
10 thereof as a part of the comments concerning said permit
11 application.

12 (e) Persons entitled to notice may contact the district office
13 of the division to ascertain the names and location of water
14 testing laboratories in the area capable and qualified to test
15 water supplies in accordance with standard accepted methods. In
16 compiling such list of names the division shall consult with the
17 state bureau of public health and local health departments.

18 **§22-6A-11. Procedure for filing comments; certification of notice.**

19 (a) All persons described in subsections (a) and (b), section
20 nine of this article may file comments with the secretary as to the
21 location or construction of the applicant's proposed well work
22 within fifteen days after the application is filed with the
23 secretary.

24 (b) Prior to the issuance of any permit for well work, the

1 applicant shall certify to the secretary that the requirements of
2 section nine of this article have been completed by the applicant.
3 Such certification may be by affidavit of personal service or the
4 return receipt card, or other postal receipt for certified mailing.

5 **§22-6A-12. Permit application requirements and contents.**

6 Every permit application filed under this article shall be
7 verified and shall contain the following:

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

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

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

21 (4) The type of well;

22 (5) The well work for which a permit is requested;

23 (6) The approximate depth to which the well is to be drilled
24 or deepened, or the actual depth if the well has been drilled;

1 (7) The permit application fee required by law;

2 (8) If the proposed well work will require casing or tubing to
3 be set, the entire casing program for the well, including the size
4 of each string of pipe, the starting point and depth to which each
5 string is to be set, and the extent to which each such string is to
6 be cemented;

7 (9) If the proposed well work is to plug or replug the well,
8 (i) Specifications in accordance with the data requirements of
9 section thirty-seven of this article, (ii) a copy of all logs in
10 the operator's possession as the secretary may require, and (iii)
11 a work order showing in detail the proposed manner of plugging or
12 unplugging the well, in order that a representative of the
13 secretary and any interested persons may be present when the work
14 is done. In the event of an application to drill, redrill or
15 deepen a well, if the well work is unsuccessful so that the well
16 must be plugged and abandoned, and if the well is one on which the
17 well work has been continuously progressing pursuant to a permit,
18 the operator may proceed to plug the well as soon as the operator
19 has obtained the verbal permission of the secretary or the
20 secretary's designated representative to plug and abandon the well,
21 except that the operator shall make reasonable effort to notify as
22 soon as practicable the surface owner and the coal owner, if any,
23 of the land at the well location, and shall also timely file the
24 plugging affidavit required by section twenty-three of this

1 article;

2 (10) If the proposed well work is to stimulate a gas well,
3 specifications in accordance with the data requirements of section
4 thirteen of this article;

5 (11) The erosion and sediment control plan required by section
6 thirteen of this article for applications for permits to drill; and

7 (12) Any other relevant information which the secretary may
8 require.

9 **§22-6A-13. Erosion and sediment control plan requirements.**

10 (a) An erosion and sediment control plan shall accompany each
11 application for a well work permit. Such plan shall contain
12 methods of stabilization and drainage, including a map of the
13 project area indicating the amount of acreage disturbed. The
14 erosion and sediment control plan shall meet the minimum
15 requirements of the West Virginia erosion and sediment control
16 manual as adopted and amended, from time to time, by the
17 department, in consultation with the several soil conservation
18 districts pursuant to the control program established in this state
19 through section 208 of the federal Water Pollution Control Act
20 Amendments of 1972 (33 U.S.C.1288).

21 (b) The erosion and sediment control plan shall become part of
22 the terms and conditions of a well work permit which is issued and
23 the provisions of the plan shall be carried out where applicable in
24 the operation. The erosion and sediment control plan shall set out

1 the proposed method of reclamation which shall comply with the
2 requirements of section twenty-nine of this article.

3 **§22-6A-14. Plats prerequisite to drilling or fracturing wells;**
4 **preparation and contents; notice and information**
5 **furnished to coal operators, owners or lessees;**
6 **issuance of permits; performance bonds or**
7 **securities in lieu thereof; bond forfeiture.**

8 (a) Before drilling for gas, or before fracturing or
9 stimulating a well on any tract of land, the well operator shall
10 have a plat prepared by a professional surveyor or registered
11 engineer showing the district and county in which the tract of land
12 is located, the name and acreage of the same, the names of the
13 owners of adjacent tracts, the proposed or actual location of the
14 well determined by survey, the coordinates of the well, the courses
15 and distances of such location from two permanent points or
16 landmarks on said tract and the number to be given the well. In
17 the event the tract of land on which the said well proposed to be
18 drilled or fractured is located is known to be underlain by one or
19 more coal seams, copies of the plat shall be forwarded by
20 registered or certified mail to each and every coal operator
21 operating said coal seams beneath said tract of land, who has
22 mapped the same and filed such maps with the Office of Miners'
23 Health, Safety and Training in accordance with chapter twenty-two-a
24 of this code and the coal seam owner of record and lessee of

1 record, if any, if said owner or lessee has recorded the
2 declaration provided in section fifty-two of this article, and if
3 said owner or lessee is not yet operating said coal seams beneath
4 said tract of land. With each of such plats there shall be
5 enclosed a notice (form for which shall be furnished on request by
6 the secretary) addressed to the secretary and to each such coal
7 operator, owner and lessee, if any, at their respective addresses,
8 informing them that such plat and notice are being mailed to them
9 respectively by registered or certified mail, pursuant to the
10 requirements of this article.

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

1 operators, owners and lessees, if any, to whom copies of the plat
2 and notice shall have been mailed as herein required, and upon
3 presentation of such written consent to the secretary. The notice
4 above provided for may be given to the coal operator by delivering
5 or mailing it by registered or certified mail as above to any agent
6 or superintendent in actual charge of mines.

7 (c) A permit to drill, or to fracture or stimulate a gas well,
8 shall not be issued unless the application therefor is accompanied
9 by a bond as provided in section twenty-eight of this article.

10 **§22-6A-15. Well location restrictions.**

11 (a) Wells may not be drilled within one thousand feet
12 measured horizontally from any existing building or existing water
13 well without the written consent of the owner thereof. Where the
14 distance restriction would deprive the owner of the gas rights of
15 the right to produce or share in the gas underlying said surface
16 tract, the well operator may be granted a variance from said
17 distance restriction upon submission of a plan which shall identify
18 the additional measures, facilities or practices to be employed
19 during well site construction, drilling and operations. The
20 variance, if granted, shall include such additional terms and
21 conditions as the department shall require to insure the safety and
22 protection of affected persons and property. The provisions may
23 include insurance, bonding and indemnification, as well as
24 technical requirements.

1 (b) No well site may be prepared or well drilled within one
2 hundred feet measured horizontally from any watercourse, natural or
3 artificial lake, pond or reservoir or within one hundred feet of
4 the boundary of a wetland or the boundary that affects the
5 functions and values of a wetland. However, no well may be drilled
6 using hydraulic fracturing or horizontal drilling within two
7 thousand five hundred feet of a surface water source, and within
8 one thousand feet of a groundwater source, that serves a public
9 water system. The distance from the public water supply source, as
10 identified by the department, shall be measured as follows:

11 (1) For a surface water intake on a lake or reservoir, the
12 distance shall be measured from the boundary of the lake or
13 reservoir.

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

17 (3) For a groundwater source, the distance shall be measured
18 from the wellhead or spring.

19 The department may waive such distance restrictions upon
20 submission of a plan which shall identify the additional measures,
21 facilities or practices to be employed during well site
22 construction, drilling and operations. Such waiver, if granted,
23 shall impose such permit conditions as are necessary to protect the
24 waters of the state.

1 (c) On making a determination on a well permit, the
2 department shall consider and may deny or condition a well permit
3 based on the impact of the proposed well on public resources to
4 include, but not be limited to, the following:

5 (1) Publicly owned parks, forests, gamelands, recreational
6 and wildlife areas.

7 (2) National or state scenic rivers.

8 (3) National natural landmarks.

9 (4) Habitats of rare and endangered flora and fauna and other
10 critical communities.

11 (5) Historical and archaeological sites listed on the federal
12 or state list of historic places.

13 (6) Bodies of water and watercourses, including, but not
14 limited to, wetlands, wild trout streams and wilderness trout
15 streams.

16 (d) Prior to submitting a permit application to the
17 department for a well or well site within a wild trout stream, high
18 quality or exceptional value watershed as indicated by the
19 twelve-digit Hydrologic Unit Code, the applicant shall consult with
20 the West Virginia Division of Natural Resources.

21 **§22-6A-16. Review of application; issuance of permit in the**
22 **absence of objections; copy of permits to county**
23 **assessor.**

24 The secretary shall review each application for a well work

1 permit and shall determine whether a permit should be issued.

2 No permit shall be issued less than sixty days after the
3 filing date of the application for any well work: Provided, That
4 if the applicant certifies that all persons entitled to notice of
5 the application under the provisions of this article have been
6 served in person or by certified mail, return receipt requested,
7 with a copy of the well work application, including the erosion and
8 sediment control plan, water management plan, and the plat required
9 by this article, and further files written statements of no
10 objection by all such persons, the secretary may issue the well
11 work permit thirty days after the filing date of the application.

12 The secretary may inspect the proposed well work location to
13 assure adequate review of the application. The permit shall not be
14 issued, or shall be conditioned including conditions with respect
15 to the location of the well and access roads prior to issuance if
16 the director determines that:

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

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

21 (3) The water management plan is inadequate;

22 (4) The plat is inadequate;

23 (5) The applicant has failed to demonstrate compliance with
24 sections eight and nine of this article;

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

2 (7) The proposed well work fails to protect fresh water
3 sources or supplies; or

4 (8) Any other requirement of this article.

5 The secretary shall promptly review all comments filed. If
6 after review of the application and all comments received, the
7 application for a well work permit is approved, and no timely
8 objection or comment has been filed with the secretary or made by
9 the secretary, the permit shall be issued, with conditions, if any.

10 Nothing in this section shall be construed to supersede the
11 provisions of sections fourteen and twenty-six of this article.

12 The secretary shall mail a copy of the permit as issued or a
13 copy of the order denying a permit to any person who submitted
14 comments to the secretary concerning the permit and requested a
15 copy.

16 Upon the issuance of any permit pursuant to the provisions of
17 this article, the secretary shall transmit a copy of the permit to
18 the office of the assessor for the county in which the well is
19 located.

20 **§22-6A-17. Findings and orders of inspectors concerning**
21 **violations; determination of reasonable time for**
22 **abatement; extensions of time for abatement;**
23 **special inspections; notice of findings and**
24 **orders.**

1 (a) If a gas inspector, upon making an inspection of a well or
2 well site or any other gas facility, finds that any provision of
3 this article is being violated, the inspector shall also find
4 whether or not an imminent danger to persons exists, or whether or
5 not there exists an imminent danger that a fresh water source or
6 supply will be contaminated or lost. If the inspector finds that
7 an imminent danger exists, an order requiring the operator of the
8 well, well site or other gas facility to cease further operations
9 until the imminent danger has been abated shall be issued by the
10 inspector. If the inspector finds that no imminent danger exists,
11 the inspector shall determine what would be a reasonable period of
12 time to totally abate the violation. The findings shall contain
13 reference to the provisions of this article which the inspector
14 finds are being violated, and a detailed description of the
15 conditions which cause and constitute the violation.

16 (b) The period of time for abatement shall not exceed seven
17 days, but may be extended from time to time, up to a total of
18 thirty days for good cause shown: Provided, That the thirty-day
19 period may be extended by the inspector when abatement cannot be
20 accomplished because of circumstances or conditions beyond the
21 control of the well operator.

22 (c) The secretary shall conduct a special inspection: (A)
23 Whenever an operator of a well or well site or any other gas
24 facility, prior to the expiration of any period of abatement;

1 requests the secretary to conduct a special inspection; and (B)
2 upon expiration of the period of time as originally fixed or as
3 extended, unless the director is satisfied that the violation has
4 been abated. Upon conducted a special inspection, the inspector
5 shall determine whether or not the violation has been totally
6 abated. If the inspector determines that the violation has not
7 been totally abated, the inspector shall determine whether or not
8 the period of time should be extended. If the inspector determines
9 that the period of time should be extended, the inspector shall
10 determine what a reasonable extension would be. If the inspector
11 determines that the violation has not been totally abated, and if
12 the period of time as originally fixed, or as so fixed and
13 extended, has then expired, and if the inspector also determines
14 that such period of time should not be further extended, the
15 inspector shall thereupon make an order requiring the operator of
16 the well or well site or other gas facility to cease further
17 operations of the well, well site or facility, as the case may be.
18 The findings and order shall contain reference to the specific
19 provisions of this article which are being violated.

20 (d) Notice of each finding and order made under this section
21 shall promptly be given to the operator.

22 **§22-6A-18. Review of findings and orders by secretary.**

23 (a) Any well operator, complaining coal operator, owner or
24 lessee, if any, aggrieved by findings or an order made by an

1 inspector pursuant to section seventeen of this article, may within
2 fifteen days apply to the secretary for annulment or revision of
3 the order. After receiving the application, the secretary shall
4 conduct a special inspection of the well, well site or other gas
5 facility affected by the order, or cause two duly authorized
6 inspectors, other than the inspector who issued the order or the
7 supervising inspector and one duly authorized inspector other than
8 the inspector who made the order, to conduct the inspection of the
9 well, or well site or other facility and to report thereon to them.
10 After conducting the special inspection, or upon receiving the
11 report of the special inspection, as the case may be, the secretary
12 shall issue an order with findings and shall annul, revise or
13 affirm the order of the inspector.

14 (b) Notice of each finding and order made under this section
15 shall promptly be given to the operator of the well, well site or
16 other facility, and the complainant under section three, if any.

17 (c) At any time while an order made pursuant to section three
18 of this article is in effect, the operator of the well, well site
19 or other gas facility affected by the order may apply to the
20 secretary for annulment or revision of the order. The secretary
21 shall thereupon proceed to act upon such application in the manner
22 provided in this section.

23 **§22-6A-19. Requirements for findings, orders and notices; posting**
24 **of findings and orders.**

1 (a) All findings and orders made pursuant to section seventeen
2 or eighteen of this article, and all notices required to be given
3 regarding findings and orders, shall be in writing. All findings
4 and orders shall be signed by the person issuing them, and all
5 notices shall be signed by the person giving the notice. All
6 notices shall contain a copy of the findings and orders referred to
7 therein.

8 (b) Notice of any finding or order required by section three
9 or four of this article to be given to an operator shall be given
10 by causing the notice, addressed to the operator of the well, well
11 site or other gas facility to which the finding or order pertains,
12 to be delivered to the operator by causing a copy thereof to be
13 sent by registered mail to the permanent address of the operator as
14 filed with the department and by causing a copy thereof to be
15 posted upon the drilling rig or other equipment at the well, well
16 site or other gas facility, as the case may be. The specific name
17 of the operator does not need to be set forth in the notice
18 required by this subsection.

19 **§22-6A-20. Well site restoration.**

20 (a) Each gas well owner or operator shall restore the land
21 surface within the area disturbed in siting, drilling, completing
22 and producing the well, including pipeline and access road
23 rights-of-way.

24 (b) During and after all earthmoving or soil disturbing

1 activities, including, but not limited to, the activities related
2 to siting, drilling, completing, producing and plugging the well;
3 erosion and sedimentation control measures shall be implemented in
4 accordance with an erosion and sedimentation control plan prepared
5 in accordance with all applicable provisions of the State Water
6 Pollution Control Act or any applicable rule promulgated
7 thereunder.

8 (c) Within nine months after completion of drilling of any
9 well, the owner or operator shall restore the well site, remove or
10 fill all pits used to contain produced fluids or industrial wastes
11 and remove all drilling supplies and equipment not needed for
12 production. Drilling supplies and equipment not needed for
13 production may be stored on the well site if the express written
14 consent of the surface landowner is obtained.

15 (d) Within nine months after plugging a well, the owner or
16 operator shall remove all production or storage facilities,
17 supplies and equipment and restore the well site.

18 (e) Restoration activities required by this article or in
19 rules promulgated hereunder shall also comply with all applicable
20 provisions of the State Water Pollution Control Act or any
21 applicable rule promulgated thereunder.

22 (f) Failure to restore the well site as required in this
23 article or in rules promulgated hereunder is a violation of this
24 article.

1 (g) The restoration period may be extended by the department
2 for an additional six months upon application of the well owner or
3 operator providing evidence of inability to comply due to adverse
4 weather conditions or lack of essential fuel, equipment or labor.

5 **§22-6A-21. Protection of fresh groundwater; casing requirements.**

6 (a) To aid in the protection of fresh groundwater, the well
7 operator shall control and dispose of brines produced from the
8 drilling, alteration, or operation of a gas well in a manner
9 consistent with all applicable provisions of the State Water
10 Pollution Control Act or any applicable rule promulgated
11 thereunder.

12 (b) To prevent the migration of gas or fluids into sources of
13 fresh groundwater and to prevent pollution or diminution of fresh
14 groundwaters, there shall be run and permanently cemented, a string
15 or strings of casing in each well drilled through the fresh water
16 bearing strata to a depth below the deepest fresh water aquifer in
17 a manner prescribed by rule by the department.

18 (c) When a well is drilled at a location where the coal has
19 been drilled and cased to prevent the migration of gas or fluids
20 into the seam from which the coal has been removed in a manner
21 prescribed by rule of the department. The department and the coal
22 operator, owner or lessee shall be given at least seventy two
23 hours' notice prior to commencement of the work protecting the
24 mine.

1 (d) When a well is drilled at a location where the coal has
2 not been removed, the well shall be drilled to such a depth and of
3 size as will permit the placing of casing, packers in, and vents
4 on, the hole at such points and in such a manner prescribed by the
5 department by rule as will exclude all gas or fluids from the coal
6 seam, except such as may be found naturally in the coal seam itself
7 and will enable the monitoring of the integrity of the production
8 casing.

9 (e) The department shall inspect each permitted well drilled
10 in any formation using hydraulic fracturing or horizontal drilling,
11 or both, during each phase of cementing, completing and altering.
12 The permittee may not proceed to the next phase of the drilling
13 operation until an inspection by the department has been performed.
14 The department shall allocate an appropriate portion of the well
15 permit fees to fund the inspection and may increase the permit fees
16 to meet an increase in the inspection costs.

17 **§22-6A-22. Protection of water supplies.**

18 (a) Any well operator who affects a public or private water
19 supply by pollution or diminution shall restore or replace the
20 affected supply with an alternate source of water adequate in
21 quantity and quality for the purposes served by the supply.

22 (b) Any landowner or water purveyor suffering pollution or
23 diminution of a water supply as a result of the drilling,
24 alteration or operation of a gas well may so notify the department

1 and request that an investigation be conducted. Within ten days of
2 such notification, the department shall investigate any such claim
3 and shall, within forty five days following notification, make a
4 determination. If the department finds that the pollution or
5 diminution was caused by the drilling, alteration or operation
6 activities, or if it presumes the well operator responsible for
7 pollution pursuant to subsection (c), then it shall issue such
8 orders to the well operator as are necessary to assure compliance
9 with subsection (a). Such orders may include orders requiring the
10 temporary replacement of a water supply where it is determined that
11 the pollution or diminution may be of limited duration.

12 (c) Upon a written request by any landowner residing within
13 five thousand five hundred feet but farther than two thousand five
14 hundred feet of a proposed gas well using hydraulic fracturing, the
15 well permit applicant shall conduct a predrilling or prealteration
16 survey, using a facility or laboratory certified by the department,
17 and send a copy of the survey by certified mail to the requestor.
18 A predrilling or prealteration survey shall provide at a minimum
19 the testing results for chemicals or chemical compounds known to be
20 commonly used for hydraulic fracturing including, but not limited
21 to, the following: all major cations and anions, arsenic, benzene,
22 toluene, ethylbenzene, xylenes, manganese, dissolved methane, total
23 dissolved solids, chlorides, nutrients and radionuclides.

24 (d) Unless rebutted by one of the five defenses established

1 in subsection (f), it shall be presumed that a well operator is
2 responsible for the pollution of a water supply that is within two
3 thousand five hundred feet of the gas well, where the pollution
4 occurred within twelve months after the completion of drilling or
5 alteration of such well.

6 (e) In case of horizontal drilling, the presumption under
7 subsection (d) covers the entire length of the horizontal drilling
8 and extends an additional two thousand five hundred feet from the
9 end or sides of each horizontal well bore.

10 (f) In order to rebut the presumption of liability
11 established in subsection (d), the well operator must affirmatively
12 prove one of the following five defenses:

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

15 (2) The landowner or water purveyor refused to allow the
16 operator access to conduct a predrilling or prealteration survey.

17 (3) The water supply is not within two thousand five hundred
18 feet of the well.

19 (4) The pollution occurred more than twelve months after
20 completion of drilling or alteration activities.

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

23 (g) Any operator electing to preserve its defenses under
24 subsection (e) (1) or (2) shall retain the services of an

1 independent certified laboratory to conduct the predrilling or
2 prealteration survey of water supplies. A copy of the results of
3 any such survey shall be submitted to the department and the
4 landowner or water purveyor in a manner prescribed by the
5 department.

6 (h) Nothing herein shall prevent any landowner or water
7 purveyor who claims pollution or diminution of a water supply from
8 seeking any other remedy that may be provided at law or in equity.

9 **§22-6A-23. Hydraulic fracturing chemicals and surface**
10 **impoundments.**

11 (a) Notwithstanding a trade secret claim, a well operator
12 shall file a report with the department for each well that is
13 drilled using the hydraulic fracturing process within thirty days
14 of completion of such well. The report shall include, without
15 limitation, the complete list of the chemicals and chemical
16 compounds used in the fracturing fluid products, specifying the
17 volume of fluid utilized in each separate hydraulic fracturing
18 operation and the Chemical Abstract Service registry number for
19 each constituent chemical. The department shall make the report
20 available to the public upon a written request.

21 (b) In case of a medical emergency, the operator shall
22 provide the concentration of each constituent chemical and the
23 formula for each chemical compound to medical emergency personnel
24 or local emergency personnel, or both.

1 (c) The well operator shall keep a copy of the report at the
2 well site and produce it upon request by the department, local
3 emergency personnel or surface landowners residing within five
4 thousand five hundred feet of the well.

5 **§22-6A-24. Hydraulic fracture fluids monitoring.**

6 For each individual hydraulic fracturing operation performed
7 at a well site, the well operator shall maintain the data
8 indicating the total volume of fracturing fluids used for the
9 operation as well as the total volume of fluids that returned to
10 the surface. The well operator shall compile the data and the
11 necessary records to support the data, and submit it to the
12 department on a semiannual basis.

13 **§22-6A-25. Use of surface impoundments for temporary flow-back
14 storage.**

15 Where centralized flow-back impoundments are used to
16 temporarily store flow-back water, the department shall require the
17 use of dual liner systems with a leak detection system installed
18 between the two liners. The department shall inspect such
19 impoundments on a monthly basis.

20 **§22-6A-26. Notice to coal operators, owners or lessees and
21 director of intention to fracture certain other
22 wells; contents of such notice; bond; permit
23 required.**

24 Before fracturing any well the operator shall, by registered

1 or certified mail, forward a notice of intention to fracture the
2 well to the secretary and to any coal operator operating any coal
3 seam beneath the tract of land on which the well is located, who
4 has mapped the same and filed the maps with the office of miners'
5 health, safety and training in accordance with chapter twenty-two-a
6 of this code, and the coal seam owner and lessee, if any, if the
7 coal owner of record or lessee of record has recorded the
8 declaration provided in section fifty-two of this article, and if
9 the coal owner or lessee is not yet operating the coal seams
10 beneath the tract of land.

11 The notice shall be addressed to the secretary and to each
12 such coal operator at their respective addresses, shall contain the
13 number of the drilling permit for such well and such other
14 information as may be required by the secretary to enable the
15 department and the coal operators to locate and identify such well
16 and shall inform them that such notice is being mailed to them,
17 respectively, by registered or certified mail, pursuant to the
18 requirements of this article. The form for such notice of
19 intention shall be furnished on request by the director.

20 If no objections are made, or are found by the secretary to
21 such proposed fracturing within thirty days from receipt of such
22 notice by the secretary, the same shall be filed and become a
23 permanent record of such fracturing, subject to inspection at any
24 time by any interested person, and the secretary shall forthwith

1 issue to the well operator a permit reciting the filing of such
2 notice, that no objections have been made by the coal operators, or
3 found thereto by the secretary, and authorizing the well operator
4 to fracture such well. Unless the secretary has objections to such
5 proposed fracturing, such permit shall be issued prior to the
6 expiration of such thirty-day period upon the obtaining by the well
7 operator of the consent in writing of the coal operator or
8 operators, owners or lessees, if any, to whom notice of intention
9 to fracture shall have been mailed as herein required, and upon
10 presentation of such written consent to the director. The notice
11 above provided for may be given to the coal operator by delivering
12 or mailing it by registered or certified mail as above to any agent
13 or superintendent in actual charge of mines.

14 **§22-6A-27. Construction standards for pits and impoundments.**

15 All of the requirements set forth in 35 CSR §4-21 shall apply
16 to pits and impoundments used in connection with gas operations
17 regulated by this article, regardless of the capacity of the pit or
18 impoundment. Moreover, all impoundments shall be constructed with
19 an impermeable synthetic liner to prevent seepage or leakage, and
20 all pits shall be constructed with a dual liner system with a leak
21 detection system installed between the two liners.

22 **§22-6A-28. Performance Bonds; corporate surety or other security.**

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

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

3 (b) A separate bond as described in subsection (d) of this
4 section may be furnished for a particular gas well. A separate
5 bond as described in subsection (d) of this section shall be
6 furnished for each well drilled or converted for the introduction
7 of liquids for the disposal of pollutants or the effluent
8 therefrom. Each of these bonds shall be in the sum of \$25,000,
9 payable to the State of West Virginia, conditioned on full
10 compliance with all laws, rules relating to the drilling,
11 redrilling, deepening, casing, stimulating, and plugging of gas
12 wells and to the plugging, abandonment and reclamation of wells and
13 for furnishing such reports and information as may be required by
14 the director.

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

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

20 (d) When an operator has furnished a separate bond from a
21 corporate bonding or surety company to drill, fracture or stimulate
22 a gas well and the well produces gas, its operator may deposit with
23 the director cash from the sale of the gas or both until the total
24 deposited is \$5,000. When the sum of the cash deposited is

1 \$25,000, the separate bond for the well shall be released by the
2 director. Upon receipt of such cash, the director shall
3 immediately deliver the same to the Treasurer of the State of West
4 Virginia. The Treasurer shall hold such cash in the name of the
5 state in trust for the purpose for which the bond was furnished and
6 the deposit was made. The operator shall be entitled to all
7 interest and income which may be earned on the cash deposited so
8 long as the operator is in full compliance with all laws, rules
9 relating to the drilling, redrilling, deepening, casing, plugging,
10 abandonment and reclamation of the well for which the cash was
11 deposited and so long as the operator has furnished all reports and
12 information as may be required by the director. If the cash
13 realized from the sale of gas from the well is not sufficient for
14 the operator to deposit with the director the sum of \$25,000 within
15 one year of the day the well started producing, the corporate or
16 surety company which issued the bond on the well may notify the
17 operator and the director of its intent to terminate its liability
18 under its bond. The operator then shall have thirty days to
19 furnish a new bond from a corporate bonding or surety company or
20 collateral securities or other forms of security, as provided in
21 the next preceding paragraph of this section with the director. If
22 a new bond or collateral securities or other forms of security are
23 furnished by the operator, the liability of the corporate bonding
24 or surety company under the original bond shall terminate as to any

1 acts and operations of the operator occurring after the effective
2 date of the new bond or the date the collateral securities or other
3 forms of security are accepted by the Treasurer of the State of
4 West Virginia. If the operator does not furnish a new bond or
5 collateral securities or other forms of security, as provided in
6 the next preceding paragraph of this section, with the director,
7 the operator shall immediately plug, fill and reclaim the well in
8 accordance with all of the provisions of law and rules applicable
9 thereto. In such case, the corporate or surety company which
10 issued the original bond shall be liable for any plugging, filling
11 or reclamation not performed in accordance with such laws and
12 rules.

13 (e) Any bond furnished for a well subject to the provisions of
14 this article prior to the effective date of this article shall be
15 valid for all work on the well permitting prior to the effective
16 date of this article; but no permit shall hereafter be issued or
17 renewed for the well without a bond complying with the provisions
18 of this section.

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

1 (g) Whenever the right to operate a well is assigned or
2 otherwise transferred, the assignor or transferor shall notify the
3 department of the name and address of the assignee or transferee by
4 certified mail, return receipt requested, not later than five days
5 after the date of the assignment or transfer. No assignment or
6 transfer by the owner shall relieve the assignor or transferor of
7 the 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
14 section fourteen, twenty-eight or thirty-seven of this article, and
15 the name and address of the assignee's or transferee's designated
16 agent if assignee or transferee would be required to designate such
17 an agent under section six of this article, if assignee or
18 transferee were an applicant for a permit under said section six.
19 Every well operator required to designate an agent under this
20 section shall within five days after the termination of such
21 designation notify the department of such termination and designate
22 a new agent.

23 Upon compliance with the requirements of this section by
24 assignor or transferor and assignee or transferee, the director

1 shall release assignor or transferor from all duties and
2 requirements of this article, and the deputy director shall give
3 written notice of release unto assignor or transferor of any bond
4 and return unto assignor or transferor any cash or collateral
5 securities deposited pursuant to section twelve, fourteen,
6 twenty-three or twenty-six of this article.

7 (h) If any of the requirements of this article or rules
8 promulgated pursuant thereto or the orders of the director have not
9 been complied with within the time limit set by the violation
10 notice as defined in sections seventeen, eighteen, and nineteen of
11 this article, the performance bond shall then be forfeited. No
12 well may be produced until the violation is abated and the
13 permittee furnishes a new performance bond.

14 (i) When any bond is forfeited pursuant to the provisions of
15 this article or rules promulgated pursuant thereto, the director
16 shall give notice to the Attorney General who shall collect the
17 forfeiture without delay.

18 (j) All forfeitures shall be deposited in the Treasury of the
19 State of West Virginia in the special reclamation fund as defined
20 in section twenty-nine of this article.

21 **§22-6A-29. Reclamation requirements.**

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

1 (a) Within six months after the completion of the drilling
2 process, the operator shall fill all the pits for muds, cuttings,
3 salt water and hydrocarbons that are not needed for production
4 purposes, or are not required or allowed by state or federal law or
5 rule and remove all concrete bases, drilling supplies and drilling
6 equipment. Within such period, the operator shall grade or terrace
7 and plant, seed or sod the area disturbed that is not required in
8 production of the well where necessary to bind the soil and prevent
9 substantial erosion and sedimentation. No pit may be used for the
10 ultimate disposal of salt water. Salt water shall be periodically
11 drained or removed, and properly disposed of, from any pit that is
12 retained so the pit is kept reasonably free of salt water.

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

21 The secretary may, upon written application by an operator
22 showing reasonable cause, extend the period within which
23 reclamation shall be completed, but not to exceed a further
24 six-month period.

1 If the secretary refuses to approve a request for extension,
2 the refusal shall be by order.

3 (c) It shall be the duty of an operator to commence the
4 reclamation of the area of land disturbed in siting, drilling,
5 completing or producing the well in accordance with soil erosion
6 and sediment control plans approved by the director or the
7 director's designate.

8 (d) The secretary shall promulgate rules setting forth
9 requirements for the safe and efficient installation and burying of
10 all production and gathering pipelines where practical and
11 reasonable except that such rules shall not apply to those
12 pipelines regulated by the Public Service Commission.

13 **§22-6A-30. Water management plan requirements for gas wells using**
14 **water resources for fracturing or stimulating gas**
15 **production.**

16 (a) Prior to drilling, fracturing or stimulating gas wells
17 which use water obtained from withdrawals of water resources of the
18 state, gas well operators shall submit to the secretary a water
19 management plan containing the following information:

20 (1) The type of water source, such as surface, underground or
21 groundwater, and county of each source to be used by the operation
22 for water withdrawals, and the latitude and longitude of each
23 anticipated withdrawal location;

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

1 (3) The anticipated months when water withdrawals will be
2 made;

3 (4) The planned management and or disposition of wastewater
4 from the fracturing, stimulation and production activities;

5 (5) A listing of the additives as presented on material safety
6 data sheets that are used in water used for fracturing or
7 stimulating the well;

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

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

18 (B) For surface waters, a demonstration that a sufficient in-
19 stream flow will be available immediately downstream of the point
20 of withdrawal. A sufficient in-stream flow is available:

21 (i) If the department's Water Use Guidance Tool demonstrates
22 that the stream contains sufficient water for the withdrawal and a
23 pass-by flow is maintained immediately downstream of the point of
24 withdrawal that is protective of the environment. The Water Use

1 Guidance Tool is a web based geographical information system that
2 calculates the water resources available in streams located in
3 specific drainage basins based upon stream flow data obtained from
4 the United States Geological Survey; and

5 (ii) When the department's Water Use Guidance Tool indicates
6 that water withdrawals should be limited or restricted but local
7 conditions suggest otherwise, only if the withdrawal rate is
8 limited to maintain a pass-by flow in the stream immediately
9 downstream of the point of withdrawal that is protective of the
10 environment; and

11 (C) Methods to be used for surface water withdrawal to
12 minimize the impact of entrainment and impingement of fish.

13 (b) For all water used for hydraulic fracturing and for flow-
14 back water from hydraulic fracturing activities and produced water
15 from production activities, gas well operators shall comply with
16 the following recordkeeping and reporting requirements:

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

19 (A) The quantity of flow-back water from hydraulic fracturing
20 the well;

21 (B) The quantity of produced water from the well; and

22 (C) The method of management or disposal of the flow-back and
23 produced well water.

24 (2) For transportation activities, the following information

1 shall be recorded and maintained by the operator:

2 (A) The quantity of water transported;

3 (B) The collection and delivery or disposal locations of
4 water; and

5 (C) The name and address of the water hauler, and the company
6 for which the hauler was hauling the water.

7 (3) The information maintained pursuant to this subsection by
8 the gas well operator shall be available for reasonable inspection
9 by the department along with other required permits and records and
10 maintained for three years after the water withdrawal activity.

11 (c) This section is intended to be consistent with and does
12 not supersede, revise, repeal or otherwise modify, articles eleven
13 and twenty-six, of this chapter, and does not revise, repeal or
14 otherwise modify the common law doctrine of riparian rights under
15 West Virginia law.

16 **§22-6A-31. Objections to proposed drilling of gas wells;**
17 **indication of changes on plats; issuance of**
18 **permits.**

19 When a proposed well drilling site is above a seam or seams of
20 coal, the owner of any such coal seam may, within thirty days from
21 the receipt by the secretary of the plat and notice required by
22 section fourteen of this article, file objections in writing to
23 such proposed drilling with the secretary, setting out therein as
24 definitely as is reasonably possible the ground or grounds on which

1 such objections are based. The secretary may prepare a form for
2 filing an objection.

3 Thereafter, no further action shall be taken on the permit
4 application until the secretary issues a decision on the objection.

5 If a permit is issued, the secretary shall indicate the
6 approved drilling location on the plat filed with the secretary in
7 accordance with the provisions of section fourteen of this article
8 and shall number and keep an index of and docket each plat and
9 notice mailed to the secretary as provided in section fourteen of
10 this article, and each notice mailed to the secretary as provided
11 in section twenty-six of this article, entering in such docket the
12 name of the well operator, and the names and addresses of all
13 persons notified, the dates of conferences, hearings and all other
14 actions taken by the secretary and the review board. The secretary
15 shall also prepare a record of the proceedings, which record shall
16 include all applications, plats and other documents filed with the
17 director, all notices given and proof of service thereof, all
18 orders issued, all permits issued and a transcript of the hearing.
19 The record prepared by the secretary shall be open to inspection by
20 the public.

21 **§22-6A-32. Protective devices -- When well penetrates workable**
22 **coal bed; when gas is found beneath or between**
23 **workable coal beds.**

24 (a) When a well penetrates one or more workable coal beds, the

1 well operator shall run and cement a string of casing in the hole
2 through the workable coal bed or beds in such a manner as will
3 exclude all liquids, gas or gas pressure from the coal bed or beds,
4 except such gas or gas pressure as may be found in such coal bed or
5 beds. Such string of casing shall be run to a point at least
6 thirty feet below the lowest workable coal bed which the well
7 penetrates and shall be circulated and cemented from such point to
8 the surface in such a manner as provided for in reasonable rules
9 promulgated by the director in accordance with the provisions of
10 chapter twenty-nine-a. After any such string of casing has been so
11 run and cemented to the surface, drilling may proceed to the
12 permitted depth.

13 (b) In the event that gas is found beneath a workable coal bed
14 before the hole has been reduced from the size it had at the coal
15 bed, a packer shall be placed below the coal bed, and above the gas
16 horizon, and the gas by this means diverted to the inside of the
17 adjacent string of casing through perforations made in such casing,
18 and through it passed to the surface without contact with the coal
19 bed. Should gas be found between two workable beds of coal, in a
20 hole, of the same diameter from bed to bed, two packers shall be
21 placed, with perforations in the casing between them, permitting
22 the gas to pass to the surface inside the adjacent casing. In
23 either of the cases here specified, the strings of casing shall
24 extend from their seats to the top of the well.

1 **§22-6A-33. Same -- Continuance during life of well; dry or**
2 **abandoned wells.**

3 In the event that a well produces natural gas, or is drilled
4 for or converted for the introduction of pressure, whether liquid
5 or gas, all coal-protecting strings of casing and all
6 water-protecting strings of casing shall remain in place until the
7 well is plugged or abandoned. During the life of the well the
8 annular spaces between the various strings of casing adjacent to
9 workable beds of coal shall be kept open, and the top ends of all
10 such strings shall be provided with casing heads, or such other
11 suitable devices as will permit the free passage of gas and prevent
12 filling of such annular spaces with dirt or debris.

13 Any well which is completed as a dry hole or which is not in
14 use for a period of twelve consecutive months shall be presumed to
15 have been abandoned and shall promptly be plugged by the operator
16 in accordance with the provisions of this article, unless the
17 operator furnishes satisfactory proof to the secretary that there
18 is a bona fide future use for such well.

19 **§22-6A-34. Same -- When well is drilled through horizon of**
20 **coalbed from which coal has been removed.**

21 When a well is drilled through the horizon of a coalbed from
22 which the coal has been removed, the hole shall be drilled at least
23 thirty feet below the coalbed, of a size sufficient to permit the
24 placing of a liner which shall start not less than twenty feet

1 beneath the horizon of the coalbed and extend not less than twenty
2 feet above it. Within this liner, which may be welded to the
3 casing to be used, shall be centrally placed the largest-sized
4 casing to be used in the well and the space between the liner and
5 casing shall be filled with cement as they are lowered into the
6 hole. Cement shall be placed in the bottom of the hole to a depth
7 of twenty feet to form a sealed seat for both liner and casing:
8 *Provided*, That the liner may extend back to the surface and serve
9 as the freshwater or coal protection casing, if done in accordance
10 with sections thirty-two and thirty-five of this article, as
11 applicable. If the liner is constructed in this manner, the next
12 string of casing to be run into the well shall extend at least
13 twenty feet below the coalbed. Cement shall be placed between that
14 string of casing and the liner from the bottom of the casing to a
15 point at least twenty feet above the coalbed. Following the
16 setting of the liner, drilling shall proceed in the manner provided
17 above. Should it be found necessary to drill through the horizon
18 of two or more workable coalbeds from which the coal has been
19 removed, the liner shall be started not less than twenty feet below
20 the lowest horizon penetrated and shall extend to a point not less
21 than twenty feet above the highest horizon.

22 **§22-6A-35. Same -- Installation of fresh water casings.**

23 When a permit has been issued for the drilling of a gas well,
24 each well operator shall run and permanently cement a string of

1 casing in the hole through the fresh water bearing strata in such
2 a manner and to the extent provided for in rules promulgated by the
3 secretary in accordance with the provisions of this chapter.

4 **§22-6A-36. Well report, logs, core samples and cuttings to be**
5 **filed; confidentiality and permitted use; authority**
6 **to promulgate rules.**

7 (a) Within a reasonable time after the completion of the
8 drilling of a well, the well operator shall file with the secretary
9 and with the state Geological and Economic Survey a completion
10 report containing the following:

11 (1) The character, depth and thickness of geological
12 formations encountered, including fresh water, coal seams, mineral
13 beds, brine and oil and gas bearing formations; and

14 (2) Such other information as the secretary may require to
15 effectuate the purposes of this chapter.

16 The secretary may promulgate such reasonable rules in
17 accordance with article three, chapter twenty-nine-a of this code,
18 as may be considered necessary to ensure that the character, depth
19 and thickness of geological formations encountered are accurately
20 logged: *Provided*, That the secretary shall not require logging by
21 the use of an electrical logging device: *Provided*, however, That
22 if electrical or mechanical or geophysical logs are recorded in the
23 well, the secretary may request copies of these logs: *Provided*
24 *further*, That mechanical or geophysical logs may not include

1 vertical seismic profiles or two-dimensional or three-dimensional
2 seismic information.

3 (b) If a well operator takes core samples, that activity shall
4 be noted within the report, and, within sixty days after filing the
5 completion report, the operator shall, subject to the terms of this
6 article, provide the state Geological and Economic Survey with a
7 complete set of cores, consisting of at least quarter slabs,
8 correctly labeled and identified according to depth. The core
9 samples requested by and provided to the state Geological and
10 Economic Survey may not contain any materials or documents made
11 with regard to analyzing or interpreting the core samples.

12 (c) If a well operator catches cuttings during the drilling of
13 any deep or shallow well, that activity shall be noted within the
14 report and, within sixty days after filing the completion report,
15 the operator shall, subject to the terms of this article, provide
16 the state Geological and Economic Survey with a sample of the
17 cuttings, correctly labeled and identified according to depth.

18 (d) Any information, reports, cuttings and core samples
19 requested by and provided to the state Geological and Economic
20 Survey by the operator shall be kept confidential at the written
21 request of the operator for a specified amount of time as follows:

22 (1) Except for core samples, any logs, drill cuttings, reports
23 and other information or materials that reveal trade secrets or
24 other confidential business information relating to the competitive

1 interests of the operator or the operator's privy may not be
2 disclosed to the public for one year following delivery, unless the
3 operator consents in writing to a shorter time. At the operator's
4 written request, the period of confidentiality may be extended in
5 annual increments: *Provided*, That the total period of
6 confidentiality may not exceed three years.

7 (2) Any core samples may not be disclosed to the public for
8 five years following delivery to the state Geological and Economic
9 Survey, unless the operator consents in writing to a shorter time.
10 At the operator's written request, the period of confidentiality
11 may be extended for an additional five years: *Provided*, That the
12 total period of confidentiality may not exceed ten years.

13 (e) Notwithstanding the provisions of subsection (d) of this
14 section, the state Geological and Economic Survey may store and
15 process confidential information within its minerals mapping or
16 geographic information systems; however, that confidential
17 information may not be revealed to the public until the lapsing of
18 the period of confidentiality created pursuant to subsection (d) of
19 this section. After the period of confidentiality has lapsed,
20 statistics or other information generated as the result of storage
21 and processing may be disclosed in the aggregate through articles,
22 reports, maps, or lectures presented in accordance with generally
23 accepted academic or scientific practices and in a manner to
24 preclude the identification of a particular well or operator.

1 **§22-6A-37. Plugging, abandonment and reclamation of well; notice**
2 **of intention; bonds; affidavit showing time and**
3 **manner.**

4 All dry or abandoned wells or wells presumed to be abandoned
5 under the provisions of section thirty-three of this article shall
6 be plugged and reclaimed in accordance with this section and the
7 other provisions of this article and in accordance with the rules
8 promulgated by the secretary.

9 Prior to the commencement of plugging operations and the
10 abandonment of any well, the well operator shall either: (a)
11 Notify, by registered or certified mail, the secretary and the coal
12 operator operating coal seams, the coal seam owner of record or
13 lessee of record, if any, to whom notices are required to be given
14 by section twelve of this article, and the coal operators to whom
15 notices are required to be given by section thirteen of this
16 article, of its intention to plug and abandon any such well (using
17 such form of notice as the secretary may provide), giving the
18 number of the well and its location and fixing the time at which
19 the work of plugging and filling will be commenced, which time
20 shall be not less than five days after the day on which such notice
21 so mailed is received or in due course should be received by the
22 secretary, in order that a representative or representatives of the
23 secretary and such coal operator, owner or lessee, if any, may be
24 present at the plugging and filling of the well: *Provided, That*

1 whether such representatives appear or do not appear, the well
2 operator may proceed at the time fixed to plug and fill the well in
3 the manner hereinafter described; or (b) first obtain the written
4 approval of the secretary and such coal operator, owner or lessee,
5 if any; or (c) in the event the well to be plugged and abandoned is
6 one on which drilling or reworking operations have been
7 continuously progressing pursuant to authorization granted by the
8 secretary, first obtain the verbal permission of the secretary or
9 the secretary's designated representative to plug and abandon the
10 well, except that the well operator shall, within a reasonable
11 period not to exceed five days after the commencement of the
12 plugging operations, give the written notices required by
13 subdivision (a) above.

14 The well operator shall not be required to prepare or submit
15 to the director a plat prior to the commencement of plugging
16 operations so long as a plat pertaining to the particular well is
17 on file with the director and accurately identifies the location of
18 the well, or so long as there is also on file with the director the
19 coordinates of the well established by a global positioning system.
20 The coordinates established by a global positioning system must be
21 filed with the secretary in either a written or electronic form
22 prescribed by the secretary. The global positioning system used to
23 establish the coordinates shall be accurate within the variance
24 allowed by law for the distance between the actual location of the

1 well and location shown on the plat that is required to be filed
2 with a well permit application, or the secretary may establish the
3 accuracy of the global positioning system by legislative rule
4 promulgated pursuant to section five of this article.

5 No well may be plugged or abandoned unless prior to the
6 commencement of plugging operations and the abandonment of any well
7 the secretary is furnished a bond as provided in section
8 twenty-eight of this article. In no event prior to the
9 commencement of plugging operations shall a lessee under a lease
10 covering a well be required to give or sell the well to any person
11 owning an interest in the well, including, but not limited to, the
12 respective lessor, or agent of the lessor, nor may the lessee be
13 required to grant a person with an interest in the well, including,
14 but not limited to, the respective lessor, or agent of the lessor,
15 an opportunity to qualify under section twenty-eight of this
16 article to continue operation of the well.

17 When the plugging, filling and reclamation of a well have been
18 completed, an affidavit, in triplicate, shall be made (on a form to
19 be furnished by the secretary) by two experienced persons who
20 participated in the work, the secretary or the secretary's
21 designated representative, in which affidavit shall be set forth
22 the time and manner in which the well was plugged and filled and
23 the land reclaimed. One copy of this affidavit shall be retained
24 by the well operator, another (or true copies of same) shall be

1 mailed to the coal operator or operators, if any, and the third to
2 the secretary.

3 **§22-6A-38. Methods of plugging well.**

4 Upon the abandonment or cessation of the operation of any well
5 drilled for natural gas, the well operator at the time of such
6 abandonment or cessation, shall fill and plug the well in the
7 following manner:

8 (a) Where the well does not penetrate workable coal beds, it
9 shall either be filled with mud, clay or other nonporous material
10 from the bottom of the well to a point twenty feet above the top of
11 its lowest gas or water-bearing stratum; or a permanent bridge
12 shall be anchored thirty feet below its lowest gas or water-bearing
13 stratum, and from such bridge it shall be filled with mud, clay or
14 other nonporous material to a point twenty feet above such stratum;
15 at this point there shall be placed a plug of cement or other
16 suitable material which will completely seal the hole. Between
17 this sealing plug and a point twenty feet above the next higher gas
18 or water-bearing stratum, the hole shall be filled, in the manner
19 just described; and at such point there shall be placed another
20 plug of cement or other suitable material which will completely
21 seal the hole. In like manner the hole shall be filled and
22 plugged, with reference to each of its gas or water-bearing strata.
23 However, whenever such strata are not widely separated and are free
24 from water, they may be grouped and treated as a single sand, gas

1 or petroleum horizon, and the aforesaid filling and plugging be
2 performed as though there were but one horizon. After the plugging
3 of all gas or water-bearing strata, as aforesaid, a final cement
4 plug shall be placed approximately ten feet below the bottom of the
5 largest casing in the well; from this point to the surface the well
6 shall be filled with mud, clay or other nonporous material. In
7 case any of the gas-bearing strata in a well shall have been shot,
8 thereby creating cavities which cannot readily be filled in the
9 manner above described, the well operator shall follow either of
10 the following methods:

11 (1) Should the stratum which has been shot be the lowest one
12 in the well, there shall be placed, at the nearest suitable point,
13 but not less than twenty feet above the stratum, a plug of cement
14 or other suitable material which will completely seal the hole. In
15 the event, however, that the shooting has been done above one or
16 more gas-bearing strata in the well, plugging in the manner
17 specified shall be done at the nearest suitable point, but not less
18 than twenty feet below and above the stratum shot; or

19 (2) When such cavity shall be in the lowest gas-bearing
20 stratum in the well, a liner shall be placed which shall extend
21 from below the stratum to a suitable point, but not less than
22 twenty feet above the stratum in which shooting has been done. In
23 the event, however, that the shooting has been done above one or
24 more gas-bearing strata in the well, the liner shall be so placed

1 that it will extend not less than twenty feet above, nor less than
2 twenty feet below, the stratum in which shooting has been done.
3 Following the placing of the liner in the manner here specified it
4 shall be compactly filled with cement, mud, clay or other nonporous
5 sealing material.

6 (b) Where the well penetrates one or more workable coal beds
7 and a coal protection string of casing has been circulated and
8 cemented into the surface, the well shall be filled and securely
9 plugged in the manner provided in subsection (a) of this section,
10 except that expanding cement shall be used instead of regular
11 hydraulic cement, to a point approximately one hundred feet below
12 the bottom of the coal protection string of casing. A one hundred
13 foot plug of expanding cement shall then be placed in the well so
14 that the top of such plug is located at a point just below the coal
15 protection string of casing. After such plug has been securely
16 placed in the well, the coal protection string of casing shall be
17 emptied of liquid from the surface to a point one hundred feet
18 below the lowest workable coal bed or to the bottom of the coal
19 protection string of casing, whichever is shallower. A vent or
20 other device approved by the director shall then be installed on
21 the top of the coal protection string of casing in such a manner
22 that will prevent liquids and solids from entering the well but
23 will permit ready access to the full internal diameter of the coal
24 protection string of casing when required. The coal protection

1 string of casing and the vent or other device approved by the
2 director shall extend, when finally in place, a distance of not
3 less than thirty inches above ground level and shall be permanently
4 marked with the well number assigned by the director;

5 (c) Where the well penetrates one or more workable coal beds
6 and a coal protection string of casing has not been circulated and
7 cemented in to the surface, the well shall be filled and securely
8 plugged in the manner provided in subsection (a) of this section to
9 a point fifty feet below the lowest workable coal bed. Thereafter,
10 a plug of cement shall be placed in the well at a point not less
11 than forty feet below the lowest workable coal bed. After the
12 cement plug has been securely placed in the well, the well shall be
13 filled with cement to a point twenty feet above the lowest workable
14 coal bed. From this point the well shall be filled with mud, clay
15 or other nonporous material to a point forty feet beneath the next
16 overlying workable coal bed, if such there be, and the well shall
17 then be filled with cement from this point to a point twenty feet
18 above such workable coal bed, and similarly, in case there are more
19 overlying workable coal beds. After the filling and plugging of
20 the well to a point above the highest workable coal bed, filling
21 and plugging of the well shall continue in the manner provided in
22 subsection (a) of this section to a point fifty feet below the
23 surface, and a plug of cement shall be installed from the point
24 fifty feet below the surface to the surface with a monument

1 installed therein extending thirty inches above ground level;

2 (d) (1) Where the well penetrates one or more workable coal
3 beds and a coal protection string of casing has not been circulated
4 and cemented in to the surface, a coal operator or coal seam owner
5 may request that the well be plugged in the manner provided in
6 subdivision (3) of this subsection rather than by the method
7 provided in subsection (c) of this section. Such request (forms
8 for which shall be provided by the director) must be filed in
9 writing with the director prior to the scheduled plugging of the
10 well, and must include the number of the well to be plugged and the
11 name and address of the well operator. At the time such request is
12 filed with the director, a copy of such request must also be mailed
13 by registered or certified mail to the well operator named in the
14 request.

15 (2) Upon receipt of such request, the director shall issue an
16 order staying the plugging of the well and shall promptly determine
17 the cost of plugging the well in the manner provided in subdivision
18 (3) of this subsection and the cost of plugging the well in the
19 manner provided in subsection (c) of this section. In making such
20 determination, the director shall take into consideration any
21 agreement previously made between the well operator and the coal
22 operator or coal seam owner making the request. If the director
23 determines that the cost of plugging the well in the manner
24 provided in subsection (c) of this section exceeds the cost of

1 plugging the well in the manner provided in subdivision (3) of this
2 subsection, the director shall grant the request of the coal
3 operator or owner and shall issue an order requiring the well
4 operator to plug the well in the manner provided in subdivision (3)
5 of this subsection. If the director determines that the cost of
6 plugging the well in the manner provided in subsection (c) of this
7 section is less than the cost of plugging the well in the manner
8 provided in subdivision (3) of this subsection, the director shall
9 request payment into escrow of the difference between the
10 determined costs by the coal operator or coal seam owner making the
11 request. Upon receipt of satisfactory notice of such payment, or
12 upon receipt of notice that the well operator has waived such
13 payment, the director shall grant the request of the coal operator
14 or coal seam owner and shall issue an order requiring the well
15 operator to plug the well in the manner provided in subdivision (3)
16 of this subsection. If satisfactory notice of payment into escrow,
17 or notice that the well operator has waived such payment, is not
18 received by the director within fifteen days after the request for
19 payment into escrow, the director shall issue an order permitting
20 the plugging of the well in the manner provided in subsection (c)
21 of this section. Copies of all orders issued by the director shall
22 be sent by registered or certified mail to the coal operator or
23 coal seam owner making the request and to the well operator. When
24 the escrow agent has received certification from the director of

1 the satisfactory completion of the plugging work and the
2 reimbursable extra cost thereof (that is, the difference between
3 the director's determination of plugging cost in the manner
4 provided in subsection (c) of this section and the well operator's
5 actual plugging cost in the manner provided in subdivision (3) of
6 this subsection), the escrow agent shall pay the reimbursable sum
7 to the well operator or the well operator's nominee from the
8 payment into escrow to the extent available. The amount by which
9 the payment into escrow exceeds the reimbursable sum plus the
10 escrow agent's fee, if any, shall be repaid to the coal owner. If
11 the amount paid to the well operator or the well operator's nominee
12 is less than the actual reimbursable sum, the escrow agent shall
13 inform the coal owner, who shall pay the deficiency to the well
14 operator or the well operator's nominee within thirty days. If the
15 coal operator breaches this duty to pay the deficiency, the well
16 operator shall have a right of action and be entitled to recover
17 damages as if for wrongful conversion of personalty, and reasonable
18 attorney fees.

19 (3) Where a request of a coal operator or coal seam owner
20 filed pursuant to subdivision (1) of this subsection has been
21 granted by the director, the well shall be plugged in the manner
22 provided in subsection (a) of this section, except that expanding
23 cement shall be used instead of regular hydraulic cement, to a
24 point approximately two hundred feet below the lowest workable coal

1 bed. A one hundred foot plug of expanding cement shall then be
2 placed in the well beginning at the point approximately two hundred
3 feet below the lowest workable coal bed and extending to a point
4 approximately one hundred feet below the lowest workable coal bed.
5 A string of casing with an outside diameter no less than four and
6 one-half inches shall then be run into the well to a point
7 approximately one hundred feet below the lowest workable coal bed
8 and such string of casing shall be circulated and cemented in to
9 the surface. The casing shall then be emptied of liquid from a
10 point approximately one hundred feet below the lowest workable coal
11 bed to the surface, and a vent or other device approved by the
12 director shall be installed on the top of the string of casing in
13 such a manner that it will prevent liquids and solids from entering
14 the well but will permit ready access to the full internal diameter
15 of the coal protection string of casing when required. The string
16 of casing and the vent or other device approved by the director
17 shall extend, when finally in place, a distance of no less than
18 thirty inches above ground level and shall be permanently marked
19 with the well number assigned by the director. Notwithstanding the
20 foregoing provisions of this subdivision, if under particular
21 circumstances a different method of plugging is required to obtain
22 the approval of another governmental agency for the safe mining
23 through of said well, the director may approve such different
24 method of plugging if the director finds the same to be as safe for

1 mining through and otherwise adequate to prevent gas or other fluid
2 migration from the gas reservoirs as the method above specified.

3 (e) Any person may apply to the secretary for an order to
4 clean out and replug a previously plugged well in a manner which
5 will permit the safe mining through of such well. Such application
6 shall be filed with the director and shall contain the well number,
7 a general description of the well location, the name and address of
8 the owner of the surface land upon which the well is located, a
9 copy of or record reference to a deed, lease or other document
10 which entitles the applicant to enter upon the surface land, a
11 description of the methods by which the well was previously
12 plugged, and a description of the method by which such applicant
13 proposes to clean out and replug the well. At the time an
14 application is filed with the secretary, a copy shall be mailed by
15 registered or certified mail to the owner or owners of the land,
16 and the gas lessee of record, if any, of the site upon which the
17 well is located. If no objection to the replugging of the well is
18 filed by any such landowner or gas lessee within thirty days after
19 the filing of the application, and if the director determines that
20 the method proposed for replugging the well will permit the safe
21 mining through of such well, the director shall grant the
22 application by an order authorizing the replugging of the well.
23 Such order shall specify the method by which the well shall be
24 replugged, and copies thereof shall be mailed by certified or

1 registered mail to the applicant and to the owner or owners of the
2 land, and the gas lessee, if any, of the site upon which such well
3 is located. If any such landowner or gas lessee objects to the
4 replugging of the well, the director shall notify the applicant of
5 such objection. Thereafter, the director shall schedule a hearing
6 to consider the objection, which hearing shall be held after notice
7 by registered or certified mail to the objectors and the applicant.
8 After consideration of the evidence presented at the hearing, the
9 director shall issue an order authorizing the replugging of the
10 well if the director determines that replugging of the well will
11 permit the safe mining through of such well. Such order shall
12 specify the manner in which the well shall be replugged and copies
13 thereof shall be sent by registered or certified mail to the
14 applicant and objectors. The secretary shall issue an order
15 rejecting the application if the secretary determines that the
16 proposed method for replugging the well will not permit the safe
17 mining through of such well;

18 (f) All persons adversely affected, by a determination or
19 order of the secretary issued pursuant to the provisions of this
20 section shall be entitled to review in accordance with the
21 provisions of section forty-nine of this article (EQB).

22 **§22-6A-39. Notice of initial entry upon surface lands.**

23 (a) At least fifteen days before entering upon the surface
24 land for inspection, measurements, surveying or other evaluation of

1 proposed access routes and sites for either new well work or roads
2 or other work requiring disturbance of the surface that has not
3 been disturbed before by the operator of the gas well, an operator
4 shall provide notice of the fact that the operator is entering the
5 surface land and of the general purposes for such entry. The
6 fifteen days begins to run from the surface owner's actual receipt
7 of the notice or refusal to accept the notice. The fifteen days
8 notice before entry may be waived by a surface owner in writing.
9 A surface use and compensation agreement is not valid unless it is
10 finalized and signed at least fifteen days after receipt of the
11 notice provided in this section.

12 (b) The notice shall include:

13 (1) The name, mailing address and physical address of the
14 operator, and a land line telephone number if one exists, a cell
15 phone number if one exists, and an e-mail address or other
16 electronic contact information if any exist for the actual person
17 or persons who may come onto the land representing the operator,
18 the person with authority to make decisions regarding the access
19 road, well site and pipelines, and their supervisors;

20 (2) The anticipated, approximate dates and times of entry onto
21 the surface land;

22 (3) A document referencing this article and other statutes and
23 rules regarding the surface owner's rights to notice of, and to
24 comment upon, the well work permit, the soil erosion and sediment

1 control manual of the department; and

2 (4) An offer to meet with the surface owner at an mutually
3 agreed location. The offer to meet shall be to meet prior to or at
4 the time of the first entry.

5 (c) At the meeting the operator shall point out and explain
6 his or her preference for locations of well sites, impoundments,
7 access roads and pipelined proposed to be located on the surface,
8 consider owner's suggestions for alternate locations, and if the
9 surface owner's suggestion cannot be used, the operator shall make
10 a record of the reasons these suggestions cannot be used.

11 **§22-6A-40. Notice of planned surface use; mediation.**

12 (a) This section does not apply if the operator and the
13 surface owner have entered into an agreed surface use and
14 compensation agreement in compliance with this article that, by
15 separate signature, waives the requirements of this section.

16 (b) Before filing an application for a well work permit the
17 operator shall give the surface owner notice of the planned well
18 work.

19 (c) The notice of the planned well work is to include:

20 (1) The name of the operator, the mailing and physical address
21 of the operator and the name, land line telephone number if any,
22 cell phone number if any, and e-mail or other electronic contact
23 information if any, of the individual with authority to negotiate
24 a surface use and compensation agreement plus, at the option of the

1 operator, any other individual working for the operator; and

2 (2) A proposed surface use and compensation agreement as set
3 out in section forty-seven of this article.

4 (d) The notice of planned well work shall include a statement
5 that if the parties cannot agree to a surface use and compensation
6 agreement, then either party may request that the parties enter
7 into private mediation to attempt to reach an agreement not less
8 than fifteen days nor more than thirty days from the receipt of the
9 notice of planned well work by the surface owner, and a statement
10 that the department may have an explanation of the agreed private
11 mediation process.

12 (e) Either party may request that the parties enter into
13 agreed private mediation not less than fifteen nor more than thirty
14 days after the notice of planned well work is received. The
15 mediator shall be a person mutually agreed to by both parties.

16 A mediation agreement shall include a method of sharing the
17 cost of mediation. The private mediation agreement shall include
18 an agreement on a mediator or on a person to select a mediator.
19 The mediator shall schedule the mediation within twenty days of the
20 agreement. The mediation shall follow standard mediation
21 practices. Each party must send a person to the mediation with
22 authority to enter into a surface use and compensation agreement.
23 The mediation shall be completed within thirty days of the request
24 for agreed private mediation. Agreements reached through mediation

1 are binding and enforceable. If the parties cannot come to a
2 private mediation agreement on the mediator or other aspects of the
3 process, then the mediation shall not proceed.

4 (f) Notwithstanding article six, chapter eleven of this code,
5 unless the operator submits an agreed surface use and compensation
6 agreement with the permit application that, by separate signature,
7 waives the requirements of this section, no well work permit
8 application shall be submitted to the department until forty-five
9 days after the notice has been received by the surface owner.
10 However, if a party makes a request for agreed private mediation
11 within thirty days of receipt by the surface owner of the notice of
12 planned well work, a permit application may not be submitted until
13 sixty days after the service of the notice of planned surface use.
14 The surface use agreement so submitted may include a separately
15 signed statement of no objections as provided in this article.

16 **§22-6A-41. Surface use and compensation agreement.**

17 (a) A surface use agreement must be in writing or, if both
18 parties agree, in the form of an authenticated electronic record.

19 (b) A surface use agreement is to include at a minimum:

20 (1) The name, physical address, telephone number of the
21 operator, the surface owner and the mineral owner;

22 (2) Locations and dimensions of well sites, access roads,
23 pipelines, land application sites and other uses set out in a
24 format and in sufficient detail for the surface owner to determine

1 and evaluate the effect of the operator's plan on the surface
2 owner's interest, including what soil and timber or other
3 vegetation will be disturbed;

4 (3) Specifications for construction of the well site, pits,
5 disposal areas, access roads, pipelines, and other facilities or
6 uses associated with the well work or for entry on to land by
7 motorized equipment, including without limitation temporary soil
8 erosion and sediment control, dimensions of all cut and fill
9 locations, top soil banking and road grades expressed as a percent
10 of slope, side slope, drainage structures and their frequency, and
11 whether the specifications will require a waiver from the state;

12 (4) Specifications applicable for the life of the well
13 including reclamation of the well site, pits, disposal areas,
14 access roads, pipelines, and other facilities, uses or disturbances
15 of the surface lands associated with the well work including
16 without limitation erosion and sediment control for the life of the
17 well;

18 (5) Specifications for the temporary and permanent
19 revegetation of the well site, pits, disposal areas, access roads,
20 pipelines, and other facilities or uses associated with the well
21 work, road surfaces, soil preparation, seed species;

22 (6) Specifications for maintenance of well sites, pipelines
23 and access roads, including frequency or indicators of need for
24 maintenance including, without limitation, gating appliance

1 specifications and gate and access control practices;

2 (7) Particular specifications for maintenance at all times of
3 existing roads used by the surface owner that will also be utilized
4 by the operator, including, without limitation, gating appliance
5 specifications and gate practices;

6 (8) At a minimum, compensation to the surface owner for the
7 value of the land disturbed by the operator pursuant to the
8 activity for which the well work permit will be sought, the land
9 foreseen for occupation of the land and used by the well site,
10 access road and pipeline or other uses, and foreseen lost or
11 damaged personal property, fixtures, timber and other crops and
12 vegetation.

13 (c) A surface use and compensation agreement may include any
14 other documents that will be included in the well permit
15 application including those regarding casing and cementing and land
16 application of pit waste.

17 (d) A surface use and compensation agreement may include a
18 statement of no objection as provided in article twenty one,
19 section twelve of this chapter.

20 (e) A surface use and compensation agreement may not waive
21 damages for breach of the agreement, for pollution of water sources
22 or supplies not identified in the agreement, for negligence or
23 failure to perform tasks in a workmanlike manner, or for unforeseen
24 damages.

1 **§22-6A-42. Effect of surface use and compensation agreement; bond.**

2 (a) If a statement of no objections is included in a surface
3 use and compensation agreement as provided in article six of this
4 chapter, the director may issue a permit at any time without
5 waiting for any comment from the surface owner. However, the
6 surface owner may still comment: (1) On any provision of the
7 permit that was not supplied to the surface owner prior to signing
8 the statement of no objection; and (2) on any documents that
9 contains provisions inconsistent with the surface use and
10 compensation agreement or documents included with the surface use
11 and compensation agreement. The director shall deny or condition
12 a permit if it is inconsistent with a surface use and compensation
13 agreement or document included with the surface use and
14 compensation agreement.

15 (b) If an agreed upon surface use and compensation agreement
16 is not submitted with the permit application, no permit may issue
17 unless the operator submits proof that it has furnished a surety
18 bond, letter of credit from a banking institution or a certificate
19 of deposit for the benefit of the surface owner in the amount of
20 \$50,000 for each permitted well work. The surety bond, letter of
21 credit, cash or certificate of deposit shall only be released by
22 the surety company, financial institution or state if:

23 (1) The operator and the surface owner enter into an agreed
24 surface use and compensation agreement before reclamation has been

1 completed;

2 (2) The surface owner signs a release after reclamation has
3 been completed regarding compensation for damages;

4 (3) The operator provides proof that it has paid an amount for
5 surface owner compensation determined by binding arbitration
6 pursuant to article seven of this chapter;

7 (4) The operator provides proof that it has paid a judgement
8 in favor of the surface owner entered by a magistrate court or a
9 circuit court of this state or a federal court; or

10 (5) As provided in section twenty-eight of this article.

11 **§22-6A-43. Appeal to environmental quality board.**

12 Any person adversely affected by a decision or order made and
13 entered by the secretary in accordance with the provisions of this
14 article, or aggrieved by failure or refusal of the secretary to act
15 within the specified time as provided in this article on an
16 application for a permit or aggrieved by the terms and conditions
17 of a permit granted under the provisions of this article, may
18 appeal to the environmental quality board, pursuant to the
19 provisions of article one, chapter twenty-two-b of this code.

20 **§22-6A-44. Hydraulic Fracturing and Horizontal Drilling Permit**

21 **Fund established; permit application fees; permit**
22 **modification fees; annual permit fees; Hydraulic**
23 **Fracturing and Horizontal Drilling Reclamation**
24 **Fund; dedication of proceeds.**

1 (a) There is hereby created within the State Treasury the
2 special revenue fund designated as the "Hydraulic Fracturing and
3 Horizontal Drilling Permit Fund."

4 (b) The permit application fees, permit modification fees,
5 permit renewal fees and annual permit fees established and
6 collected pursuant to this section; any interest or surcharge
7 assessed and collected by the secretary; interest accruing on
8 investments and deposits of the fund; and any other moneys
9 designated by the secretary shall be deposited into the Hydraulic
10 Fracturing and Horizontal Drilling Permit Fund. The secretary
11 shall expend the proceeds of the Hydraulic Fracturing and
12 Horizontal Drilling Permit Fund solely to administer the provisions
13 of this article.

14 (c) The secretary shall file a quarterly report with the
15 Governor and the Joint Committee on Government and Finance on the
16 use of the fund, which shall include a detailed accounting of all
17 deposits to and expenditures from the Hydraulic Fracturing and
18 Horizontal Drilling Permit Fund.

19 (d) Every applicant shall pay to the secretary an initial
20 application fee for a well work permit of \$15,000. For each
21 application to modify a well work permit, the applicant shall pay
22 a fee of \$10,000.

23 (e) In addition to the fees required by subsection (d) of this
24 section, each person holding a well work permit shall pay to the

1 secretary an annual permit fee of \$5,000. The annual fee shall be
2 due yearly on the anniversary date of the issuance of the permit.

3 The secretary may suspend any permit issued pursuant to this
4 article when the annual permit fee is more than thirty days past
5 due. Permit suspension takes effect on the date the secretary
6 mails, by certified mail, written notice to the permittee's last
7 known address notifying the permittee that the permit has been
8 suspended.

9 (f) In addition to the fees required by subsections (d) and
10 (e) of this section, every applicant for a permit to drill a well
11 shall pay to the secretary a reclamation fee of \$15,000. The
12 reclamation fee shall be paid at the time the application for a
13 drilling permit is filed with the secretary and the payment of such
14 reclamation fee shall be a condition precedent to the issuance of
15 said permit.

16 (g) There is hereby created within the State Treasury the
17 special revenue fund designated as the "Hydraulic Fracturing and
18 Horizontal Drilling Reclamation Fund." The secretary shall deposit
19 with the State Treasurer to the credit of the Hydraulic Fracturing
20 and Horizontal Drilling Reclamation Fund all reclamation fees
21 collected. The proceeds of any bond forfeited under the provisions
22 of this article shall inure to the benefit of and shall be
23 deposited in the Hydraulic Fracturing and Horizontal Drilling
24 Reclamation Fund.

1 (h) The Hydraulic Fracturing and Horizontal Drilling
2 Reclamation Fund shall be administered by the secretary. The
3 secretary shall cause to be prepared plans for the reclaiming and
4 plugging of wells which have not been reclaimed or plugged or which
5 have been improperly reclaimed or plugged. As funds become
6 available, the secretary shall reclaim and properly plug wells in
7 accordance with said plans and specifications and in accordance
8 with the provisions of this article relating to the reclaiming and
9 plugging of wells and all rules promulgated thereunder. Such funds
10 may also be utilized for the purchase of abandoned wells, where
11 such purchase is necessary, and for the reclamation of such
12 abandoned wells, and for any engineering, administrative and
13 research costs as may be necessary to properly effectuate the
14 reclaiming and plugging of all wells, abandoned or otherwise.

15 (i) The secretary may avail the department of any federal
16 funds provided on a matching basis that may be made available for
17 the purpose of reclaiming or plugging any wells.

18 (j) The secretary shall make an annual report to the Governor
19 and to the Legislature setting forth the number of wells reclaimed
20 or plugged through the use of this reclamation fund provided for
21 herein. Such report shall identify each such reclamation and
22 plugging project, state the number of wells reclaimed or plugged
23 thereby, show the county wherein such wells are located and shall
24 make a detailed accounting of all expenditures from the reclamation

1 fund.

2 (k) All wells shall be reclaimed or plugged by contract
3 entered into by the secretary on a competitive bid basis as
4 provided for under the provisions of article three, chapter five-a
5 of this code and the rules promulgated thereunder.

6 (l) The department may not process any permit application
7 pursuant to this article until all applicable fees required by this
8 section have been received.

9 **§22-6A-45. Offenses; penalties.**

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

18 (b) In lieu of a civil action, the department may establish an
19 administrative procedure for the assessment and collection of civil
20 penalties by rules promulgated pursuant to the provisions of
21 article three, chapter twenty-nine-a of this code.

22 (c) Any person or persons, firm, partnership, partnership
23 association or corporation violating any of the provisions of this
24 article shall be guilty of a misdemeanor and, upon conviction

1 thereof, shall be punished by a fine not exceeding \$20,000, or
2 confinement in jail up to twelve months, or both.

3 **§22-6A-46. Declaration of gas notice by owners and lessees of coal**
4 **seams.**

5 For purposes of notification under this article, any owner or
6 lessee of coal seams shall file a declaration of the owner's or
7 lessee's interest in such coal seams with the clerk of the county
8 commission in the county where such coal seams are located. Said
9 clerk shall file and index such declaration in accordance with
10 section two, article one, chapter thirty-nine of this code, and
11 shall index the name of the owner or lessee of such coal seams in
12 the grantor index of the record maintained for the indexing of
13 leases.

14 The declaration shall entitle such owner or lessee to the
15 notices provided in sections fourteen, twenty-six, and thirty-seven
16 of this article: Provided, That the declaring owner shall be the
17 record owner of the coal seam, and the declaring lessee shall be
18 the record lessee with the owner's or lessee's source or sources of
19 title recorded prior to recording such lessee's declaration.

20 The declaration shall be acknowledged by such owner or lessee,
21 and in the case of a lessee, may be a part of the coal lease under
22 which the lessee claims. Such declaration may be in the following
23 language:

24 "DECLARATION OF GAS NOTICE"

1 "The undersigned hereby declares:

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

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

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

12 (3) The undersigned desires to be given all notices of gas
13 operations provided by sections fourteen, twenty-six, and
14 thirty-seven of this article, addressed as follows:

15 (Here insert the name and mailing address of the undersigned
16 owner or lessee.)

17

18

(Signature)

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

20 The benefits of the foregoing declaration shall be personal to
21 the declaring owner or lessee, and not transferable or assignable
22 in any way.

23 **§22-6A-47. 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.

NOTE: The purpose of this bill is to establish a new regulatory program for gas operations that drill in the Marcellus Shale formation or any gas operation which utilizes horizontal drilling or hydraulic fracturing involving a minimum of five thousand barrels of water for fracturing a geologic formation to stimulate gas production.

This article is new; therefore, strike-throughs and underscoring have been omitted.

This bill was recommended for introduction and passage during the Regular Session of the Legislature by the Joint Judiciary Committee.