

COMMITTEE SUBSTITUTE

FOR

H. B. 2878

(BY DELEGATES MANCHIN, FLEISCHAUER, CAPUTO,
WELLS, MANYPENNY, BARKER, MOORE, MILEY AND FERRO)

(Originating in the House Committee on the Judiciary)
[February 24, 2011]

A BILL to amend and reenact §22-6-1, §22-6-8 and §22-6-9 of the Code of West Virginia, 1931, as amended, and to amend said code by adding thereto a new article, designated §22-6A-1, §22-6A-2, §22-6A-3, §22-6A-4, §22-6A-5, §22-6A-6, §22-6A-7, §22-6A-8, §22-6A-9, §22-6A-10, §22-6A-11, §22-6A-12 and §22-6A-13; and to amend and reenact §22-7-3 of said code, all

relating to the regulation of oil and gas wells; providing definitions; requiring disclosure of binding contract; providing additional notice requirements to surface owners; requiring operators to take certain actions to assist surface owners; establishing new regulatory scheme for horizontal shallow wells; providing purpose and findings for horizontal shallow wells regulation; requiring compliance with other programs; requiring certification from department of highways; establishing well location restrictions an exceptions thereto; providing agency inspection requirements; authorizing predrilling water well inspections; requiring hydraulic fracturing fluids monitoring, recordkeeping and reporting requirements; providing requirements associated with pits and impoundments; establishing a water management plan; establishing requirements relating to water withdrawals; providing limitations on local ordinances; prohibiting construction on certain surface owners without authorization; requiring reports to the legislature; establishing permit application rulemaking authority; and expanding timber

compensation requirements for lost timber removed during oil and gas well activities.

Be it enacted by the Legislature of West Virginia:

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

**ARTICLE 6. DIVISION OF OIL AND GAS; OIL AND GAS
WELLS; ADMINISTRATION;
ENFORCEMENT.**

§22-6-1. Definitions.

1 Unless the context in which used clearly requires a
2 different meaning, as used in this article and article six-a of
3 this chapter:

4 (a) “Administratively complete application” means an
5 application for permit approval that the secretary determines
6 to contain information addressing each application

7 requirement of the regulatory program and to contain all
8 information necessary to initiate processing and review;

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

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

22 (a) (d) “Casing” means a string or strings of pipe
23 commonly placed in wells drilled for natural gas or
24 petroleum or both;

25 ~~(b)~~ (e) “Cement” means hydraulic cement properly mixed
26 with water;

27 ~~(c)~~ (f) “Chair” means the chair of the West Virginia
28 Shallow Gas Well Review Board as provided for in section
29 four, article eight, chapter twenty-two-c of this code;

30 ~~(d)~~ (g) “Coal operator” means any person or persons,
31 firm, partnership, partnership association or corporation that
32 proposes to or does operate a coal mine;

33 ~~(e)~~ (h) “Coal seam” and “workable coal bed” are
34 interchangeable terms and mean any seam of coal twenty
35 inches or more in thickness, unless a seam of less thickness
36 is being commercially worked, or can in the judgment of the
37 department foreseeably be commercially worked and will
38 require protection if wells are drilled through it;

39 ~~(f) “Director” means the director of the Division of~~
40 ~~Environmental Protection as established in article one of this~~
41 ~~chapter or such other person to whom the director has~~
42 ~~delegated authority or duties pursuant to sections six or eight,~~
43 ~~article one of this chapter;~~

44 (g) (i) “Deep well” means any well other than a shallow
45 well or coalbed methane well, drilled ~~and completed in~~ to a
46 formation ~~at or~~ below the top of the uppermost member of
47 the “Onondaga Group;”

48 (h) (j) “Expanding cement” means any cement approved
49 by the ~~office~~ division of oil and gas which expands during
50 the hardening process, including, but not limited to, regular
51 oil field cements with the proper additives;

52 (i) (k) “Facility” means any facility utilized in the oil and
53 gas industry in this state ~~and~~ including but not limited to
54 those specifically named or referred to in this article or in
55 article six-a, eight, or nine, ten or twenty-one of this chapter,
56 other than a well or well site;

57 (j) (l) “Gas” means all natural gas and all other fluid
58 hydrocarbons not defined as oil in this section;

59 (m) “Horizontal shallow well” means a shallow well that
60 is first drilled on a vertical or directional plane, but which is
61 eventually curved to become horizontal (or near horizontal)
62 in order to parallel a particular geologic formation. Multiple

63 horizontal wells may be drilled from the same surface well
64 pad. A horizontal shallow well may also have multiple
65 horizontal side laterals drilled into the same formation.

66 (n) “Impoundment” means a man-made excavation or
67 diked area for the retention of fresh water and into which no
68 wastes of any kind are placed;

69 (o) “Modification” means any change to the permit or
70 permit application that would require renoteice to any party
71 originally receiving notice as part of the permit application or
72 any changes to the plat or casing program, whether or not
73 such changes would require renoteice;

74 (p) “Occupied dwelling” means any building that is
75 currently being used on a regular or periodic basis for human
76 habitation;

77 ~~(k)~~ (q) “Oil” means natural crude oil or petroleum and
78 other hydrocarbons, regardless of gravity, which are
79 produced at the well in liquid form by ordinary production
80 methods and which are not the result of condensation of gas
81 after it leaves the underground reservoirs;

82 (t) (r) "Owner" when used with reference to any well,
83 shall include any person or persons, firm, partnership,
84 partnership association or corporation that owns, manages,
85 operates, controls or possesses such well as principal, or as
86 lessee or contractor, employee or agent of such principal;

87 (m) (s) "Owner" when used with reference to any coal
88 seam, shall include any person or persons who own, lease or
89 operate such coal seam;

90 (n) (t) "Person" means any natural person, corporation,
91 firm, partnership, partnership association, venture, receiver,
92 trustee, executor, administrator, guardian, fiduciary or other
93 representative of any kind, and includes any government or
94 any political subdivision or any agency thereof;

95 (u) "Pit" means a man-made excavation or diked area that
96 contains or is intended to contain an accumulation of process
97 waste fluids, drill cuttings or any other liquid substance that
98 could impact surface or groundwater;

99 (v) "Pollutant" shall have the same meaning as provided
100 in subsection (17), section three, article eleven, chapter
101 twenty-two of this code;

102 ~~(o)~~ (w) “Plat” means a map, drawing or print showing the
103 location of a well or wells as herein defined;

104 ~~(p)~~ (x) “Review board” means the West Virginia Shallow
105 Gas Well Review Board as provided for in section four,
106 article eight, chapter twenty-two-c of this code;

107 ~~(q)~~ (y) “Safe mining through of a well” means the mining
108 of coal in a workable coal bed up to a well which penetrates
109 such workable coal bed and through such well so that the
110 casing or plug in the well bore where the well penetrates the
111 workable coal bed is severed;

112 (z) “Secretary” means the Cabinet Secretary of the
113 Department of Environmental Protection as established in
114 article one of this chapter or such other person to whom the
115 secretary has delegated authority or duties pursuant to
116 sections six or eight, article one of this chapter;

117 ~~(r)~~ (aa) “Shallow well” means any gas well, other than a
118 coal bed methane well, drilled no deeper than one hundred
119 feet below the top of the “Onondaga Group” and completed
120 in a formation above the top of the uppermost member of the

121 “Onondaga Group”: *Provided*, That in drilling a shallow well
122 the operator may penetrate into the “Onondaga Group” to a
123 reasonable depth, not in excess of ~~twenty~~ 100 feet, in order
124 to allow for logging and completion operations, but in
125 drilling a shallow well the operator may penetrate into the
126 “Onondaga Group” to a reasonable depth, not in excess of
127 100 feet, in order to allow for logging and completion
128 operations, but in no event may the “Onondaga Group”
129 formation or any formation below the “Onondaga Group” be
130 otherwise produced, perforated or stimulated in any manner;
131 (bb) “Significant, imminent environmental harm to land,
132 air or water resources” means the existence of any condition
133 or practice or any violation of a permit or other requirement
134 of this article or article six-a of this chapter, which condition,
135 practice of violation could reasonably be expected to cause
136 significant and imminent environmental harm to land, air or
137 water resources. The term “environmental harm” means any
138 material adverse impact on land, air or water resources,
139 including but not limited to plant, wildlife and fish, and the

140 environmental harm is imminent if a condition or practice
141 exists that is causing the harm or may reasonably be expected
142 to cause the harm at any time before the end of the abatement
143 time set by the secretary. An environmental harm is
144 “significant” if that harm is material and not immediately
145 repairable;

146 (s)(cc) “Stimulate” means any action taken by a well
147 operator to increase the inherent productivity of an oil or gas
148 well, including, but not limited to, fracturing, shooting or
149 acidizing, but excluding cleaning out, bailing or work over
150 operations;

151 (t)(dd) “Waste” means: (i) Physical waste, as the term is
152 generally understood in the oil and gas industry; (ii) the
153 locating, drilling, equipping, operating or producing of any
154 oil or gas well in a manner that causes, or tends to cause a
155 substantial reduction in the quantity of oil and gas ultimately
156 recoverable from a pool under prudent and proper operations,
157 or that causes or tends to cause a substantial or unnecessary
158 or excessive surface loss of oil or gas; or (iii) the drilling of

159 more deep wells than are reasonably required to recover
160 efficiently and economically the maximum amount of oil and
161 gas from a pool; (iv) substantially inefficient, excessive or
162 improper use, or the substantially unnecessary dissipation of,
163 reservoir energy, it being understood that nothing in this
164 chapter shall be construed to authorize any agency of the
165 state to impose mandatory spacing of shallow wells except
166 for the provisions of section eight, article nine, chapter
167 twenty-two-c of this code and the provisions of article eight,
168 chapter twenty-two-c of this code; (v) inefficient storing of
169 oil or gas: *Provided*, That storage in accordance with a
170 certificate of public convenience issued by the Federal
171 Energy Regulatory Commission shall be conclusively
172 presumed to be efficient; and (vi) other underground or
173 surface waste in the production or storage of oil, gas or
174 condensate, however caused. Waste does not include gas
175 vented or released from any mine areas as defined in section
176 two, article one, chapter twenty-two-a of this code or from
177 adjacent coal seams which are the subject of a current permit

178 issued under article two of chapter twenty-two-a of this code:

179 *Provided, however,* That nothing in this exclusion is intended

180 to address ownership of the gas;

181 (ee) “Waters of this state” Shall have the same meaning

182 as the term “waters” as provided in subsection (23), section

183 three, article eleven, chapter twenty-two of this code;

184 ~~(u)~~(ff) “Well” means any shaft or hole sunk, drilled,

185 bored or dug into the earth or into underground strata for the

186 extraction or injection or placement of any liquid or gas, or

187 any shaft or hole sunk or used in conjunction with such

188 extraction or injection or placement. The term “well” does

189 not include any shaft or hole sunk, drilled, bored or dug into

190 the earth for the sole purpose of core drilling or pumping or

191 extracting therefrom potable, fresh or usable water for

192 household, domestic, industrial, agricultural or public use;

193 ~~(v)~~(gg) “Well work” means the drilling, redrilling,

194 deepening, stimulating, pressuring by injection of any fluid,

195 converting from one type of well to another, combining or

196 physically changing to allow the migration of fluid from one

197 formation to another or plugging or replugging of any well;

198 and

199 ~~(w)~~(hh) “Well operator” or “operator” means any person

200 or persons, firm, partnership, partnership association or

201 corporation that proposes to or does locate, drill, operate or

202 abandon any well as herein defined.

203 ~~(x) “Pollutant shall have the same meaning as provided~~

204 ~~in subsection (17), section three, article eleven, chapter~~

205 ~~twenty-two of this code, and~~

206 ~~(y) “Waters of this state” shall have the same meaning as~~

207 ~~the term “waters” as provided in subsection (23), section~~

208 ~~three,~~

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

1 (a) The Legislature hereby finds and declares:

2 (1) That a significant portion of the oil and gas

3 underlying this state is subject to development pursuant to

4 leases or other continuing contractual agreements wherein

5 the owners of ~~such~~ the oil and gas are paid upon a royalty or

6 rental basis known in the industry as the annual flat well
7 royalty basis, in which the royalty is based solely on the
8 existence of a producing well, and thus is not inherently
9 related to the volume of the oil and gas produced or
10 marketed;

11 (2) That continued exploitation of the natural resources
12 of this state in exchange for such wholly inadequate
13 compensation is unfair, oppressive, works an unjust hardship
14 on the owners of the oil and gas in place, and unreasonably
15 deprives the economy of the State of West Virginia of the
16 just benefit of the natural wealth of this state;

17 (3) That a great portion, if not all, of such leases or other
18 continuing contracts based upon or calling for an annual flat
19 well royalty have been in existence for a great many years
20 and were entered into at a time when the techniques by which
21 oil and gas are currently extracted, produced or marketed
22 were not known or contemplated by the parties, nor was it
23 contemplated by the parties that oil and gas would be
24 recovered or extracted or produced or marketed from the

25 depths and horizons currently being developed by the well
26 operators;

27 (4) That while being fully cognizant that the provisions
28 of section 10, article I of the United States Constitution and
29 of section 4, article III of the Constitution of West Virginia;
30 proscribe the enactment of any law impairing the obligation
31 of a contract, the Legislature further finds that it is a valid
32 exercise of the police powers of this state and in the interest
33 of the State of West Virginia and in furtherance of the
34 welfare of its citizens; to discourage as far as Constitutionally
35 possible the production and marketing of oil and gas located
36 in this state under the type of leases or other continuing
37 contracts described above.

38 (b) In the light of the foregoing findings, the Legislature
39 hereby declares that it is the policy of this state, to the extent
40 possible, to prevent the extraction, production or marketing
41 of oil or gas under a lease or leases or other continuing
42 contract or contracts providing a flat well royalty or any
43 similar provisions for compensation to the owner of the oil

44 and gas in place, which is not inherently related to the
45 volume of oil or gas produced or marketed, and toward these
46 ends, the Legislature further declares that it is the obligation
47 of this state to prohibit the issuance of any permit required by
48 it for the development of oil or gas where the right to
49 develop, extract, produce or market the same is based upon
50 such flat well royalty leases or other continuing contractual
51 agreements.

52 (c) Any lease or other continuing contract purporting to
53 convey an interest in the extraction, production or marketing
54 of oil or gas for a sum of money or for any other good and
55 valuable consideration shall contain in bold face type of a
56 font size not less than 16 points above the signature line the
57 following warning language: "This is a binding contract.
58 Before signing this contract, consult with an attorney of your
59 choice to ensure the protection of your rights and interests.

60 By placing our initials at the end of this paragraph we,
61 the lessors, acknowledge we have read and understood this
62 paragraph: _____ (initials of lessors)."

63 ~~(c)~~(d) In addition to any requirements contained in this
64 article with respect to the issuance of any permit required for
65 the drilling, redrilling, deepening, fracturing, stimulating,
66 pressuring, converting, combining or physically changing to
67 allow the migration of fluid from one formation to another,
68 no such permit shall be hereafter issued unless the lease or
69 leases or other continuing contract or contracts by which the
70 right to extract, produce or market the oil or gas is filed with
71 the permit application. ~~for such permit.~~ In lieu of filing the
72 lease or leases or other continuing contract or contracts, the
73 applicant for a permit described herein may file the
74 following:

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

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

80 (3) The book and page number wherein each ~~such~~ lease
81 or contract by which the right to extract, produce or market
82 the oil or gas is recorded; and

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

85 ~~(d)~~ (e) Unless the provisions of subsection (e) are met, no
86 ~~such~~ permit shall be ~~hereafter~~ issued after this article takes
87 effect for the drilling of a new oil or gas well or for the
88 redrilling, deepening, fracturing, stimulating, pressuring,
89 converting, combining or physically changing to allow the
90 migration of fluid from one formation to another, of an
91 existing oil or gas production well; where or if the right to
92 extract, produce or market the oil or gas is based upon a lease
93 or leases or other continuing contract or contracts providing
94 for flat well royalty or any similar provision for
95 compensation to the owner of the oil or gas in place which is
96 not inherently related to the volume of oil and gas so
97 extracted, produced and marketed.

98 ~~(e)~~ (f) To avoid the permit prohibition of subsection (d),
99 the applicant may file with ~~such~~ the application an affidavit
100 which certifies that the affiant is authorized by the owner of
101 the working interest in the well to state that it shall tender to

102 the owner of the oil or gas in place not less than one-eighth
103 of the total amount paid to or received by or allowed to the
104 owner of the working interest at the wellhead for the oil or
105 gas so extracted, produced or marketed before deducting the
106 amount to be paid to or set aside for the owner of the oil or
107 gas in place; on all such oil or gas to be extracted, produced
108 or marketed from the well. If ~~such~~ that affidavit ~~be~~ is filed
109 with ~~such~~ the application, then ~~such~~ the application for
110 permit shall be treated as if ~~such~~ the lease or leases or other
111 continuing contract or contracts comply with the provisions
112 of this section.

113 ~~(f)~~ (g) The owner of the oil or gas in place shall have a
114 cause of action to enforce the owner's rights established by
115 this section.

116 ~~(g)~~ (h) The provisions of this section shall not affect or
117 apply to any lease or leases or other continuing contract or
118 contracts for the underground storage of gas or any well
119 utilized in connection therewith or otherwise subject to the
120 provisions of article nine of this chapter.

121 ~~(h)~~ (i) The ~~director~~ secretary shall enforce this
122 requirement ~~irrespective~~ regardless of when the lease or other
123 continuing contract was executed.

124 ~~(i)~~(j) The provisions of this section shall not adversely
125 affect any rights to free gas.

§22-6-9. Notice to property owners.

1 (a) At least 30 days before entering upon the surface land
2 for surveying or staking for either proposed access routes on
3 drill sites, new well work or roads or other work requiring
4 disturbance of the surface that has not been disturbed before
5 by the operator of the gas well, an operator shall provide
6 notice of the fact that the operator is entering the surface land
7 and of the general purposes for such entry. The 30 days
8 begins to run from the surface owner's actual receipt of the
9 notice or refusal to accept the notice. The 30 days notice
10 before entry may be waived by a surface owner in writing.

11 (b) The notice shall include:

12 (1) The name, mailing address and physical address of
13 the operator, and a land line telephone number if one exists,

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

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

22 (3) A document referencing this article and other statutes
23 and rules regarding the surface owner's rights to notice of,
24 and to comment upon, the well work permit, the soil erosion
25 and sediment control manual of the division, the oil and gas
26 production damages compensation act; and

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

30 (c) At the meeting the operator shall point out and
31 explain his or her preference for locations of well sites,
32 impoundments, access roads and pipeline proposed to be

33 located on the surface, consider owner's suggestions for
34 alternate locations, and if the surface owner's suggestion
35 cannot be used, the operator shall make a record of the
36 reasons these suggestions cannot be used.

37 (a) ~~(d)~~ No later than the filing date of the application, the
38 applicant for a permit for any well work or for a certificate of
39 approval for the construction of an impoundment shall
40 deliver, by personal service or by ~~certified mail, return~~
41 ~~receipt requested~~ registered or certified mail or by any
42 method of delivery that requires a receipt or signature
43 confirmation, copies of the application, well plat, and erosion
44 and sediment control plan required by section ~~six~~ three of
45 this article to each of the following persons:

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

48 (2) The owners of record of the surface tract or tracts
49 overlying the oil and gas leasehold being developed by the
50 proposed well work, if ~~such~~ the surface tract is to be utilized
51 for roads or other land disturbance as described in the erosion

52 and sediment control plan submitted pursuant to section ~~six~~
53 three of this article;

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

57 (4) The owners of record of the surface tract or tracts
58 overlying the oil and gas leasehold being developed by the
59 proposed well work, if the surface tract is to be utilized for
60 the placement, construction, enlargement, alteration, repair,
61 removal or abandonment of any impoundment as described
62 in section five of this article; and

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

65 ~~(b)~~ (e) If more than three tenants in common or other
66 coowners of interests described in subsection ~~(a)~~ (d) of this
67 section hold interests in ~~such~~ the lands, the applicant may
68 serve the documents required upon the person described in
69 the records of the sheriff required to be maintained pursuant
70 to section eight, article one, chapter eleven-a of this code, or

71 publish in the county in which the well is located or is
72 proposed to be located a Class II legal advertisement as
73 described in section two, article three, chapter fifty-nine of
74 this code, containing such notice and information as the
75 ~~director~~ secretary shall prescribe by rule, with the first
76 publication date being at least ten days prior to the filing of
77 the permit application: *Provided*, That all owners occupying
78 the tracts where the well work is or is proposed to be located
79 ~~at~~ on the filing date of the permit application shall receive
80 actual service of the documents required by subsection (a) of
81 this section.

82 ~~(c)~~ (f) Materials served upon persons described in
83 subsections ~~(a)~~ (e) and ~~(b)~~ (f) of this section shall contain a
84 statement of the methods and time limits for filing comments,
85 who may file comments, ~~and~~ the name and address of the
86 ~~director~~ secretary for the purpose of filing comments and
87 obtaining additional information, and a statement that ~~such~~
88 those persons may request, at the time of submitting
89 comments, notice of the permit decision and a list of persons
90 qualified to test water as provided in this section.

91 ~~(d)~~ (g) Any person entitled to submit comments shall also
92 be entitled to receive a copy of the permit as issued or a copy
93 of the order modifying or denying the permit if ~~such~~ that
94 person requests ~~the receipt thereof~~ of them as a part of ~~the~~ his
95 or her comments concerning ~~said~~ the permit application.

96 ~~(e)~~ (h) Persons entitled to notice may contact the ~~district~~
97 ~~office of the division~~ department to ascertain the names and
98 locations of water testing laboratories in the subject area
99 capable and qualified to test water supplies in accordance
100 with standard accepted methods. In compiling ~~such~~ that list
101 of names the ~~division~~ department shall consult with the state
102 Bureau of Public Health and local health departments.

ARTICLE 6A. HORIZONTAL SHALLOW WELLS.

§22-6A-1. Applicability.

1 The provisions of this article apply to all horizontal
2 shallow wells as defined in section one of article six of this
3 chapter and are additional regulatory requirements for
4 horizontal shallow wells in addition to the provisions of
5 article six of this chapter. The provisions of section eight,

6 article eight, chapter twenty-two-c of this code also apply to
7 all horizontal shallow wells.

§22-6A-2. Purpose and legislative findings.

1 (a) Findings. The drilling, transportation and processing
2 of the gas from wells using hydraulic fracturing and
3 horizontal drilling will result in billions of dollars' worth of
4 gas being harvested, will require the investment of billions of
5 dollars in West Virginia and will generate thousands of
6 jobs. It is the policy of this state to ensure that natural
7 resources are harvested in an environmentally sound manner
8 and in a manner that benefits the people and the economy of
9 West Virginia through the hiring of fully trained, local
10 workers for the drilling, transport and processing of this
11 important natural resource.

12 (b) Purpose. The Legislature declares that the purpose of
13 this article is to establish additional specialized regulatory
14 requirements for the newly developed extraction techniques
15 associated with horizontal gas well drilling, providing further
16 requirements to address new industry practices relating to the

17 construction and completion of these well developments.
18 Unlike traditional oil and gas drilling activities, horizontal
19 gas drilling in the Marcellus formation are concentrated on
20 large drilling pads, use large volumes of water, exist for
21 longer times and otherwise have a significantly larger impact
22 on the surrounding area than traditional oil and gas drilling,
23 creating impacts to local water resources, air and noise
24 pollution associated with construction and operation of these
25 well sites, and necessitating additional regulatory
26 requirements. Therefore, the Legislature hereby enacts the
27 Horizontal Oil and Gas Well Act to provide, in addition to
28 general regulatory requirments this chapter otherwise
29 applicable to these activities, a regulatory program to fully
30 address the impacts of this newly developed drilling
31 technology to our state.

§22-6A-3. Compliance with other programs required.

1 (a) Prior to the issuance of any well work permit the
2 secretary shall ascertain from the Commissioner of the
3 Division of Labor whether the applicant is in compliance
4 with the provisions of article one-b, chapter twenty-one of

5 this code; article one-c and one-d, chapter twenty-one of this
6 code; article one-d and section fourteen, article five, chapter
7 twenty-one of this code and whether the applicant requires all
8 contractors hired to work under the permit have bona-fide
9 apprenticeship and training programs registered with the
10 United States Department of Labor. The secretary shall not
11 issue any well work permit unless the Commissioner of
12 Labor ascertains that the applicant is in compliance with all
13 of the provisions listed herein.

14 (b) Prior to the issuance of any well work permit, the
15 secretary shall ascertain from the Executive Director of
16 Workforce West Virginia and the Insurance Commissioner
17 whether the applicant is in compliance with the provisions of
18 section six-c, article two, chapter twenty-one-a of this code
19 and section five, article two, chapter twenty-three of this
20 code regarding any required subscription to the
21 Unemployment Compensation Fund or to the Workers'
22 Compensation Fund, the payment of premiums and other
23 charges to the fund, the timely filing of payroll reports and

24 the maintenance of adequate deposits. If the applicant is
25 delinquent or has defaulted, or has been terminated by the
26 executive director or the Insurance Commissioner, the permit
27 may not be issued until the applicant returns to compliance
28 or is restored by the executive director or the Insurance
29 Commissioner under a reinstatement agreement.

30 (c) After issuance of a well work permit, the operator
31 must maintain continued compliance with the programs set
32 forth in this section and provide proof of compliance to the
33 secretary on a quarterly basis after permit issuance.

§22-6A-4. Department of Highways approval of well road access.

1 As part of the permit application, the operator shall
2 provide a letter of certification from the department of
3 highways that the operator has entered into an agreement and
4 is in compliance with all laws, regulations and conditions
5 required by the department of highways relating to posting
6 bond, use, maintenance and repair of all state and county
7 roads to be utilized for access to a well location, including,
8 but not limited to, those roads used for the transportation of

9 water, machinery or any other items or materials related to
10 the construction and operation of the well. Upon notice that
11 the operator is failing to comply with the letter of
12 certification as required by this section, the department shall
13 deem such violation as a violation of a permit condition for
14 construction or operation of the well pursuant to this article.

§22-6A-5. Well location restrictions.

1 (a) Wells may not be drilled within 1000 feet measured
2 horizontally from any existing occupied dwelling or existing
3 water well without the written consent of the owner thereof.
4 Where the distance restriction would deprive the owner of
5 the oil and gas rights of the right to produce or share in the
6 oil or gas underlying said surface tract, the well operator may
7 be granted a variance from said distance restriction upon
8 submission of a plan which shall identify the additional
9 measures, facilities or practices to be employed during well
10 site construction, drilling and operations. The variance, if
11 granted, shall include such additional terms and conditions as
12 the department shall require to insure the safety and
13 protection of affected persons and property. The provisions

14 may include insurance, bonding and indemnification, as well
15 as technical requirements.

16 (b) No well site may be prepared or well drilled within
17 100 feet measured horizontally from any watercourse, natural
18 or artificial lake, pond or reservoir or within 100 feet of the
19 boundary of a wetland or the boundary that affects the
20 functions and values of a wetland. However, no well may be
21 drilled using hydraulic fracturing and horizontal drilling
22 within 2,500 feet of a surface water source, and within 1,000
23 feet of a groundwater source, that serves a public water
24 system. The distance from the public water supply source, as
25 identified by the department, shall be measured as follows:

26 (1) For a surface water intake on a lake or reservoir, the
27 distance shall be measured from the boundary of the lake or
28 reservoir.

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

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

34 The department may waive such distance restrictions
35 upon submission of a plan which shall identify the additional
36 measures, facilities or practices to be employed during well
37 site construction, drilling and operations. Such waiver, if
38 granted, shall impose such permit conditions as are necessary
39 to protect the waters of the State.

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

44 (1) Publicly owned parks, forests, gamelands,
45 recreational and wildlife areas.

46 (2) National or State scenic rivers.

47 (3) National natural landmarks.

48 (4) Habitats of rare and endangered flora and fauna and
49 other critical communities.

50 (5) Historical and archaeological sites listed on the
51 Federal or State list of historic places.

52 (6) Bodies of water and watercourses, including, but not
53 limited to, wetlands, wild trout streams and wilderness trout
54 streams.

55 (d) Prior to submitting a permit application to the
56 department for a well or well site within a wild trout stream,
57 High Quality or Exceptional Value watershed as indicated by
58 the 12-digit Hydrologic Unit Code, the applicant shall
59 consult with the West Virginia Division of Natural
60 Resources.

61 (e) The department shall inspect each permitted well
62 drilled in any formation using hydraulic fracturing or
63 horizontal drilling, or both, during each phase of cementing,
64 completing and altering. The permittee may not proceed to
65 the next phase of the drilling operation until an inspection by
66 the department has been performed. The department shall
67 allocate an appropriate portion of the well permit fees to fund
68 the inspection and may increase the permit fees to meet an
69 increase in the inspection costs.

70 (f) Upon a written request by any landowner residing
71 within 5,500 feet of a proposed gas well using hydraulic
72 fracturing, the well permit applicant shall conduct a
73 predrilling or prealteration survey, using a facility or
74 laboratory certified by the department, and send a copy of the

75 survey by certified mail to the requestor. A predrilling or
76 prealteration survey shall provide at a minimum the testing
77 results for chemicals or chemical compounds known to be
78 commonly used for hydraulic fracturing including, but not
79 limited to, the following: all major cations and anions,
80 arsenic, benzene, toluene, ethylbenzene, xylenes, manganese,
81 dissolved methane, total dissolved solids, chlorides, nutrients
82 and radionuclides.

§22-6A-6. Hydraulic fracturing chemicals and surface impoundments.

1 (a) Notwithstanding a trade secret claim, a well operator
2 shall file a report with the department for each well that is
3 drilled using the hydraulic fracturing process within 30 days of
4 completion of such well. The report shall include, without
5 limitation, the complete list of the chemicals and chemical
6 compounds used in the fracturing fluid products, specifying the
7 volume of fluid utilized in each separate hydraulic fracturing
8 operation and the Chemical Abstract Service registry number for
9 each constituent chemical. The department shall make the report
10 available to the public upon a written request.

11 (b) In case of a medical emergency, the operator shall
12 provide the concentration of each constituent chemical and
13 the formula for each chemical compound to medical
14 emergency personnel or local emergency personnel, or both.

15 (c) The well operator shall keep a copy of the report at
16 the well site and produce it upon request by the department,
17 local emergency personnel or surface landowners residing
18 within 5,500 feet of the well.

§22-6A-7. Hydraulic fracture fluids monitoring.

1 For each individual hydraulic fracturing operation
2 performed at a well site, the well operator shall maintain the
3 data indicating the total volume of fracturing fluids used for
4 the operation as well as the total volume of fluids that
5 returned to the surface. The well operator shall compile the
6 data and the necessary records to support the data, and
7 submit it to the department.

§22-6A-8. Construction standards for pits and impoundments.

1 All of the requirements set forth in 35 CSR §4-21 shall
2 apply to pits and impoundments used in connection with

3 operations regulated by this article, regardless of the capacity
4 of the pit or impoundment. In addition, the secretary shall
5 conduct a study on the safety of these pits and impoundments
6 and upon a finding that greater monitoring, safety
7 requirements or other conditions are necessary, shall
8 promulgate a legislative rule establishing these new
9 requirements. The secretary shall provide a report of this
10 study to the Legislature's joint committee on government and
11 finance, on or before December 31, 2011.

**§22-6A-9. Water management plan requirements for gas wells
using water resources for fracturing or
stimulating gas production.**

1 (a) Prior to drilling, fracturing or stimulating gas wells
2 which use water obtained from withdrawals of water
3 resources of the state, gas well operators shall submit to the
4 secretary a water management plan containing the following
5 information:

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

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

11 (3) The anticipated months when water withdrawals will
12 be made;

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

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

19 (6) For all surface water withdrawals, a water resources
20 protection plan that includes the information requested in
21 subdivisions (1) through (5) of this subsection and includes
22 documentation of measures that will be taken to allow the
23 state to manage the quantity of its waters for present and
24 future use and enjoyment and for the protection of the
25 environment. The plan shall include the following:

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

29 (B) For surface waters, a demonstration that a sufficient
30 instream flow will be available immediately downstream of
31 the point of withdrawal. A sufficient instream flow is
32 available:

33 (i) If the department's Water Use Guidance Tool
34 demonstrates that the stream contains sufficient water for the
35 withdrawal and a passby flow is maintained immediately
36 downstream of the point of withdrawal that is protective of
37 the environment. The Water Use Guidance Tool is a web
38 based geographical information system that calculates the
39 water resources available in streams located in specific
40 drainage basins based upon stream flow data obtained from
41 the United States Geological Survey; and

42 (ii) When the department's Water Use Guidance Tool
43 indicates that water withdrawals should be limited or
44 restricted but local conditions suggest otherwise, only if the
45 withdrawal rate is limited to maintain a passby flow in the
46 stream immediately downstream of the point of withdrawal
47 that is protective of the environment; and

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

50 (b) For all water used for hydraulic fracturing and for
51 flowback water from hydraulic fracturing activities and
52 produced water from production activities, gas well operators
53 shall comply with the following recordkeeping and reporting
54 requirements:

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

57 (A) The quantity of flowback water from hydraulic
58 fracturing the well;

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

60 (C) The method of management or disposal of the
61 flowback and produced well water.

62 (2) For transportation activities, the following
63 information shall be recorded and maintained by the
64 operator:

65 (A) The quantity of water transported;

66 (B) The name and address of the water hauler, and the
67 company for which the hauler was hauling the water;

68 (3) The information maintained pursuant to this
69 subsection by the gas well operator shall be available for
70 reasonable inspection by the division of oil and gas along
71 with other required permits and records and maintained for
72 three years after the water withdrawal activity.

73 (c) Within at least twenty-four hours, but no more than
74 forty-eight hours, prior to the withdrawal of water, the
75 operator shall identify the location of withdrawal by latitude
76 and longitude and verify that sufficient flow exists to protect
77 designated uses of the stream. The operator shall use
78 methods deemed appropriate by the secretary to determine if
79 sufficient flow is available and must check flows on a daily
80 basis for the duration of the withdrawal. Any variation from
81 the methods previously approved by the secretary for
82 determining if sufficient flow is available must be requested
83 in writing by the operator.

84 (d) All water withdrawal locations and facilities
85 identified in the water management plan shall be identified
86 with a sign that discloses that the location is a water

87 withdrawal point and the name and telephone number of the
88 operator for which the water withdrawn will be utilized.

89 (e) This section is intended to be consistent with and does
90 not supersede, revise, repeal or otherwise modify, articles
91 eleven and twenty-six, of this chapter, and does not revise,
92 repeal or otherwise modify the common law doctrine of
93 riparian rights under West Virginia law.

94 (f) In the event that an oil and gas driller or operator
95 contaminates the aquifer through the process of hydraulic
96 fracturing of the well, or contaminates the aquifer through a
97 surface spill or spills, the secretary shall require remediation
98 of the aquifer to clean water act standards.

§22-6A-10. Local Ordinances.

1 All local ordinances and enactments purporting to
2 regulate gas operations regulated by this act are hereby
3 preempted and superseded to the extent the ordinances and
4 enactments regulate the method of oil and gas operations.
5 Nothing in this act shall affect the traditional power of local
6 government to regulate zoning and land development of gas

7 activities as well as other aspects, such as the time and the
8 place of operations to protect the health, safety and welfare
9 of the general public through local ordinances and
10 enactments.

**§22-6A-11. Prohibition on drilling pad construction without
surface owners consent.**

1 The Legislature finds that the unconventional drilling
2 practices associated with horizontal oil and gas development
3 have only very recently been technologically feasible, require
4 the use of substantially large areas of land previously unseen
5 in traditional oil and gas well development, and utilize
6 significantly more surface area than drilling methods in use
7 when the vast majority of mineral estates in the state were
8 severed from the fee tract. Specifically, the drilling of wells
9 using large volumes of water, utilize large impoundments,
10 place multiple wells on a single well pad, with a significantly
11 longer time period of development, and the many trucking,
12 construction and operational activities associated with the
13 development of horizontal shallow wells have been and may

14 still be unknown to many persons who purchase either fee
15 simple of surface ownership of tracts of land where drilling
16 may occur. Further, because pooling agreements encompass
17 several tracts, the surface owner's property may be used to
18 extract gas and oil from land that is not owned by that surface
19 or mineral owner, where the surface owner is not subservient
20 to other mineral owners interests. The Legislature finds that
21 it is inherently unfair to force a surface owner to allow,
22 without his or her consent, the construction and operation of
23 a well pad for a horizontal shallow well unit. Therefore, the
24 Legislature declares it against public policy to authorize a
25 well pad to be constructed on the surface of a property as part
26 of a pooling agreement without the surface owner's consent:
27 *Provided, That, if the owner of a mineral interest has pooled*
28 *his or her interest with other mineral interests, surface*
29 *disturbance for all other activities associated with*
30 *construction of a well pad, such as access roads and gas lines*
31 *may be conducted upon the surface of any leased property*
32 *within the pool without consent from the surface owner, with*

33 just and proper compensation as provided pursuant to article
34 seven of this chapter is authorized.

§22-6A-12. Reports to the Legislature.

1 The secretary shall, by December 31 of each year through
2 and including the year 2016, report to the joint committee on
3 government and finance on the horizontal shallow wells
4 permitting and inspection activities of the division of oil and
5 gas. Specifically, reports that include, but are not limited to,
6 the number of well inspections undertaken in the prior year,
7 the number of inspections required by law to be undertaken
8 in the prior year, an analysis of whether permitting fees for
9 the horizontal shallow gas and oil wells are sufficient to fund
10 the necessary wells permit writers and inspectors adequate to
11 fulfill their statutory duties, including time-frames associated
12 with issuing permits, and a recommendation to whether the
13 permit fees should be increased or decreased to provide
14 adequate funding to the office to meet its statutory duties
15 regarding the permitting and inspection process associated
16 with horizontal shallow gas and oil wells.

§22-6A-13. Rulemaking.

1 Notwithstanding the provisions of section six, article six,
2 there is imposed up each operator of a Horizontal shallow
3 well permit fee for new permits, permit renewals and permit
4 modifications. The Division shall propose legislative rules
5 for promulgation in accordance with article three, chapter
6 twenty-nine-a of this code establishing the fees required by
7 this section. The fees shall be calculated to generate
8 sufficient money to provide for the fulfillment of the duties
9 of the division, as provided in this article.

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

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

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

3 (1) Lost income or expenses incurred as a result of being
4 unable to dedicate land actually occupied by the driller's
5 operation or to which access is prevented by ~~such~~ the drilling
6 operation to the uses to which it was dedicated prior to

7 commencement of the activity for which a permit was
8 obtained measured from the date the operator enters upon the
9 land until the date reclamation is completed, (2) the market
10 value of crops destroyed, damaged or prevented from
11 reaching market, (3) timber which must be cleared from a
12 surface site in order to make that site useable for the
13 development or extraction of oil, gas or mineral interests,
14 including that cleared for access roads, shall be appraised by
15 a certified appraiser of timber who shall be compensated by
16 the extractor, and, such timber shall be valued at a minimum
17 of two times the value of the present appraised value, which
18 value shall be paid by the extractor, for the purpose of
19 adequately compensating the surface landowner for losing
20 the future use of this resource. Additionally, the surface
21 owner shall retain all of the cleared timber, ~~(3)~~ (4) any
22 damage to a water supply in use prior to the commencement
23 of the permitted activity, ~~(4)~~ (5) the cost of repair of personal
24 property up to the value of replacement by personal property
25 of like age, wear and quality, and ~~(5)~~ (6) the diminution in

26 value, if any, of the surface lands and other property after
27 completion of the surface disturbance done pursuant to the
28 activity for which the permit was issued determined
29 according to the actual use made thereof by the surface
30 owner immediately prior to the commencement of the
31 permitted activity.

32 The amount of damages may be determined by any
33 formula mutually agreeable between the surface owner and
34 the oil and gas developer.

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

38 (c) In the case of surface lands owned by more than one
39 person as tenants in common, joint tenants or other
40 coownership, any claim for compensation under this article
41 shall be for the benefit of all ~~such~~ coowners. The resolution
42 of a claim for compensation provided in this article shall
43 operate as a bar to the assertion of additional claims under
44 this section arising out of the same drilling operations.