

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

**Senate Bill No. 424**

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

---

[Introduced February 4, 2011; referred to the Committee on  
Energy, Industry and Mining; and then to the Committee on the  
Judiciary.]

---

A BILL to repeal §22-6-41 of the Code of West Virginia, 1931, as amended; to repeal §22C-7-1, §22C-7-2 and §22C-7-3 of said code; to amend and reenact §22-6-1, §22-6-2, §22-6-3, §22-6-4, §22-6-5, §22-6-6, §22-6-7, §22-6-8, §22-6-9, §22-6-10, §22-6-11, §22-6-12, §22-6-13, §22-6-14, §22-6-15, §22-6-16, §22-6-17, §22-6-18, §22-6-19, §22-6-20, §22-6-21, §22-6-22, §22-6-23, §22-6-24, §22-6-25, §22-6-26, §22-6-27, §22-6-28, §22-6-29, §22-6-30, §22-6-31, §22-6-32, §22-6-33, §22-6-34, §22-6-35, §22-6-36, §22-6-37, §22-6-38, §22-6-39 and §22-6-40 of said code; to amend and reenact §22-7-3 of said code; to amend and reenact §22C-8-2 and §22C-8-4 of said code; to amend and reenact §22C-9-1, §22C-9-2, §22C-9-3 and §22C-9-4 of said code; and to amend said code by adding thereto a new section, designated §22C-9-7a, all relating to the regulation of oil

1 and gas wells; oil and gas production damage compensation; the  
 2 Shallow Gas Well Review Board; the Conservation Commission;  
 3 the pooling of gas from horizontal shallow wells; and  
 4 increasing civil penalties.

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

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 7 be repealed; that §22C-7-1, §22C-7-2 and §22C-7-3 of said code be  
 8 repealed; that §22-6-1, §22-6-2, §22-6-3, §22-6-4, §22-6-5, §22-6-  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

20 **CHAPTER 22. ENVIRONMENTAL RESOURCES.**

21 **ARTICLE 6. DIVISION OF OIL AND GAS; OIL AND GAS WELLS;**

22 **ADMINISTRATION; ENFORCEMENT.**

23 **§22-6-1. Definitions.**

24 Unless the context in which used clearly requires a different

1 meaning, as used in this article:

2       (a) "Administratively complete application" means an  
3 application for permit approval that the secretary determines to  
4 contain information addressing each application requirement of the  
5 regulatory program and to contain all information necessary to  
6 initiate processing and review;

7       (b) "Assessment officer" means an employee of the department,  
8 other than an oil and gas inspector supervisor, inspector or  
9 inspector-in-training, appointed by the secretary to issue proposed  
10 penalty assessments and to conduct informal conferences to review  
11 notices, orders, and proposed penalty assessments;

12       (c) "Best management practice" means schedules of activities,  
13 prohibitions of practices, maintenance procedures, and other  
14 management practices that will prevent or reduce pollution of  
15 waters of the state and include treatment requirements, operating  
16 procedures, and practices to control site runoff, spillage or  
17 leaks, sludge or waste disposal or drainage from raw material  
18 storage;

19       ~~(a)~~ (d) "Casing" means a string or strings of pipe commonly  
20 placed in wells drilled for natural gas or petroleum or both;

21       ~~(b)~~ (e) "Cement" means hydraulic cement properly mixed with  
22 water;

23       ~~(c)~~ (f) "Chair" means the chair of the West Virginia Shallow  
24 Gas Well Review Board as provided for in section four, article  
25 eight, chapter twenty-two-c of this code;

1       ~~(d)~~ (g) "Coal operator" means any person or persons, firm,  
2 partnership, partnership association or corporation that proposes  
3 to or does operate a coal mine;

4       ~~(e)~~ (h) "Coal seam" and "workable coal bed" are  
5 interchangeable terms and mean any seam of coal twenty inches or  
6 more in thickness, unless a seam of less thickness is being  
7 commercially worked, or can in the judgment of the department  
8 foreseeably be commercially worked and will require protection if  
9 wells are drilled through it;

10       ~~(f)~~ "Director" means the director of the Division of  
11 Environmental Protection as established in article one of this  
12 chapter or such other person to whom the director has delegated  
13 authority or duties pursuant to sections six or eight, article one  
14 of this chapter;

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

18       ~~(h)~~ (j) "Expanding cement" means any cement approved by the  
19 ~~office~~ division of oil and gas which expands during the hardening  
20 process, including, but not limited to, regular oil field cements  
21 with the proper additives;

22       ~~(i)~~ (k) "Facility" means any facility utilized in the oil and  
23 gas industry in this state and specifically named or referred to in  
24 this article or in article eight, ~~or~~ nine, ten or twenty-one of  
25 this chapter, other than a well or well site;

1       ~~(j)~~ (l) "Gas" means all natural gas and all other fluid  
2 hydrocarbons not defined as oil in this section;

3       (m) "Impoundment" means a man-made excavation or diked area  
4 for the retention of fresh water and into which no wastes of any  
5 kind are placed;

6       (n) "Modification" means any change to the permit or permit  
7 application that would require renotice to any party originally  
8 receiving notice as part of the permit application or any changes  
9 to the plat or casing program, whether or not such changes would  
10 require renotice;

11       (o) "Occupied dwelling" means any building that is currently  
12 being used on a regular or periodic basis for human habitation;

13       ~~(k)~~ (p) "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       ~~(i)~~ (q) "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)~~ (r) "Owner" when used with reference to any coal seam,  
24 shall include any person or persons who own, lease or operate such  
25 coal seam;

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

6       (t) "Pit" means a man-made excavation or diked area that  
7 contains or is intended to contain an accumulation of process waste  
8 fluids, drill cuttings or any other liquid substance that could  
9 impact surface or groundwater;

10       (u) "Pollutant" shall have the same meaning as provided in  
11 subsection (17), section three, article eleven, chapter twenty-two  
12 of this code;

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

15       (w) "Replacement of water supply" means, with respect to water  
16 supplies, contaminated, diminished or interrupted provision of  
17 water supply on both a temporary and permanent basis of at least  
18 equivalent quality and quantity. Replacement includes provision of  
19 an equivalent water delivery system and payment of operation and  
20 maintenance cost in excess of customary and reasonable delivery  
21 cost for the replaced water supplies. Upon agreement by the  
22 operator and the water supply owner, the obligation to pay the  
23 costs may be satisfied by a one-time payment in an amount which  
24 covers the present annual operation and maintenance costs for a  
25 period agreed to by the operator and the water supply owner;

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

4       ~~(q)~~ (y) "Safe mining through of a well" means the mining of  
5 coal in a workable coal bed up to a well which penetrates such  
6 workable coal bed and through such well so that the casing or plug  
7 in the well bore where the well penetrates the workable coal bed is  
8 severed;

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

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

24       (bb) "Significant, imminent environmental harm to land, air or  
25 water resources" means the existence of any condition or practice

1 or any violation of a permit or other requirement of this article,  
2 which condition, practice of violation could reasonably be expected  
3 to cause significant and imminent environmental harm to land, air  
4 or water resources. The term "environmental harm" means any  
5 material adverse impact on land, air or water resources, including  
6 but not limited to plant, wildlife and fish, and the environmental  
7 harm is imminent if a condition or practice exists that is causing  
8 the harm or may reasonably be expected to cause the harm at any  
9 time before the end of the abatement time set by the secretary. An  
10 environmental harm is "significant" if that harm is material and  
11 not immediately repairable;

12       (cc) "Stimulate" means any action taken by a well operator to  
13 increase the inherent productivity of an oil or gas well,  
14 including, but not limited to, fracturing, shooting or acidizing,  
15 but excluding cleaning out, bailing or work over operations;

16       (dd) "Waste" means: (i) Physical waste, as the term is  
17 generally understood in the oil and gas industry; (ii) the  
18 locating, drilling, equipping, operating or producing of any oil or  
19 gas well in a manner that causes, or tends to cause a substantial  
20 reduction in the quantity of oil and gas ultimately recoverable  
21 from a pool under prudent and proper operations, or that causes or  
22 tends to cause a substantial or unnecessary or excessive surface  
23 loss of oil or gas; or (iii) the drilling of more deep wells than  
24 are reasonably required to recover efficiently and economically the  
25 maximum amount of oil and gas from a pool; (iv) substantially



1 inefficient, excessive or improper use, or the substantially  
2 unnecessary dissipation of, reservoir energy, it being understood  
3 that nothing in this chapter shall be construed to authorize any  
4 agency of the state to impose mandatory spacing of shallow wells  
5 except for the provisions of section eight, article nine, chapter  
6 twenty-two-c of this code and the provisions of article eight,  
7 chapter twenty-two-c of this code; (v) inefficient storing of oil  
8 or gas: *Provided*, That storage in accordance with a certificate of  
9 public convenience issued by the Federal Energy Regulatory  
10 Commission shall be conclusively presumed to be efficient; and (vi)  
11 other underground or surface waste in the production or storage of  
12 oil, gas or condensate, however caused. Waste does not include gas  
13 vented or released from any mine areas as defined in section two,  
14 article one, chapter twenty-two-a of this code or from adjacent  
15 coal seams which are the subject of a current permit issued under  
16 article two of chapter twenty-two-a of this code: *Provided*,  
17 *however*, That nothing in this exclusion is intended to address  
18 ownership of the gas;

19 (ee) "Waters of this state: Shall have the same meaning as  
20 the term "waters" as provided in subsection (23), section three,  
21 article eleven, chapter twenty-two of this code;

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

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

6 (gg) "Well work" means the drilling, redrilling, deepening,  
 7 stimulating, pressuring by injection of any fluid, converting from  
 8 one type of well to another, combining or physically changing to  
 9 allow the migration of fluid from one formation to another or  
 10 plugging or replugging of any well; and

11 (hh) "Well operator" or "operator" means any person or  
 12 persons, firm, partnership, partnership association or corporation  
 13 that proposes to or does locate, drill, operate or abandon any well  
 14 as herein defined.

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

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

21 **§22-6-2. Secretary -- Powers and duties generally; department**  
 22 **records open to public; inspectors.**

23 (a) The secretary shall have as his or her duty the  
 24 supervision of the execution and enforcement of matters related to  
 25 oil and gas set out in this article and in articles eight, and

1 nine, ten, and twenty-one of this chapter.

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

6 (c) The secretary shall have full charge of the oil and gas  
7 matters set out in this article and in articles eight, ~~and~~ nine,  
8 ten, and twenty-one of this chapter. In addition to all other  
9 powers and duties conferred upon him or her, the secretary shall  
10 have the power and duty to:

11 (1) Supervise and direct the activities of the ~~office~~ division  
12 of oil and gas and see that the purposes set forth in subsections  
13 (a) and (b) of this section are carried out;

14 (2) ~~Employ a supervising oil and gas inspector and oil and gas~~  
15 ~~inspectors~~ Determine the number of supervising oil and gas  
16 inspectors and oil and gas inspectors needed to carry out the  
17 purposes of this article and articles eight, nine, ten, and twenty-  
18 one of this chapter and appoint them as such. All appointees shall  
19 be qualified civil service employees, but no person is eligible for  
20 appointment until he or she has served in a probationary status for  
21 a period of six months to the satisfaction of the secretary;

22 (3) Supervise and direct ~~such~~ oil and gas inspectors and  
23 supervising inspectors in the performance of their duties;

24 (4) ~~Suspend for good cause any oil and gas inspector or~~  
25 ~~supervising inspector without compensation for a period not~~

1 ~~exceeding thirty days in any calendar year~~ Make investigations or  
2 inspections necessary to ensure complete compliance with the  
3 provisions of this code and enforce the provisions of this article  
4 and articles eight, nine, ten, and twenty-one of this chapter;

5 (5) Prepare report forms to be used by oil and gas inspectors  
6 or ~~the~~ supervising inspectors in making their findings, orders and  
7 notices, upon inspections made in accordance with this article and  
8 articles ~~seven,~~ eight, nine, ~~and~~ ten, and twenty-one of this  
9 chapter;

10 (6) Employ a hearing officer and such clerks, stenographers,  
11 and other employees as may be necessary to carry out ~~his or her~~  
12 their duties and the purposes of the ~~office~~ division of oil and gas  
13 and fix their compensation;

14 (7) Hear and determine applications made by owners, well  
15 operators, ~~and~~ or coal operators for the annulment or revision of  
16 orders made by oil and gas inspectors or ~~the~~ supervising  
17 inspectors; ~~and to make inspections, in accordance with the~~  
18 ~~provisions of this article and articles eight and nine of this~~  
19 ~~chapter;~~

20 (8) Cause a properly indexed permanent and public record to be  
21 kept of all inspections made by the secretary or by oil and gas  
22 inspectors or ~~the~~ supervising inspectors;

23 (9) Conduct ~~such~~ research and studies as the secretary ~~shall~~  
24 deems necessary to aid in protecting the health and safety of  
25 persons employed within or at potential or existing oil or gas

1 production fields within this state, to improve drilling and  
2 production methods, and to provide for the more efficient  
3 protection and preservation of oil and gas-bearing rock strata and  
4 property used in connection therewith;

5 (10) Collect a permit fee of ~~four hundred dollars~~ \$400 for  
6 each permit application filed other than an application for a deep  
7 well or a coalbed methane well or a well that is drilled  
8 horizontally; and collect a permit fee of ~~six hundred fifty dollars~~  
9 \$650 for each permit application filed for a deep well; and collect  
10 a permit fee of \$10,000 for each permit application filed for a  
11 well that is drilled horizontally: *Provided*, That no permit  
12 application fee shall be required when an application is submitted  
13 solely for the plugging or replugging of a well, or to modify an  
14 existing application or permit for which the operator previously  
15 has submitted a permit fee under this section. All application  
16 fees required hereunder shall be in lieu of and not in addition to  
17 any fees imposed under article eleven of this chapter relating to  
18 discharges of stormwater but shall be in addition to any other fees  
19 required by the provisions of this article; *Provided, however*, That  
20 upon a final determination by the United States Environmental  
21 Protection Agency regarding the scope of the exemption under  
22 section 402(1)(2) of the federal Clean Water Act (33 U.S.C.  
23 1342(1)(2)), which determination requires a "national pollutant  
24 discharge elimination system" permit for stormwater discharges from  
25 the oil and gas operations described therein, any permit fees for

1 stormwater permits required under article eleven of this chapter  
2 for ~~such~~ these operations shall not exceed \$100.

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

5 (12) Perform all duties as the permit issuing authority for  
6 the state in all matters pertaining to the exploration,  
7 development, production, storage, and recovery of this state's oil  
8 and gas;

9 (13) Adopt rules with respect to the issuance, denial,  
10 retention, suspension or revocation of permits, authorizations, and  
11 requirements of this chapter, which rules shall assure that the  
12 rules, permits, and authorizations issued by the secretary are  
13 adequate to satisfy the purposes of this article and articles  
14 ~~seven, eight, nine, and ten,~~ and twenty-one of this chapter, and  
15 particularly with respect to the consolidation of the various state  
16 and federal programs which place permitting requirements on the  
17 exploration, development, production, storage, and recovery of this  
18 state's oil and gas ~~Provided, That notwithstanding any provisions~~  
19 ~~of this article and articles seven, eight, nine and ten of this~~  
20 ~~chapter to the contrary, the environmental quality board shall have~~  
21 ~~the sole authority pursuant to section three, article three,~~  
22 ~~chapter twenty-two-b to promulgate rules setting standards of water~~  
23 ~~quality applicable to waters of the state; and~~

24 (14) Perform ~~such~~ acts as may be necessary or appropriate to  
25 secure to this state the benefits of federal legislation

1 establishing programs relating to the exploration, development,  
2 production, storage, and recovery of this state's oil and gas,  
3 which programs are assumable by the state.

4       (d) ~~The Secretary shall have authority to visit and inspect~~  
5 ~~any well or well site and any other oil or gas facility in this~~  
6 ~~state and may call for the assistance of any oil and gas inspector~~  
7 ~~or inspectors or supervising inspector whenever such assistance is~~  
8 ~~necessary in the inspection of any such well or well site or any~~  
9 ~~other oil or gas facility. Similarly, all All oil and gas~~  
10 ~~inspectors and the supervising inspectors shall have authority are~~  
11 authorized to visit and inspect any well or well site and any other  
12 oil or gas facility in this state. They shall make all necessary  
13 surveys and inspections of oil and gas operations required by this  
14 article and articles eight, nine, ten, and twenty-one of this  
15 chapter; administer and enforce all oil and gas laws and rules; and  
16 perform other duties and services as may be prescribed by the  
17 secretary. Inspectors shall give particular attention to all  
18 conditions of each permit to ensure complete compliance therewith.  
19 They shall note and describe all violations of this article and  
20 articles eight, nine, ten, or twenty-one of this chapter and  
21 immediately report those violations to the secretary in writing,  
22 furnishing at the same time a copy of the report to the operator  
23 concerned. Any well operator, coal operator operating coal seams  
24 beneath the tract of land, or the coal seam owner or lessee, if  
25 any, if said owner or lessee is not yet operating said coal seams

~~1 beneath said tract of land may request the Secretary to have an  
2 immediate inspection made. The operator or owner of every well or  
3 well site or any other oil or gas facility shall cooperate with the  
4 Secretary, all oil and gas inspectors and the supervising inspector  
5 in making inspections or obtaining information.~~

6 (e) ~~Oil and gas inspectors shall devote their full time and  
7 undivided attention to the performance of their duties, and they  
8 shall be responsible for the inspection of all wells or well sites  
9 or other oil or gas facilities in their respective districts as  
10 often as may be required in the performance of their duties. Any  
11 well operator, coal operator operating coal seams beneath the tract  
12 of land, or the coal seam owner or lessee, if any, if the owner or  
13 lessee is not yet operating the coal seams beneath the tract of  
14 land, may request the secretary to make an immediate inspection.  
15 The operator or owner of every well or well site or any other oil  
16 or gas facility shall cooperate with the secretary, all oil and gas  
17 inspectors, and supervising inspectors in making inspections or  
18 obtaining information.~~

19 (f) All records of the office shall be open to the public.

20 **§22-6-3. Permit required for well work; permit fee; application;**  
21 **soil erosion control plan.**

22 ~~(a) If an oil and gas inspector, upon making an inspection of  
23 a well or well site or any other oil or gas facility, finds that  
24 any provision of this article is being violated, the inspector  
25 shall also find whether or not an imminent danger to persons~~



1 ~~exists, or whether or not there exists an imminent danger that a~~  
2 ~~fresh water source or supply will be contaminated or lost. If the~~  
3 ~~inspector finds that such imminent danger exists, an order~~  
4 ~~requiring the operator of such well or well site or other oil or~~  
5 ~~gas facility to cease further operations until such imminent danger~~  
6 ~~has been abated shall be issued by the inspector. If the inspector~~  
7 ~~finds that no such imminent danger exists, the inspector shall~~  
8 ~~determine what would be a reasonable period of time within which~~  
9 ~~such violation should be totally abated. Such findings shall~~  
10 ~~contain reference to the provisions of this article which the~~  
11 ~~inspector finds are being violated, and a detailed description of~~  
12 ~~the conditions which cause and constitute such violation.~~

13       ~~(b) The period of time so found by such oil and gas inspector~~  
14 ~~to be a reasonable period of time shall not exceed seven days.~~  
15 ~~Such period may be extended by such inspector, or by any other oil~~  
16 ~~and gas inspector duly authorized by the director, from time to~~  
17 ~~time, for good cause, but not to exceed a total of thirty days,~~  
18 ~~upon the making of a special inspection to ascertain whether or not~~  
19 ~~such violation has been totally abated: *Provided*, That such thirty-~~  
20 ~~day period may be extended beyond thirty days by such inspectors~~  
21 ~~where abatement is shown to be incapable of accomplishment because~~  
22 ~~of circumstances or conditions beyond the control of the well~~  
23 ~~operator. The director shall cause a special inspection to be~~  
24 ~~made: (A) Whenever an operator of a well or well site or any other~~  
25 ~~oil or gas facility, prior to the expiration of any such period of~~

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

~~22 (c) Notice of each finding and order made under this section  
23 shall promptly be given to the operator of the well or well site or  
24 other oil or gas facility to which it pertains by the person making  
25 such finding or order.~~

1 ~~(d) No order shall be issued under the authority of this~~  
2 ~~section which is not expressly authorized herein.~~

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

9 (b) The application for a well work permit shall be  
10 accompanied by the applicable bond as prescribed by section twelve,  
11 fourteen or twenty-three of this article, and the applicable plat  
12 required by section twelve or fourteen of this article.

13 (c) Every permit application filed under this section shall be  
14 on the form prescribed by the secretary, shall be verified, and  
15 shall contain the following:

16 (1) The names and addresses of (A) The permit applicant; (B)  
17 The owner of record of the property, to include surface, mineral,  
18 and storage rights, proposed to be developed; (C) The holders of  
19 record of any leasehold interest in the property; (D) The agent  
20 required to be designated by subsection (e) of this section; (E) If  
21 the applicant is a business entity other than a sole proprietor,  
22 the names and business addresses of the principals, officers, and  
23 resident agent; and (F) Every person whom the applicant must notify  
24 under any section of this article, together with a certification  
25 and evidence that a copy of the application and all other required

1 documentation has been delivered to all those persons;

2 (2) The name and address of every coal operator operating coal  
3 seams under the tract of land on which the well is or may be  
4 located, and the coal seam owner of record and lessee of record  
5 required to be given notice by sections twelve and fourteen, if  
6 any, if the owner or lessee is not yet operating said coal seams;

7 (3) The number of the well or other identification as the  
8 secretary may require;

9 (4) The type of well;

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

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

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

15 (8) Any permit application fee required by law;

16 (9) If the proposed well work will require casing or tubing to  
17 be set, the entire casing program for the well, including the size  
18 of each string of pipe, the starting point and depth to which each  
19 string is to be set, and the extent to which each such string is to  
20 be cemented;

21 (10) If the proposed well work is to convert an oil well or a  
22 combination well or to drill a new well for the purpose of  
23 introducing pressure for the recovery of oil as provided in section  
24 twenty-five of this article, specifications in accordance with the  
25 data requirements of section fourteen of this article;

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

20       (12) If the proposed well work is to stimulate an oil or gas  
21 well, specifications in accordance with the data requirements of  
22 section thirteen of this article;

23       (13) The erosion and sediment control plan required by  
24 subsection (d) of this section for applications for permits to  
25 drill;

1       (14) A well site safety plan to address proper safety measures  
2 to be employed for the protection of persons on the site as well as  
3 the general public. The plan shall encompass all aspects of the  
4 operation, including the actual well work for which the permit was  
5 obtained, completion activities, and production activities;

6       (15) A statement of whether the applicant or any officer,  
7 partner, director, principal shareholder of the applicant, any  
8 subsidiary, affiliate or persons controlled by or under common  
9 control with the applicant has ever been an officer, partner,  
10 director or principal shareholder in a company that has ever held  
11 a well work permit in this or any other state that has been revoked  
12 or has had a bond or similar security deposited in lieu of bond  
13 forfeited and, if so, a brief explanation of the facts involved;  
14 and

15       (16) Any other relevant information which the secretary may  
16 require.

17       (d)(1) An erosion and sediment control plan shall accompany  
18 each application for a well work permit, except for a well work  
19 permit to plug or replug any well. The erosion and sediment  
20 control plan shall contain methods of stabilization and drainage,  
21 including a map of the project area indicating the amount of  
22 acreage disturbed. The erosion and sediment control plan shall  
23 meet the minimum requirements of the West Virginia erosion and  
24 sediment control manual as adopted and from time to time amended by  
25 the department. The erosion and sediment control plan shall become

1 part of the terms and conditions of any well work permit that is  
2 issued, except for a well work permit to plug or replug any well,  
3 and the provisions of the plan shall be carried out where  
4 applicable in the operation. The erosion and sediment control plan  
5 shall set out the proposed method of reclamation which shall comply  
6 with the requirements of section thirty of this article. For  
7 permits to plug or replug any well, the operator shall submit a  
8 reclamation plan in accordance with established best management  
9 practices as contained in the Erosion and Sediment Control Manual.

10 (2) For well sites that disturb five acres or more of surface,  
11 excluding pipelines, gathering lines, and roads, the erosion and  
12 sediment control plan shall be certified by a registered  
13 professional engineer.

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

19 (f) The well operator named in the application shall designate  
20 the name and address of an agent for the operator who shall be the  
21 attorney-in-fact for the operator and who shall be a resident of  
22 the State of West Virginia upon whom notices, orders or other  
23 communications issued pursuant to this article or article eleven,  
24 chapter twenty-two, may be served, and upon whom process may be  
25 served. Every well operator required to designate an agent under

1 this section shall, within five days after the termination of the  
2 designation, notify the secretary of the termination and designate  
3 a new agent.

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

10 (h) In addition to the other requirements of this article, an  
11 application for a well work permit for a gas well that is drilled  
12 horizontally shall include, in addition to the information listed  
13 above, a water management plan, which shall:

14 (1) Explain if the drilling, fracturing or stimulating of the  
15 horizontal well requires the use of water obtained by withdrawals  
16 from waters of the state in amounts that exceed two hundred ten  
17 thousand gallons during any month; and

18 (2) Include the following information:

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

23 (B) The anticipated volume of each water withdrawal;

24 (C) The anticipated months when water withdrawals will be  
25 made;



1       (D) The planned management and disposition of wastewater from  
2 fracturing, stimulation, and production activities;

3       (E) A listing of the anticipated additives that may be used  
4 for fracturing or stimulating the well. Upon well completion, a  
5 listing of the additives that were actually used in the fracturing  
6 or stimulating of the well shall be submitted as part of the  
7 completion report;

8       (F) For all surface water withdrawals, a water resources  
9 protection plan that includes the information requested in  
10 paragraphs (A) through (E) of this subdivision 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       (i) 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       (ii) For surface waters, a demonstration, using methods  
19 acceptable to the secretary, that sufficient in-stream flow will  
20 be available immediately downstream of the point of withdrawal. A  
21 sufficient in-stream flow is maintained when a pass-by flow that is  
22 protective of the identified use of the stream is preserved  
23 immediately downstream of the point of withdrawal; and

24       (iii) Methods to be used for surface water withdrawals to  
25 minimize adverse impact to aquatic life.

1       (3) This subsection is intended to be consistent with and does  
2 not supersede, revise, repeal or otherwise modify articles eleven,  
3 twelve or twenty-six of this chapter and does not revise, repeal or  
4 otherwise modify the common law doctrine of riparian rights in West  
5 Virginia law.

6       (i) The secretary may waive the requirements of this section  
7 and sections nine, ten, and eleven of this article in any emergency  
8 situation, if the secretary deems that action necessary. In that  
9 case the secretary may issue an emergency permit which would be  
10 effective for not more than thirty days, but which would be subject  
11 to reissuance by the secretary.

12       (j) The secretary shall deny the issuance of a permit if the  
13 secretary determines that the applicant has committed a substantial  
14 violation of a previously issued permit, including the erosion and  
15 sediment control plan, or a substantial violation of one or more of  
16 the rules promulgated hereunder, and has failed to abate or seek  
17 review of the violation within the time prescribed by the secretary  
18 pursuant to the provisions of sections twenty-eight, twenty-eight-a  
19 or thirty-four of this article and the rules promulgated hereunder,  
20 which time may not be unreasonable: *Provided*, That in the event  
21 that the secretary does find that a substantial violation has  
22 occurred and that the operator has failed to abate or seek review  
23 of the violation in the time prescribed, the secretary may suspend  
24 the permit on which the violation exists, after which suspension  
25 the operator shall forthwith cease all well work being conducted

1 under the permit: *Provided, however,* That the secretary may  
2 reinstate the permit without further notice, at which time the well  
3 work may continue. The secretary shall make written findings of  
4 the determination and may enforce the same in the circuit courts of  
5 this state, and the operator may appeal the suspension pursuant to  
6 the provisions of section thirteen of this article. The secretary  
7 shall make a written finding of any such determination.

8 (k) Any person who violates any provision of this section  
9 shall be guilty of a misdemeanor, and, upon conviction thereof,  
10 shall be fined not more than \$5,000 or be imprisoned in the county  
11 jail not more than twelve months, or both fined and imprisoned.

12 **§22-6-4. Approval, denial or revision of permit.**

13 ~~(a) Any well operator, complaining coal operator, owner or~~  
14 ~~lessee, if any, aggrieved by findings or an order made by an oil or~~  
15 ~~gas inspector pursuant to section three of this article, may within~~  
16 ~~fifteen days apply to the director for annulment or revision of~~  
17 ~~such order. Upon receipt of such application the director shall~~  
18 ~~make a special inspection of the well, well site or other oil and~~  
19 ~~gas facility affected by such order, or cause two duly authorized~~  
20 ~~oil and gas inspectors, other than the oil and gas inspector who~~  
21 ~~made such order or the supervising inspector and one duly~~  
22 ~~authorized oil and gas inspector other than the oil and gas~~  
23 ~~inspector who made such order, to make such inspection of such~~  
24 ~~well, or well site or other oil or gas facility and to report~~  
25 ~~thereon to them. Upon making such special inspection, or upon~~

1 ~~receiving the report of such special inspection, as the case may~~  
2 ~~be, the director shall make an order which shall include the~~  
3 ~~director's findings and shall annul, revise or affirm the order of~~  
4 ~~the oil and gas inspector.~~

5 ~~(b) The director shall cause notice of each finding and order~~  
6 ~~made under this section to be given promptly to the operator of the~~  
7 ~~well, well site or other oil or gas facility to which such findings~~  
8 ~~and order pertain, and the complainant under section three, if any.~~

9 ~~(c) At any time while an order made pursuant to section three~~  
10 ~~of this article is in effect, the operator of the well, well site~~  
11 ~~or other oil or gas facility affected by such order may apply to~~  
12 ~~the director for annulment or revision of such order. The director~~  
13 ~~shall thereupon proceed to act upon such application in the manner~~  
14 ~~provided in this section.~~

15 ~~(d) In view of the urgent need for prompt decision of matters~~  
16 ~~submitted to the director under this article, all actions which the~~  
17 ~~director, or oil and gas inspectors or the supervising inspector~~  
18 ~~are required to take under this article, shall be taken as rapidly~~  
19 ~~as practicable, consistent with adequate consideration of the~~  
20 ~~issues involved.~~

21 (a) Upon the receipt of an administratively complete well work  
22 permit application or application for modification of a well work  
23 permit, the secretary shall grant, require revision of, or deny the  
24 application for a permit within a reasonable time and notify the  
25 applicant in writing of the decision. The applicant for a permit

1 or permit modification has the burden of establishing that the  
2 application is in compliance with all the requirements of this  
3 article and the rules promulgated hereunder.

4 (b) No permit or modification of a permit may be approved  
5 unless the applicant affirmatively demonstrates and the secretary  
6 finds in writing on the basis of the information set forth in the  
7 application or from information otherwise available, which shall be  
8 documented in the approval and made available to the applicant,  
9 that:

10 (1) The permit application is accurate and complete and that  
11 the applicant has complied with all the requirements of this  
12 article and the rules promulgated hereunder; and

13 (2) The applicant has demonstrated that erosion and sediment  
14 control and reclamation as required by this article can be  
15 accomplished pursuant to the erosion and sediment control plan  
16 contained in the permit application.

17 (c) The permit shall not be issued or shall be conditioned,  
18 including conditions with respect to the location of the well and  
19 access roads, prior to issuance if the secretary determines that:

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

22 (2) Damage would occur to publicly owned lands or resources;  
23 or

24 (3) The proposed well work fails to protect fresh water  
25 sources or supplies.

1       (d) Where information available to the department indicates  
2 that any operation owned or controlled by the applicant is  
3 currently in violation of this article or other environmental laws  
4 or rules, the permit may not be issued until the applicant submits  
5 proof that the violation has been corrected or is in the process of  
6 being corrected to the satisfaction of the secretary or the  
7 division or agency that has jurisdiction over the violation, and no  
8 permit may be issued to any applicant after a finding by the  
9 secretary, after an opportunity for hearing, that the applicant or  
10 the operator specified in the application controls or has  
11 controlled operations with a demonstrated pattern of willful  
12 violations of this article or articles eight, nine, ten, eleven or  
13 twenty-one of this chapter, of such nature and duration with such  
14 irreparable damage to the environment as to indicate an intent not  
15 to comply with the provisions of the environmental laws of the  
16 State of West Virginia: *Provided*, That if the secretary finds that  
17 the applicant is or has been affiliated with, or managed or  
18 controlled by, or is or has been under the common control of, other  
19 than as an employee, a person who has had a well work permit  
20 revoked or bond or other security forfeited for failure to comply  
21 with any environmental laws of this state, the secretary may not  
22 issue a permit to the applicant: *Provided, however*, That subject  
23 to the discretion of the secretary and based upon a petition for  
24 reinstatement, a permit may be issued to any applicant if: (1)  
25 After the revocation or forfeiture, the operator whose permit has

1 been revoked or bond forfeited has paid into the Oil and Gas  
2 Reclamation Fund any additional sum of money determined by the  
3 secretary to be adequate to correct the noncompliance issue; (2)  
4 the violations which resulted in the revocation or forfeiture have  
5 not caused irreparable damage to the environment; and (3) the  
6 secretary is satisfied that the petitioner will comply with this  
7 article.

8 (e) The secretary shall promptly review all comments filed by  
9 persons entitled to receive notice of the application. If after  
10 review of the application and all comments received, the  
11 application for a well work permit is approved, and no timely  
12 objection or comment has been filed with the secretary or made by  
13 the secretary pursuant to the provisions of sections fifteen,  
14 sixteen or seventeen of this article, the permit shall be issued,  
15 with conditions, if any. Nothing in this section shall be  
16 construed to supersede the provisions of sections three or twelve,  
17 thirteen, fourteen, fifteen, sixteen or seventeen of this article.

18 (f) The secretary shall mail a copy of the permit as issued or  
19 a copy of the order denying the permit to any person who submitted  
20 comments to the secretary concerning the permit and requested a  
21 copy.

22 (g) Upon issuance of any permit pursuant to the provisions of  
23 this article, the secretary shall transmit a copy of the plat  
24 described in section twelve of this article to the office of the  
25 assessor for the county in which the well is located.

1 **§22-6-5. Certificate of approval required for large impoundment**  
2 **construction; certificate of approval and annual**  
3 **registration fees; application required to obtain**  
4 **certificate; revocation or suspension of certificates.**

5 ~~(a) All findings and orders made pursuant to section three or~~  
6 ~~four of this article, and all notices required to be given of the~~  
7 ~~making of such findings and orders, shall be in writing. All such~~  
8 ~~findings and orders shall be signed by the person making them, and~~  
9 ~~all such notices shall be signed by the person charged with the~~  
10 ~~duty of giving the notice. All such notices shall contain a copy~~  
11 ~~of the findings and orders referred to therein.~~

12 ~~(b) Notice of any finding or order required by section three~~  
13 ~~or four of this article to be given to an operator shall be given~~  
14 ~~by causing such notice, addressed to the operator of the well, well~~  
15 ~~site or other oil and/or gas facility to which such finding or~~  
16 ~~order pertains, to be delivered to such operator by causing a copy~~  
17 ~~thereof to be sent by registered mail to the permanent address of~~  
18 ~~such operator as filed with the division and by causing a copy~~  
19 ~~thereof to be posted upon the drilling rig or other equipment at~~  
20 ~~the well, well site or other oil and/or gas facility, as the case~~  
21 ~~may be. The requirement of this article that a notice shall be~~  
22 ~~"addressed to the operator of the well, well site or other oil~~  
23 ~~and/or gas facility to which such finding or order pertains," shall~~  
24 ~~not require that the name of the operator for whom it is intended~~



1 ~~shall be specifically set out in such address. Addressing such~~  
2 ~~notice to "Operator of \_\_\_\_\_," specifying the well,~~  
3 ~~well site or other oil and/or gas facility sufficiently to identify~~  
4 ~~it, shall satisfy such requirement.~~

5 ~~(c) Any well operator, complaining coal operator, owner or~~  
6 ~~lessee, if any, adversely affected by a final order issued by the~~  
7 ~~director under section four of this article shall be entitled to~~  
8 ~~judicial review thereof. All of the pertinent provisions of~~  
9 ~~section four, article five, chapter twenty-nine-a of this code~~  
10 ~~shall apply to and govern such judicial review with like effect as~~  
11 ~~if the provisions of said section four were set forth in extenso in~~  
12 ~~this section.~~

13 ~~(d) The judgment of the circuit court shall be final unless~~  
14 ~~reversed, vacated or modified on appeal to the Supreme Court of~~  
15 ~~Appeals in accordance with the provisions of section one, article~~  
16 ~~six, chapter twenty-nine-a of this code.~~

17 ~~(e) Legal counsel and services for the director in all appeal~~  
18 ~~proceedings in any circuit court and the Supreme Court of Appeals~~  
19 ~~shall be provided by the Attorney General or his or her assistants~~  
20 ~~and in any circuit court by the prosecuting attorney of the county~~  
21 ~~as well, all without additional compensation. The director, with~~  
22 ~~written approval of the Attorney General, may employ special~~  
23 ~~counsel to represent the director at any such appeal proceedings.~~

24 (a) The Legislature finds that large impoundments (i.e. an  
25 impoundment with a capacity of five thousand barrels or more) not

1 associated with a specific well work permit may constitute a  
2 potential hazard to people and property; therefore, large  
3 impoundments not permitted under a well work permit must be  
4 properly regulated and controlled to protect the health, safety and  
5 welfare of people and property in this state. It is the intent of  
6 the Legislature by this section to provide for the regulation and  
7 supervision of large impoundments not associated with a well work  
8 permit in this state to the extent necessary to protect the public  
9 health, safety and welfare. The Legislature has ordained this  
10 article to fulfill its responsibilities to the people of this state  
11 and to protect their lives and private and public property from the  
12 danger of a potential or actual failure of a large impoundment not  
13 associated with a well work permit. This section shall not apply  
14 to large impoundments associated with a well work permit.

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

1 impoundment involved in a single project.

2 (c) The application fee for placement, construction,  
3 enlargement, alteration, repair or removal of an impoundment  
4 pursuant to this section is \$300, and the fee shall accompany the  
5 application for certificate of approval.

6 (d) Operators holding certificates of approval shall be  
7 assessed an annual registration fee of \$100, which may be valid for  
8 more than one impoundment involved in a single project. Existing  
9 certificates of approval shall be extended for one year upon  
10 receipt of the annual registration fee, an inspection report, a  
11 monitoring and emergency action plan, and a maintenance plan:  
12 Provided, That where an approved, up-to-date inspection report,  
13 monitoring and emergency action plan, and maintenance plan are on  
14 file with the department, and where no outstanding violation(s)  
15 exist, then the certificate of approval will be extended without  
16 resubmission of the foregoing documents upon receipt of the annual  
17 registration fee.

18 (e) Every application for a certificate of approval shall be  
19 made in writing on a form prescribed by the secretary and shall be  
20 signed and verified by the applicant. The application shall  
21 contain and provide information that may reasonably be required by  
22 the secretary to administer the provisions of this article.

23 (f) Plans and specifications for the placement, construction,  
24 erosion and sediment control, enlargement, alteration, repair or  
25 removal and reclamation of impoundments shall be the charge of a

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

4 (g) Each certificate of approval issued by the secretary  
5 pursuant to this section may contain other terms and conditions as  
6 the secretary may prescribe.

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

14 (1) Before any certificate of approval is amended or revoked  
15 by the secretary, the operator may request a hearing in accordance  
16 with the provisions of article five, chapter twenty-nine-a of this  
17 code.

18 (2) A decision of the secretary to revoke or refusing to issue  
19 a certificate of approval shall be subject to judicial review by an  
20 administrative law judge of the department upon the appeal of the  
21 applicant for or holder of such certificate of approval, but in any  
22 such judicial review only the legality of the decision of the  
23 secretary pursuant to the Constitution and laws of this state and  
24 the United States shall be determined.

25 (i) Upon expiration of the certificate of approval, or upon

1 its revocation by the secretary, the operator shall, within sixty  
2 days, fill all impoundments that are not required or allowed by  
3 state or federal law or rule or agreement between the operator and  
4 the surface owner that allows the impoundment to remain open for  
5 the use and benefit of the surface owner and reclaim the site with  
6 the approved erosion and sediment control plan.

7 (j) This section shall not apply to farm ponds constructed by  
8 the operator with the written consent of the surface owner, which  
9 will be used after completion of the drilling activity primarily  
10 for agricultural purposes, including without limitation livestock  
11 watering, irrigation, retention of animal wastes and fish culture  
12 and that have no potential to cause loss of human life in the event  
13 of embankment failure. The operator shall not use the farm pond in  
14 any way for anything other than fresh water storage. Any  
15 impoundment that is intended to be left permanent shall meet the  
16 requirements set forth by the United States Department of  
17 Agriculture's Natural Resources Conservation Service "Conservation  
18 Practice Standard - Ponds" (Code 378).

19 (k) An impoundment that is constructed in a manner that it  
20 (1) rises twenty-five feet or more above the natural bed of a  
21 stream or watercourse as measured from the downstream toe of the  
22 embankment and does or can impound fifteen acrefeet or more of  
23 water; or (2) rises six feet or more above the natural bed of a  
24 stream or watercourse as measured from the downstream toe of the  
25 embankment and does or can impound fifty acrefeet or more of water

1 is, by definition, a dam and is thereby subject to the provisions  
2 of the West Virginia Dam Control Act, article fourteen, chapter  
3 twenty-two of this code.

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

8 **§22-6-6. General environmental protection performance standards**  
9 **for oil and gas operations.**

10 ~~(a) It is unlawful for any person to commence any well work,~~  
11 ~~including site preparation work which involves any disturbance of~~  
12 ~~land, without first securing from the director a well work permit.~~  
13 ~~An application may propose and a permit may approve two or more~~  
14 ~~activities defined as well work.~~

15 ~~(b) The application for a well work permit shall be~~  
16 ~~accompanied by applicable bond as prescribed by section twelve,~~  
17 ~~fourteen or twenty-three of this article, and the applicable plat~~  
18 ~~required by section twelve or fourteen of this article.~~

19 ~~(c) Every permit application filed under this section shall be~~  
20 ~~verified and shall contain the following:~~

21 ~~(1) The names and addresses of (i) the well operator, (ii) the~~  
22 ~~agent required to be designated under subsection (e) of this~~  
23 ~~section, and (iii) every person whom the applicant must notify~~  
24 ~~under any section of this article together with a certification and~~  
25 ~~evidence that a copy of the application and all other required~~

1 ~~documentation has been delivered to all such persons;~~

2 ~~(2) The name and address of every coal operator operating coal~~  
3 ~~seams under the tract of land on which the well is or may be~~  
4 ~~located, and the coal seam owner of record and lessee of record~~  
5 ~~required to be given notice by section twelve, if any, if said~~  
6 ~~owner or lessee is not yet operating said coal seams;~~

7 ~~(3) The number of the well or such other identification as the~~  
8 ~~director may require;~~

9 ~~(4) The type of well;~~

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

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

13 ~~(7) Any permit application fee required by law;~~

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

19 ~~(9) If the proposed well work is to convert an oil well or a~~  
20 ~~combination well or to drill a new well for the purpose of~~  
21 ~~introducing pressure for the recovery of oil as provided in section~~  
22 ~~twenty-five of this article, specifications in accordance with the~~  
23 ~~data requirements of section fourteen of this article;~~

24 ~~(10) If the proposed well work is to plug or replug the well,~~  
25 ~~(i) specifications in accordance with the data requirements of~~

1 ~~section twenty-three of this article, (ii) a copy of all logs in~~  
2 ~~the operator's possession as the director may require, and (iii) a~~  
3 ~~work order showing in detail the proposed manner of plugging or~~  
4 ~~unplugging the well, in order that a representative of the director~~  
5 ~~and any interested persons may be present when the work is done.~~  
6 ~~In the event of an application to drill, redrill or deepen a well,~~  
7 ~~if the well work is unsuccessful so that the well must be plugged~~  
8 ~~and abandoned, and if the well is one on which the well work has~~  
9 ~~been continuously progressing pursuant to a permit, the operator~~  
10 ~~may proceed to plug the well as soon as the operator has obtained~~  
11 ~~the verbal permission of the director or the director's designated~~  
12 ~~representative to plug and abandon the well, except that the~~  
13 ~~operator shall make reasonable effort to notify as soon as~~  
14 ~~practicable the surface owner and the coal owner, if any, of the~~  
15 ~~land at the well location, and shall also timely file the plugging~~  
16 ~~affidavit required by section twenty-three of this article;~~

17 ~~(11) If the proposed well work is to stimulate an oil or gas~~  
18 ~~well, specifications in accordance with the data requirements of~~  
19 ~~section thirteen of this article;~~

20 ~~(12) The erosion and sediment control plan required under~~  
21 ~~subsection (d) of this section for applications for permits to~~  
22 ~~drill; and~~

23 ~~(13) Any other relevant information which the director may~~  
24 ~~require by rule.~~

25 ~~(d) An erosion and sediment control plan shall accompany each~~



~~1 application for a well work permit except for a well work permit to  
2 plug or replug any well. Such plan shall contain methods of  
3 stabilization and drainage, including a map of the project area  
4 indicating the amount of acreage disturbed. The erosion and  
5 sediment control plan shall meet the minimum requirements of the  
6 West Virginia erosion and sediment control manual as adopted and  
7 from time to time amended by the division, in consultation with the  
8 several soil conservation districts pursuant to the control program  
9 established in this state through section 208 of the federal Water  
10 Pollution Control Act Amendments of 1972 (33 U.S.C.1288). The  
11 erosion and sediment control plan shall become part of the terms  
12 and conditions of a well work permit, except for a well work permit  
13 to plug or replug any well, which is issued and the provisions of  
14 the plan shall be carried out where applicable in the operation.  
15 The erosion and sediment control plan shall set out the proposed  
16 method of reclamation which shall comply with the requirements of  
17 section thirty of this article.~~

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

1 ~~such designation notify the director of such termination and~~  
2 ~~designate a new agent.~~

3 ~~(f) The well owner or operator shall install the permit number~~  
4 ~~as issued by the director in a legible and permanent manner to the~~  
5 ~~well upon completion of any permitted work. The dimensions,~~  
6 ~~specifications and manner of installation shall be in accordance~~  
7 ~~with the rules of the director.~~

8 ~~(g) The director may waive the requirements of this section~~  
9 ~~and sections nine, ten and eleven of this article in any emergency~~  
10 ~~situation, if the director deems such action necessary. In such~~  
11 ~~case the director may issue an emergency permit which would be~~  
12 ~~effective for not more than thirty days, but which would be subject~~  
13 ~~to reissuance by the director.~~

14 ~~(h) The director shall deny the issuance of a permit if the~~  
15 ~~director determines that the applicant has committed a substantial~~  
16 ~~violation of a previously issued permit, including the erosion and~~  
17 ~~sediment control plan, or a substantial violation of one or more of~~  
18 ~~the rules promulgated hereunder, and has failed to abate or seek~~  
19 ~~review of the violation within the time prescribed by the director~~  
20 ~~pursuant to the provisions of sections three and four of this~~  
21 ~~article and the rules promulgated hereunder, which time may not be~~  
22 ~~unreasonable: *Provided*, That in the event that the director does~~  
23 ~~find that a substantial violation has occurred and that the~~  
24 ~~operator has failed to abate or seek review of the violation in the~~  
25 ~~time prescribed, the director may suspend the permit on which said~~

~~1 violation exists, after which suspension the operator shall  
2 forthwith cease all well work being conducted under the permit:  
3 Provided, however, That the director may reinstate the permit  
4 without further notice, at which time the well work may be  
5 continued. The director shall make written findings of any such  
6 determination and may enforce the same in the circuit courts of  
7 this state and the operator may appeal such suspension pursuant to  
8 the provisions of section forty of this article. The director  
9 shall make a written finding of any such determination.~~

~~10 (i) Any person who violates any provision of this section  
11 shall be guilty of a misdemeanor, and, upon conviction thereof,  
12 shall be fined not more than five thousand dollars, or be  
13 imprisoned in the county jail not more than twelve months, or both  
14 fined and imprisoned.~~

15 (a) The secretary shall promulgate separate rules and  
16 establish best management practices directed toward the surface  
17 effects of oil and gas operations, embodying the requirements in  
18 subsection (b) of this section.

19 (b) Each permit issued by the secretary pursuant to this  
20 article and relating to oil and gas operations shall require the  
21 operation at a minimum to:

22 (1) Adopt measures consistent with best management practices  
23 in order to maintain the value and reasonably foreseeable use of  
24 surface lands;

25 (2) Adopt measures consistent with best management practices

1 in order to control fugitive particulate matter;

2 (3) Plug all wells in accordance with the requirements of  
3 sections twenty-three and twenty-four of article and the rules  
4 promulgated pursuant thereto when such wells become abandoned  
5 pursuant to section nineteen of this article;

6 (4) With respect to surface disposal of cuttings, stabilize  
7 all waste pits, including the use of impervious materials, if  
8 necessary, to assure that any leachate therefrom will not degrade  
9 surface or groundwaters below water quality standards established  
10 pursuant to applicable federal and State law and that the site is  
11 stabilized and revegetated in accordance with the erosion and  
12 sediment control manual provided for in section three of this  
13 article;

14 (5) Establish on regraded areas and all other disturbed areas  
15 a diverse and permanent vegetative cover capable of self-  
16 regeneration and plant succession and at least equal in extent of  
17 cover to the natural vegetation of the area in accordance with the  
18 erosion and sediment control manual provided for in section three  
19 of this article;

20 (6) Protect off-site areas from damages that may result from  
21 oil and gas operations in accordance with best management practices  
22 and the erosion and sediment control manual provided for in section  
23 three of this article;

24 (7) Eliminate fire hazards and otherwise eliminate conditions  
25 which constitute a hazard to health and safety of the public;

1       (8) Protect the quantity and the quality of water in surface  
2 and groundwater systems both during and after drilling operations  
3 and during reclamation by: (A) Withdrawing water from surface  
4 waters of the state by methods deemed appropriate by the secretary,  
5 so as to maintain sufficient in-stream flow immediately downstream  
6 of the withdrawal location. In no case shall an operator withdraw  
7 water from ground or surface waters at volumes beyond what the  
8 waters can sustain; (B) Casing, sealing or otherwise managing wells  
9 to keep returned fluids from entering ground and surface waters, in  
10 accordance with the provisions of section twenty-one of this  
11 article; (C) Conducting oil and gas operations using best  
12 management practices so as to prevent additional contributions of  
13 suspended or dissolved solids to streamflow or runoff outside the  
14 permit area, but in no event shall the contributions be in excess  
15 of requirements set by applicable state or federal law; and (D)  
16 Registering all water supply wells with the Division of Oil and Gas  
17 and constructing and plugging all such wells in accordance with the  
18 standards of the Bureau for Public Health set forth in its  
19 legislative rule entitled *Water Well Regulations*. In lieu of  
20 plugging, the operator may transfer the well to the surface owner  
21 upon agreement of the parties. All drinking water wells within two  
22 thousand five hundred feet of the water supply well shall be flow  
23 tested by the operator upon request of the drinking well owner  
24 prior to operating the water supply well.

25       (9) With respect to other surface impacts of oil and gas

1 operations not specified in this subsection, including the  
2 construction of new roads or the improvement or use of existing  
3 roads to gain access to the site of oil and gas drilling activities  
4 and for storage areas, processing areas, shipping areas, and other  
5 areas upon which are sited structures, facilities or other property  
6 or materials resulting from or incident to the activities  
7 associated with oil and gas operations, operate in accordance with  
8 the standards established in this article or the rules promulgated  
9 thereunder and best management practices; and

10 (10) To the extent possible using best management practices,  
11 minimize adverse effects of the operation on fish, aquatic life,  
12 wildlife.

13 (11) In addition to the other requirements of this article, an  
14 operator that drills any well using horizontal drilling methods  
15 shall comply with the following requirements:

16 (A) Identification of water withdrawal locations. Within at  
17 least twenty-four hours, but no more than forty-eight hours, prior  
18 to the withdrawal of water, the operator shall identify the  
19 location of withdrawal by latitude and longitude and verify that  
20 sufficient flow exists to protect designated uses of the stream.  
21 The operator shall use methods deemed appropriate by the secretary  
22 to determine if sufficient flow is available and must check flows  
23 on a daily basis for the duration of the withdrawal. Any variation  
24 from the methods previously approved by the secretary for  
25 determining if sufficient flow is available must be requested in

1 writing by the operator.

2 (B) Signage for water withdrawal locations. All water  
3 withdrawal locations and facilities identified in the water  
4 management plan shall be identified with a sign that discloses that  
5 the location is a water withdrawal point and the name and telephone  
6 number of the operator for which the water withdrawn will be  
7 utilized.

8 (C) Record keeping and reporting. For all water used for  
9 hydraulic fracturing of horizontal wells and for flowback water  
10 from hydraulic fracturing activities and produced water from  
11 production activities from horizontal wells, gas well operators  
12 shall comply with the following record keeping and reporting  
13 requirements:

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

16 (I) The quantity of flowback water from hydraulic fracturing  
17 the well;

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

19 (III) The method of management or disposal of the flowback and  
20 produced water.

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

23 (I) The quantity of water transported;

24 (II) The collection and delivery or disposal locations of  
25 water; and

1        (III) The name of the water hauler.

2        (D) The information maintained pursuant to this subdivision  
 3 shall be available for inspection by the department along with  
 4 other required permits and records and maintained for three years  
 5 after the water withdrawal activity.

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

11 **§22-6-7. Water pollution control permits; powers and duties of the**  
 12 **secretary; penalties.**

13        (a) In addition to a permit for well work, the ~~director~~  
 14 secretary, after public notice and an opportunity for public  
 15 hearing, may either issue a separate permit, general permit or a  
 16 permit consolidated with the well work permit for the discharge or  
 17 disposition of any pollutant or combination of pollutants into  
 18 waters of this state upon condition that such discharge or  
 19 disposition meets or will meet all applicable State and federal  
 20 water quality standards and effluent limitations and all other  
 21 requirements of the ~~director~~ secretary.

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



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

4 (2) Make, cause or permit to be made any outlet, or  
5 substantially enlarge or add to the load of any existing outlet,  
6 for the discharge of pollutants or the effluent therefrom, into the  
7 waters of this state;

8 (3) Acquire, construct, install, modify or operate a disposal  
9 system or part thereof for the direct or indirect discharge or  
10 deposit of treated or untreated pollutants or the effluent  
11 therefrom, into the waters of this state, or any extension to or  
12 addition to such disposal system;

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

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

19 (6) Operate any disposal well for the injection or reinjection  
20 underground of any pollutant, including, but not limited to,  
21 liquids or gasses, or convert any well into ~~such~~ a disposal well or  
22 plug or abandon any ~~such~~ disposal well.

23 (c) Notwithstanding any provision of this article or articles  
24 ~~seven, eight, nine, or ten~~ or twenty-one of this chapter to the  
25 contrary, the ~~director~~ secretary shall have the same powers and

1 duties relating to inspection and enforcement as those granted  
2 under article eleven, chapter twenty-two of this code in connection  
3 with the issuance of any water pollution control permit or any  
4 person required to have ~~such~~ a water pollution control permit.

5 (d) Any person who violates any provision of this section, any  
6 order issued under this section or any permit issued pursuant to  
7 this section or any rule of the ~~director~~ secretary relating to  
8 water pollution or who willfully or negligently violates any  
9 provision of this section or any permit issued pursuant to this  
10 section or any rule or order of the ~~director~~ secretary relating to  
11 water pollution or who fails or refuses to apply for and obtain a  
12 permit or who intentionally misrepresents any material fact in an  
13 application, record, report, plan or other document filed or  
14 required to be maintained under this section shall be subject to  
15 the same penalties for ~~such~~ those violations as are provided for in  
16 sections twenty-two and twenty-four, article eleven, chapter  
17 twenty-two of this code: *Provided*, That the provisions of section  
18 twenty-six, article eleven, chapter twenty-two of this code  
19 relating to exceptions to criminal liability shall also apply.

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

24 (e) Any water pollution control permit issued pursuant to this  
25 section or any order issued in connection with ~~such~~ a permit for

1 the purpose of implementing the "national pollutant discharge  
2 elimination system" established under the federal Clean Water Act  
3 shall be issued by the ~~chief of the office of water resources of~~  
4 ~~the division in consultation with the chief of the office of oil~~  
5 ~~and gas of the division~~ secretary and shall be appealable to the  
6 environmental quality board pursuant to the provisions of section  
7 twenty-five, article eleven, chapter twenty-two and section seven,  
8 article one, chapter twenty-two-b of this code.

9 **§22-6-8. Permits not to be on flat well royalty leases;**  
10 **legislative findings and declarations; permit**  
11 **requirements.**

12 (a) The Legislature hereby finds and declares:

13 (1) That a significant portion of the oil and gas underlying  
14 this state is subject to development pursuant to leases or other  
15 continuing contractual agreements wherein the owners of ~~such~~ the  
16 oil and gas are paid upon a royalty or rental basis known in the  
17 industry as the annual flat well royalty basis, in which the  
18 royalty is based solely on the existence of a producing well, and  
19 thus is not inherently related to the volume of the oil and gas  
20 produced or marketed;

21 (2) That continued exploitation of the natural resources of  
22 this state in exchange for such wholly inadequate compensation is  
23 unfair, oppressive, works an unjust hardship on the owners of the  
24 oil and gas in place, and unreasonably deprives the economy of the  
25 State of West Virginia of the just benefit of the natural wealth of

1 this state;

2       (3) That a great portion, if not all, of such leases or other  
3 continuing contracts based upon or calling for an annual flat well  
4 royalty have been in existence for a great many years and were  
5 entered into at a time when the techniques by which oil and gas are  
6 currently extracted, produced or marketed were not known or  
7 contemplated by the parties, nor was it contemplated by the parties  
8 that oil and gas would be recovered or extracted or produced or  
9 marketed from the depths and horizons currently being developed by  
10 the well operators;

11       (4) That while being fully cognizant that the provisions of  
12 section 10, article I of the United States Constitution and of  
13 section 4, article III of the Constitution of West Virginia,  
14 proscribe the enactment of any law impairing the obligation of a  
15 contract, the Legislature further finds that it is a valid exercise  
16 of the police powers of this state and in the interest of the State  
17 of West Virginia and in furtherance of the welfare of its citizens,  
18 to discourage as far as Constitutionally possible the production  
19 and marketing of oil and gas located in this state under the type  
20 of leases or other continuing contracts described above.

21       (b) In the light of the foregoing findings, the Legislature  
22 hereby declares that it is the policy of this state, to the extent  
23 possible, to prevent the extraction, production or marketing of oil  
24 or gas under a lease or leases or other continuing contract or  
25 contracts providing a flat well royalty or any similar provisions

1 for compensation to the owner of the oil and gas in place, which is  
2 not inherently related to the volume of oil or gas produced or  
3 marketed, and toward these ends, the Legislature further declares  
4 that it is the obligation of this state to prohibit the issuance of  
5 any permit required by it for the development of oil or gas where  
6 the right to develop, extract, produce or market the same is based  
7 upon ~~such~~ flat well royalty leases or other continuing contractual  
8 agreements.

9 (c) In addition to any requirements contained in this article  
10 with respect to the issuance of any permit required for the  
11 drilling, redrilling, deepening, fracturing, stimulating,  
12 pressuring, converting, combining or physically changing to allow  
13 the migration of fluid from one formation to another, no such  
14 permit shall be hereafter issued unless the lease or leases or  
15 other continuing contract or contracts by which the right to  
16 extract, produce or market the oil or gas is filed with the permit  
17 application. ~~for such permit.~~ In lieu of filing the lease or  
18 leases or other continuing contract or contracts, the applicant for  
19 a permit described herein may file the following:

20 (1) A brief description of the tract of land including the  
21 district and county wherein the tract is located;

22 (2) The identification of all parties to all leases or other  
23 continuing contractual agreements by which the right to extract,  
24 produce or market the oil or gas is claimed;

25 (3) The book and page number wherein each ~~such~~ lease or

1 contract by which the right to extract, produce or market the oil  
2 or gas is recorded; and

3 (4) A brief description of the royalty provisions of each ~~such~~  
4 lease or contract.

5 (d) Unless the provisions of subsection (e) are met, no ~~such~~  
6 permit shall be ~~hereafter~~ issued after this article takes effect  
7 for the drilling of a new oil or gas well or for the redrilling,  
8 deepening, fracturing, stimulating, pressuring, converting,  
9 combining or physically changing to allow the migration of fluid  
10 from one formation to another, of an existing oil or gas production  
11 well, where or if the right to extract, produce or market the oil  
12 or gas is based upon a lease or leases or other continuing contract  
13 or contracts providing for flat well royalty or any similar  
14 provision for compensation to the owner of the oil or gas in place  
15 which is not inherently related to the volume of oil and gas so  
16 extracted, produced and marketed.

17 (e) To avoid the permit prohibition of subsection (d), the  
18 applicant may file with ~~such~~ the application an affidavit which  
19 certifies that the affiant is authorized by the owner of the  
20 working interest in the well to state that it shall tender to the  
21 owner of the oil or gas in place not less than one-eighth of the  
22 total amount paid to or received by or allowed to the owner of the  
23 working interest at the wellhead for the oil or gas so extracted,  
24 produced or marketed before deducting the amount to be paid to or  
25 set aside for the owner of the oil or gas in place, on all such oil

1 or gas to be extracted, produced or marketed from the well. If  
2 ~~such~~ that affidavit ~~be~~ is filed with ~~such~~ the application, then  
3 ~~such~~ the application for permit shall be treated as if ~~such~~ the  
4 lease or leases or other continuing contract or contracts comply  
5 with the provisions of this section.

6 (f) The owner of the oil or gas in place shall have a cause of  
7 action to enforce the owner's rights established by this section.

8 (g) The provisions of this section shall not affect or apply  
9 to any lease or leases or other continuing contract or contracts  
10 for the underground storage of gas or any well utilized in  
11 connection therewith or otherwise subject to the provisions of  
12 article nine of this chapter.

13 (h) The ~~director~~ secretary shall enforce this requirement  
14 ~~irrespective~~ regardless of when the lease or other continuing  
15 contract was executed.

16 (i) The provisions of this section shall not adversely affect  
17 any rights to free gas.

18 **§22-6-9. Notice to property owners.**

19 (a) Prior to filing a permit application, the operator shall  
20 provide notice to the surface owner at least seventy-two hours but  
21 no more than forty-five days prior to entering the surface tract to  
22 conduct any plat surveys required pursuant to section twelve of  
23 this article.

24 ~~(a)~~ (b) No later than the filing date of the application, the  
25 applicant for a permit for any well work or for a certificate of

1 approval for the construction of an impoundment shall deliver, by  
2 personal service or by ~~certified mail, return receipt requested~~  
3 registered or certified mail or by any method of delivery that  
4 requires a receipt or signature confirmation, copies of the  
5 application, well plat, and erosion and sediment control plan  
6 required by section ~~six~~ three of this article to each of the  
7 following persons:

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

10 (2) The owners of record of the surface tract or tracts  
11 overlying the oil and gas leasehold being developed by the proposed  
12 well work, if ~~such~~ the surface tract is to be utilized for roads or  
13 other land disturbance as described in the erosion and sediment  
14 control plan submitted pursuant to section ~~six~~ three of this  
15 article; and

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

19 (4) The owners of record of the surface tract or tracts  
20 overlying the oil and gas leasehold being developed by the proposed  
21 well work, if the surface tract is to be utilized for the  
22 placement, construction, enlargement, alteration, repair, removal  
23 or abandonment of any impoundment as described in section five of  
24 this article; and

25 (5) The operator of any storage field within which the



1 proposed well work activity is to take place.

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

17       ~~(c)~~ (d) Materials served upon persons described in subsections  
18 ~~(a)~~ (b) and ~~(b)~~ (c) of this section shall contain a statement of  
19 the methods and time limits for filing comments, who may file  
20 comments, ~~and~~ the name and address of the ~~director~~ secretary for  
21 the purpose of filing comments and obtaining additional  
22 information, and a statement that ~~such~~ those persons may request,  
23 at the time of submitting comments, notice of the permit decision  
24 and a list of persons qualified to test water as provided in this  
25 section.

1       ~~(d)~~ (e) Any person entitled to submit comments shall also be  
 2 entitled to receive a copy of the permit as issued or a copy of the  
 3 order modifying or denying the permit if ~~such~~ that person requests  
 4 ~~the receipt thereof~~ of them as a part of ~~the~~ his or her comments  
 5 concerning ~~said~~ the permit application.

6       (f) The surface owner and the coal owner, operator or lessee  
 7 shall also be entitled to receive notice within seven days but no  
 8 less than two days before commencement that well work or site  
 9 preparation work that involves any disturbance of land is expected  
 10 to commence, if that person requests receipt of that notice as a  
 11 part of his or her comments concerning the permit application.

12       ~~(e)~~ (g) Persons entitled to notice may contact the ~~district~~  
 13 ~~office of the division~~ department to ascertain the names and  
 14 locations of water testing laboratories in the subject area capable  
 15 and qualified to test water supplies in accordance with standard  
 16 accepted methods. In compiling ~~such~~ that list of names the ~~division~~  
 17 department shall consult with the state Bureau of Public Health and  
 18 local health departments.

19 **§22-6-10. Procedure for filing comments; certification of notice.**

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

1 (b) Prior to the issuance of any permit for well work, the  
2 applicant shall certify to the ~~director~~ secretary that the  
3 requirements of section nine of this article have been completed by  
4 the applicant. Such certification may be by affidavit of personal  
5 service or the return receipt card, or other postal receipt for  
6 ~~certified mailing~~ indicating that the notice provided for in  
7 section nine of this article was conducted.

8 **§22-6-11. Inspections; monitoring; right of entry; inspection of**  
9 **records; identification signs.**

10 ~~The director shall review each application for a well work~~  
11 ~~permit and shall determine whether or not a permit shall be issued.~~

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

25 ~~The director may cause such inspections to be made of the~~

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

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

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

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

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

~~14 The director shall promptly review all comments filed. If  
15 after review of the application and all comments received, the  
16 application for a well work permit is approved, and no timely  
17 objection or comment has been filed with the director or made by  
18 the director under the provisions of section fifteen, sixteen or  
19 seventeen of this article, the permit shall be issued, with  
20 conditions, if any. Nothing in this section shall be construed to  
21 supersede the provisions of sections six, twelve, thirteen,  
22 fourteen, fifteen, sixteen and seventeen of this article.~~

~~23 The director shall mail a copy of the permit as issued or a  
24 copy of the order denying a permit to any person who submitted  
25 comments to the director concerning said permit and requested such~~

1 ~~copy.~~

2 ~~Upon the issuance of any permit pursuant to the provisions of~~  
3 ~~this article, the director shall transmit a copy of such permit to~~  
4 ~~the office of the assessor for the county in which the well is~~  
5 ~~located.~~

6 (a) The secretary shall cause to be made inspections of oil  
7 and gas operations as are necessary to effectively enforce the  
8 requirements of this article, and for those purposes the secretary  
9 or his or her authorized representative shall, without advance  
10 notice and upon presentation of appropriate credentials: (A) Have  
11 the right of entry to, upon or through oil and gas operations or  
12 any premises in which any records required to be maintained  
13 pursuant to this chapter are located; and (B) At reasonable times  
14 and without delay, have access to and copy any records and inspect  
15 any monitoring equipment or method of operation required by this  
16 chapter of the code.

17 (b) For the purpose of enforcement under this article, in the  
18 administration and enforcement of any permit under this article or  
19 for determining whether any person is in violation of any  
20 requirement of this article, the secretary shall, at a minimum,  
21 require any operator to:

22 (1) Establish and maintain appropriate records;

23 (2) Make appropriate reports to the department; and

24 (3) Provide any other information relative to oil and gas  
25 operations as the secretary finds reasonable and necessary.

1       (c) Inspections of oil and gas operations shall be made on an  
2 irregular basis without prior notice to the operator or the  
3 operator's agents or employees, except for necessary on-site  
4 meetings with the operator. The inspections shall include the  
5 filing of inspection reports adequate to enforce the requirements,  
6 terms, and purposes of this article.

7       (d) Each operator shall maintain at the well site a clearly  
8 visible monument which sets forth the name, business address and  
9 telephone number of the operator, and the API number of the well.

10       (e) Copies of any records, reports, inspection materials or  
11 information obtained pursuant to this article by the secretary  
12 shall be made available to the public so that they are conveniently  
13 available to residents in the areas of oil and gas operations,  
14 unless specifically exempted by this article or the West Virginia  
15 Freedom of Information Act as set forth in article one, chapter  
16 twenty-nine-b of this code.

17       (f) Whenever on the basis of available information, including  
18 reliable information from any person, the secretary has cause to  
19 believe that any person is in violation of this article or article  
20 eight, nine, ten, eleven or twenty-one of this chapter or any  
21 permit condition or rule promulgated thereunder, the secretary  
22 shall immediately order inspection of the operation at which the  
23 alleged violation is occurring, unless the information is available  
24 as a result of a prior state inspection.

25       (g) When requested by the operator, the secretary may provide

1 for a compliance conference with his or her authorized  
 2 representative to review the compliance status of any oil and gas  
 3 operation. Any such conference may not constitute an inspection as  
 4 defined in this section.

5 **§22-6-12. Plats prerequisite to drilling or fracturing wells;**  
 6 **preparation and contents; notice and information**  
 7 **furnished to coal operators, owners or lessees;**  
 8 **issuance of permits; performance bonds or securities**  
 9 **in lieu thereof; bond forfeiture.**

10 (a) Before drilling for oil or gas or before fracturing or  
 11 stimulating a well on any tract of land, the well operator shall  
 12 have a plat prepared by a ~~licensed land~~ professional surveyor or  
 13 registered professional engineer showing the district and county in  
 14 which the tract of land is located, the name and acreage of the  
 15 same, the names of the owners of adjacent tracts, the proposed or  
 16 actual location of the well determined by survey, the courses and  
 17 distances of ~~such~~ the location from two permanent points or  
 18 landmarks on ~~said~~ the tract, all mineral tract boundaries within  
 19 the scope of the plat, and the number to be given the well. In the  
 20 event the tract of land on which the ~~said~~ well proposed to be  
 21 drilled or fractured is located is known to be underlain by one or  
 22 more coal seams, copies of the plat shall be forwarded by  
 23 registered or certified mail or by any method of delivery that  
 24 requires a receipt or signature confirmation to each and every coal

1 operator operating ~~said~~ coal seams beneath ~~said~~ the tract of land  
2 who has mapped the same and filed ~~such~~ the maps with the Office of  
3 Miners' Health, Safety and Training in accordance with chapter  
4 twenty-two-a of this code, and the coal seam owner of record and  
5 lessee of record, if any, if ~~said~~ the owner or lessee has recorded  
6 the declaration or is owner or lessee of record as provided in  
7 section thirty-six of this article, and if ~~said~~ the owner or lessee  
8 is not yet operating ~~said~~ the coal seams beneath ~~said~~ the tract of  
9 land. With each of ~~such~~ the plats there shall be enclosed a notice  
10 (form for which shall be furnished on request by the secretary)  
11 addressed to the secretary and to each ~~such~~ coal operator, owner  
12 and lessee, if any, at their respective addresses, informing them  
13 that ~~such~~ the plat and notice are being mailed to them respectively  
14 by registered or certified mail or by any method of delivery that  
15 requires a receipt or signature confirmation, pursuant to the  
16 requirements of this article.

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



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

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

18 **§22-6-13. Notice to coal operators, owners or lessees and**  
 19 **secretary of intention to fracture certain wells;**  
 20 **contents of the notice; bond; permit required;**  
 21 **appeal from order of issuance or refusal of permit**  
 22 **to drill or fracture; procedure.**

23 (a) Before fracturing any well the well operator shall, by  
 24 registered or certified mail or by any method of delivery that

1 requires a receipt or signature confirmation, forward a notice of  
2 intention to fracture ~~such~~ the well to the ~~director~~ secretary and  
3 to each and every coal operator operating coal seams beneath ~~said~~  
4 the tract of land who has mapped ~~the same~~ them and filed ~~such~~ the  
5 maps with the Office of Miners' Health, Safety and Training in  
6 accordance with chapter twenty-two-a of this code, and the coal  
7 seam owner and lessee, if any, if ~~said~~ the owner of record or  
8 lessee of record has recorded the declaration or is the owner or  
9 lessee of record as provided in section thirty-six of this article  
10 and if ~~said~~ the owner or lessee is not yet operating ~~said~~ the coal  
11 seams beneath ~~said~~ the tract of land.

12       **(b)** The notice shall be addressed to the ~~director~~ secretary  
13 and to each ~~such~~ coal operator at their respective addresses, shall  
14 contain the number of the drilling permit for ~~such~~ the well and  
15 ~~such~~ any other information as may be required by the ~~director~~  
16 secretary to enable the ~~division~~ department and the coal operators  
17 to locate and identify ~~such~~ the well and shall inform them that  
18 ~~such~~ notice is being ~~mailed~~ sent to them, respectively, by  
19 registered or certified mail or by any method of delivery that  
20 requires a receipt or signature confirmation, pursuant to the  
21 requirements of this article. The form for ~~such~~ the notice of  
22 intention shall be furnished on request by the ~~director~~ secretary.

23       **(c)** If no objections are made or ~~are~~ found by the ~~director~~  
24 secretary to ~~such~~ the proposed fracturing within ~~fifteen~~ thirty  
25 days from receipt of ~~such~~ the notice by the ~~director~~ secretary, the

1 ~~same~~ it shall be filed and become a permanent record of ~~such~~ the  
2 fracturing, subject to inspection at any time by any interested  
3 person, and the ~~director~~ secretary shall forthwith issue to the  
4 well operator a permit reciting the filing of ~~such~~ the notice, that  
5 no objections have been made by the coal operators or found ~~thereto~~  
6 by the ~~director~~ secretary, and authorizing the well operator to  
7 fracture ~~such~~ the well. Unless the ~~director~~ secretary has  
8 objections to ~~such~~ the proposed fracturing, ~~such~~ the permit ~~shall~~  
9 may be issued prior to the expiration of ~~such fifteen~~ the thirty-  
10 day period upon the ~~obtaining by the~~ well operator ~~of the~~ obtaining  
11 the written consent ~~in writing~~ of the coal ~~operator or~~ operators,  
12 owners or lessees, if any, to whom notice of intention to fracture  
13 ~~shall have been mailed~~ was sent as ~~herein~~ required by this article  
14 and upon presentation of ~~such~~ the written consent to the ~~director~~  
15 secretary. The notice above provided for may be given to the coal  
16 operator by delivering or mailing it by registered or certified  
17 mail or by any method of delivery that requires a receipt or  
18 signature confirmation as above to any agent or superintendent in  
19 actual charge of mines.

20 (d) Any party to the proceeding provided for in this section  
21 or section seven, article eight, chapter twenty-two-c of this code  
22 adversely affected by the issuance of a drilling permit or to the  
23 issuance of a fracturing permit or the refusal of the secretary to  
24 grant a drilling permit or fracturing permit is entitled to  
25 judicial review thereof. All of the pertinent provisions of

1 section four, article five, chapter twenty-nine-a of this code  
 2 shall apply to and govern the judicial review with like effect as  
 3 if the provisions of that section four were set forth *in extenso* in  
 4 this section.

5 (e) The judgment of the circuit court shall be final unless  
 6 reversed, vacated or modified on appeal to the Supreme Court of  
 7 Appeals in accordance with the provisions of section one, article  
 8 six, chapter twenty-nine-a of this code.

9 **§22-6-14. Plats prerequisite to introducing liquids or waste into**  
 10 **wells; preparation and contents; notice and**  
 11 **information furnished to coal operators, owners or**  
 12 **lessees and secretary; issuance of permits;**  
 13 **performance bonds or security in lieu thereof; appeal**  
 14 **from order of issuance or refusal of permit for**  
 15 **drilling location for introduction of liquids or waste**  
 16 **or from conditions of converting procedure.**

17 (a) Before drilling a well for the introduction of liquids for  
 18 the purposes provided for in section twenty-five of this article or  
 19 for the introduction of liquids for the disposal of pollutants or  
 20 the effluent therefrom on any tract of land or before converting an  
 21 existing well for ~~such~~ those purposes, the well operator shall have  
 22 a plat prepared by a registered professional engineer or ~~licensed~~  
 23 ~~land~~ professional surveyor showing the district and county in which  
 24 the tract of land is located, the name and acreage of the same, the

1 names of the owners of all adjacent tracts, the proposed or actual  
2 location of the well or wells determined by a survey, the courses  
3 and distances of ~~such~~ the location from two permanent points of  
4 land marked on ~~said~~ the tract, all mineral tract boundaries within  
5 the scope of the plat, and the number to be given to the well and  
6 shall forward by registered or certified mail or by any method of  
7 delivery that requires a receipt or signature confirmation the  
8 original and one copy of the plat to the ~~director~~ secretary. In  
9 addition, the well operator shall provide the following information  
10 on the plat or by way of attachment thereto to the ~~director~~  
11 secretary in the manner and form prescribed by ~~the director's~~ rules  
12 promulgated by the secretary: (1) The location of all wells,  
13 abandoned or otherwise located within the area to be affected; (2)  
14 Where available, the casing records of all ~~such~~ those wells; (3)  
15 Where available, the drilling log of all ~~such~~ those wells; (4) The  
16 maximum pressure to be introduced; (5) The geological formation  
17 into which ~~such~~ the liquid or pressure is to be introduced; (6) A  
18 general description of the liquids to be introduced; (7) The  
19 location of all water-bearing horizons above and below the  
20 geological formation into which ~~such~~ the pressure, liquid or waste  
21 is to be introduced; and (8) ~~Such~~ Any other information ~~as~~  
22 ~~director~~ secretary ~~by rule~~ may require.

23 (b) In the event the tract of land on which ~~said~~ the well  
24 proposed to be drilled or converted for the purposes provided for  
25 in this section is located is known to be underlaid with coal

1 seams, copies of the plat and all information required by this  
2 section shall be forwarded by the well operator by registered or  
3 certified mail or by any method of delivery that requires a receipt  
4 or signature confirmation to each and every coal operator operating  
5 coal seams beneath ~~said~~ the tract of land who has mapped the same  
6 and filed ~~such~~ those maps with the Office of Miners' Health, Safety  
7 and Training in accordance with chapter twenty-two-a of this code  
8 and the coal seam owner of record and lessee of record, if any, if  
9 ~~said~~ the owner or lessee has recorded the declaration or is the  
10 owner or lessee of record as provided in section thirty-six of this  
11 article and if ~~said~~ the owner or lessee is not yet operating ~~said~~  
12 the seams beneath ~~said~~ the tract of land. With each of ~~such~~ the  
13 plats, there shall be enclosed a notice (form for which shall be  
14 furnished on request by the ~~director~~ secretary) addressed to the  
15 ~~director~~ secretary and to each ~~such~~ coal operator, owner or lessee,  
16 if any, at their respective addresses, informing them that ~~such~~ the  
17 plat and notice are being mailed to them, respectively, by  
18 registered or certified mail or by any method of delivery that  
19 requires a receipt or signature confirmation, pursuant to the  
20 requirements of this section.

21 (c) If no objections are made by any ~~such~~ coal operator, owner  
22 or lessee or the ~~director~~ secretary, ~~such~~ the proposed drilling or  
23 converting of the well or wells for the purposes provided for in  
24 this section within thirty days from ~~the~~ receipt of ~~such~~ the plat  
25 and notice by the ~~director~~ secretary, ~~the same~~ they shall be filed

1 and become a permanent record of ~~such~~ the location or well, subject  
2 to inspection at any time by any interested person, and the  
3 ~~director~~ secretary may after public notice and opportunity to  
4 comment, issue ~~such~~ a permit authorizing the well operator to drill  
5 at ~~such~~ the location or convert ~~such~~ an existing well or wells for  
6 the purposes provided for in this section. The notice above  
7 provided for may be given to the coal operator by delivering or  
8 mailing it ~~by registered or certified mail~~ as provided for above to  
9 any agent or superintendent in actual charge of the mines.

10 (d) A permit to drill a well or wells or convert an existing  
11 well or wells for the purposes provided for in this section shall  
12 not be issued until all of the bonding provisions required by ~~the~~  
13 ~~provisions of~~ section twelve of this article have been fully  
14 complied with, and all ~~such~~ bonding provisions shall apply to all  
15 wells drilled or converted for the purposes provided for in this  
16 section as if ~~such~~ those wells had been drilled for the purposes  
17 provided for in section twelve of this article, except that ~~such~~  
18 the bonds shall be conditioned upon full compliance with all laws  
19 and rules relating to the drilling of a well or the converting of  
20 an existing well for the purposes provided for in ~~said~~ section  
21 twenty-five, or introducing of liquids for the disposal of  
22 pollutants including the redrilling, deepening, casing, plugging or  
23 abandonment of all ~~such~~ those wells.

24 (e) Any party to the proceeding provided for in this section  
25 adversely affected by the order of issuance of a drilling permit or

1 to the issuance of a fracturing permit or the refusal of the  
 2 secretary to grant a drilling permit or fracturing permit is  
 3 entitled to judicial review thereof. All of the pertinent  
 4 provisions of section four, article five, chapter twenty-nine-a of  
 5 this code shall apply to and govern that judicial review with like  
 6 effect as if the provisions of that section four were set forth in  
 7 extenso in this section.

8 (f) The judgment of the circuit court shall be final unless  
 9 reversed, vacated or modified on appeal to the Supreme Court of  
 10 Appeals in accordance with the provisions of section one, article  
 11 six, chapter twenty-nine-a of this code.

12 **§22-6-15. Objections to proposed drilling of deep wells and oil**  
 13 **wells; objections to fracturing; notices and hearings;**  
 14 **agreed locations or conditions; indication of changes**  
 15 **on plats, etc.; issuance of permits.**

16 (a) When a proposed deep well drilling site or oil well  
 17 drilling site ~~or any site~~ is above a seam or seams of coal, then  
 18 the coal ~~operator operating said coal seams beneath the tract of~~  
 19 ~~land, or the coal seam owner or lessee, if any, if said owner or~~  
 20 ~~lessee is not yet operating said coal seams~~ owner, operator or  
 21 lessee, whether or not the coal owner, operator or lessee is  
 22 operating the coal seams, may within ~~fifteen~~ thirty days ~~from the~~  
 23 of receipt by the ~~director~~ secretary of the plat and notice  
 24 required by section twelve of this article or within ~~fifteen~~ thirty



1 days ~~from the~~ of receipt by the ~~director~~ secretary of notice  
2 required by section thirteen of this article, file objections in  
3 writing (~~forms for which will be furnished by the director on~~  
4 ~~request~~) to ~~such~~ the proposed drilling or fracturing with the  
5 ~~director~~ secretary, setting out therein as ~~definitely~~ specifically  
6 as is reasonably possible the ground or grounds on which ~~such~~ the  
7 objections are based.

8       (b) If any objection to the proposed drilling is filed or ~~if~~  
9 ~~any objection is~~ made by the ~~director~~ secretary, the ~~director~~  
10 secretary shall notify the well operator of the character of the  
11 objections and by whom made and fix a time and place, not less than  
12 ~~fifteen~~ thirty days from the end of ~~said fifteen~~ the thirty-day  
13 period, at which ~~such~~ the objections will be considered. ~~of which~~  
14 At that time and place the well operator and all objecting coal  
15 operators, owners or lessees, if any, shall be given at least ~~ten~~  
16 fifteen days' written notice by the ~~director~~, secretary by  
17 registered or certified mail or by any method of delivery that  
18 requires a receipt or signature confirmation and summoned to  
19 appear. At the time and place so fixed, the well operator and the  
20 objecting coal operators, owners or lessees, if any, or ~~such~~ any of  
21 them ~~as~~ who are present or represented, shall proceed to consider  
22 the objections. In the case of proposed drilling, ~~such~~ the parties  
23 present or represented may agree upon either the location as made  
24 or ~~so~~ moved so as to satisfy all objections and meet the approval  
25 of the ~~director~~ secretary. ~~and any~~ Any change in the original

1 location so agreed upon and approved by the ~~director~~ secretary  
2 shall be indicated on ~~said~~ the plat on file with the ~~director~~  
3 secretary, and the distance and direction of the new location from  
4 the original location shall be shown, and as so altered, the plat  
5 shall be filed and become a permanent record. ~~and in~~ In the case of  
6 proposed fracturing, ~~such~~ the parties present or represented may  
7 agree upon conditions under which the well is to be fractured which  
8 will protect life and property and which will satisfy all  
9 objections and meet the approval of the ~~director~~ secretary, at  
10 which time the plat and notice required by section twelve or the  
11 notice required by section thirteen, as the case may be, shall be  
12 filed and become a permanent record. Whereupon the ~~director~~  
13 secretary shall ~~forthwith~~ immediately issue to the well operator a  
14 drilling or fracturing permit, as the case may be, reciting the  
15 filing of the plat and notice required by ~~said~~ section twelve or  
16 the notice required by ~~said~~ section thirteen, as the case may be,  
17 that at a hearing duly held a location as shown on the plat or the  
18 conditions under which the fracturing is to take place for the  
19 protection of life and property were agreed upon and approved, and  
20 that the well operator is authorized to drill at ~~such~~ the location  
21 or to fracture at the site shown on ~~such~~ the plat or to fracture  
22 the well identified in the notice required by section thirteen, as  
23 the case may be.

24 ~~(b)~~ (c) In the event the well operator and the objecting coal  
25 operators, owners or lessees, if any, or ~~such as~~ any who are

1 present or represented at ~~such~~ the hearing are unable to agree upon  
2 a drilling location or upon a drilling location that meets the  
3 approval of the ~~director~~ secretary, then the ~~director~~ secretary  
4 shall proceed to hear the evidence and testimony in accordance with  
5 sections one and two, article five, chapter twenty-nine-a of this  
6 code, except where such provisions are inconsistent with this  
7 article. The ~~director~~ secretary shall take into consideration in  
8 arriving at his or her decision:

9       (1) Whether the drilling location is above or in close  
10 proximity to any mine opening or shaft, entry, travelway, airway,  
11 haulageway, drainageway or passageway, loadout, stockpile, pit,  
12 highwall, active surface mining, or to any proposed extension  
13 thereof in any operated or abandoned or operating coal mine or coal  
14 mines already surveyed and platted, but not yet being operated;

15       (2) Whether the proposed drilling can reasonably be done  
16 through an existing or planned pillar of coal, or in close  
17 proximity to an existing well or pillar of coal, taking into  
18 consideration the surface topography;

19       (3) Whether a well can be drilled safely, taking into  
20 consideration the dangers from creeps, squeezes or other  
21 disturbances due to the extraction of coal; and

22       (4) The extent to which the proposed drilling location  
23 unreasonably interferes with the safe recovery of coal, oil and  
24 gas.

25       At the close of the hearing or within ten days thereafter the

1 ~~director~~ secretary shall issue an order:

2 (1) Refusing to issue a permit;

3 (2) Issuing a permit for the proposed drilling location; ~~or~~

4 (3) Issuing a permit for a drilling location different from  
5 that requested by the well operator; or

6 (4) Placing other limitations on the drilling location or  
7 process as the secretary finds necessary to protect human health or  
8 safety or the environment.

9 The order shall state with particularity the reasons for the  
10 ~~director's~~ secretary's order and shall be mailed by registered or  
11 certified mail or by any method of delivery that requires receipt  
12 or signature confirmation to the parties present or represented at  
13 ~~such~~ the hearing. If the ~~director~~ secretary has ruled that a  
14 permit will be issued, the ~~director~~ secretary shall issue a permit  
15 effective ten days after ~~such~~ the order is mailed, except that for  
16 good cause shown, the ~~director~~ secretary may stay the issuance of  
17 a permit for a period not to exceed thirty days.

18 If a permit is issued, the ~~director~~ secretary shall indicate  
19 the new drilling location on the plat on file and shall number and  
20 keep an index of and docket each plat and notice received by mail  
21 as provided in section twelve of this article and each notice  
22 mailed as provided in section thirteen of this article, entering  
23 into ~~such~~ the docket the name of the well operator and the names  
24 and addresses of all persons notified, the dates of hearings and  
25 all actions taken by the ~~director~~ secretary. The ~~director~~

1 secretary shall also prepare a record of the proceedings, which  
2 record shall include all applications, plats and other documents  
3 filed with the ~~director~~ secretary, all notices given and proof of  
4 service thereof, all orders issued, all permits issued and a  
5 transcript of the hearing. The record prepared by the ~~director~~  
6 secretary shall be open to inspection by the public.

7       ~~(c)~~ (d) In the event the well operator and the objecting coal  
8 operators, owners or lessees, if any, or ~~such as~~ any who are  
9 present or represented at ~~such~~ the hearing are unable to agree upon  
10 the conditions under which the well is to be fractured so as to  
11 protect life and property or upon conditions of fracturing that  
12 meet with the approval of the ~~director~~ secretary, then the ~~director~~  
13 secretary shall proceed to hear the evidence and testimony in  
14 accordance with sections one and two, article five, chapter twenty-  
15 nine-a of this code, except where such provisions are inconsistent  
16 with this article.

17       The ~~director~~ secretary shall take into consideration whether  
18 the well can be fractured safely, taking into consideration the  
19 dangers from creeps, squeezes or other disturbances.

20       At the close of the hearing, or within ten days thereafter,  
21 the ~~director~~ secretary shall issue an order stating the conditions  
22 under which the well is to be fractured, provided the well can be  
23 fractured safely, taking into consideration the dangers from  
24 creeps, squeezes or other disturbances. If ~~such~~ fracturing cannot  
25 be done safely, the ~~director~~ secretary shall issue an order stating

1 with particularity the reasons for refusing to issue a permit.

2       The order shall state with particularity the reasons for the  
3 ~~director's~~ secretary's order and shall be mailed by registered or  
4 certified mail or by any method of delivery that requires a receipt  
5 or signature confirmation to the parties present or represented at  
6 ~~such~~ the hearing. If the ~~director~~ secretary has ruled that a  
7 permit will be issued, the ~~director~~ secretary shall issue a permit  
8 effective ten days after ~~such~~ the order is mailed, except that for  
9 good cause shown, the ~~director~~ secretary may stay the issuance of  
10 a permit for a period not to exceed thirty days.

11       If a permit is issued, the ~~director~~ secretary shall indicate  
12 the well to be fractured on the plat on file and shall number and  
13 keep an index of and docket each plat and notice received by mail  
14 as provided in section twelve of this article and each notice  
15 received by mail as provided in section thirteen of this article,  
16 entering into ~~such~~ the docket the name of the well operator, the  
17 names and addresses of all persons notified, the dates of hearings,  
18 and all actions taken by the ~~director~~ secretary. The ~~director~~  
19 secretary shall also prepare a record of the proceedings, which  
20 record shall include all applications, plats and other documents  
21 filed with by the ~~director~~ secretary, all notices given and proof  
22 of service thereof, all orders issued, all permits issued, and a  
23 transcript of the hearing. The record prepared by the ~~director~~  
24 secretary shall be open to inspection by the public.

25 **§22-6-16. Objections to proposed drilling or converting for**

1           **introducing liquids or waste into wells; notices and**  
 2           **hearings; agreed location or conditions; indication of**  
 3           **changes on plats, etc.; issuance of permits; docket of**  
 4           **proceeding.**

5           (a) When a well is proposed to be drilled or converted for the  
 6 purposes provided for in section fourteen of this article and is  
 7 above a seam or seams of coal, then the coal ~~operator operating~~  
 8 ~~said coal seams beneath the tract of land, or the coal seam owner~~  
 9 ~~or lessee, if any, if said owner or lessee is not yet operating~~  
 10 ~~said coal seams~~ owner, operator or lessee, whether or not such coal  
 11 owner, operator or lessee is operating said coal seams, may within  
 12 ~~fifteen~~ thirty days ~~from the~~ of receipt by the ~~director~~ secretary  
 13 of the plat and notice required by section fourteen of this  
 14 article, file objections in writing ~~(forms for which will be~~  
 15 ~~furnished by the director on request)~~ to ~~such~~ the proposed drilling  
 16 or conversion.

17           (b) In any case wherein a well proposed to be drilled or  
 18 converted for the purposes provided for in section fourteen of this  
 19 article shall, in the opinion of the ~~chief of the office of water~~  
 20 ~~resources~~ Director of the Division of Water and Waste Management,  
 21 affect detrimentally the reasonable standards of purity and quality  
 22 of the waters of the state, ~~such chief~~ the director shall, within  
 23 the time period established by the ~~director~~ secretary for the  
 24 receipt of public comment on ~~such~~ the proposed drilling conversion,

1 file with the ~~director such~~ secretary those objections in writing,  
2 ~~to such proposed drilling or conversion~~ setting out therein as  
3 ~~definitely~~ specifically as is reasonably possible the ground or  
4 grounds upon which ~~such the~~ objections are based and indicating the  
5 conditions, consistent with the provisions of this article and the  
6 rules promulgated thereunder, as may be necessary for the  
7 protection of the reasonable standards of the purity and quality of  
8 ~~such the~~ waters of the state under which ~~such the~~ proposed drilling  
9 or conversion may be completed to overcome ~~such any~~ objections. ~~if~~  
10 ~~any.~~

11 (c) If any ~~objection or objections~~ to the proposed drilling  
12 are ~~so~~ filed or ~~are~~ made by the ~~director~~ secretary, the ~~director~~  
13 secretary shall notify the well operator of the character of the  
14 objections and by whom made and fix a time and place, not less than  
15 thirty days from the end of ~~said the~~ the thirty-day period, at which  
16 ~~such those~~ objections will be considered. ~~of which~~ At that time and  
17 place the well operator and all objecting coal operators, ~~the~~  
18 owners or lessees, if any, or ~~such chief,~~ the director shall be  
19 given at least ~~ten~~ fifteen days' written notice by the ~~director~~  
20 secretary by registered or certified mail or by any method of  
21 delivery that requires a receipt or signature confirmation and  
22 summoned to appear. At the time and place so fixed, the well  
23 operator and the objecting coal operators, owners or lessees, if  
24 any, or ~~such any~~ of them ~~as who~~ are present or represented or ~~such~~  
25 ~~chief,~~ the director shall proceed to consider the objections. In



1 the case of proposed drilling or converting of a well for the  
2 purposes provided for in section fourteen of this article, ~~such the~~  
3 parties present or represented may agree upon either the location  
4 as made or ~~so~~ moved so as to satisfy all objections and meet the  
5 approval of the ~~director,~~ secretary. ~~and any~~ Any change in the  
6 original location so agreed upon and approved by the ~~director~~  
7 secretary shall be indicated on ~~said the~~ plat on file with the  
8 ~~director~~ secretary, and the distance and direction of the new  
9 location from the original location shall be shown and, as so  
10 altered, the plat shall be filed and become a permanent record. In  
11 the case of proposed conversion, ~~such the~~ parties present or  
12 represented may agree upon conditions under which the conversion is  
13 to take place for the protection of life and property or for  
14 protection of reasonable standards of purity and quality of the  
15 waters of the state. At which time the plat and notice required by  
16 section fourteen shall be filed and become a permanent record.  
17 Whereupon the ~~director~~ secretary may issue to the well operator a  
18 permit to drill or convert, as the case may be, reciting the filing  
19 of the plat and notice required by ~~said~~ section fourteen that at a  
20 hearing duly held a location as shown on the plat or the conditions  
21 under which the conversion is to take place for the protection of  
22 life and property and reasonable standards of purity and quality of  
23 the waters of the state ~~where~~ agreed upon and approved and that the  
24 well operator is authorized to drill at ~~such the~~ location or to  
25 convert at the site shown on ~~such the~~ plat, as the case may be.

1 (d) (1) In the case where the well operator and the objecting  
2 coal operators, owners or lessees, if any, and ~~such chief,~~ the  
3 director or ~~such as~~ any who are present or represented at ~~such~~ the  
4 hearing are unable to agree upon a drilling location, or upon a  
5 drilling location that meets the approval of the ~~director~~  
6 secretary, then the ~~director~~ secretary shall proceed to hear the  
7 evidence and testimony in accordance with sections one and two,  
8 article five, chapter twenty-nine-a of this code, except where such  
9 provisions are inconsistent with this article. The ~~director~~  
10 secretary shall take into consideration ~~upon~~ in arriving at his or  
11 her decision:

12 (A) Whether the drilling location is above or in close  
13 proximity to any mine opening or shaft, entry, ~~traveling~~ travelway,  
14 air haulage, drainage or passageway, loadout, stockpile, pit,  
15 highwall, active surface mining, or to any proposed extension  
16 thereof, in any operated or abandoned or operating coal mine, or  
17 coal mine already surveyed and platted, but not yet being operated;

18 (B) Whether the proposed drilling can reasonably be done  
19 through an existing or planned pillar of coal, or in close  
20 proximity to an existing well or pillar of coal, taking into  
21 consideration the surface topography;

22 (C) Whether a well can be drilled safely, taking into  
23 consideration the dangers from creeps, squeezes or other  
24 disturbances, due to the extraction of coal; and

25 (D) The extent to which the proposed drilling location

1 unreasonably interferes with the safe recovery of coal, oil and  
2 gas.

3 (2) At the close of the hearing or within ten days thereafter  
4 the ~~director~~ secretary shall issue an order:

5 (A) Refusing to issue a permit;

6 (B) Issuing a permit for the proposed drilling location; ~~or~~

7 (C) Issuing a permit for a drilling location different than  
8 that requested by the well operator; or

9 (D) Placing other limitations on the drilling location or  
10 process as the secretary finds necessary to protect human health or  
11 safety or the environment.

12 The order shall state with particularity the reasons for the  
13 ~~director's~~ secretary's order and shall be mailed by registered or  
14 certified mail or by any method of delivery that requires a receipt  
15 or signature confirmation to the parties present or represented at  
16 ~~such~~ the hearing. If the ~~director~~ secretary has ruled that a  
17 permit will be issued, the ~~director~~ secretary shall issue a permit  
18 effective ten days after ~~such~~ the order is mailed, ~~Except~~ except  
19 that for good cause shown, the ~~director~~ secretary may stay the  
20 issuance of a permit for a period not to exceed thirty days.

21 (3) If a permit is issued, the ~~director~~ secretary shall  
22 indicate the new drilling location on the plat on file with the  
23 ~~director~~ secretary and shall number and keep an index of and docket  
24 each plat and notice mailed to the ~~director~~ secretary as provided  
25 in section twelve of this article, and each notice mailed to the

1 ~~director~~ secretary as provided in section thirteen of this article,  
2 entering into ~~such~~ the docket the name of the well operator and the  
3 names and addresses of all persons notified, the dates of hearings  
4 and all actions taken by the ~~director~~ secretary, permits issued or  
5 refused, the papers filed, and a transcript of the hearing. This  
6 shall constitute a record of the proceedings before the ~~director~~  
7 secretary and shall be open to inspection by the public.

8 (e) (1) In the case the well operator and the objecting coal  
9 operators, owners or lessees, if any, and ~~such chief,~~ the director  
10 or ~~such as any who~~ are present or represented at ~~such~~ the hearing  
11 are unable to agree upon the conditions under which the well is to  
12 be converted so as to protect life and property and the reasonable  
13 standards of purity and quality of the waters of the state or upon  
14 conditions of converting that meet with the approval of the  
15 ~~director~~ secretary, then the ~~director~~ secretary shall proceed to  
16 hear the evidence and testimony in accordance with sections one and  
17 two, article five, chapter twenty-nine-a of this code, except where  
18 such provisions are inconsistent with this article. The ~~director~~  
19 secretary shall take into consideration ~~upon~~ in making his or her  
20 decision:

21 (A) Whether the well can be converted safely, taking into  
22 consideration the dangers from creeps, squeezes or other  
23 disturbances; and

24 (B) Whether the well can be converted, taking into  
25 consideration the reasonable standards of the purity and quality of

1 the waters of the state.

2 (2) At the close of the hearing, or within ten days  
3 thereafter, the ~~director~~ secretary shall issue an order stating the  
4 conditions under which the conversion is to take place, providing  
5 the well can be converted safely taking into consideration the  
6 dangers from creeps, squeezes or other disturbances and the  
7 reasonable standards of purity and quality of the waters of this  
8 state. If ~~such~~ converting cannot be done safely or if the  
9 reasonable standards of purity and quality of ~~such~~ the waters of  
10 the state will be endangered, the ~~director~~ secretary shall issue an  
11 order stating with particularity the reasons for refusing to issue  
12 a permit.

13 (3) The order shall state with particularity the reasons for  
14 the ~~director's~~ secretary's order and shall be mailed by registered  
15 or certified mail or by any method of delivery that requires a  
16 receipt or signature confirmation to the parties present or  
17 represented at ~~such~~ the hearing. If the ~~director~~ secretary has  
18 ruled that a permit will be issued, ~~such~~ the permit shall become  
19 effective ten days after the ~~division~~ department has mailed ~~such~~  
20 the order, ~~Except~~ except for good cause shown, the ~~director~~  
21 secretary may stay the issuance of a permit for a period not to  
22 exceed thirty days.

23 (4) If a permit is issued, the ~~director~~ secretary shall  
24 indicate the well to be converted on the plat on file with the  
25 ~~director,~~ secretary and shall number and keep an index of and

1 docket each plat and notice mailed to the ~~director~~ secretary as  
 2 provided in section fourteen of this article, entering into ~~such~~  
 3 the docket the name of the well operator and the names and  
 4 addresses of all persons notified, the dates of hearings and all  
 5 actions taken by the ~~director~~ secretary, permits issued or refused,  
 6 the papers filed, and a transcript of the hearings. This shall  
 7 constitute a record of the proceedings before the ~~director~~  
 8 secretary and shall be open to inspection by the public.

9 **§22-6-17. Objections to proposed drilling or deepening of shallow**  
 10 **gas wells; notice to chair of review board; indication**  
 11 **of changes on plats; issuance of permits.**

12 (a) When a proposed shallow well drilling site is above a seam  
 13 or seams of coal, then the coal owner, ~~of any such coal seam~~  
 14 operator or lessee, whether or not the coal owner, operator or  
 15 lessee is operating the coal seams may, within ~~fifteen~~ thirty days  
 16 ~~from the~~ of receipt by the ~~director~~ secretary of the plat and  
 17 notice required by section twelve of this article, file objections  
 18 in writing ~~(forms for which will be furnished by the director on~~  
 19 ~~request)~~ to ~~such~~ the proposed drilling or deepening with the  
 20 ~~director~~ secretary, setting out therein as ~~definitely~~ specifically  
 21 as is reasonably possible the ground or grounds on which ~~such~~ those  
 22 objections are based.

23 (b) If any ~~such~~ objection is filed or ~~if any objection is made~~  
 24 by the ~~director~~ secretary, the ~~director~~ secretary shall ~~forthwith~~  
 25 immediately mail, ~~by registered or certified mail, to~~ serve upon

1 the chair of the review board a notice that an objection to the  
2 proposed drilling or deepening of a shallow well has been filed  
3 with or made by the ~~director,~~ secretary and shall enclose in ~~such~~  
4 that notice a copy of all objections and of the application and  
5 plat filed with the ~~director~~ secretary in accordance with the  
6 provisions of section twelve of this article.

7 (1) Thereafter, no further action shall be taken on ~~such~~ the  
8 application by the ~~director~~ secretary until an order is received  
9 from the review board directing the ~~director~~ secretary to:

10 ~~(a)~~ (A) Refuse a drilling permit; or

11 ~~(b)~~ (B) Issue a drilling permit for the proposed drilling  
12 location; or

13 ~~(c)~~ (C) Issue a drilling permit for an alternate drilling  
14 location different from that requested by the well operator; or

15 ~~(d)~~ (D) Issue a drilling permit either for the proposed  
16 drilling location or for an alternate drilling location different  
17 from that requested by the well operator, but not allow the  
18 drilling of the well for a period of not more than one year from  
19 the date of issuance of ~~such~~ the permit; or

20 (E) Place other limitations on the drilling location or  
21 process as the review board finds necessary to protect human health  
22 or safety or the environment.

23 (2) Upon receipt of ~~such~~ the review board order, the ~~director~~  
24 secretary shall promptly undertake the action directed by the  
25 review board, except that the ~~director~~ secretary shall not issue a

1 drilling permit unless the applicant has complied with all other  
2 provisions of this article (except section fifteen) pertaining to  
3 the application for and approval of a drilling permit ~~have been~~  
4 ~~complied with~~. All permits issued by the ~~director~~ secretary  
5 pursuant to this section shall be effective ten days after issuance  
6 unless the review board orders the ~~director~~ secretary to stay the  
7 effectiveness of a permit for a period not to exceed thirty days  
8 from the date of issuance.

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



1 **§22-6-18. Protective devices -- When well penetrates workable coal**  
2 **bed; when gas is found beneath or between workable**  
3 **coal beds.**

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

17 (b) In the event that gas is found beneath a workable coal bed  
18 before the hole has been reduced from the size it had at the coal  
19 bed, a packer shall be placed below the coal bed, and above the gas  
20 horizon, and the gas by this means diverted to the inside of the  
21 adjacent string of casing through perforations made in ~~such~~ the  
22 casing, and through it passed to the surface without contact with  
23 the coal bed. Should gas be found between two workable beds of  
24 coal, in a hole, of the same diameter from bed to bed, two packers  
25 shall be placed, with perforations in the casing between them,

1 permitting the gas to pass to the surface inside the adjacent  
 2 casing. In either of the cases here specified, the strings of  
 3 casing shall extend from their seats to the top of the well.

4 **§22-6-19. Same -- Continuance during life of well; dry or**  
 5 **abandoned wells.**

6 In the event that a well becomes productive of natural gas or  
 7 petroleum or is drilled for or converted for the introduction of  
 8 pressure, whether liquid or gas, or for the introduction of liquid  
 9 for the purposes provided for in section twenty-five of this  
 10 article or for the disposal of pollutants or the effluent  
 11 therefrom, all coal-protecting strings of casing and all water-  
 12 protecting strings of casing shall remain in place until the well  
 13 is plugged or abandoned. During the life of the well the annular  
 14 spaces between the various strings of casing adjacent to workable  
 15 beds of coal shall be kept open, and the top ends of all such  
 16 strings shall be provided with casing heads or ~~such~~ other suitable  
 17 devices ~~as~~ that will permit the free passage of gas and prevent  
 18 filling of ~~such~~ the annular spaces with dirt or debris.

19 Any well which is completed as a dry hole or which is not in  
 20 use for a period of twelve consecutive months shall be presumed to  
 21 have been abandoned and shall promptly be plugged by the operator  
 22 in accordance with the provisions of this article, unless the  
 23 operator furnishes satisfactory proof to the ~~director~~ secretary  
 24 that there is a bona fide future use for ~~such~~ the well.

25 **§22-6-20. Same -- When well is drilled through horizon of coalbed**

1                   **from which coal has been removed.**

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

1 than twenty feet above the highest horizon.

2 **§22-6-21. Same -- Installation of fresh water casings.**

3       (a) When a permit has been issued for the drilling of an oil  
4 or gas well or both, each well operator shall run and permanently  
5 cement a string of casing in the hole through the fresh water  
6 bearing strata in ~~such~~ a manner and to the extent provided for in  
7 rules promulgated by the ~~director~~ secretary in accordance with the  
8 provisions of this chapter.

9       (b) No oil or gas well shall be drilled nearer than two  
10 hundred feet from an existing water well or occupied dwelling  
11 without first obtaining the written consent of the owner of such  
12 water well or occupied dwelling or near surface water of the state  
13 that is less than one hundred feet downgradient from the oil or gas  
14 well.

15 **§22-6-22. Well report, logs, core samples and cuttings to be**  
16                   **filed; confidentiality and permitted use; authority**  
17                   **to promulgate rules.**

18       (a) Within a reasonable time after the completion of the  
19 drilling of a shallow well or deep well, the well operator shall  
20 file with the secretary and with the state Geological and Economic  
21 Survey a completion report containing the following:

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

1           (2) ~~Such~~ Any other information as the secretary may require to  
2 effectuate the purposes of this chapter.

3           The secretary may promulgate ~~such~~ reasonable rules in  
4 accordance with article three, chapter twenty-nine-a of this code,  
5 ~~as~~ that may be considered necessary to ensure that the character,  
6 depth and thickness of geological formations encountered are  
7 accurately logged: *Provided*, That the secretary shall not require  
8 logging by the use of an electrical logging device: *Provided*,  
9 *however*, That if electrical or mechanical or geophysical logs are  
10 recorded in the well, the secretary may request copies of these  
11 logs: *Provided further*, That mechanical or geophysical logs may not  
12 include vertical seismic profiles or two-dimensional or three-  
13 dimensional seismic information.

14           (b) If a well operator takes core samples, that activity shall  
15 be noted within the report, and, within sixty days after filing the  
16 completion report, the operator shall, subject to the terms of this  
17 article, provide the state Geological and Economic Survey with a  
18 complete set of cores, consisting of at least quarter slabs,  
19 correctly labeled and identified according to depth. The core  
20 samples requested by and provided to the state Geological and  
21 Economic Survey may not contain any materials or documents made  
22 with regard to analyzing or interpreting the core samples.

23           (c) If a well operator catches cuttings during the drilling of  
24 any deep or shallow well, that activity shall be noted within the  
25 report and, within sixty days after filing the completion report,

1 the operator shall, subject to the terms of this article, provide  
2 the state Geological and Economic Survey with a sample of the  
3 cuttings, correctly labeled and identified according to depth.

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

8 (1) Except for core samples, any logs, drill cuttings, reports  
9 and other information or materials that reveal trade secrets or  
10 other confidential business information relating to the competitive  
11 interests of the operator or the operator's privy may not be  
12 disclosed to the public for one year following delivery, unless the  
13 operator consents in writing to a shorter time. At the operator's  
14 written request, the period of confidentiality may be extended in  
15 annual increments: *Provided*, That the total period of  
16 confidentiality may not exceed three years.

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

23 (e) Notwithstanding the provisions of subsection (d) of this  
24 section, the state Geological and Economic Survey may store and  
25 process confidential information within its minerals mapping or

1 geographic information systems; however, that confidential  
2 information may not be revealed to the public until the lapsing of  
3 the period of confidentiality created pursuant to subsection (d) of  
4 this section. After the period of confidentiality has lapsed,  
5 statistics or other information generated as the result of storage  
6 and processing may be disclosed in the aggregate through articles,  
7 reports, maps, or lectures presented in accordance with generally  
8 accepted academic or scientific practices and in a manner to  
9 preclude the identification of a particular well or operator.

10 **§22-6-23. Plugging, abandonment and reclamation of well; notice of**  
11 **intention; bonds; affidavit showing time and manner.**

12 All dry or abandoned wells or wells presumed to be abandoned  
13 under the provisions of section nineteen of this article shall be  
14 plugged and reclaimed in accordance with this section and the other  
15 provisions of this article and in accordance with the rules  
16 promulgated by the secretary.

17 Prior to the commencement of plugging operations and the  
18 abandonment of any well, the well operator shall either: (a)  
19 Notify, by registered or certified mail or by any method of  
20 delivery that requires a receipt or signature confirmation, the  
21 secretary and the coal operator operating coal seams, the coal seam  
22 owner of record or lessee of record, if any, to whom notices are  
23 required to be given by section twelve of this article, and the  
24 coal operators to whom notices are required to be given by section  
25 thirteen of this article, of its intention to plug and abandon any

1 such well (using ~~such~~ the form of notice as the secretary may  
2 provide), giving the number of the well and its location and fixing  
3 the time at which the work of plugging and filling will be  
4 commenced, which time shall be not less than five days after the  
5 day on which ~~such~~ the notice so mailed is received ~~or in due course~~  
6 ~~should be received~~ by the secretary, in order that a representative  
7 or representatives of the secretary and ~~such~~ the coal operator,  
8 owner or lessee, if any, may be present at the plugging and filling  
9 of the well: *Provided*, That whether ~~such~~ any representatives appear  
10 or do not appear, the well operator may proceed at the time fixed  
11 to plug and fill the well in the manner hereinafter described; or  
12 (b) First obtain the written approval of the secretary and ~~such~~ the  
13 coal operator, owner or lessee, if any; or (c) In the event the  
14 well to be plugged and abandoned is one on which drilling or  
15 reworking operations have been continuously progressing pursuant to  
16 authorization granted by the secretary, first obtain the verbal  
17 permission of the secretary or the secretary's designated  
18 representative to plug and abandon the well, except that the well  
19 operator shall, within a reasonable period not to exceed five days  
20 after the commencement of the plugging operations, give the written  
21 notices required by subdivision (a) above.

22         The well operator shall not be required to prepare or submit  
23 to the ~~director~~ secretary a plat prior to the commencement of  
24 plugging operations as long as a plat pertaining to the particular  
25 well is on file with the ~~director~~ secretary and accurately



1 identifies the location of the well, or so long as there is also on  
2 file with the ~~director~~ secretary the coordinates of the well  
3 established by a global positioning system. The coordinates  
4 established by a global positioning system must be filed with the  
5 secretary in either a written or electronic form prescribed by the  
6 secretary. The global positioning system used to establish the  
7 coordinates shall be accurate within the variance allowed by law  
8 for the distance between the actual location of the well and  
9 location shown on the plat that is required to be filed with a well  
10 permit application, or the secretary may establish the accuracy of  
11 the global positioning system by legislative rule promulgated  
12 pursuant to section two of this article.

13 No well may be plugged or abandoned unless prior to the  
14 commencement of plugging operations and the abandonment of any well  
15 the secretary is furnished a bond as provided in section twenty-six  
16 of this article. In no event prior to the commencement of plugging  
17 operations shall a lessee under a lease covering a well be required  
18 to give or sell the well to any person owning an interest in the  
19 well, including, but not limited to, the respective lessor, or  
20 agent of the lessor, nor may the lessee be required to grant a  
21 person with an interest in the well, including, but not limited to,  
22 the respective lessor, or agent of the lessor, an opportunity to  
23 qualify under section twenty-six of this article to continue  
24 operation of the well.

25 When the plugging, filling and reclamation of a well have been

1 completed, an affidavit, in triplicate, shall be made (on a form to  
2 be furnished by the secretary) by two experienced persons who  
3 participated in the work, the secretary or the secretary's  
4 designated representative, in which affidavit shall be set forth  
5 the time and manner in which the well was plugged and filled and  
6 the land reclaimed. One copy of this affidavit shall be retained  
7 by the well operator, another (or true copies of same) shall be  
8 mailed to the coal operator or operators, if any, and the third to  
9 the secretary.

10 **§22-6-24. Methods of plugging well.**

11       Upon the abandonment or cessation of the operation of any well  
12 drilled for natural gas or petroleum, or drilled or converted for  
13 the introduction of pressure, whether liquid or gas, or for the  
14 introduction of liquid for the purposes provided for in section  
15 twenty-five of this article or for the disposal of pollutants or  
16 the effluent therefrom, the well operator, at the time of such  
17 abandonment or cessation, shall fill and plug the well in the  
18 following manner:

19       (a) Where the well does not penetrate workable coal beds, it  
20 shall either be filled with mud, clay or other nonporous material  
21 from the bottom of the well to a point twenty feet above the top of  
22 its lowest oil, gas or water-bearing stratum, or a permanent bridge  
23 shall be anchored thirty feet below its lowest oil, gas or water-  
24 bearing stratum, and from such bridge it shall be filled with mud,  
25 clay or other nonporous material to a point twenty feet above such

1 stratum. ~~at~~ At this point there shall be placed a plug of cement or  
2 other suitable material which will completely seal the hole.  
3 Between this sealing plug and a point twenty feet above the next  
4 higher oil, gas or water-bearing stratum, the hole shall be filled  
5 in the manner just described, and at such point there shall be  
6 placed another plug of cement or other suitable material which will  
7 completely seal the hole. In like manner the hole shall be filled  
8 and plugged with reference to each of its oil, gas or water-bearing  
9 strata. However, whenever ~~such~~ the strata are not widely separated  
10 and are free from water, they may be grouped and treated as a  
11 single sand, gas or petroleum horizon, and the aforesaid filling  
12 and plugging shall be performed as though there were but one  
13 horizon. After the plugging of all oil, gas or water-bearing  
14 strata, as aforesaid, a final cement plug shall be placed  
15 approximately ten feet below the bottom of the largest casing in  
16 the well and from this point to the surface the well shall be  
17 filled with mud, clay or other nonporous material. In case any of  
18 the oil or gas-bearing strata in a well shall have been shot,  
19 thereby creating cavities which cannot readily be filled in the  
20 manner above described, the well operator shall follow either of  
21 the following methods:

22 (1) Should the stratum which has been shot be the lowest one  
23 in the well, there shall be placed, at the nearest suitable point,  
24 but not less than twenty feet above the stratum, a plug of cement  
25 or other suitable material which will completely seal the hole. In

1 the event, however, that the shooting has been done above one or  
2 more oil or gas-bearing strata in the well, plugging in the manner  
3 specified shall be done at the nearest suitable point, but not less  
4 than twenty feet below and above the stratum shot; or

5 (2) When such cavity ~~shall be~~ is in the lowest oil or gas-  
6 bearing stratum in the well, a liner shall be placed which shall  
7 extend from below the stratum to a suitable point, but not less  
8 than twenty feet above the stratum in which shooting has been done.

9 In the event, however, that the shooting has been done above one or  
10 more oil or gas-bearing strata in the well, the liner shall be so  
11 placed that it will extend not less than twenty feet above nor less  
12 than twenty feet below the stratum in which shooting has been done.  
13 Following the placing of the liner in the manner here specified it  
14 shall be compactly filled with cement, mud, clay or other nonporous  
15 sealing material.

16 (b) Where the well penetrates one or more workable coal beds  
17 and a coal protection string of casing has been circulated and  
18 cemented into the surface, the well shall be filled and securely  
19 plugged in the manner provided in subsection (a) of this section,  
20 except that expanding cement shall be used instead of regular  
21 hydraulic cement, to a point approximately one hundred feet below  
22 the bottom of the coal protection string of casing. A one hundred  
23 foot plug of expanding cement shall then be placed in the well so  
24 that the top of ~~such~~ the plug is located at a point just below the  
25 coal protection string of casing. After ~~such~~ the plug has been

1 securely placed in the well, the coal protection string of casing  
2 shall be emptied of liquid from the surface to a point one hundred  
3 feet below the lowest workable coal bed or to the bottom of the  
4 coal protection string of casing, whichever is shallower. A vent  
5 or other device approved by the ~~director~~ secretary shall then be  
6 installed on the top of the coal protection string of casing in  
7 ~~such~~ a manner that will prevent liquids and solids from entering  
8 the well but will permit ready access to the full internal diameter  
9 of the coal protection string of casing when required. The coal  
10 protection string of casing and the vent or other device approved  
11 by the ~~director~~ secretary shall extend, when finally in place, a  
12 distance of not less than thirty inches above ground level and  
13 shall be permanently marked with the well number assigned by the  
14 ~~director~~ secretary;

15 (c) Where the well penetrates one or more workable coal beds  
16 and a coal protection string of casing has not been circulated and  
17 cemented in to the surface, the well shall be filled and securely  
18 plugged in the manner provided in subsection (a) of this section to  
19 a point fifty feet below the lowest workable coal bed. Thereafter,  
20 a plug of cement shall be placed in the well at a point not less  
21 than forty feet below the lowest workable coal bed. After the  
22 cement plug has been securely placed in the well, the well shall be  
23 filled with cement to a point twenty feet above the lowest workable  
24 coal bed. From this point the well shall be filled with mud, clay  
25 or other nonporous material to a point forty feet beneath the next

1 overlying workable coal bed, if ~~such there be~~ any, and the well  
2 shall then be filled with cement from this point to a point twenty  
3 feet above ~~such~~ the workable coal bed, and similarly ~~in case if~~  
4 there are more overlying workable coal beds. After the filling and  
5 plugging of the well to a point above the highest workable coal  
6 bed, filling and plugging of the well shall continue in the manner  
7 provided in subsection (a) of this section to a point fifty feet  
8 below the surface, and a plug of cement shall be installed from the  
9 point fifty feet below the surface to the surface with a monument  
10 installed therein extending thirty inches above ground level;

11 (d) (1) Where the well penetrates one or more workable coal  
12 beds and a coal protection string of casing has not been circulated  
13 and cemented in to the surface, a coal operator or coal seam owner  
14 may request that the well be plugged in the manner provided in  
15 subdivision (3) of this subsection rather than by the method  
16 provided in subsection (c) of this section. Such request (forms  
17 for which shall be provided by the ~~director~~ secretary) must be  
18 filed in writing with the ~~director~~ secretary prior to the scheduled  
19 plugging of the well, and must include the number of the well to be  
20 plugged and the name and address of the well operator. At the time  
21 ~~such~~ the request is filed with the ~~director~~ secretary, a copy of  
22 ~~such request~~ it must also be mailed by registered or certified mail  
23 or any method of delivery that requires a receipt or signature  
24 confirmation to the well operator named in the request.

25 (2) Upon receipt of ~~such~~ the request, the ~~director~~ secretary

1 shall issue an order staying the plugging of the well and shall  
2 promptly determine the cost of plugging the well in the manner  
3 provided in subdivision (3) of this subsection and the cost of  
4 plugging the well in the manner provided in subsection (c) of this  
5 section. In making ~~such~~ that determination, the ~~director~~ secretary  
6 shall take into consideration any agreement previously made between  
7 the well operator and the coal operator or coal seam owner making  
8 the request. If the ~~director~~ secretary determines that the cost of  
9 plugging the well in the manner provided in subsection (c) of this  
10 section exceeds the cost of plugging the well in the manner  
11 provided in subdivision (3) of this subsection, the ~~director~~  
12 secretary shall grant the request of the coal operator or owner and  
13 shall issue an order requiring the well operator to plug the well  
14 in the manner provided in subdivision (3) of this subsection. If  
15 the ~~director~~ secretary determines that the cost of plugging the  
16 well in the manner provided in subsection (c) of this section is  
17 less than the cost of plugging the well in the manner provided in  
18 subdivision (3) of this subsection, the ~~director~~ secretary shall  
19 request payment into escrow of the difference between the  
20 determined costs by the coal operator or coal seam owner making the  
21 request. Upon receipt of satisfactory notice of ~~such~~ the payment  
22 or upon receipt of notice that the well operator has waived ~~such~~  
23 the payment, the ~~director~~ secretary shall grant the request of the  
24 coal operator or coal seam owner and shall issue an order requiring  
25 the well operator to plug the well in the manner provided in

1 subdivision (3) of this subsection. If satisfactory notice of  
2 payment into escrow or notice that the well operator has waived  
3 ~~such~~ payment is not received by the ~~director~~ secretary within  
4 fifteen days after the request for payment into escrow, the  
5 ~~director~~ secretary shall issue an order permitting the plugging of  
6 the well in the manner provided in subsection (c) of this section.  
7 Copies of all orders issued by the ~~director~~ secretary shall be sent  
8 by registered or certified mail or any method of delivery that  
9 requires a receipt or signature confirmation to the coal operator  
10 or coal seam owner making the request and to the well operator.  
11 When the escrow agent has received certification from the ~~director~~  
12 secretary of the satisfactory completion of the plugging work and  
13 the reimbursable extra cost thereof (that is, the difference  
14 between the ~~director's~~ secretary's determination of plugging cost  
15 in the manner provided in subsection (c) of this section and the  
16 well operator's actual plugging cost in the manner provided in  
17 subdivision (3) of this subsection), the escrow agent shall pay the  
18 reimbursable sum to the well operator or the well operator's  
19 nominee from the payment into escrow to the extent available. The  
20 amount by which the payment into escrow exceeds the reimbursable  
21 sum plus the escrow agent's fee, if any, shall be repaid to the  
22 coal owner. If the amount paid to the well operator or the well  
23 operator's nominee is less than the actual reimbursable sum, the  
24 escrow agent shall inform the coal owner, who shall pay the  
25 deficiency to the well operator or the well operator's nominee



1 within thirty days. If the coal operator breaches this duty to pay  
2 the deficiency, the well operator shall have a right of action and  
3 be entitled to recover damages as if for wrongful conversion of  
4 personalty and reasonable attorney fees.

5 (3) Where a request of a coal operator or coal seam owner  
6 filed pursuant to subdivision (1) of this subsection has been  
7 granted by the ~~director~~ secretary, the well shall be plugged in the  
8 manner provided in subsection (a) of this section, except that  
9 expanding cement shall be used instead of regular hydraulic cement,  
10 to a point approximately two hundred feet below the lowest workable  
11 coal bed. A one hundred foot plug of expanding cement shall then  
12 be placed in the well beginning at the point approximately two  
13 hundred feet below the lowest workable coal bed and extending to a  
14 point approximately one hundred feet below the lowest workable coal  
15 bed. A string of casing with an outside diameter no less than four  
16 and one-half inches shall then be run into the well to a point  
17 approximately one hundred feet below the lowest workable coal bed  
18 and ~~such~~ the string of casing shall be circulated and cemented in  
19 to the surface. The casing shall then be emptied of liquid from a  
20 point approximately one hundred feet below the lowest workable coal  
21 bed to the surface, and a vent or other device approved by the  
22 ~~director~~ secretary shall be installed on the top of the string of  
23 casing in ~~such~~ a manner that ~~it~~ will prevent liquids and solids  
24 from entering the well but will permit ready access to the full  
25 internal diameter of the coal protection string of casing when

1 required. The string of casing and the vent or other device  
2 approved by the ~~director~~ secretary shall extend, when finally in  
3 place, a distance of no less than thirty inches above ground level  
4 and shall be permanently marked with the well number assigned by  
5 the ~~director~~ secretary. Notwithstanding the foregoing provisions  
6 of this subdivision, if under particular circumstances a different  
7 method of plugging is required to obtain the approval of another  
8 governmental agency for the safe mining through of said well, the  
9 ~~director~~ secretary may approve ~~such a~~ a different method of plugging  
10 if the ~~director~~ secretary finds ~~the same~~ it to be as safe for  
11 mining through and otherwise adequate to prevent gas or other fluid  
12 migration from the oil and gas reservoirs as the method above  
13 specified.

14 (e) Where the well penetrates one or more workable coal beds,  
15 a coal operator or coal seam owner or lessee may request that the  
16 well be plugged in a manner that meets federal Miners Safety and  
17 Health Administration (MSHA) requirements for mining through the  
18 well. Any such request shall be submitted and addressed as  
19 provided in subparagraph (d) of this section.

20 ~~(e)~~ (f) Any person may apply to the ~~director~~ secretary for an  
21 order to clean out and replug a previously plugged well in a manner  
22 which will permit the safe mining through of ~~such~~ the well. ~~Such~~  
23 The application shall be filed with the ~~director~~ secretary and  
24 shall contain the well number, a general description of the well  
25 location, the name and address of the owner of the surface land

1 upon which the well is located, a copy of or record reference to a  
2 deed, lease or other document which entitles the applicant to enter  
3 upon the surface land, a description of the methods by which the  
4 well was previously plugged, and a description of the method by  
5 which ~~such~~ the applicant proposes to clean out and replug the well.  
6 At the time an application is filed with the ~~director~~ secretary, a  
7 copy shall be mailed by registered or certified mail or by any  
8 method of delivery that requires a receipt or signature  
9 confirmation to the owner or owners of the land~~,~~ and the oil and  
10 gas lessee of record, if any, of the site upon which the well is  
11 located. If no objection to the replugging of the well is filed by  
12 any ~~such~~ relevant landowner or oil and gas lessee within thirty  
13 days after the filing of the application, and if the ~~director~~  
14 secretary determines that the method proposed for replugging the  
15 well will permit the safe mining through of such well, the ~~director~~  
16 secretary shall grant the application by an order authorizing the  
17 replugging of the well. Such order shall specify the method by  
18 which the well shall be replugged, and copies thereof shall be  
19 mailed by certified or registered mail or by any method of delivery  
20 that requires a receipt or signature confirmation to the applicant  
21 and to the owner or owners of the land~~,~~ and to the oil and gas  
22 lessee, if any, of the site upon which ~~such~~ the well is located.  
23 If any ~~such~~ relevant landowner or oil and gas lessee objects to the  
24 replugging of the well, the ~~director~~ secretary shall notify the  
25 applicant of ~~such~~ the objection. Thereafter, the ~~director~~

1 secretary shall schedule a hearing to consider the objection, which  
2 hearing shall be held after notice by registered or certified mail  
3 or by any method of delivery that requires a receipt or signature  
4 confirmation to the objectors and the applicant. After  
5 consideration of the evidence presented at the hearing, the  
6 ~~director~~ secretary shall issue an order authorizing the replugging  
7 of the well if the ~~director~~ secretary determines that replugging of  
8 the well will permit the safe mining through of ~~such~~ the well.  
9 ~~Such~~ The order shall specify the manner in which the well shall be  
10 replugged and copies thereof shall be sent by registered or  
11 certified mail or by any method of delivery that requires a receipt  
12 or signature confirmation to the applicant and objectors. The  
13 ~~director~~ secretary shall issue an order rejecting the application  
14 if the ~~director~~ secretary determines that the proposed method for  
15 replugging the well will not permit the safe mining through of ~~such~~  
16 the well;

17 ~~(f)~~ (g) All persons adversely affected by a determination or  
18 order of the ~~director~~ secretary issued pursuant to the provisions  
19 of this section shall be entitled to judicial review in accordance  
20 with the provisions of articles five and six, chapter twenty-nine-a  
21 of this code.

22 **§22-6-25. Introducing liquid pressure into producing strata to**  
23 **recover oil contained therein.**

24 The owner or operator of any well or wells which produce oil  
25 or gas may allow ~~such~~ the well or wells to remain open for the

1 purpose of introducing water or other liquid pressure into and upon  
2 the producing strata for the purpose of recovering the oil  
3 contained therein and may drill additional wells for like purposes,  
4 *Provided* That the introduction of such water or other liquid  
5 pressure shall be controlled as to volume and pressure and shall be  
6 through casing or tubing which shall be so anchored and packed that  
7 no water-bearing strata or other oil or gas-bearing sand or  
8 producing stratum above or below the producing strata into and upon  
9 which ~~such~~ the pressure is introduced shall be affected thereby,  
10 fulfilling requirements as set forth ~~under~~ in section fourteen.

11 **§22-6-26. Performance bonds; corporate surety or other security.**

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

16 (b) A separate bond as described in subsection (d) of this  
17 section may be furnished for a particular oil or gas well, or for  
18 a particular well for the introduction of liquids for the purposes  
19 provided in section twenty-five of this article. A separate bond  
20 as described in subsection (d) of this section shall be furnished  
21 for each well drilled or converted for the introduction of liquids  
22 for the disposal of pollutants or the effluent therefrom. Each of  
23 these bonds shall be in the sum of ~~five thousand dollars,~~ \$5,000  
24 payable to the State of West Virginia, conditioned on full  
25 compliance with all laws, rules relating to the drilling,

1 redrilling, deepening, casing, and stimulating of oil and gas wells  
2 (or, if applicable, with all laws, rules relating to drilling or  
3 converting wells for the introduction of liquids for the purposes  
4 provided in section twenty-five of this article or for the  
5 introduction of liquids for the disposal of pollutants or the  
6 effluent therefrom) and to the plugging, abandonment, and  
7 reclamation of wells and for furnishing such reports and  
8 information as may be required by the ~~director~~ secretary.

9 (c) When an operator makes or has made application for permits  
10 to drill or stimulate a number of oil and gas wells or to drill or  
11 convert a number of wells for the introduction of liquids for the  
12 purposes provided in section twenty-five of this article, the  
13 operator may, in lieu of furnishing a separate bond, furnish a  
14 blanket bond in the sum of ~~fifty thousand dollars,~~ \$50,000 payable  
15 to the State of West Virginia and conditioned as aforesaid in  
16 subsection (b) of this section.

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

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

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

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



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

14 (f) Any separate bond furnished for a particular well prior to  
15 the effective date of this chapter shall continue to be valid for  
16 all work on the well ~~permitting~~ permitted prior to the July 11,  
17 1985; but no permit shall hereafter be issued on such a particular  
18 well without a bond complying with the provisions of this section.  
19 Any blanket bond furnished prior to July 11, 1985 shall be replaced  
20 with a new blanket bond conforming to the requirements of this  
21 section, at which time the prior bond shall be discharged by  
22 operation of law; and if the ~~director~~ secretary determines that any  
23 operator has not furnished a new blanket bond, the ~~director~~  
24 secretary shall notify the operator by ~~certified mail, return~~  
25 ~~receipt requested~~ registered or certified mail or by any method of

1 delivery that requires a receipt or signature confirmation of the  
2 requirement for a new blanket bond<sup>7</sup>, and failure to submit a new  
3 blanket bond within sixty days after receipt of the notice from the  
4 ~~director~~ secretary shall work a forfeiture under subsection (i) of  
5 this section of the blanket bond furnished prior to July 11, 1985.

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

12 (h) Whenever the right to operate a well is assigned or  
13 otherwise transferred, the assignor or transferor shall notify the  
14 department of the name and address of the assignee or transferee by  
15 ~~certified mail, return receipt requested~~ registered or certified  
16 mail or by any method of delivery that requires a receipt or  
17 signature confirmation not later than five days after the date of  
18 the assignment or transfer. No assignment or transfer by the owner  
19 shall relieve the assignor or transferor of the obligations and  
20 liabilities unless and until the assignee or transferee files with  
21 the department the well name and the permit number of the subject  
22 well, the county and district in which the subject well is located,  
23 the names and addresses of the assignor or transferor<sup>7</sup> and assignee  
24 or transferee, a copy of the instrument of assignment or transfer  
25 accompanied by the applicable bond, cash, collateral security or

1 other forms of security described in section twelve, fourteen,  
2 twenty-three or twenty-six of this article, and the name and  
3 address of the assignee's or transferee's designated agent if  
4 assignee or transferee would be required to designate such an agent  
5 under section ~~six~~ three of this article, if assignee or transferee  
6 were an applicant for a permit under ~~said~~ section ~~six~~ three. Every  
7 well operator required to designate an agent under this section  
8 shall, within five days after the termination of such designation,  
9 notify the department of such termination and designate a new  
10 agent.

11       Upon compliance with the requirements of this section by  
12 assignor or transferor and assignee or transferee, the ~~director~~  
13 secretary shall release assignor or transferor from all duties and  
14 requirements of this article and ~~the deputy director~~ shall give  
15 written notice of release ~~unto~~ assignor or transferor of any bond  
16 and return ~~unto~~ assignor or transferor any cash or collateral  
17 securities deposited pursuant to section twelve, fourteen, twenty-  
18 three or twenty-six of this article.

19       (i) If any of the requirements of this article or rules  
20 promulgated pursuant thereto or the orders of the ~~director~~  
21 secretary have not been complied with within the time limit set by  
22 the violation notice as defined in sections ~~three, four and five~~  
23 eleven, twenty-eight or thirty-four of this article, the  
24 performance bond shall then be forfeited.

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

1 this article or rules promulgated pursuant thereto, the ~~director~~  
2 ~~secretary~~ shall give notice to the Attorney General who shall  
3 collect the forfeiture without delay.

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

7 **§22-6-27. Cause of action for damages caused by explosions.**

8 Any person suffering personal injury or property damage due to  
9 any explosion caused by any ~~permittee,~~ operator shall have a cause  
10 of action against ~~such permittee~~ the operator for three years after  
11 the explosion, regardless of when the explosion occurred.

12 **§22-6-28. Notice of violation; procedure and actions; enforcement;**  
13 **permit revocation and bond forfeiture; civil and**  
14 **criminal penalties; appeals; prosecution; injunctive**  
15 **relief.**

16 ~~(a) The director shall exercise supervision over the drilling,~~  
17 ~~casing, plugging, filling and reclamation of all wells and shall~~  
18 ~~have such access to the plans, maps and other records and to the~~  
19 ~~properties of the well operators as may be necessary or proper for~~  
20 ~~this purpose, and, either as the result of its own investigations~~  
21 ~~or pursuant to charges made by any well operator or coal operator,~~  
22 ~~the director may enter, or shall permit any aggrieved person to~~  
23 ~~file before the director, a formal complaint charging any well~~  
24 ~~operator with not drilling or casing, or not plugging or filling,~~

~~1 or reclaiming any well in accordance with the provisions of this  
2 article, or to the order of the director. True copies of any such  
3 complaints shall be served upon or mailed by registered mail to any  
4 person so charged, with notice of the time and place of hearing, of  
5 which the operator or operators so charged shall be given at least  
6 five days' notice. At the time and place fixed for hearing, full  
7 opportunity shall be given any person so charged or complaining to  
8 be heard and to offer such evidence as desired, and after a full  
9 hearing, at which the director may offer in evidence the results of  
10 such investigations as the director may have made, the director  
11 shall make findings of fact and enter such order as in the  
12 director's judgment is just and right and necessary to secure the  
13 proper administration of this article, and if the director deems  
14 necessary, restraining the well operator from continuing to drill  
15 or case any well or from further plugging, filling or reclaiming  
16 the same, except under such conditions as the director may impose  
17 in order to ensure a strict compliance with the provisions of this  
18 article relating to such matters.~~

~~19 (b) Except as provided in subsection (c) of this section, any  
20 well operator or coal operator adversely affected by a final  
21 decision or order of the director, may appeal in the manner  
22 prescribed in section four, article five, chapter twenty-nine-a of  
23 this code.~~

~~24 (c) Any person having an interest which is or may be adversely  
25 affected, or who is aggrieved by an order of the director, or by~~

~~1 the issuance or denial of a permit, or by the permit's terms and  
2 conditions, where the subject to such order, permits or terms and  
3 conditions is solid waste, may appeal to the environmental quality  
4 board in the same manner as appeals are taken under the solid waste  
5 management act, section sixteen, article fifteen of this chapter.  
6 For the purpose of this subsection the term solid waste has the  
7 same meaning as would be given that term pursuant to section two,  
8 article fifteen of this chapter but for the exemption related to  
9 waste or material regulated by this chapter, chapter twenty-two-b  
10 or chapter twenty-two-c of this code.~~

11 (a) If an owner or operator has not complied with any of the  
12 requirements of this article or article eleven of this chapter,  
13 rules promulgated pursuant thereto or permit conditions, the  
14 secretary shall cause a notice of violation to be served upon the  
15 operator or the operator's duly authorized agent as notices are  
16 served pursuant to the provisions the West Virginia Rules of Civil  
17 Procedure to the permanent address shown on the application for the  
18 permit. The notice shall specify in what respects the operator has  
19 failed to comply with this article or article eleven of this  
20 chapter, rules or permit conditions and shall specify a reasonable  
21 time for abatement of the violation not to exceed seven days. If  
22 the operator has not abated the violation within the time specified  
23 in the notice, or any reasonable extension thereof not to exceed  
24 thirty days, the secretary may order the cessation of the  
25 operation, unless the operator affirmatively demonstrates that

1 compliance is unattainable due to conditions totally beyond the  
2 control of the operator. If a violation is not abated within the  
3 time specified or any extension thereof, or if any cessation order  
4 is issued, a mandatory civil penalty of up to \$10,000 per day per  
5 violation shall be assessed. A cessation order remains in effect  
6 until the secretary determines that the violation has been abated  
7 or until modified, vacated or terminated by the secretary or by a  
8 court. In any cessation order issued pursuant to this subsection,  
9 the secretary shall determine the steps necessary to abate the  
10 violation in the most expeditious manner possible and shall include  
11 the necessary measures in the order.

12 (b) If the secretary determines that a pattern of violations  
13 of any requirement of this article or article eleven of this  
14 chapter or any permit condition exists or has existed as a result  
15 of the operator's lack of reasonable care and diligence, or that  
16 the violations are willfully caused by the operator, the secretary  
17 shall immediately issue an order directing the operator to show  
18 cause why the operation should not be suspended or revoked and  
19 giving the operator thirty days in which to request a hearing. If  
20 a hearing is requested, the secretary shall inform all interested  
21 parties of the time and place of the hearing. Any hearing  
22 conducted pursuant to this section shall be recorded and is subject  
23 to the provisions of chapter twenty-nine-a of this code. Within  
24 sixty days following the hearing, the secretary shall issue and  
25 furnish to the operator and all other parties to the hearing a

1 written decision, and the reasons therefor, concerning suspension  
2 or revocation of the operation. Upon the operator's failure to  
3 show cause why the right to operate should not be suspended or  
4 revoked, the secretary shall immediately suspend or revoke the  
5 operator's right to operate the well(s) at issue. If the right to  
6 operate is revoked, the secretary shall initiate procedures in  
7 accordance with rules promulgated by the secretary to forfeit the  
8 entire amount of the operator's bond or other security posted  
9 pursuant to section twenty-six of this article, and collect the  
10 forfeiture without delay: *Provided*, That the entire proceeds of  
11 such forfeiture shall be deposited with the State Treasurer to the  
12 credit of the Oil and Gas Reclamation Fund; *Provided, however*, That  
13 any excess therefrom shall remain in the Oil and Gas Reclamation  
14 Fund.

15 (c) Any operator who violates any permit condition or who  
16 violates any other provision of this article or article eleven of  
17 this chapter or the rules promulgated pursuant thereto may also be  
18 assessed a civil penalty. The penalty may not exceed \$10,000.  
19 Each day of continuing violation may be deemed a separate violation  
20 for purposes of penalty assessments. In determining the amount of  
21 the penalty, consideration shall be given to the operator's history  
22 of previous violations; the seriousness of the violation, including  
23 any irreparable or significant harm to the environment and any  
24 hazard to the health or safety of the public; whether the operator  
25 was negligent; and the demonstrated good faith of the operator



1 charged in attempting to achieve rapid compliance after  
2 notification of the violation.

3 (d) (1) Upon the issuance of a notice or order pursuant to  
4 this section, the assessment officer shall, within thirty days, set  
5 a proposed penalty assessment, if any, and notify the operator in  
6 writing of such proposed penalty assessment. Any proposed penalty  
7 assessment must be paid in full within thirty days of receipt or,  
8 if the operator wishes to contest either the amount of the penalty  
9 or the fact of violation, it may request an informal conference  
10 with the assessment officer within fifteen days or a formal hearing  
11 before the secretary within thirty days. The notice of proposed  
12 penalty assessment shall advise the operator of the right to an  
13 informal conference and a formal hearing pursuant to this section.  
14 When the operator requests an informal conference, it has fifteen  
15 days from receipt of the assessment officer's decision to request  
16 a formal hearing before the secretary.

17 (A) When an informal conference is held, the assessment  
18 officer has authority to affirm, modify or vacate the notice, order  
19 or proposed penalty assessment.

20 (B) When a formal hearing is requested, the amount of the  
21 proposed penalty assessment shall be forwarded to the secretary for  
22 placement in an escrow account. Formal hearings shall be of record  
23 and subject to the provisions of article five, chapter  
24 twenty-nine-a of this code. Following the hearing, the order or  
25 proposed penalty assessment shall be affirmed, modified or vacated

1 and, when appropriate, shall incorporate an assessment order  
2 requiring that the assessment be paid.

3 (2) Civil penalties owed pursuant to this section may be  
4 recovered by the secretary in the circuit court of Kanawha County.

5 In any such action, the state, or any agency of the state that  
6 prevails, may be awarded costs and reasonable attorney's fees.

7 Civil penalties collected pursuant to this article shall be  
8 deposited with the State Treasurer to the credit of the Oil and Gas  
9 Operating Permit and Processing Fund established in section twenty-  
10 nine of this article. If, through administrative or judicial  
11 review of the proposed penalty, it is determined that no violation  
12 occurred or that the amount of the penalty should be reduced, the  
13 secretary shall, within thirty days, remit the appropriate amount  
14 to the person, with interest at the rate of six percent or at the  
15 prevailing United States Department of the Treasury rate, whichever  
16 is greater. Failure to forward the money to the secretary within  
17 thirty days is a waiver of all legal rights to contest the  
18 violation or the amount of the penalty.

19 (e) Any operator whose interest is or may be adversely  
20 affected by any order of the secretary may file an appeal in  
21 accordance with the provisions of article five, chapter twenty-  
22 nine-a of this code, within thirty days after receipt of the order.

23 (f) The filing of an appeal or a request for an informal  
24 conference or formal hearing provided for in this section does not  
25 stay execution of the order appealed from. Pending completion of

1 the investigation and conference or hearing required by this  
2 section, the operator may file with the secretary a written request  
3 that the secretary grant temporary relief from any notice or order  
4 issued under this section or sections eleven, twenty-eight or  
5 thirty-four of this article, together with a detailed statement  
6 giving reasons for granting such relief. The secretary shall issue  
7 an order or decision granting or denying such relief expeditiously:  
8 Provided, That where the operator requests relief from a cessation  
9 order, the decision on the request shall be issued within five days  
10 of its receipt. The secretary may grant such relief under such  
11 conditions as he or she may prescribe if:

12 (1) All parties to the proceedings have been notified and  
13 given an opportunity to be heard on a request for temporary relief;

14 (2) The person requesting the relief shows that there is a  
15 substantial likelihood that he will prevail on the merits in the  
16 final determination of the proceedings;

17 (3) The relief will not adversely affect the public health or  
18 safety or cause significant imminent environmental harm to land,  
19 air or water resources; and

20 (4) The relief sought is not the issuance of a permit where a  
21 permit has been denied, in whole or in part, by the secretary.

22 (g) Any person who willfully and knowingly violates a  
23 condition of a permit issued pursuant to this article or article  
24 eleven of this chapter or rules promulgated pursuant thereunder, or  
25 fails or refuses to comply with any order issued under those

1 articles and rules or any order incorporated in a final decision  
2 issued by the secretary, is guilty of a misdemeanor and, upon  
3 conviction thereof, shall be fined not less than \$5,000 nor more  
4 than \$10,000 or imprisoned in the county jail not more than one  
5 year or both fined and imprisoned.

6 (h) Whenever a corporate operator violates a condition of a  
7 permit issued pursuant to this article, rules promulgated pursuant  
8 thereto, or any order incorporated in a final decision issued by  
9 the secretary, any director, officer or agent of the corporation  
10 who willfully and knowingly authorized, ordered or carried out the  
11 failure or refusal is subject to the same civil penalties, fines  
12 and imprisonment that may be imposed upon a person pursuant to  
13 subsections (c) and (g) of this section.

14 (i) Any person who knowingly makes any false statement,  
15 representation or certification or knowingly fails to make any  
16 statement, representation or certification in any application,  
17 petition, record, report, plan or other document filed or required  
18 to be maintained pursuant to this article or rules promulgated  
19 pursuant thereto is guilty of a misdemeanor and, upon conviction  
20 thereof, shall be fined not less than \$5,000 nor more than \$10,000  
21 or imprisoned in the county jail not more than one year or both  
22 fined and imprisoned.

23 (j) Whenever any person: (A) violates or fails or refuses to  
24 comply with any order or decision issued by the secretary pursuant  
25 to this article; or (B) interferes with, hinders or delays the

1 secretary in carrying out the provisions of this article; or (C)  
2 refuses to admit the secretary to the property where the well or  
3 its associated activities are located; or (D) refuses to permit  
4 inspection of the operation by the secretary; or (E) refuses to  
5 furnish any reasonable information or report requested by the  
6 secretary in furtherance of the provisions of this article; or (F)  
7 refuses to permit access to, and copying of, such records as the  
8 secretary determines necessary in carrying out the provisions of  
9 this article; or (G) violates any other provisions of this article,  
10 the rules promulgated pursuant thereto or the terms and conditions  
11 of any permit, the secretary or the prosecuting attorney of the  
12 county in which the permit area is located may institute a civil  
13 action for relief, including a permanent or temporary injunction,  
14 restraining order or any other appropriate order in the circuit  
15 court of Kanawha County or any court of competent jurisdiction to  
16 compel compliance with and enjoin such violations, failures or  
17 refusals. The court or the judge thereof in vacation may issue a  
18 preliminary injunction in any case pending a decision on the merits  
19 of any application filed without requiring the filing of a bond or  
20 other equivalent security.

21 (k) Any person who, except as permitted by law, willfully  
22 resists, prevents, impedes or interferes with the secretary or any  
23 of his or her agents in the performance of their duties pursuant to  
24 this article is guilty of a misdemeanor and, upon conviction  
25 thereof, shall be punished by a fine of not more than \$5,000 or by

1 imprisonment for not more than one year or both.

2 **§22-6-29. Operating permit and processing fund; special**  
3 **reclamation fund; fees.**

4 (a) There is hereby continued within the Treasury of the State  
5 of West Virginia the special fund known as the Oil and Gas  
6 Operating Permit and Processing Fund, and the secretary shall  
7 deposit with the State Treasurer to the credit of ~~such~~ that special  
8 fund all fees collected ~~under~~ pursuant to the provisions of  
9 subdivision ten, subsection (c), section two of this article.

10 (1) The Oil and Gas Operating Permit and Processing Fund shall  
11 be administered by the secretary for the purposes of carrying out  
12 the provisions of this chapter.

13 (2) The secretary shall make an annual report to the Governor  
14 and to the Legislature on the use of the fund and shall make a  
15 detailed accounting of all expenditures from the Oil and Gas  
16 Operating Permit and Processing Fund.

17 (b) In addition to any other fees required by the provisions  
18 of this article, every applicant for a permit to drill a well  
19 shall, before the permit is issued, pay to the secretary a special  
20 reclamation fee of ~~one hundred fifty dollars~~ \$150 for each activity  
21 for which a well work application is required to be filed:  
22 *Provided*, That a special reclamation fee shall not be assessed for  
23 plugging activities. ~~Such~~ The special reclamation fee shall be  
24 paid at the time the application for a drilling permit is filed  
25 with the secretary, and ~~the~~ payment of ~~such~~ the special reclamation

1 fee shall be a condition precedent to the issuance of said permit.

2       (c) There is hereby continued within the Treasury of the State  
3 of West Virginia the special fund known as the Oil and Gas  
4 Reclamation Fund, and the secretary shall deposit with the State  
5 Treasurer to the credit of ~~such~~ that special fund all special  
6 reclamation fees collected. The proceeds of any bond forfeited  
7 under the provisions of this article shall inure to the benefit of  
8 and shall be deposited in such Oil and Gas Reclamation Fund.

9       (d) The Oil and Gas Reclamation Fund shall be administered by  
10 the secretary. The secretary shall cause to be prepared plans for  
11 the reclaiming and plugging of abandoned wells which have not been  
12 reclaimed or plugged or which have been improperly reclaimed or  
13 plugged. The secretary, as funds become available in the Oil and  
14 Gas Reclamation Fund, shall reclaim and properly plug wells in  
15 accordance with ~~said~~ those plans and specifications and in  
16 accordance with the provisions of this article relating to the  
17 reclaiming and plugging of wells and all rules promulgated  
18 thereunder. ~~Such~~ Those funds may also be utilized for the purchase  
19 of abandoned wells, where such purchase is necessary, and for the  
20 reclamation of such abandoned wells, and for any engineering,  
21 administrative, and research costs as may be necessary to properly  
22 effectuate the reclaiming and plugging of all wells, abandoned or  
23 otherwise.

24       (e) The secretary may avail the ~~division~~ department of any  
25 federal funds provided on a matching basis that may be made

1 available for the purpose of reclaiming or plugging any wells.

2       (f) The secretary shall make an annual report to the Governor  
3 and to the Legislature setting forth the number of wells reclaimed  
4 or plugged through the use of the Oil and Gas Reclamation Fund  
5 provided for herein. ~~Such~~ The report shall identify each ~~such~~  
6 reclamation and plugging project, state the number of wells  
7 reclaimed or plugged thereby, show the county wherein such wells  
8 are located, ~~and shall~~ make a detailed accounting of all  
9 expenditures from the Oil and Gas Reclamation Fund.

10       (g) All wells shall be reclaimed or plugged by contract  
11 entered into by the secretary on a competitive bid basis as  
12 provided for under the provisions of article three, chapter five-a  
13 of this code and the rules promulgated thereunder.

14 **§22-6-30. Reclamation requirements.**

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

18       (a) Within six months after the completion of the drilling  
19 process, ~~the operator shall fill all the pits and impoundments for~~  
20 ~~containing muds, cuttings, salt water, and oil that are not needed~~  
21 ~~for production purposes, or~~ are not required or allowed by state or  
22 federal law or rule or agreement between the operator and the  
23 surface owner that allows the impoundment to remain open for the  
24 use and benefit of the surface owner (i.e. a farm pond as described  
25 in section five above) and remove all concrete bases, drilling



1 supplies, and drilling equipment. Within ~~such~~ that period, the  
2 operator shall grade or terrace and plant, seed or sod the area  
3 disturbed that is not required in production of the well where  
4 necessary to bind the soil and prevent substantial erosion and  
5 sedimentation. No pit may be used for the ultimate disposal of  
6 salt water. Salt water and oil shall be periodically drained or  
7 removed and properly disposed of from any pit that is retained, so  
8 the pit is kept reasonably free of salt water and oil. Any  
9 impoundment that is intended to be left permanent shall meet the  
10 requirements set forth by the United States Department of  
11 Agriculture's Natural Resources Conservation Service "Conservation  
12 Practice Standard - Ponds" (Code 378). No pits may be left  
13 permanent.

14 (b) For multiple well pads, reclamation shall be completed  
15 within six months after the completion of the drilling process for  
16 a well, unless the operator commences drilling on a subsequent well  
17 within six months.

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

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

5       ~~If the director refuses to approve a request for extension,~~  
6 ~~the refusal shall be by order.~~

7       ~~(c)~~ (d) (1) It shall be the duty of ~~an~~ the operator to commence  
8 the reclamation of the area of land disturbed in siting, drilling,  
9 completing or producing the well in accordance with soil erosion  
10 and sediment control plans approved by the ~~director~~ secretary or  
11 the ~~director's designate~~ secretary's designee.

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

16       (3) If the secretary refuses to approve a request for  
17 extension, the refusal shall be by order.

18       ~~(d)~~ (e) The ~~director~~ secretary shall promulgate rules setting  
19 forth requirements for the safe and efficient installation and  
20 burying of all production and gathering pipelines where practical  
21 and reasonable, except that ~~such~~ those rules shall not apply to  
22 those pipelines regulated by the Public Service Commission.

23 **§22-6-31. Preventing waste of gas; plan of operation required**

24                   **for wasting gas in process of producing oil;**  
25                   **rejection thereof.**

1 Natural gas shall not be permitted to waste or escape from any  
2 well or pipeline, when it is reasonably possible to prevent ~~such~~  
3 that waste, after the owner or operator of ~~such~~ the gas, or well,  
4 or pipeline has had a reasonable length of time to shut in ~~such~~ the  
5 gas in the well or make the necessary repairs to ~~such~~ the well or  
6 pipeline to prevent ~~such~~ waste: *Provided*, That (a) If, in the  
7 process of drilling a well for oil or gas, or both, gas is found in  
8 ~~such~~ the well and the owner or operator thereof desires to continue  
9 to search for oil or gas or both by drilling deeper in search of  
10 lower oil or gas-bearing strata, or (b) If it becomes necessary to  
11 make repairs to any well producing gas, commonly known as "cleaning  
12 out," and if in either event it is necessary for the gas in ~~such~~  
13 the well to escape therefrom during the process of drilling or  
14 making repairs, as the case may be, then the owner or operator of  
15 ~~such~~ the well shall prosecute ~~such~~ the drilling or repairs with  
16 reasonable diligence so that the waste of gas from the well shall  
17 not continue longer than reasonably necessary, and if, during the  
18 progress of ~~such~~ the deeper drilling or repairs, any temporary  
19 suspension thereof becomes necessary, the owner or operator of ~~such~~  
20 the well shall use all reasonable means to shut in the gas and  
21 prevent its waste during ~~such~~ the temporary suspension: *Provided*,  
22 *however*, That in all cases where both oil and gas are found and  
23 produced from the same oil and gas-bearing stratum, and where it is  
24 necessary for the gas therefrom to waste in the process of  
25 producing the oil, the owner or operator shall use all reasonable

1 diligence to conserve and save from waste so much of ~~such~~ the gas  
2 as it is reasonably possible to save, but in no case shall ~~such~~  
3 the gas from any well be wasted in the process of producing oil  
4 therefrom until the owner or operator of ~~such~~ the well ~~shall have~~  
5 has filed with the ~~director~~ secretary a plan of operation for ~~said~~  
6 the well showing, among other things, the gas-oil production ratio  
7 involved in ~~such~~ the operation, which plan shall govern the  
8 operation of ~~said~~ the well unless the ~~director~~ secretary shall,  
9 within ten days from the date on which ~~such~~ the plan is submitted  
10 to the ~~director~~ secretary, make a finding that ~~such~~ the plan fails,  
11 under all the facts and circumstances, to propose the exercise of  
12 all reasonable diligence to conserve and save from waste so much of  
13 ~~such~~ the gas as it is reasonably possible to save, in which event  
14 production of oil at ~~such~~ the well by the wasting of gas shall  
15 cease and desist until a plan of operation is approved by the  
16 ~~director~~ secretary. Successive plans of operation may be filed by  
17 the owner or operator of any ~~such~~ well with the ~~director~~ secretary.

18 **§22-6-32. Right of adjacent owner or operator to prevent waste of**  
19 **gas; recovery of cost.**

20 (a) If the owner or operator of any ~~such~~ well shall neglect or  
21 refuse to drill, case and equip, ~~or~~ plug and abandon or shut in and  
22 conserve from waste the gas produced therefrom, as required to be  
23 done and performed by the preceding sections of this article, for  
24 a period of twenty days after a written notice so to do, which  
25 notice may be served personally upon the owner or operator or may

1 be posted in a conspicuous place at or near the well, it shall be  
2 lawful for the owner or operator of any adjacent or neighboring  
3 lands or the ~~director~~ secretary to enter upon the premises where  
4 ~~such~~ the well is situated and properly case and equip ~~such~~ the  
5 well, or, in case the well is to be abandoned, to properly plug and  
6 abandon it, or, in case the well is wasting gas, to properly shut  
7 it in and make ~~such~~ any needed repairs to the well to prevent the  
8 waste of gas, in the manner required ~~to be done~~ by the preceding  
9 sections of this article. ~~and the~~ The reasonable cost and expense  
10 incurred by an owner or operator or the ~~director~~ secretary in so  
11 doing shall be paid by the owner or operator of ~~such~~ the well and  
12 may be recovered as debts of like amount are by law recoverable.

13 (b) The ~~director~~ secretary may utilize funds and procedures  
14 established pursuant to section twenty-nine of this article for the  
15 purposes set out in ~~the~~ this section. Amounts recovered by the  
16 ~~director~~ secretary pursuant to this section shall be deposited in  
17 the Oil and Gas Reclamation Fund established pursuant to section  
18 twenty-nine of this article.

19 **§22-6-33. Restraining waste.**

20 Aside from and in addition to the imposition of any penalties  
21 under this article, it shall be the duty of any circuit court in  
22 the exercise of its equity jurisdiction to hear and determine any  
23 action which may be filed to restrain the waste of natural gas in  
24 violation of this article, and to grant relief by injunction or by  
25 other decrees or orders, in accordance with the principles and

1 practice in equity. The plaintiff in ~~such~~ that action shall have  
 2 sufficient standing to maintain the same if the condition or  
 3 practice exists or that any operator is in violation of any  
 4 requirements of this article or any permit condition plaintiff  
 5 shall aver and prove that the plaintiff is interested in the lands  
 6 situated within the distance of one mile from ~~such~~ the well, either  
 7 as an owner of ~~such~~ the land or of the oil or gas or both  
 8 ~~thereunder,~~ in fee simple or as an owner of leases thereof or of  
 9 rights therein for the production of oil and gas or either of them  
 10 or as the ~~director~~ secretary.

11 **§22-6-34. Cessation of operation by order of inspector; informal**  
 12 **conference; imposition of affirmative obligations;**  
 13 **appeal.**

14 ~~(a) Any person or persons, firm, partnership, partnership~~  
 15 ~~association or corporation who willfully violates any provision of~~  
 16 ~~this article or any rule or order promulgated hereunder shall be~~  
 17 ~~subject to a civil penalty not exceeding two thousand five hundred~~  
 18 ~~dollars. Each day a violation continues after notice by the~~  
 19 ~~division constitutes a separate offense. The penalty shall be~~  
 20 ~~recovered by a civil action brought by the division, in the name of~~  
 21 ~~the state, before the circuit court of the county in which the~~  
 22 ~~subject well or facility is located. All such civil penalties~~  
 23 ~~collected shall be credited to the General Fund of the state.~~

24 ~~(b) Any person or persons, firm, partnership, partnership~~  
 25 ~~association or corporation willfully violating any of the~~

~~1 provisions of this article which prescribe the manner of drilling  
2 and casing or plugging and filling any well, or which prescribe the  
3 methods of conserving gas from waste, shall be guilty of a  
4 misdemeanor, and, upon conviction thereof, shall be punished by a  
5 fine not exceeding five thousand dollars, or imprisonment in jail  
6 for not exceeding twelve months, or both, in the discretion of the  
7 court, and prosecutions under this section may be brought in the  
8 name of the State of West Virginia in the court exercising criminal  
9 jurisdiction in the county in which the violation of such  
10 provisions of the article or terms of such order was committed, and  
11 at the instance and upon the relation of any citizens of this  
12 state.~~

13 (a) Notwithstanding any other provisions of this article, an  
14 oil and gas inspector has the authority to issue a cessation order  
15 to an oil or gas operation when an inspector determines that any  
16 required by this article, which condition, practice or violation  
17 also creates an imminent danger to the health or safety of the  
18 public or is causing or can reasonably be expected to cause  
19 significant, imminent environmental harm to land, air or water  
20 resources. The cessation order shall take effect immediately.  
21 Unless waived in writing, an informal conference shall be held at  
22 or near the site relevant to the violation set forth in the  
23 cessation order within twenty-four hours after the order becomes  
24 effective, or the order shall expire. The conference shall be held  
25 before a supervising oil and gas inspector, who shall, immediately

1 upon conclusion of said conference, determine when and if the  
2 operation may resume. An operator who believes it is aggrieved by  
3 the decision of the supervising oil and gas inspector may  
4 immediately appeal to the secretary, setting forth reasons why the  
5 operation should not be halted. The secretary shall determine  
6 forthwith when the operation may be resumed.

7 (b) The cessation order shall remain in effect until the  
8 secretary determines that the condition, practice or violation has  
9 been abated or until modified, vacated or released by the  
10 secretary. Where the secretary finds that the ordered cessation  
11 will not completely abate the imminent danger to health or safety  
12 of the public or the significant imminent environmental harm to  
13 land, air or water resources, the secretary shall, in addition to  
14 the cessation order, impose affirmative obligations on the operator  
15 requiring the operator to take whatever steps the secretary  
16 determines necessary to abate the imminent danger or the  
17 significant environmental harm.

18 (c) Any cessation order issued pursuant to this section or any  
19 other provision of this article may be released by any inspector.  
20 An inspector shall be readily available to terminate a cessation  
21 order upon abatement of the violation.

22 **§22-6-35. Civil action for contamination or deprivation of fresh**  
23 **water source or supply; presumption; water rights and**  
24 **replacement; waiver of replacement.**



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

5       (b) Unless rebutted by one of the defenses established in  
6 subsection c below, ~~in~~ in any action for contamination or  
7 deprivation of a fresh water source or supply within one thousand  
8 feet of the site of drilling for an oil or gas well, there shall be  
9 a rebuttable presumption that ~~such~~ the drilling and ~~such~~ the oil or  
10 gas well or either was the proximate cause of the contamination or  
11 deprivation of ~~such~~ the fresh water source or supply.

12       (c) In order to rebut the presumption of liability established  
13 in subsection (b) above, the operator must affirmatively prove one  
14 of the following defenses:

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

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

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

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

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

1 (d) Any operator electing to preserve its defenses under  
2 subdivision (c)(1) or (c)(2) above shall retain the services of an  
3 independent certified laboratory to conduct the predrilling or  
4 prealteration survey of water supplies. A copy of the results of  
5 the survey shall be submitted to the department and the landowner  
6 or water purveyor in a manner prescribed by the secretary.

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

14 (f) The operator conducting the oil or gas operation shall:  
15 (1) Provide an emergency drinking water supply within twenty-four  
16 hours; (2) provide temporary water supply within seventy-two hours;  
17 (3) within thirty days begin activities to establish a permanent  
18 water supply or submit a proposal to the secretary outlining the  
19 measures and timetables to be utilized in establishing a permanent  
20 supply. The total time for providing a permanent water supply may  
21 not exceed two years. If the operator demonstrates that providing  
22 a permanent replacement water supply cannot be completed within two  
23 years, the secretary may extend the time frame on case-by-case  
24 basis; and (4) pay all reasonable costs incurred by the real  
25 property owner in securing a water supply.

1 (g) A real property owner as described in subsection (b) above  
 2 aggrieved under the provisions of subsections (b), (c) or (d) of  
 3 this section may seek relief in court.

4 (h) Notwithstanding the denial of the operator of  
 5 responsibility for the damage to the real property owner's water  
 6 supply or the status of any appeal on determination of liability  
 7 for the damage to the real property owner's water supply, the  
 8 operator may not discontinue providing the required water service  
 9 until authorized to do so by the secretary.

10 **§22-6-36. Declaration of oil and gas notice by owners and lessees**  
 11 **of coal seams.**

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

23 (b) The declaration, if filed, shall entitles such the owner  
 24 or lessee to the notices provided in sections twelve, thirteen,  
 25 fourteen, and twenty-three of this article: Provided, That the

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

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

9 "DECLARATION OF OIL AND GAS NOTICE"

10 "The undersigned hereby declares:

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

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

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

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

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

1

2

(Signature)

3

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

4

5 The benefits of the foregoing declaration shall be personal to

6 the declaring owner or lessee, and not transferable or assignable

7

**§22-6-37. Rules, orders and permits remain in effect.**

8

9 The rules promulgated and all orders and permits in effect

10 upon the effective date of this article ~~pursuant to the provisions~~11 ~~of former article one, chapter twenty-two b of this code,~~ shall12 remain in full force and effect as if ~~such~~ those rules, orders, and13 ~~permits were adopted by the director established in this chapter~~14 secretary, but all such rules, orders, and permits shall be subject15 to review by the ~~director~~ secretary to ensure they are consistent16 **§22-6-38. Application of article; exclusions.**

17 This article shall not apply to or affect any well work

18 permitted prior to the effective date of this article, ~~under former~~19 ~~article one, chapter twenty-two b of this code,~~ unless ~~such~~ the20 well is, after completion, whether ~~such~~ completion is prior to or

21 subsequent to the effective date of this article, deepened

22 subsequent to the effective date of this article through another

23 coal seam or to another formation above the top of the uppermost24 member of the "Onondaga Group." ~~or to a depth of less than six~~25 ~~thousand feet, whichever is shallower.~~

1 **§22-6-39. Injunctive relief.**

2 (a) In addition to other remedies, and aside from various  
3 penalties provided by law, whenever it appears to the ~~director~~  
4 secretary that any person is violating or threatening to violate  
5 any provision of this article, any order or final decision of the  
6 ~~director,~~ secretary or any lawful rule promulgated hereunder, the  
7 ~~director~~ secretary may ~~apply~~ petition in the name of the state to  
8 the circuit court of the county in which the violations or any part  
9 thereof has occurred, is occurring or is about to occur, or to the  
10 judge thereof in vacation, for an injunction against ~~such~~ the  
11 persons and any other persons who have been, are or are about to be  
12 involved in any practices, acts or admissions so in violation,  
13 enjoining ~~such~~ the person or persons from any violation or  
14 violations. ~~Such application~~ The petition may be made and  
15 prosecuted to conclusion, whether or not any violation or  
16 violations have resulted or shall result in prosecution or  
17 conviction under the provisions of this article.

18 (b) Upon ~~application~~ petition by the ~~director~~ secretary, the  
19 circuit courts of this state may, by mandatory or prohibitory  
20 injunction, compel compliance with the provisions of this article  
21 and all orders and final decisions of the ~~director~~ secretary. The  
22 court may issue a temporary injunction in any case pending a  
23 decision on the merits of any ~~application~~ petition filed. Any  
24 other section of this code to the contrary notwithstanding, the  
25 state shall not be required to furnish bond or other undertaking as

1 a prerequisite to obtaining mandatory, prohibitory or temporary  
2 injunctive relief under the provisions of this article.

3 (c) The judgment of the circuit court upon ~~application~~  
4 petition permitted by the provisions of this section shall be final  
5 unless reversed, vacated or modified on appeal to the Supreme Court  
6 of Appeals. Any ~~such~~ appeal shall be sought in the manner and  
7 within the time provided by law for appeals from circuit courts in  
8 other civil actions.

9 (d) The ~~director~~ secretary shall be represented in all such  
10 proceedings by the secretary's in-house counsel as provided in  
11 section six, article one of this chapter, or the secretary may be  
12 represented by the Attorney General or the Attorney General's  
13 assistants or ~~in such proceedings in the circuit courts~~ by the  
14 prosecuting attorney of the several counties, ~~as well,~~ all without  
15 additional compensation. The ~~director~~ secretary, with the written  
16 approval of the Attorney General, may employ special counsel to  
17 represent the ~~director~~ secretary in ~~any such~~ those proceedings.

18 (e) If the ~~director~~ secretary shall refuse or fail to apply  
19 for an injunction to enjoin a violation or threatened violation of  
20 any provision of this article, any order or final decision of the  
21 ~~director,~~ secretary or any rules promulgated hereunder within ten  
22 days after receipt of a written request to do so by any well  
23 operator, coal operator operating coal seams beneath the tract of  
24 land, or the coal seam owner or lessee, if any, if said owner or  
25 lessee is not yet operating said coal seams beneath said tract of

1 land, adversely affected by ~~such~~ the violation or threatened  
2 violation, the person making ~~such~~ the request may apply on ~~their~~  
3 his, her or its own behalf for an injunction to enjoin ~~such~~ the  
4 violation or threatened violation in any court in which the  
5 ~~director~~ secretary might have brought suit. The ~~director~~ secretary  
6 shall be made party defendant in ~~such application~~ that petition in  
7 addition to the person or persons violating or threatening to  
8 violate any provisions of this article, any final order or decision  
9 of the ~~director,~~ secretary or any rule promulgated hereunder. The  
10 ~~application~~ petition shall proceed and injunctive relief may be  
11 granted in the same manner as if the application had been made by  
12 the ~~director.~~ Except secretary, except that the court may require  
13 a bond or other undertaking from the plaintiff.

14 **§22-6-40. Seismic activity.**

15 ~~Any party to the proceeding under section fifteen of this~~  
16 ~~article or section seven, article eight, chapter twenty-two-c of~~  
17 ~~this code, adversely affected by the issuance of a drilling permit~~  
18 ~~or to the issuance of a fracturing permit or the refusal of the~~  
19 ~~director to grant a drilling permit or fracturing permit is~~  
20 ~~entitled to judicial review thereof. All of the pertinent~~  
21 ~~provisions of section four, article five, chapter twenty-nine-a of~~  
22 ~~this code shall apply to and govern such judicial review with like~~  
23 ~~effect as if the provisions of said section four were set forth in~~  
24 ~~extenso in this section.~~

25 ~~The judgment of the circuit court shall be final unless~~



1 ~~reversed, vacated or modified on appeal to the Supreme Court of~~  
2 ~~Appeals in accordance with the provisions of section one, article~~  
3 ~~six, chapter twenty-nine-a of this code.~~

4 (a) Prior to conducting any seismic activity for seismic  
5 exploration for oil or gas, the company or person performing the  
6 activity must provide notice to Miss Utility of West Virginia Inc.  
7 and to all surface owners, mineral owners, and storage field  
8 operators on whose property blasting, percussion or other seismic-  
9 related activities will occur or whose property interests are  
10 within the geographic area encompassed by the seismic study.

11 (b) The notice shall be provided at least thirty days prior to  
12 commencement of the seismic activity and shall specify a seventy-  
13 two hour period in which the blasting, percussion or other seismic-  
14 related activity will occur. In the event the seismic activity is  
15 not performed within the designated seventy-two period, the company  
16 or person performing seismic activity shall send a revised notice.

17 (c) The notice shall also include a reclamation plan in  
18 accordance with the erosion and sediment control manual that  
19 provides for the reclamation of any areas disturbed as a result of  
20 the seismic activity, including filling of shotholes utilized for  
21 blasting.

22 (d) Nothing in this section shall be construed to decide  
23 questions as to whether seismic activity may be secured by mineral  
24 owners, surface owners or other ownership interests.

25 **ARTICLE 7. OIL AND GAS PRODUCTION DAMAGE COMPENSATION.**

1 **§22-7-3. Compensation of surface owners for drilling operations.**

2 (a) The oil and gas developer shall be obligated to pay the  
3 surface owner compensation for:

4 (1) Lost income or expenses incurred as a result of being  
5 unable to dedicate land actually occupied by the driller's  
6 operation or to which access is prevented by ~~such~~ the drilling  
7 operation to the uses to which it was dedicated prior to  
8 commencement of the activity for which a permit was obtained  
9 measured from the date the operator enters upon the land until the  
10 date reclamation is completed, (2) the market value of crops  
11 destroyed, damaged or prevented from reaching market, (3) the  
12 stumpage value of timber, as that term is defined by the West  
13 Virginia Division of Forestry, destroyed, damaged or prevented from  
14 reaching market, ~~(3)~~ (4) any damage to a water supply in use prior  
15 to the commencement of the permitted activity, ~~(4)~~ (5) the cost of  
16 repair of personal property up to the value of replacement by  
17 personal property of like age, wear and quality, and ~~(5)~~ (6) the  
18 diminution in value, if any, of the surface lands and other  
19 property after completion of the surface disturbance done pursuant  
20 to the activity for which the permit was issued determined  
21 according to the actual use made thereof by the surface owner  
22 immediately prior to the commencement of the permitted activity.

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

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

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

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

12 **COMMISSIONS AND COMPACTS.**

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

14 **§22C-8-2. Definitions.**

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

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

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

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

23 (4) "Coal seam" and "workable coal bed" are interchangeable  
24 terms and mean any seam of coal twenty inches or more in thickness,

1 unless a seam of less thickness is being commercially worked, or  
 2 can in the judgment of the ~~division~~ department foreseeably be  
 3 commercially worked and will require protection if wells are  
 4 drilled through it;

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

7 (6) "Commissioner" means the oil and gas conservation  
 8 commissioner provided for in section four, article nine of this  
 9 chapter;

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

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

16 (9) ~~"Division"~~ "Department" means the state ~~division~~  
 17 Department of Environmental Protection provided for in chapter  
 18 twenty-two of this code;

19 ~~(10) "Director" means the director of the Division of~~  
 20 ~~Environmental Protection as established in article one, chapter~~  
 21 ~~twenty-two of this code or such other person to whom the division~~  
 22 ~~department delegates authority or duties pursuant to sections six~~  
 23 ~~or eight, article one, chapter twenty-two of this code;~~

24 ~~(11)~~ (10) "Drilling unit" means the acreage on which the board  
 25 decides one well may be drilled under section ten of this article;

1       ~~(12)~~ (11) "Gas" means all natural gas and all other fluid  
2 hydrocarbons not defined as oil in subdivision (15) of this  
3 section;

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

13       ~~(14)~~ (13) "Just and equitable share of production" means, as  
14 to each person, an amount of gas in the same proportion to the  
15 total gas production from a well as that person's acreage bears to  
16 the total acreage in the drilling unit;

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

22       ~~(16)~~ (15) "Owner" when used with reference to any coal seam,  
23 shall include any person or persons who own, lease or operate such  
24 coal seam;

25       ~~(17)~~ (16) "Person" means any natural person, corporation,

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

5 ~~(18)~~ (17) "Plat" means a map, drawing or print showing the  
6 location of one or more wells or a drilling unit;

7 ~~(19)~~ (18) "Pool" means an underground accumulation of gas in  
8 a single and separate natural reservoir (ordinarily a porous  
9 sandstone or limestone). It is characterized by a single natural-  
10 pressure system so that production of gas from one part of the pool  
11 tends to or does affect the reservoir pressure throughout its  
12 extent. A pool is bounded by geologic barriers in all directions,  
13 such as geologic structural conditions, impermeable strata, and  
14 water in the formation, so that it is effectively separated from  
15 any other pools which may be present in the same district or in the  
16 same geologic structure;

17 ~~(20)~~ (19) "Royalty owner" means any owner of gas in place, or  
18 gas rights, to the extent that such owner is not a gas operator as  
19 defined in subdivision (13) of this section;

20 (20) "Secretary" means the Secretary of the Department of  
21 Environmental Protection as established in article one, chapter  
22 twenty-two of this code or such other person to whom the secretary  
23 delegates authority or duties pursuant to sections six or eight,  
24 article one, chapter twenty-two of this code;

25 (21) "Shallow well" means any gas well other than a coalbed

1 methane well, drilled no deeper than one hundred feet below the top  
2 of the "Onondaga Group": ~~and completed in a formation above the top~~  
3 ~~of the uppermost member of the "Onondaga Group:"~~ *Provided, That in*  
4 ~~drilling a shallow well the well operator may penetrate into the~~  
5 ~~"Onondaga Group" to a reasonable depth, not in excess of twenty~~  
6 ~~feet, in order to allow for logging and completion operations, but~~  
7 in no event may the "Onondaga Group" formation or any formation  
8 below the "Onondaga Group" be ~~otherwise~~ produced, perforated or  
9 stimulated in any manner;

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

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

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

24 **§22C-8-4. Shallow gas well review board; membership; method of**  
25 **appointment; vacancies; compensation and expenses;**

1                   **staff.**

2           (a) There is hereby continued the Shallow Gas Well Review  
3 Board which shall be composed of three members, ~~two of whom shall~~  
4 ~~be~~ the commissioner, ~~and the chief of the office of oil and gas a~~  
5 person representing the interests of surface owners of real  
6 property, and ~~The remaining member of the board shall be a~~  
7 registered professional who has been successfully tested in mining  
8 engineering, with at least ten years practical experience in the  
9 coal mining industry, ~~and~~ the latter two of which shall be  
10 appointed by the Governor, ~~by~~ and with the advice and consent of  
11 the Senate: *Provided*, That any person ~~so~~ appointed while the  
12 Senate ~~of this state~~ is not in session shall be permitted to serve  
13 in an acting capacity for one year from appointment or until the  
14 next session of the Legislature, whichever is less. As soon as  
15 practical after appointment and qualification of the member  
16 appointed by the Governor, the Governor shall convene a meeting of  
17 the board for the purpose of organizing and electing a chair, who  
18 serves as such until a successor is elected by the board.

19           (b) A vacancy in the membership appointed by the Governor  
20 shall be filled by appointment by the Governor within sixty days  
21 after the occurrence of ~~such~~ the vacancy. Before performing any  
22 duty hereunder, each member of the board shall take and subscribe  
23 to the oath required by section 5, article IV of the Constitution  
24 of West Virginia, and ~~serves~~ thereafter until a successor has been  
25 appointed and qualified.



1 (c) The memberss of the board appointed by the Governor shall  
2 be paid the same compensation, and each member of the board shall  
3 be paid the expense reimbursement, as is paid to members of the  
4 Legislature for their interim duties as recommended by the Citizens  
5 Legislative Compensation Commission and authorized by law for each  
6 day or portion thereof engaged in the discharge of official duties.  
7 Each member of the board shall also be reimbursed for all  
8 reasonable and necessary expenses actually incurred in the  
9 performance of the duties as a member of the board.

10 (d) The ~~division~~ department shall furnish office and clerical  
11 staff and supplies and services, including reporters for hearings,  
12 as required by the board.

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

14 **§22C-9-1. Declaration of public policy; legislative findings.**

15 (a) It is hereby declared to be the public policy of this  
16 state and in the public interest to:

17 (1) Foster, encourage and promote exploration for and  
18 development, production, utilization and conservation of oil and  
19 gas resources;

20 (2) Prohibit waste of oil and gas resources and unnecessary  
21 surface loss of oil and gas and their constituents;

22 (3) Encourage the maximum recovery of oil and gas; and

23 (4) Safeguard, protect and enforce the correlative rights of  
24 operators and royalty owners in a pool or unconventional reservoir  
25 of oil or gas to the end that each such operator and royalty owner

1 may obtain his just and equitable share of production from such  
2 pool or unconventional reservoir of oil or gas.

3 (b) The Legislature hereby determines and finds that oil and  
4 natural gas found in West Virginia in shallow sands or strata have  
5 been produced continuously for more than one hundred years; that  
6 oil and gas deposits in such shallow sands or strata have  
7 geological and other characteristics different than those found in  
8 ~~deeper~~ other formations; and that in order to encourage the maximum  
9 recovery of oil and gas from all productive formations in this  
10 state, it is not in the public interest, with the exceptions of  
11 shallow wells utilized in a secondary recovery program and  
12 horizontal shallow wells, to enact statutory provisions relating to  
13 the exploration for or production from oil and gas from shallow  
14 wells, as defined in section two of this article, but that it is in  
15 the public interest to enact statutory provisions establishing  
16 regulatory procedures and principles to be applied to the  
17 exploration for or production of oil and gas from deep wells and  
18 horizontal shallow wells, as defined in said section two.

19 **§22C-9-2. Definitions.**

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

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

25 (2) "Director" means the director of the ~~Division~~ of

1 ~~Environmental Protection oil and gas~~ and "~~chief~~" "secretary" means  
2 ~~the chief of the office of oil and gas~~ secretary of the Department  
3 of Environmental Protection;

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

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

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

24 (6) "Independent producer" means a producer of crude oil or  
25 natural gas whose allowance for depletion is determined under

1 Section 613A of the federal Internal Revenue Code in effect on July  
2 1, 1997;

3 (7) "Net proceeds" means the actual proceeds received less  
4 post-production costs incurred downstream of the wellhead,  
5 including without limitation, gathering, compression, treating,  
6 transportation, and marketing costs;

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

12 ~~(8)~~ (9) "Gas" means all natural gas and all other fluid  
13 hydrocarbons not defined as oil in subdivision ~~(7)~~ (8) of this  
14 section;

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

25 (11) "Pooling" means the integration of interests within a

1 drilling unit created voluntarily or pursuant to this article to  
2 facilitate the drilling of wells producing from one or more  
3 unconventional reservoirs;

4 ~~(10)~~ (12) "Well" means any shaft or hole sunk, drilled, bored  
5 or dug into the earth or underground strata for the extraction of  
6 oil or gas;

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

17 ~~(12)~~ (14) "Deep well" means any well, other than a shallow  
18 well or coalbed methane well, drilled and completed in to a  
19 formation ~~at or~~ below the top of the uppermost member of the  
20 "Onondaga Group;"

21 (15) "Horizontal shallow well" means a shallow well that is  
22 first drilled on a vertical or directional plane, but which is  
23 eventually curved to become horizontal (or near horizontal) in  
24 order to parallel a particular geologic formation. Multiple  
25 horizontal wells may be drilled from the same surface well pad. A

1 horizontal shallow well may also have multiple horizontal side  
2 laterals drilled into the same formation. A horizontal shallow  
3 well may have completions into multiple formations above the  
4 Onondaga Group from the same well base to the extent the operator  
5 has the right to develop those formations and has or obtains the  
6 voluntary rights or any necessary commission authorization to do  
7 so;

8 (16) "Lateral" means the portions of a well bore that deviate  
9 from approximate vertical orientation to approximate horizontal  
10 orientation and all well bores beyond such deviation to total depth  
11 or terminus thereof;

12 ~~(13)~~ (17) "Drilling unit" means the acreage on which one or  
13 more wells may be drilled to produce oil or gas from a specified  
14 formation;

15 (18) "Unconventional reservoir" means any geological formation  
16 existing that contains or is otherwise productive of oil or natural  
17 gas that generally cannot be produced at economic flow rates nor in  
18 economic volumes except by wells stimulated by hydraulic fracture  
19 treatments, a horizontal wellbore, or by using multilateral  
20 wellbores or some other technique to expose more of the reservoir  
21 to the wellbore;

22 (19) "Unitization" means the combination of two or more  
23 leasehold tracks or mineral interests to more efficiently extract  
24 the oil or gas from the target formation;

25 ~~(14)~~ (20) "Waste" means and includes:

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

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

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

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

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

1 tracts.

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

5 **§22C-9-3. Application of article; exclusions.**

6 (a) Except as provided in subsection (b) of this section, the  
7 provisions of this article shall apply to all lands located in this  
8 state, however owned, including any lands owned or administered by  
9 any government or any agency or subdivision thereof, over which the  
10 state has jurisdiction under its police power. The provisions of  
11 this article are in addition to and not in derogation of or  
12 substitution for the provisions of article six, chapter twenty-two  
13 of this code.

14 (b) This article shall not apply to or affect:

15 (1) Shallow wells other than those utilized in secondary  
16 recovery programs as set forth in section eight of this article and  
17 horizontal shallow wells as set forth in section nine of this  
18 article;

19 (2) Any well commenced or completed prior to ~~the ninth day of~~  
20 ~~March, one thousand nine hundred seventy-two~~ March 9, 1972, unless  
21 ~~such~~ the well is, after completion (whether ~~such~~ completion is  
22 prior or subsequent to that date):

23 (A) Deepened subsequent to that date to produce from a  
24 formation at or below the top of the uppermost member of the  
25 "Onondaga Group"; or



1 (B) Involved in secondary recovery operations for oil under an  
2 order of the commission entered pursuant to section eight of this  
3 article;

4 (3) Gas storage operations or any well employed to inject gas  
5 into or withdraw gas from a gas storage reservoir or any well  
6 employed for storage observation; or

7 (4) Free gas rights.

8 (c) The provisions of this article shall not be construed to  
9 grant to the commissioner or the commission authority or power to:

10 (1) Limit production or output, or prorate production of any  
11 oil or gas well, except as provided in subdivision (6), subsection  
12 (a), section seven of this article; or

13 (2) Fix prices of oil or gas.

14 (d) Nothing contained in either this chapter or chapter  
15 twenty-two of this code may be construed so as to require, prior to  
16 commencement of plugging operations, a lessee under a lease  
17 covering a well to give or sell the well to any person owning an  
18 interest in the well, including, but not limited to, a respective  
19 lessor, or agent of the lessor, nor shall the lessee be required to  
20 grant to a person owning an interest in the well, including, but  
21 not limited to, a respective lessor, or agent of a lessor, an  
22 opportunity to qualify under section twenty-six, article six,  
23 chapter twenty-two of this code to continue operation of the well.

24 **§22C-9-4. Oil and gas conservation commissioner and commission;**

25 **commission membership; qualifications of members;**

1           **terms of members; vacancies on commission; meetings;**  
2           **compensation and expenses; appointment and**  
3           **qualifications of commissioner; general powers and**  
4           **duties.**

5           (a) The "Oil and Gas Conservation Commission" shall be  
6 composed of five members. The ~~director of the Division of~~  
7 ~~Environmental Protection and the chief of the office of oil and gas~~  
8 State Geologist or his or her designee shall be a members of the  
9 commission ex officio. The remaining ~~three~~ four members of the  
10 commission shall be appointed by the Governor by and with the  
11 advice and consent of the Senate, and may not be employees of the  
12 ~~division~~ Department of Environmental Protection. Of the ~~three~~ four  
13 members appointed by the Governor, one shall be an independent  
14 producer and at least one shall be a public member not engaged in  
15 an activity under the jurisdiction of the Public Service Commission  
16 or the federal energy regulatory commission. The third appointee  
17 shall possess a degree from an accredited college or university in  
18 petroleum engineering or geology and must be a registered  
19 professional engineer with particular knowledge and experience in  
20 the oil and gas industry and shall serve as commissioner and as  
21 chair of the commission. The fourth appointee shall be a member of  
22 the public representing the interests of surface owners of real  
23 property.

24           (b) The members of the commission appointed by the Governor

1 shall be appointed for overlapping terms of six years each, except  
2 that the original appointments shall be for terms of two, four and  
3 six years, respectively. Each member appointed by the Governor  
4 shall serve until the member's successor has been appointed and  
5 qualified. Members may be appointed by the Governor to serve any  
6 number of terms. The members of the commission appointed by the  
7 Governor, before performing any duty hereunder, shall take and  
8 subscribe to the oath required by section 5, article IV of the  
9 Constitution of West Virginia. Vacancies in the membership  
10 appointed by the Governor shall be filled by appointment by the  
11 Governor for the unexpired term of the member whose office is  
12 vacant, and ~~such~~ the appointment shall be made by the Governor  
13 within sixty days of the occurrence of ~~such~~ the vacancy. Any  
14 member appointed by the Governor may be removed by the Governor in  
15 case of incompetency, neglect of duty, gross immorality or  
16 malfeasance in office. A commission member's appointment shall be  
17 terminated as a matter of law if that member fails to attend three  
18 consecutive meetings. The Governor shall appoint a replacement  
19 within thirty days of the termination.

20 (c) The commission shall meet at ~~such~~ the times and places ~~as~~  
21 ~~shall be~~ designated by the chair. The chair may call a meeting of  
22 the commission at any time, and shall call a meeting of the  
23 commission upon the written request of two members or upon the  
24 written request of the oil and gas conservation commissioner or the  
25 ~~chief~~ director of the ~~office~~ division of oil and gas. Notification

1 of each meeting shall be given in writing to each member by the  
2 chair at least fourteen calendar days in advance of the meeting.

3 Three members of the commission, at least two of whom are appointed  
4 members, shall constitute a quorum for the transaction of any  
5 business.

6 (d) The commission shall pay each member the same compensation  
7 as is paid to members of the Legislature for their interim duties  
8 as recommended by the Citizens Legislative Compensation Commission  
9 and authorized by law for each day or portion thereof engaged in  
10 the discharge of official duties and shall reimburse each member  
11 for actual and necessary expenses incurred in the discharge of  
12 official duties.

13 (e) The commission is hereby empowered and it is the  
14 commission's duty to execute and carry out, administer and enforce  
15 the provisions of this article in the manner provided herein.  
16 Subject to the provisions of section three of this article, the  
17 commission has jurisdiction and authority over all persons and  
18 property necessary therefor. The commission is authorized to make  
19 ~~such~~ investigation of records and facilities as the commission  
20 deems proper. In the event of a conflict between the duty to  
21 prevent waste and the duty to protect correlative rights, the  
22 commission's duty to prevent waste shall be paramount.

23 (f) Without limiting the commission's general authority, the  
24 commission shall have specific authority to:

25 (1) Regulate the spacing of deep wells;

1           (2) Make and enforce reasonable rules and orders reasonably  
2 necessary to prevent waste, protect correlative rights, govern the  
3 practice and procedure before the commission and otherwise  
4 administer the provisions of this article;

5           (3) Issue subpoenas for the attendance of witnesses and  
6 subpoenas duces tecum for the production of any books, records,  
7 maps, charts, diagrams and other pertinent documents, and  
8 administer oaths and affirmations to such witnesses, whenever, in  
9 the judgment of the commission, it is necessary to do so for the  
10 effective discharge of the commission's duties under the provisions  
11 of this article; and

12           (4) Serve as technical advisor regarding oil and gas to the  
13 Legislature, its members and committees, to the ~~chief~~ director of  
14 ~~office~~ the division of oil and gas, to the ~~division~~ Department of  
15 Environmental Protection and to any other agency of state  
16 government having responsibility related to the oil and gas  
17 industry.

18           (g) The commission may delegate to the commission staff the  
19 authority to approve or deny an application for new well permits,  
20 to establish drilling units or special field rules if:

21           (1) The application conforms to the rules of the commission;  
22 and

23           (2) No request for hearing has been received.

24           (h) The commission may not delegate its authority to:

25           (1) Propose legislative rules;

1 (2) Approve or deny an application for new well permits, to  
2 establish drilling units or special field rules if the conditions  
3 set forth in subsection (g) of this section are not met; or

4 (3) Approve or deny an application for the pooling of  
5 interests within a drilling unit.

6 (i) Any exception to the field rules or the spacing of wells  
7 which does not conform to the rules of the commission, and any  
8 application for the pooling of interests within a drilling unit,  
9 must be presented to and heard before the commission.

10 **§22C-9-7a. Drilling units and the pooling of interests in drilling**  
11 **units in connection with shallow horizontal oil**  
12 **or gas wells.**

13 (a) Drilling units.

14 (1) An application to establish drilling units may be filed  
15 with the commission by the operator or owner of any lands directly  
16 and immediately affected by the drilling of a horizontal shallow  
17 oil or gas well. Each application shall contain information as  
18 prescribed by reasonable rules proposed by the commission in  
19 accordance with the provisions of section five of this article.

20 (2) To establish a drilling unit pursuant to this section, the  
21 applicant must control, by ownership, lease or contract, at least  
22 seventy-five percent of the net acreage (calculating partial  
23 interests on a pro rata, net acreage basis) in such existing or  
24 proposed drilling unit.

25 (3) Upon the filing of an application to establish drilling

1 units, the commission shall provide notice to all interested  
2 parties in accordance with section five of this article.

3 Interested parties to a proposed drilling unit are persons who  
4 control an interest in the proposed drilling unit who have not  
5 otherwise entered into a voluntary agreement with the applicant and  
6 the owners of oil and gas in the target formation in land directly  
7 adjacent to but outside the proposed drilling unit.

8       (4) If the application does not conform to the existing rules  
9 of the commission, then the commission shall set a hearing and  
10 provide notice to all interested parties. If the application  
11 conforms to the rules of the commission, the commission shall  
12 provide notice of the filing of the application to all interested  
13 parties. Each notice shall describe the area for which a  
14 unitization order is to be entered in recognizable, narrative  
15 terms; contain other information as is essential to the giving of  
16 proper notice, including the time and date and place of a hearing,  
17 if any; include a statement that any party has a right to a hearing  
18 before the commission; and include a statement that any request for  
19 hearing must be filed with the commission within thirty days of  
20 receipt of notice. If no request for hearing has been received  
21 within the thirty days following receipt of the notice, the  
22 commission may proceed to process the application. If a request  
23 for hearing has been received by the commission, then the  
24 commission shall set a hearing and provide notice to all interested  
25 parties.

1           (5) The commission shall determine the acreage to be contained  
2 within each drilling unit, the shape thereof, and the minimum  
3 distance from the outside boundary of the unit at which a  
4 horizontal shallow well may be drilled thereon. The commission  
5 shall consider:

6           (A) The surface topography and property lines of the lands  
7 underlaid by the drilling units to be included in such order;

8           (B) The azimuth of the horizontal shallow wells to be drilled,  
9 the location of the drilling pad within the drilling unit on which  
10 multiple wells will be drilled, and the number of horizontal  
11 shallow wells to be drilled on the pad;

12           (C) The plan of horizontal shallow well spacing then being  
13 employed or proposed in the drilling unit for the lands;

14           (D) The depth at which production from the drilling unit is  
15 located;

16           (E) The nature and character of the producing unconventional  
17 reservoir, and whether the substance produced or sought to be  
18 produced is gas or oil or both;

19           (F) The maximum area which may be drained efficiently and  
20 economically by one horizontal shallow well;

21           (G) Any established or proposed drilling units for the same  
22 formation that are adjacent to the proposed drilling unit; and

23           (H) Any other available geological or scientific data  
24 pertaining to the unconventional reservoir which may be of  
25 probative value to the commission in determining the proper



1 horizontal shallow well drilling units therefor.

2       If the commission determines that additional drilling units  
3 should be established, the commission shall enter an order  
4 establishing those drilling units of a specified and approximately  
5 uniform size and shape for each drilling unit subject to the  
6 provisions of this section.

7       (6) When it is determined that an unconventional reservoir  
8 underlies an area for which a unitization order is to be entered  
9 for a drilling unit or units, the commission shall include in its  
10 order all lands determined or believed to be affected by the  
11 drilling unit or units and exclude all other lands.

12       (7) No drilling unit established by the commission shall be  
13 smaller than the maximum area which can be drained efficiently and  
14 economically by one horizontal shallow well: *Provided*, That if  
15 there is not sufficient evidence from which to determine the area  
16 which can be drained efficiently and economically by one horizontal  
17 shallow well, the commission may enter an order establishing  
18 temporary drilling units for the orderly development of the  
19 unconventional reservoir pending the obtaining of information  
20 necessary to determine the ultimate spacing for the unconventional  
21 reservoir.

22       (8) In considering the request for drilling unit, the  
23 commission may establish additional units if it determines that the  
24 additional units are necessary to effectuate the purposes of this  
25 article. When establishing additional units, the commission shall

1 provide notice to all interested parties and allow all interested  
2 parties to participate in a hearing for the additional unit or  
3 units.

4       (9) A unitization order establishing drilling units shall  
5 specify the minimum distance from the nearest outside boundary of  
6 the drilling unit at which a horizontal shallow well may be  
7 drilled. If the commission finds that a horizontal shallow well to  
8 be drilled at or more than the specified minimum distance from the  
9 boundary of a drilling unit would not be likely to produce in  
10 paying quantities or will encounter surface conditions which would  
11 substantially add to the burden or hazard of drilling the  
12 horizontal shallow well, or that a location within the area  
13 permitted by the order is prohibited by the lawful order of any  
14 state agency or court, the commission is authorized after notice  
15 and hearing to make an order permitting the horizontal shallow well  
16 to be drilled at a location within the minimum distance prescribed  
17 by the order. In granting exceptions to the order, the commission  
18 may restrict the production from any horizontal shallow well so  
19 that each person entitled thereto in the drilling unit shall not  
20 produce or receive more than his or her just and equitable share of  
21 the production from the unconventional reservoir.

22       (10) An order establishing drilling units for an  
23 unconventional reservoir shall cover all lands determined or  
24 believed to be affected by the drilling unit or units, and may be  
25 modified by the commission from time to time to include additional

1 lands determined to be affected by the drilling unit or units or to  
2 exclude lands determined not to be affected by the drilling unit or  
3 units. An order establishing drilling units may be modified by the  
4 commission to permit the drilling of additional horizontal shallow  
5 wells on a reasonably uniform pattern at a uniform minimum distance  
6 from the nearest unit boundary as provided above. Any order  
7 modifying a prior order shall be made only after application by an  
8 interested operator and notice and hearing as prescribed herein for  
9 the original order: *Provided*, That drilling units established by  
10 order shall not exceed six hundred forty acres for a horizontal  
11 shallow gas well: *Provided, however*, That the commission may exceed  
12 the acreage limitation by ten percent if the applicant demonstrates  
13 that the area would be drained efficiently and economically by a  
14 larger drilling unit.

15 (11) After the date an application to establish drilling units  
16 has been filed with the commission, no additional horizontal  
17 shallow well shall be commenced for production from the proposed  
18 units until the order establishing drilling units has been made,  
19 unless the commencement of the horizontal shallow well is  
20 authorized by order of the commission.

21 (12) The commission shall, within forty-five days after the  
22 filing of an application to establish drilling units for an  
23 unconventional reservoir subject to the provisions of this section,  
24 enter an order establishing the drilling units, dismiss the  
25 application, or for good cause, continue the application process.

1           (13) As part of the order establishing a drilling unit, the  
2 commission shall prescribe just and reasonable terms and conditions  
3 upon which the royalty interests in the unit shall, in the absence  
4 of voluntary agreement, be deemed to be integrated without the  
5 necessity of a subsequent order integrating the royalty interests.

6           (14) If a hearing has been held on an application submitted  
7 pursuant to this subsection, the order shall be a final order. If  
8 no hearing has been held, the commission shall issue a proposed  
9 order and shall provide a copy of the proposed order, together with  
10 notice of the right to appeal and request a hearing, to all  
11 interested parties. Any party aggrieved by the proposed order may  
12 appeal the proposed order to the full commission and request a  
13 hearing. Notice of appeal and request for hearing shall be made in  
14 accordance with section ten of this article within thirty days of  
15 entry of the order. If the commission does not receive an appeal  
16 and request for hearing within thirty days, the proposed order  
17 shall become final.

18           (b) Pooling of interests in drilling units.

19           (1) When two or more separately owned tracts are embraced  
20 within a drilling unit, or when there are separately owned  
21 interests in all or a part of a drilling unit, the interested  
22 persons may pool their tracts or interests for the development and  
23 operation of the drilling unit. In the absence of voluntary  
24 pooling and upon application of the operator having the majority  
25 interest in the drilling unit, an operator may seek a pooling order

1 from the commission after notice is provided to interested parties  
2 and upon a hearing of the commission. Each notice shall describe  
3 the area for which an order is to be entered in recognizable,  
4 narrative terms; and contain such other information as is essential  
5 to the giving of proper notice, including the time and date and  
6 place of a hearing. After the hearing, the commission shall enter  
7 an order pooling all tracts or interests in the drilling unit for  
8 the development and operation thereof and for sharing production  
9 therefrom. Each pooling order shall be upon terms and conditions  
10 which are just and reasonable, and in no event shall drilling be  
11 initiated on the tract of an unleased owner without the owner's  
12 written consent.

13       (2) All operations, including, but not limited to, the  
14 commencement, drilling or operation of a horizontal shallow well  
15 upon any portion of a drilling unit for which a pooling order has  
16 been entered, shall be deemed for all purposes the conduct of  
17 operations upon each separately owned tract or portion thereof in  
18 the drilling unit by the several owners thereof. That portion of  
19 the production allocated to a separately owned tract or portion  
20 thereof included in a drilling unit shall, when produced, be deemed  
21 for all purposes to have been actually produced from the tract by  
22 a horizontal shallow well drilled thereon.

23       (3) Any pooling order under the provisions of subsection (b)  
24 shall authorize the drilling and operation of a horizontal shallow  
25 well for the production of oil or gas from the pooled acreage;

1 shall designate the operator to drill and operate the horizontal  
2 shallow well; shall prescribe the time and manner in which all  
3 owners of operating interests in the pooled tracts or portions of  
4 tracts may elect to participate therein; shall provide that all  
5 reasonable costs and expenses of drilling, completing, equipping,  
6 operating, plugging and abandoning the horizontal shallow well  
7 shall be borne, and all production therefrom shared, by all owners  
8 of operating interests in proportion to the net oil or gas acreage  
9 in the pooled tracts owned or under lease to each owner; and shall  
10 make provisions for payment of all reasonable costs thereof,  
11 including a reasonable charge for supervision and for interest on  
12 past-due accounts, by all those who elect to participate therein.

13       (4) In determining the operator, the commission should  
14 designate any person who controls seventy-five percent or more of  
15 the acreage in the pooled tracts. If no person owns more than  
16 seventy-five percent of the acreage in the pooled unit, the  
17 commission will designate the operator based upon the criteria that  
18 will effectuate the purposes of this article.

19       (5) Each pooling order shall specify the activities that the  
20 operator may conduct on the surface of the tracts subject to the  
21 order in accordance with the following criteria:

22       (A) Where the owner of a mineral interest that is subject to  
23 the pooling order has not leased its interest, surface disturbance  
24 may not be conducted upon the surface of the unleased mineral  
25 interest without consent from the owner or upon a showing by the

1 operator that there is no other feasible location within the  
2 drilling unit to locate the drilling pad or access road or pipeline  
3 incidental to the drilling activities.

4 (B) Where the owner of a mineral interest that is subject to  
5 the pooling order has leased its mineral interest, drilling  
6 activities may be conducted on the surface of the lease tract and  
7 the operator may construct and operate access roads and pipelines  
8 incidental to the drilling activities on the surface of all  
9 property subject to the pooling order in accordance with the terms  
10 of the lease governing surface activities if the operator provides  
11 the owners of the surface estate the notice provided for in section  
12 twelve, article six, chapter twenty-two of this code and if the  
13 operator provides the owner of the surface estate compensation for  
14 damages pursuant to the Oil and Gas Production Damage Compensation  
15 Act established in article seven, chapter twenty-two of this code.

16 (6) Upon request, any pooling order shall provide just and  
17 equitable alternatives whereby an owner of an operating interest  
18 who does not elect to participate in the risk and cost of the  
19 drilling of a horizontal shallow well may elect:

20 (A) Option 1. Either to assign an oil and gas lease ownership  
21 interest to the operator on such terms as the parties may agree or,  
22 if unable to agree, upon such terms as are established by the  
23 commission in an order; or to lease an unleased oil and gas  
24 ownership interest pursuant to the terms of the oil and gas lease  
25 the operator submitted with the application; or

1 (B) Option 2. To become a nonoperating working interest owner  
2 by participating in the risk and cost of the well in accordance  
3 with the terms of section six of this article and the joint  
4 operating agreement the operator submitted with the application; or

5 (C) Option 3. To participate in the operation of the well as  
6 a nonoperating carried interest owner in accordance with the terms  
7 of section six of this article and the joint operating agreement  
8 the operator submitted with the application ("Carried Well  
9 Operator").

10 (7) Any interest owners whose interests are already subject to  
11 an oil and gas lease shall have no election rights and, other than  
12 the operator having the right to pool the interests, their  
13 interests shall continue to be governed by the terms of their  
14 leases and in accordance with the provisions of this article. Any  
15 interest owner who does not make an election within the thirty days  
16 prescribed herein and any interest owner who chooses Option 2 but  
17 does not tender its share of the estimated drilling costs to the  
18 operator within thirty days from the date of the commission's order  
19 establishing the pool shall be deemed to have elected Option 1.

20 (A) The royalty interest shall be the weighted average of the  
21 royalties payable under all leases and parts of the leases  
22 controlled by the operator that are included in the unit as of the  
23 date of the application, and the minimum royalty shall be the  
24 minimum royalty for oil and gas leases at the time of the  
25 application pursuant to laws of this state: *Provided*, That any



1 royalty owner who, in good faith, has entered into an arm's length,  
2 bona fide lease or other contract providing for any different  
3 royalty or payment amount shall be entitled to receive the royalty  
4 calculated at the rate provided for in that contract subject to the  
5 lease attribution provisions of this section. Each person entitled  
6 to a royalty shall be entitled to the royalty interest of the net  
7 proceeds received by the operator for the sale of the oil or gas  
8 produced from the well development and operation multiplied by that  
9 person's interest within the unit.

10 (B) The working interest owners' net revenue share shall be  
11 the net proceeds of sale of oil and gas multiplied by that person's  
12 interest within the unit. Any overriding royalties, royalties  
13 exceeding a one-eighth royalty or other costs attributable solely  
14 to an oil and gas lease shall be paid out of the applicable  
15 interest owner's net revenue share.

16 (C) In the case of Option 3, the proportionate part of the  
17 completed-for-production costs allocable to the carried well  
18 operator's interest shall be charged against the carried well  
19 operator's share of production from the drilling unit. The carried  
20 well operator's rights, interests, and claims in and to the oil and  
21 gas obtained from the drilling unit are assigned to the operator  
22 until the proceeds from the sale of the carried well operator's  
23 share of production from the drilling unit (exclusive of any  
24 royalty, excess or overriding royalty or other nonoperating or  
25 noncost bearing burden reserved in any lease, assignment thereof or

1 agreement relating thereto covering the interest) equals risk  
2 premium to be determined by the commission to be between two  
3 hundred and three hundred percent of the carried well operator's  
4 share of the completed-for-production costs allocable to the  
5 interest of the carried interest owner. The completed-for-  
6 production costs are the operator's actual costs for the well  
7 development and operation.

8 (D) After each owner has made, or has been deemed to have  
9 made, an election pursuant to subsection (5) of this section, the  
10 operator shall distribute a statement of interests to the interest  
11 owners whose interests have been pooled according to this section  
12 of the code. The statement of interests shall set out the net  
13 revenue interest of each working interest owner, including each  
14 carried interest owner, and the royalty interest of each royalty  
15 owner. The fractional interest of each owner shall be expressed as  
16 a decimal carried to the eighth place. Thereafter, payments shall  
17 be made to working interest owners, carried interest owners, and  
18 royalty owners in accordance with the statement of interests,  
19 except that payments attributable to conflicting claims may be  
20 deposited in a suspense account or otherwise dealt with in  
21 accordance with the provisions of the applicable lease or joint  
22 operating agreement.

23 (E) Upon resolution of conflicting claims, either by voluntary  
24 agreement of the parties or a final judicial determination, the  
25 operator shall distribute a revised statement of interests

1 reflecting the agreement or determination.

2       (F) To the extent an interest owner cannot be determined or  
3 located after diligent efforts by the well operator, the well  
4 operator shall hold the monies payable to that interest owner in a  
5 suspense account for that interest owner until that interest owner  
6 is located or the property is deemed abandoned and disposed of in  
7 accordance with the provisions of the Uniform Unclaimed Property  
8 Act, whichever comes first.

9       (8) If a dispute shall arise as to the costs of drilling,  
10 completing, equipping and operating a deep well, the commission  
11 shall determine and apportion the costs, within ninety days from  
12 the date of written notification to the commission of the existence  
13 of such dispute.

14       (9) The commission shall, within forty-five days after the  
15 filing of an application, enter an order, dismiss the application,  
16 or for good cause, continue the application process.

NOTE: The purpose of this bill is to modernize the oil and gas regulatory program and to provide a means to regulate horizontal drilling and drilling processes that utilize large volumes of water. It also adds "timber" to the list of things for which a surface owner may be compensated. The bill also removes the Chief of the Office of Oil & Gas from the Shallow Gas Well Review Board and replaces the chief with a person representing the interests of surface owners of real property. Finally, it removes the Secretary of the Department of Environmental Protection and the Chief of the Office of Oil & Gas from the Conservation Commission and replaces them with the state Geologist and a person representing the interests of surface owners of real property and provides a new section to regulate pooling of gas from horizontal shallow wells.

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

§22C-9-7a is new; therefore, strike-throughs and underscoring have been omitted.