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FOR  
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FOR

**Senate Bill No. 424**

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

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[Originating in the Committee on the Judiciary;  
reported February 28, 2011.]

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A BILL to amend and reenact §22-6-1, §22-6-12, §22-6-14 and §22-6-36 of the Code of West Virginia, 1931, as amended; 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, §22-6A-13, §22-6A-14, §22-6A-15, §22-6A-16 and §22-6A-17; to amend and reenact §22C-8-2 of said code; and to amend and reenact §22C-9-2 of said code, all relating gener-

ally to oil and gas and oil and gas wells; defining certain new terms and amending existing definitions of certain terms; providing the Department of Environmental Protection, in consultation with the West Virginia Board of Professional Surveyors, with the authority to promulgate rules to govern methods of survey and information to be present on the plats and reports related to oil and gas permit maps; requiring notice to coal owners and lessees of record; creating Natural Gas Horizontal Well Control Act; providing short title; making legislative findings and declarations of public policy; providing for application and exemptions of new act and special considerations for karst formations; defining terms used in said act; specifying powers and duties of Secretary of Department of Environmental Protection; incorporating by reference certain sections of existing code relating to oil and gas wells; requiring horizontal well permits; requiring application for permit; specifying content of application and required attachments; requiring posting of bond and payment of permit fees; permitting waiver of certain requirements under specified circumstances and for issuance of emergency permits; providing for suspension and reinstatement of permits; providing for appeals of certain actions of Secretary of Department of Environmen-

tal Protection; providing for review of permit applications and for issuance of permits; specifying operator performance standards; providing for copies of permits to be furnished to county assessors; requiring certificate of approval for large impoundment construction; requiring application for certificate; specifying content of application and required attachments and payment of fees; providing for revocation or suspension of certificates; requiring hearing before certificate of approval is amended, suspended or revoked without consent of operator; providing for administrative appeals; providing exceptions for certain farm ponds; authorizing Secretary of Department of Environmental Protection to propose legislative rules for consideration by Legislature; providing for permit revocation and bond forfeiture; requiring notice to property owners when application for well permit is made or application for certificate of approval of impoundment is filed and providing property owners with certain rights; requiring promulgation of certain legislative rules for plugging and abandonment of horizontal wells; specifying reclamation requirements; requiring performance bonds; providing presumptions and rebuttals in water rights civil actions; imposing certain civil and criminal penalties for certain

violations and offenses; specifying prospective application of act; preempting local ordinances; and requiring operator to enter into certain road maintenance agreement with Division of Highways.

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

That §22-6-1, §22-6-12, §22-6-14 and §22-6-36 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, §22-6A-13, §22-6A-14, §22-6A-15, §22-6A-16 and §22-6A-17; that §22C-8-2 of said code be amended and reenacted; and that §22C-9-2 of said code be amended and reenacted, all to read as follows:

**CHAPTER 22. ENVIRONMENTAL RESOURCES.**

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

**§22-6-1. Definitions.**

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

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

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

7 (c) “Chair” means the chair of the West Virginia shallow  
8 gas well review board as provided for in section four, article  
9 eight, chapter twenty-two-c of this code;

10 (d) “Coal operator” means any person or persons, firm,  
11 partnership, partnership association or corporation that  
12 proposes to or does operate a coal mine;

13 (e) “Coal seam” and “workable coal bed” are interchange-  
14 able terms and mean any seam of coal twenty inches or more  
15 in thickness, unless a seam of less thickness is being com-  
16 mercially worked, or can in the judgment of the department  
17 foreseeably be commercially worked and will require  
18 protection if wells are drilled through it;

19 (f) “Director” means the director of the division of environ-  
20 mental protection as established in article one of this chapter  
21 or such other person to whom the director has delegated  
22 authority or duties pursuant to sections six or eight, article  
23 one of this chapter;

24 (g) “Deep well” means any well other than a shallow well  
25 or coalbed methane well, drilled and completed in to a  
26 formation ~~at or~~ below the top of the uppermost member of  
27 the “Onondaga Group”;

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

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

36 (j) "Gas" means all natural gas and all other fluid hydro-  
37 carbons not defined as oil in this section;

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

43 (l) "Owner" when used with reference to any well, shall  
44 include any person or persons, firm, partnership, partnership  
45 association or corporation that owns, manages, operates,  
46 controls or possesses such well as principal, or as lessee or  
47 contractor, employee or agent of such principal;

48 (m) "Owner" when used with reference to any coal seam,

49 shall include any person or persons who own, lease or  
50 operate such coal seam;

51 (n) "Person" means any natural person, corporation, firm,  
52 partnership, partnership association, venture, receiver,  
53 trustee, executor, administrator, guardian, fiduciary or other  
54 representative of any kind, and includes any government or  
55 any political subdivision or any agency thereof;

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

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

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

64 (r) "Safe mining through of a well" means the mining of  
65 coal in a workable coal bed up to a well which penetrates  
66 such workable coal bed and through such well so that the  
67 casing or plug in the well bore where the well penetrates the  
68 workable coal bed is severed;

69 (s) "Shallow well" means any gas well, other than a  
70 coalbed methane well, drilled no deeper than one hundred

71 feet below the top of the “Onondaga Group”: ~~and completed~~  
72 ~~in a formation above the top of the uppermost member of the~~  
73 ~~“Onondaga Group”~~: *Provided*, That in drilling a shallow well  
74 the operator may penetrate into the “Onondaga Group” to a  
75 reasonable depth, not in excess of twenty feet, in order to  
76 allow for logging and completion operations, but in no event  
77 may the “Onondaga Group” formation or any formation  
78 below the “Onondaga Group” be ~~otherwise~~ produced,  
79 perforated or stimulated in any manner;

80 (t) “Stimulate” means any action taken by a well operator  
81 to increase the inherent productivity of an oil or gas well,  
82 including, but not limited to, fracturing, shooting or  
83 acidizing, but excluding cleaning out, bailing or workover  
84 operations;

85 (u) “Waste” means (i) physical waste, as the term is  
86 generally understood in the oil and gas industry; (ii) the  
87 locating, drilling, equipping, operating or producing of any  
88 oil or gas well in a manner that causes, or tends to cause a  
89 substantial reduction in the quantity of oil or gas ultimately  
90 recoverable from a pool under prudent and proper opera-  
91 tions, or that causes or tends to cause a substantial or  
92 unnecessary or excessive surface loss of oil or gas; or (iii) the



93 drilling of more deep wells than are reasonably required to  
94 recover efficiently and economically the maximum amount  
95 of oil and gas from a pool; (iv) substantially inefficient,  
96 excessive or improper use, or the substantially unnecessary  
97 dissipation of, reservoir energy, it being understood that  
98 nothing in this chapter shall be construed to authorize any  
99 agency of the state to impose mandatory spacing of shallow  
100 wells except for the provisions of section eight, article nine,  
101 chapter twenty-two-c of this code and the provisions of  
102 article eight, chapter twenty-two-c of this code; (v) ineffi-  
103 cient storing of oil or gas: *Provided*, That storage in accor-  
104 dance with a certificate of public convenience issued by the  
105 federal energy regulatory commission shall be conclusively  
106 presumed to be efficient and (vi) other underground or  
107 surface waste in the production or storage of oil, gas or  
108 condensate, however caused. Waste does not include gas  
109 vented or released from any mine areas as defined in section  
110 two, article one, chapter twenty-two-a of this code, or from  
111 adjacent coal seams which are the subject of a current permit  
112 issued under article two of chapter twenty-two-a of this  
113 code: *Provided, however*, That nothing in this exclusion is  
114 intended to address ownership of the gas;

115 (v) "Waters of this state" shall have the same meaning as  
116 the term "waters" as provided in subsection (23), section  
117 three, article eleven, chapter twenty-two of this code-;

118 (w) "Well" means any shaft or hole sunk, drilled, bored or  
119 dug into the earth or into underground strata for the extrac-  
120 tion or injection or placement of any liquid or gas, or any  
121 shaft or hole sunk or used in conjunction with such extrac-  
122 tion or injection or placement. The term "well" does not  
123 include any shaft or hole sunk, drilled, bored or dug into the  
124 earth for the sole purpose of core drilling or pumping or  
125 extracting therefrom potable, fresh or usable water for  
126 household, domestic, industrial, agricultural or public use;

127 (x) "Well work" means the drilling, re-drilling, deepening,  
128 stimulating, pressuring by injection of any fluid, converting  
129 from one type of well to another, combining or physically  
130 changing to allow the migration of fluid from one formation  
131 to another or plugging or replugging of any well; and

132 (y) "Well operator" or "operator" means any person or  
133 persons, firm, partnership, partnership association or  
134 corporation that proposes to or does locate, drill, operate or  
135 abandon any well as herein defined.

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

1 (a) Before drilling for oil or gas, or before fracturing or  
2 stimulating a well on any tract of land, the well operator  
3 shall have a plat prepared by a ~~licensed land~~ professional  
4 ~~surveyor or registered engineer~~ showing the district and  
5 county in which the tract of land is located, the name and  
6 acreage of the same, the names of the owners of adjacent  
7 tracts, the proposed or actual location of the well determined  
8 by survey, the courses and distances of such location from  
9 two permanent points or landmarks on said tract and the  
10 number to be given the well. In the event the tract of land on  
11 which the said well proposed to be drilled or fractured is  
12 located is known to be underlain by one or more coal seams,  
13 copies of the plat shall be forwarded by registered or certi-  
14 fied mail to each and every coal operator operating said coal  
15 seams beneath said tract of land, who has mapped the same  
16 and filed such maps with the Office of Miners' Health, Safety  
17 and Training in accordance with chapter twenty-two-a of

18 this code and the coal seam owner of record and lessee of  
19 record, if any, if said owner or lessee has recorded the  
20 declaration provided in section thirty-six of this article, and  
21 if said owner or lessee is not yet operating said coal seams  
22 beneath said tract of land. With each of ~~such~~ the plats there  
23 shall be enclosed a notice (form for which shall be furnished  
24 on request by the secretary) addressed to the secretary and  
25 to each ~~such~~ coal operator, owner and lessee, if any, at their  
26 respective addresses, informing them that ~~such~~ the plat and  
27 notice are being mailed to them respectively by registered or  
28 certified mail, pursuant to the requirements of this article:  
29 Provided, That the Department of Environmental Protection,  
30 with advice from the West Virginia Board of Professional  
31 Surveyors, may promulgate rules to govern methods of  
32 survey and information to be present on the plats and reports  
33 related to oil and gas permit maps including but not limited  
34 to requiring a north arrow, tax map and parcel numbers for  
35 surface tracts, mineral boundary lines, mineral owner name  
36 and title reference, surface owner name and title reference,  
37 named waterways, state highway and county numbered route  
38 numbers, and the plat shall be drawn to a scale large enough  
39 for the information to be legible.

40 (b) If no objections are made, or are found by the secretary,  
41 to ~~such~~ the proposed location or proposed fracturing within  
42 fifteen days from receipt of such plat and notice by the  
43 secretary, the same shall be filed and become a permanent  
44 record of ~~such~~ the location or fracturing subject to inspection  
45 at any time by any interested person, and the secretary may  
46 ~~forthwith~~ immediately issue to the well operator a permit  
47 reciting the filing of ~~such~~ the plat, that no objections have  
48 been made by the coal operators, owners and lessees, if any,  
49 or found thereto by the secretary, and authorizing the well  
50 operator to drill at ~~such~~ the location, or to fracture the well.  
51 Unless the secretary has objections to ~~such~~ the proposed  
52 location or proposed fracturing or stimulating, ~~such~~ the  
53 permit may be issued ~~prior to~~ before the expiration of ~~such~~  
54 the fifteen-day period upon the obtaining by the well  
55 operator of the consent in writing of the coal operator or  
56 operators, owners and lessees, if any, to whom copies of the  
57 plat and notice ~~shall~~ have been mailed as herein required,  
58 and upon presentation of ~~such~~ the written consent to the  
59 secretary. The notice above provided ~~for~~ may be given to the  
60 coal operator by delivering or mailing it by registered or

61 certified mail as above to any agent or superintendent in  
62 actual charge of mines.

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

**§22-6-14. Plats prerequisite to introducing liquids or waste into  
wells; preparation and contents; notice and infor-  
mation furnished to coal operators, owners or  
lessees and director; issuance of permits; perfor-  
mance bonds or security in lieu thereof.**

1 (a) Before drilling a well for the introduction of liquids for  
2 the purposes provided ~~for~~ in section twenty-five of this  
3 article or for the introduction of liquids for the disposal of  
4 pollutants or the effluent therefrom on any tract of land, or  
5 before converting an existing well for such purposes, the well  
6 operator shall have a plat prepared by a ~~registered engineer~~  
7 ~~or licensed land~~ professional surveyor showing the district  
8 and county in which the tract of land is located, the name  
9 and acreage of the same, the names of the owners of all  
10 adjacent tracts, the proposed or actual location of the well or  
11 wells determined by a survey, the courses and distances of

12 ~~such the~~ location from two permanent points of land marked  
13 on said tract and the number to be given to the well, and  
14 shall forward by registered or certified mail the original and  
15 one copy of the plat to the director. In addition, the well  
16 operator shall provide the following information on the plat  
17 or by way of attachment thereto to the director in the  
18 manner and form prescribed by the director's rules: (1) The  
19 location of all wells, abandoned or otherwise located within  
20 the area to be affected; (2) where available, the casing  
21 records of all ~~such those~~ wells; (3) where available, the  
22 drilling log of all ~~such those~~ wells; (4) the maximum pressure  
23 to be introduced; (5) the geological formation into which  
24 ~~such that~~ liquid or pressure is to be introduced; (6) a general  
25 description of the liquids to be introduced; and (7) the  
26 location of all water-bearing horizons above and below the  
27 geological formation into which ~~such that~~ pressure, liquid or  
28 waste is to be introduced; (8) ~~such~~ other information as the  
29 director requires by rule: ~~may require~~ Provided, That the  
30 Department of Environmental Protection, with advice from  
31 the West Virginia Board of Professional Surveyors may  
32 promulgate rules to govern methods of survey and informa-  
33 tion to be present on the plats and reports related to oil and

34 gas permit maps including but not limited to requiring a  
35 north arrow, tax map and parcel numbers for surface tracts,  
36 mineral boundary lines, mineral owner name and title  
37 reference, surface owner name and title reference, named  
38 waterways, state highway and county numbered route  
39 numbers, and the plat shall be drawn to a scale large enough  
40 for the information to be legible.

41 (b) ~~In the event~~ If the tract of land on which ~~said~~ the well  
42 proposed to be drilled or converted for the purposes provided  
43 ~~for~~ in this section is located is known to be underlaid with  
44 coal seams, copies of the plat and all information required by  
45 this section shall be forwarded by the operator by registered  
46 or certified mail to each and every coal operator operating  
47 coal seams beneath ~~said~~ the tract of land, who has mapped  
48 the same and filed such maps with the Office of Miners'  
49 Health, Safety and Training in accordance with chapter  
50 twenty-two-a of this code, and the coal seam owner of record  
51 and lessee of record, if any, if ~~said~~ the owner or lessee has  
52 recorded the declaration provided in section thirty-six of this  
53 article, and if ~~said~~ the owner or lessee is not yet operating  
54 ~~said~~ those seams beneath ~~said~~ the tract of land. With each of  
55 ~~such~~ the plats, there shall be enclosed a notice (form for



56 which shall be furnished on request by the director) ad-  
57 dressed to the director and to each ~~such~~ coal operator, owner  
58 or lessee, if any, at their respective addresses, informing  
59 them that ~~such~~ the plat and notice are being mailed to them,  
60 respectively, by registered or certified mail, pursuant to the  
61 requirements of this section.

62 (c) If no objections are made by any such coal operator,  
63 owner or lessee, or the director, ~~such~~ the proposed drilling or  
64 converting of the well or wells for the purposes provided ~~for~~  
65 in this section within thirty days from the receipt of ~~such~~ the  
66 plat and notice by the director, the same shall be filed and  
67 become a permanent record of ~~such~~ the location or well,  
68 subject to inspection at any time by any interested person,  
69 and the director may after public notice and opportunity to  
70 comment, issue ~~such~~ a permit authorizing the well operator  
71 to drill at ~~such~~ the location or convert ~~such~~ the existing well  
72 or wells for the purposes provided ~~for~~ in this section. The  
73 notice above provided ~~for~~ may be given to the coal operator  
74 by delivering or mailing it by registered or certified mail as  
75 above to any agent or superintendent in actual charge of the  
76 mines.

77 (d) A permit to drill a well or wells or convert an existing  
78 well or wells for the purposes provided ~~for~~ in this section  
79 ~~shall~~ may not be issued until all of the bonding provisions  
80 required by the provisions of section twelve of this article  
81 have been fully complied with and all ~~such~~ those bonding  
82 provisions ~~shall~~ apply to all wells drilled or converted for the  
83 purposes provided ~~for~~ in this section as if ~~such~~ those wells  
84 had been drilled for the purposes provided ~~for~~ in section  
85 twelve of this article, except that ~~such~~ the bonds shall be  
86 conditioned upon full compliance with all laws and rules  
87 relating to the drilling of a well or the converting of an  
88 existing well for the purposes provided ~~for~~ in ~~said~~ section  
89 twenty-five of this article, or introducing of liquids for the  
90 disposal of pollutants including the redrilling, deepening,  
91 casing, plugging or abandonment of all such wells.

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

1 (a) For purposes of notification under this article, any  
2 owner or lessee of coal seams ~~shall~~ may file a declaration of  
3 the owner's or lessee's interest in ~~such~~ the coal seams with  
4 the clerk of the county commission in the county where ~~such~~

5 ~~the~~ coal seams are located. ~~Said~~ The clerk shall file and  
6 index ~~such~~ the declaration in accordance with section two,  
7 article one, chapter thirty-nine of this code; and shall index  
8 the name of the owner or lessee of ~~such~~ the coal seams in the  
9 grantor index of the record maintained for the indexing of  
10 leases. If the declaration of owner's or lessee's interest is not  
11 filed, then notification pursuant to this article shall be made  
12 to the owners or lessees of coal seams of record.

13 (b) The declaration, if filed, shall entitle ~~such~~ the owner or  
14 lessee to the notices provided in sections twelve, thirteen,  
15 fourteen, and twenty-three of this article: *Provided*, That the  
16 declaring owner shall be the record owner of the coal seam,  
17 and the declaring lessee shall be the record lessee with the  
18 owner's or lessee's source or sources of title recorded prior to  
19 recording ~~such~~ the lessee's declaration.

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

24 "DECLARATION OF OIL AND GAS NOTICE"

25 "The undersigned hereby declares:

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

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

32 (Here insert a description legally adequate for a deed,  
33 whether by metes and bounds or other locational description,  
34 or by title references such as a book and page legally suffi-  
35 cient to stand in lieu of a locational description.)

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

40 (Here insert the name and mailing address of the under-  
41 signed owner or lessee.)

42 \_\_\_\_\_

43 (Signature)

44 (Here insert an acknowledgment legally adequate for a  
45 deed).”

46 The benefits of the foregoing declaration shall be personal

47 to the declaring owner or lessee; and not transferable or  
48 assignable in any way.

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

**§22-6A-1. Short title.**

1 This article shall be known and cited as the “Horizontal  
2 Well Act”.

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

1 (a) The Legislature finds that:

2 (1) The advent and advancement of new and existing  
3 technologies and drilling practices have created the opportu-  
4 nity for the efficient development of natural gas contained in  
5 underground shales and other geologic formations;

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

11 (3) In some instances these practices may require the  
12 construction of large impoundments for the storage of water  
13 or wastewater;

14 (4) Existing laws and regulations developed for conven-  
15 tional oil and gas operations are inadequate to address the

16 potential environmental impacts from these new technolo-  
17 gies and practices; and

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

22 (b) The Legislature declares that the establishment of a  
23 new regulatory scheme to address new and advanced natural  
24 gas development technologies and drilling practices is in the  
25 public interest and should be done in a manner that protects  
26 the environment and our economy for current and future  
27 generations.

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

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

1 (a) Notwithstanding any other provision of this code to the  
2 contrary, the provisions of this article shall apply to any  
3 natural gas well that is a horizontal well as defined in

4 section four of this article: *Provided*, That this article shall  
5 not apply to or affect any well work permitted for a horizon-  
6 tal well or orders issued regarding horizontal wells prior to  
7 the effective date of this article.

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

**§22-6A-4. Definitions.**

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

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

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

14 (2) "Department" means the department of environmental  
15 protection;

16 (3) "Horizontal drilling" means a method of drilling a well  
17 for the production of natural gas that is intended to maxi-  
18 mize the length of wellbore that is exposed to the formation  
19 and in which the wellbore is initially vertical but eventually  
20 is curved to become horizontal, or nearly horizontal, to  
21 parallel a particular geologic formation;



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

24 (5) "Flowback Recycle Impoundment" means an impound-  
25 ment used for the retention of flowback and freshwater and  
26 into which no other wastes of any kind are placed;

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

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

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

37 (9) "Secretary" means the Cabinet Secretary of the Depart-  
38 ment of Environmental Protection as established in article  
39 one of this chapter or such other person to whom the secre-  
40 tary has delegated authority or duties pursuant to sections  
41 six or eight, article one of this chapter.

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

1 To the extent that horizontal wells governed by this article  
2 are similar to conventional oil and gas wells regulated under  
3 article six of this chapter, the following sections of article six  
4 of this chapter are hereby incorporated by reference in this  
5 article:

6 (a) The provisions of section three, article six of this  
7 chapter relating to the findings and orders of inspectors  
8 concerning violations, the determination of reasonable time  
9 for abatement, extensions of time for abatement, special  
10 inspections, notice of findings and orders.

11 (b) The provisions of section four, article six of this chapter  
12 providing for the review of findings and orders by the  
13 secretary, special inspections, and applications for annul-  
14 ment or revision of orders by the secretary.

15 (c) The provisions of section five, article six of this chapter  
16 relating to the requirements for findings, orders and notices,  
17 notice to the operator of findings and orders, and judicial  
18 review of final orders of the secretary.

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

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

26 (f) The provisions of section ten, article six of this chapter  
27 pertaining to the procedures for filing comments relating to  
28 proposed well work and the applicant's obligation to certify  
29 compliance with applicable notice requirements, with the  
30 following exceptions:

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

34 (2) Under subsection (a), section ten, article six of this  
35 chapter the applicable time period for filing comments shall  
36 be thirty days from the filing of an application with the  
37 secretary.

38 (g) The provisions of section twelve, article six of this  
39 chapter pertaining to plats prerequisite to drilling or  
40 fracturing wells, the preparation and contents thereof, notice  
41 furnished to coal operators, owners or lessees, the issuance  
42 of permits, and required performance bonds, with the  
43 following exceptions:

44 (1) Under subsection (a), section twelve, article six of this  
45 chapter the plat also shall identify all surface tract bound-  
46 aries within the scope of the plat.

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

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

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

61 (j) The provisions of section seventeen, article six of this  
62 chapter pertaining to drilling of shallow gas wells, notice to  
63 be provided to the chair of the review board, orders issued by  
64 the review board, and permits issued for such drilling, with  
65 the exception that the applicable time for filing objections

66 shall be thirty days from the date of receipt by the secretary  
67 of the required plat and notice in lieu of fifteen days.

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

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

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

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

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

85 (p) The provisions of section twenty-seven, article six of  
86 this chapter regarding a cause of action for damages caused  
87 by an explosion.

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

92 (r) The provisions of section twenty-nine, article six of this  
93 chapter providing for the Operating Permit and Processing  
94 Fund, the oil and gas reclamation fund, and associated fees,  
95 with the exception that in the opening paragraph of subsec-  
96 tion (a), section twenty-nine, article six of this chapter the  
97 fees to be credited to the Oil and Gas Operating Permit and  
98 Processing Fund shall be the permit fees collected pursuant  
99 to subsection (f), section seven of this article.

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

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

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

109 (v) The provisions of section thirty-six, article six of this  
110 chapter providing for the declaration of oil and gas notice by  
111 owners and lessees of coal seams and setting out the form of  
112 such notice, with the exception that the owner or lessee of  
113 coal seams shall be entitled only to the notices provided in  
114 sections twelve and thirteen, of article six of this chapter.

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

117 (x) The provisions of section forty, article six of this  
118 chapter relating to appeals from orders issuing or refusing to  
119 issue a permit to drill or fracture, and the procedure there-  
120 fore.

121 Notwithstanding any other provision of this code to the  
122 contrary, no provision of article six of this chapter shall  
123 apply to horizontal wells subject to this article except as  
124 expressly incorporated by reference in this article.

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

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

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

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

9 (3) To propose any necessary legislative rules, in accor-  
10 dance with the provisions of chapter twenty-nine-a of this  
11 code to implement the provisions of this article; and

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

14 (5) Except for the duties and obligations conferred by  
15 statute upon the shallow gas well review board pursuant to  
16 article eight, chapter twenty-two-c of this code, the coalbed  
17 methane review board pursuant to article twenty-one of this  
18 chapter, and the oil and gas conservation commission  
19 pursuant to article nine, chapter twenty-two-c of this code,  
20 the secretary has sole and exclusive authority to regulate the  
21 permitting, location, spacing drilling, operation and plugging  
22 of oil and gas wells and production operations within the  
23 state.



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

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

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

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

16 (2) The name and address of every coal operator operating  
17 coal seams under the tract of land on which the well is or

18 may be located, and the coal seam owner of record and lessee  
19 of record required to be given notice by subsection (f),  
20 section five of this article, if any, if said owner or lessee is  
21 not yet operating said coal seams;

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

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

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

27 (6) Each formation in which the well will be completed if  
28 applicable;

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

30 (8) If the proposed well work will require casing or tubing  
31 to be set, the entire casing program for the well, including  
32 the size of each string of pipe, the starting point and depth to  
33 which each string is to be set, and the extent to which each  
34 such string is to be cemented;

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

39 (10) If the proposed well work is to plug or replug the well,  
40 all information necessary to demonstrate compliance with  
41 the legislative rules promulgated by the secretary in accor-  
42 dance with section eleven of this article;

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

47 (12) The erosion and sediment control plan required under  
48 subsection (c) of this section for applications for permits to  
49 drill;

50 (13) A well site safety plan to address proper safety  
51 measures to be employed for the protection of persons on the  
52 site as well as the general public. The plan shall encompass  
53 all aspects of the operation, including the actual well work  
54 for which the permit was obtained, completion activities,  
55 and production activities and shall provide an emergency  
56 point of contact for the well operator. The well operator shall  
57 provide a copy of the well site safety to the local emergency  
58 planning committee established pursuant to section seven,  
59 article five-a, chapter fifteen of this code, for the emergency  
60 planning district in which the well work will occur at least

61 seven days before commencement of well work or site  
62 preparation work that involves any disturbance of land; and

63 (14) Any other relevant information which the secretary  
64 may reasonably require.

65 (c)(1) An erosion and sediment control plan shall accom-  
66 pany each application for a well work permit under this  
67 article. The plan shall contain methods of stabilization and  
68 drainage, including a map of the project area indicating the  
69 amount of acreage disturbed. The erosion and sediment  
70 control plan shall meet the minimum requirements of the  
71 West Virginia Erosion and Sediment Control Manual as  
72 adopted and from time to time amended by the department.  
73 The erosion and sediment control plan shall become part of  
74 the terms and conditions of any well work permit that is  
75 issued pursuant to this article and the provisions of the plan  
76 shall be carried out where applicable in the operation. The  
77 erosion and sediment control plan shall set out the proposed  
78 method of reclamation which shall comply with the require-  
79 ments of section twelve of this article.

80 (2) For horizontal well sites that disturb 5 acres or more of  
81 surface, excluding pipelines, gathering lines, and roads, the  
82 erosion and sediment control plan submitted in accordance

83 with this section shall be certified by a registered profes-  
84 sional engineer.

85 (d) For well sites that disturb five acres or more of surface,  
86 excluding pipelines, gathering lines, and roads, the operator  
87 shall submit a site construction plan that shall be certified  
88 by a registered professional engineer and contains informa-  
89 tion that the secretary may require by rule.

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

97 (1) The type of water source, such as surface or groundwa-  
98 ter, the county of each source to be used by the operation for  
99 water withdrawals, and the latitude and longitude of each  
100 anticipated withdrawal location;

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

102 (3) The anticipated months when water withdrawals will  
103 be made;

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

106 (5) A listing of the anticipated additives that may be used  
107 in water used for fracturing or stimulating the well. Upon  
108 well completion, a listing of the additives that were actually  
109 used in the fracturing or stimulating of the well shall be  
110 submitted as part of the completion report required by  
111 subsection (n), section five of this article;

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

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

122 (B) For surface waters, a demonstration, using methods  
123 acceptable to the secretary, that sufficient in-stream flow  
124 will be available immediately downstream of the point of  
125 withdrawal. A sufficient in-stream flow is maintained when

126 a pass-by flow that is protective of the identified use of the  
127 stream is preserved immediately downstream of the point of  
128 withdrawal; and

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

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

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

139 (g) The application for a permit under this section shall be  
140 accompanied by the applicable bond as required by section  
141 thirteen of this article, the applicable plat required by  
142 subsection (f), section five of this article, and a permit fee of  
143 \$5,000 for the initial horizontal well drilled at a location and  
144 a permit fee of \$1,000 for each additional well drilled on a  
145 single well pad at the same location.

146 (h) The well operator named in the application shall  
147 designate the name and address of an agent for the operator

148 who shall be the attorney-in-fact for the operator and who  
149 shall be a resident of the state of West Virginia upon whom  
150 notices, orders or other communications issued pursuant to  
151 this article or article eleven of chapter twenty-two may be  
152 served, and upon whom process may be served. Every well  
153 operator required to designate an agent under this section  
154 shall, within 5 days after the termination of such designa-  
155 tion, notify the secretary of such termination and designate  
156 a new agent.

157 (i) The well owner or operator shall install the permit  
158 number as issued by the secretary and a contact telephone  
159 number for the operator in a legible and permanent manner  
160 to the well upon completion of any permitted work. The  
161 dimensions, specifications, and manner of installation shall  
162 be in accordance with the rules of the secretary.

163 (j) The secretary may waive the requirements of this  
164 section and sections eight and ten of this article and subsec-  
165 tion (e), section five of this article in any emergency situa-  
166 tion, if the secretary deems such action necessary. In such  
167 case the secretary may issue an emergency permit which  
168 shall be effective for not more than 30 days, unless reissued  
169 by the secretary.



170 (k) The secretary shall deny the issuance of a permit if the  
171 secretary determines that the applicant has committed a  
172 substantial violation of a previously issued permit for a  
173 horizontal well, including the applicable erosion and  
174 sediment control plan associated with the previously issued  
175 permit, or a substantial violation of one or more of the rules  
176 promulgated under this article, and has failed to abate or  
177 seek review of the violation within the time prescribed by  
178 the secretary pursuant to the provisions of subsections (a)  
179 and (b), section five of this article and the rules promulgated  
180 hereunder, which time may not be unreasonable.

181 (l) In the event the secretary finds that a substantial  
182 violation has occurred and that the operator has failed to  
183 abate or seek review of the violation in the time prescribed,  
184 the secretary may suspend the permit on which said violation  
185 exists, after which suspension the operator shall forthwith  
186 cease all well work being conducted under the permit.  
187 However, the secretary may reinstate the permit without  
188 further notice, at which time the well work may be contin-  
189 ued. The secretary shall make written findings of any such  
190 suspension and may enforce the same in the circuit courts of  
191 this state. The operator may appeal a suspension pursuant to

192 the provisions of subsection (w), section five of this article.  
193 The secretary shall make a written finding of any such  
194 determination.

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

1 (a) The secretary shall review each application for a well  
2 work permit and shall determine whether or not a permit  
3 shall be issued.

4 (b) No permit shall be issued less than 30 days after the  
5 filing date of the application for any well work except  
6 plugging or replugging; and no permit for plugging or  
7 replugging shall be issued less than 5 days after the filing  
8 date of the application except a permit for plugging or  
9 replugging a dry hole: *Provided*, That if the applicant  
10 certifies that all persons entitled to notice of the application  
11 under the provisions of this article have been served in  
12 person or by certified mail, return receipt requested, with a  
13 copy of the well work application, including the erosion and  
14 sediment control plan, if required, and the plat required by  
15 section seven of this article, and further files written state-

16 ments of no objection by all such persons, the secretary may  
17 issue the well work permit at any time.

18 (c) Prior to the issuance of any permit the director shall  
19 ascertain from the Executive Director of Workforce West  
20 Virginia and the Insurance Commissioner whether the  
21 applicant is in compliance with the provisions of section six-  
22 c, article two, chapter twenty-one-a of this code, and section  
23 five, article two, chapter twenty-three of this code, with  
24 regard to any required subscription to the Unemployment  
25 Compensation Fund or to the Workers' Compensation Fund,  
26 the payment of premiums and other charges to the fund, the  
27 timely filing of payroll reports and the maintenance of  
28 adequate deposits. If the applicant is delinquent or de-  
29 faulted, or has been terminated by the executive director or  
30 the Insurance Commissioner, the permit may not be issued  
31 until the applicant returns to compliance or is restored by  
32 the executive director or the Insurance Commissioner under  
33 a reinstatement agreement: *Provided*, That in all inquiries  
34 the Executive Director of Workforce West Virginia and the  
35 Insurance Commissioner shall make response to the Depart-  
36 ment of Environmental Protection within fifteen calendar  
37 days; otherwise, failure to respond timely is considered to

38 indicate the applicant is in compliance and the failure will  
39 not be used to preclude issuance of the permit.

40 (d) The secretary may cause such inspections to be made of  
41 the proposed well work location as necessary to assure  
42 adequate review of the application. The permit shall not be  
43 issued, or shall be conditioned including conditions with  
44 respect to the location of the well and access roads prior to  
45 issuance if the director determines that:

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

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

50 (3) Damage would occur to publicly owned lands or  
51 resources; or

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

54 (e) The director shall promptly review all comments filed.  
55 If after review of the application and all comments received,  
56 the application for a well work permit is approved, and no  
57 timely objection or comment has been filed with the director  
58 or made by the director under the provisions of subsection  
59 (h)and (i), section five of this article, the permit shall be

60 issued, with conditions, if any. Nothing in this section shall  
61 be construed to supersede the provisions of section seven or  
62 subsections (f) through (i), section five of this article.

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

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

67 (2) Plug all wells in accordance with the requirements of  
68 this article and the rules promulgated pursuant thereto when  
69 such wells become abandoned pursuant to subsection (k),  
70 section five of this article;

71 (3) With respect to disposal of cuttings at the well site,  
72 stabilize all waste pits, including the use of impervious  
73 materials, if necessary, to assure that any leachate therefrom  
74 will not degrade surface or groundwaters below water  
75 quality standards established pursuant to applicable federal  
76 and State law and that the site is stabilized and revegetated  
77 according to the provisions of this article and the rules  
78 promulgated thereunder;

79 (4) Grade, terrace and plant, seed or sod the area disturbed  
80 that is not required in production of the horizontal well

81 where necessary to bind the soil and prevent substantial  
82 erosion and sedimentation;

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

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

88 (7) Protect the quantity and the quality of water in surface  
89 and groundwater systems both during and after drilling  
90 operations and during reclamation by: (A) Withdrawing  
91 water from surface waters of the State by methods deemed  
92 appropriate by the secretary, so as to maintain sufficient in-  
93 stream flow immediately downstream of the withdrawal  
94 location. In no case shall an operator withdraw water from  
95 ground or surface waters at volumes beyond which the  
96 waters can sustain; (B) Casing, sealing or otherwise manag-  
97 ing wells to keep returned fluids from entering ground and  
98 surface waters; (C) Conducting oil and gas operations so as  
99 to prevent, to the extent possible using the best management  
100 practices, additional contributions of suspended or dissolved  
101 solids to streamflow or runoff outside the permit area, but in  
102 no event shall the contributions be in excess of requirements

103 set by applicable State or federal law; and (D) Identify all  
104 water supply wells to the Office of Oil and Gas that are  
105 required to be permitted by the Bureau for Public Health  
106 under 64 CSR 19. All drinking water wells within 2,500 feet  
107 of the water supply well shall be flow tested by the operator  
108 upon request of the drinking well owner prior to operating  
109 the water supply well.

110 (8) The construction of new roads or the improvement or  
111 use of existing roads shall be conducted in accordance with  
112 the standards established pursuant to this article or the rules  
113 promulgated thereunder for such effects which result from  
114 oil and gas operations; and

115 (9) In addition to the other requirements of this subsection,  
116 an operator proposing to drill any horizontal well requiring  
117 the withdrawal of more than 210,000 gallons in a month  
118 shall have the following requirements added to its permit:

119 (A) Identification of water withdrawal locations. Within 48  
120 hours prior to the withdrawal of water, the operator shall  
121 identify the location of withdrawal by latitude and longitude  
122 and verify that sufficient flow exists to protect designated  
123 uses of the stream. The operator shall use methods deemed  
124 appropriate by the secretary to determine if sufficient flow

125 is available and must check flows on a daily basis for the  
126 duration of the withdrawal. Any variation from the methods  
127 previously approved by the secretary for determining if  
128 sufficient flow is available must be requested in writing by  
129 the operator.

130 (B) Signage for water withdrawal locations. All water  
131 withdrawal locations and facilities identified in the water  
132 management plan shall be identified with a sign that  
133 identifies that the location is a water withdrawal point, the  
134 name and telephone number of the operator, and the permit  
135 numbers(s) for which the water withdrawn will be utilized.

136 (C) Recordkeeping and reporting. For all water used for  
137 hydraulic fracturing of horizontal wells and for flowback  
138 water from hydraulic fracturing activities and produced  
139 water from production activities from horizontal wells, an  
140 operator shall comply with the following record keeping and  
141 reporting requirements:

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

144 (I) The quantity of flowback water from hydraulic fractur-  
145 ing the well;

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



147 (III) The method of management or disposal of the  
148 flowback and produced water.

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

151 (I) The quantity of water transported;

152 (II) The collection and delivery or disposal locations of  
153 water; and

154 (III) The name of the water hauler.

155 (iii) The information maintained pursuant to this subdivi-  
156 sion shall be available for inspection by the department  
157 along with other required permits and records and main-  
158 tained for three years after the water withdrawal activity.

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

164 (g) The secretary shall mail a copy of the permit as issued  
165 or a copy of the order denying a permit to any person who  
166 submitted comments to the director concerning the permit  
167 and requested a copy.

168 (h) Upon the issuance of any permit pursuant to the  
169 provisions of this article, the secretary shall transmit a copy  
170 of such permit to the office of the assessor for the county in  
171 which the well is located.

**§22-6A-9. Certificate of approval required for large impoundment  
construction; certificate of approval and annual  
registration fees; application required to obtain  
certificate; term of certificate; revocation or sus-  
pension of certificates; appeals; farm ponds; crimi-  
nal penalty.**

1 (a) It is unlawful for any person to place, construct,  
2 enlarge, alter, repair, remove or abandon any freshwater  
3 impoundment or flowback recycle impoundment with  
4 capacity of greater than 210,000 gallons used in association  
5 with any horizontal well operation until he or she has first  
6 secured from the secretary a certificate of approval for the  
7 same: *Provided*, That routine repairs that do not affect the  
8 safety of the impoundment are not subject to the application  
9 and approval requirements. A separate application for a  
10 certificate of approval must be submitted by a person for  
11 each impoundment he or she desires to place, construct,  
12 enlarge, alter, repair, remove or abandon, but one applica-

13 tion may be valid for more than one impoundment involved  
14 in a single project.

15 (b) The application fee for placement, construction,  
16 enlargement, alteration, repair or removal of an impound-  
17 ment pursuant to this section is \$300, and such fee shall  
18 accompany the application for certificate of approval.  
19 Operators holding certificates of approval shall be assessed  
20 an annual registration fee of \$100, which shall be valid for  
21 more than one impoundment involved in a single project.

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

26 (d) The initial term of a certificate of approval issued  
27 pursuant to this section shall be one year. Existing certifi-  
28 cates of approval shall be extended for one year upon receipt  
29 of the annual registration fee, an inspection report, a  
30 monitoring and emergency action plan, and a maintenance  
31 plan: *Provided*, That where an approved, up-to-date inspec-  
32 tion report, monitoring and emergency action plan, and  
33 maintenance plan are on file with the department, and where  
34 no outstanding violation(s) of the requirements of the

35 certificate of approval or any plan submitted pursuant to this  
36 article related to the impoundment exist, then the certificate  
37 of approval shall be extended without resubmission of the  
38 foregoing documents upon receipt of the annual registration  
39 fee.

40 (e) Every application for a certificate of approval shall be  
41 made in writing on a form prescribed by the secretary and  
42 shall be signed and verified by the applicant. The application  
43 shall include a monitoring and emergency action plan and a  
44 maintenance plan, the required contents of which shall be  
45 established by the secretary by legislative rule. The applica-  
46 tion shall contain and provide information that may reason-  
47 ably be required by the secretary to administer the provi-  
48 sions of this article.

49 (f) Plans and specifications for the placement, construction,  
50 erosion and sediment control, enlargement, alteration, repair  
51 or removal and reclamation of impoundments shall be the  
52 charge of a registered professional engineer licensed to  
53 practice in West Virginia. Any plans or specifications  
54 submitted to the department shall bear the seal of a regis-  
55 tered professional engineer. *Provided*, That when a flowback  
56 recycle impoundment will be used to store flowback water,

57 the impoundment shall be designed and constructed using a  
58 single liner system.

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

62 (h) The secretary may revoke or suspend any certificate of  
63 approval whenever the secretary determines that the im-  
64 poundment for which the certificate was issued constitutes  
65 an imminent danger to human life or property. If necessary  
66 to safeguard human life or property, the secretary may also  
67 amend the terms and conditions of any certificate by issuing  
68 a new certificate containing the revised terms and condi-  
69 tions.

70 (1) Before any certificate of approval is amended, sus-  
71 pended, or revoked by the secretary without the consent of  
72 the operator holding the certificate, the secretary shall hold  
73 a hearing in accordance with the provisions of article five,  
74 chapter twenty-nine-a of this code.

75 (2) Any person adversely affected by an order entered  
76 following this hearing has the right to appeal to the Environ-  
77 mental Quality Board pursuant to the provisions of article  
78 one, chapter twenty-two-b of this code.

79 (i) Upon expiration of the certificate of approval, or upon  
80 its revocation by the secretary, the operator shall, within 60  
81 days, fill all impoundments that are not required or allowed  
82 by state or federal law or rule or agreement between the  
83 operator and the surface owner that allows the impoundment  
84 to remain open for the use and benefit of the surface owner  
85 and reclaim the site with the approved erosion and sediment  
86 control plan.

87 (j) This section shall not apply to:

88 (A) Farm ponds constructed by the operator with the  
89 written consent of the surface owner, which will be used  
90 after completion of the drilling activity primarily for agricul-  
91 tural purposes, including without limitation livestock  
92 watering, irrigation, retention of animal wastes and fish  
93 culture. Any impoundment that is intended to be left perma-  
94 nent as a farm pond under this subdivision shall meet the  
95 requirements set forth by the United States Department of  
96 Agriculture's Natural Resources Conservation Service  
97 "Conservation Practice Standard - Ponds" (Code 378).

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

100 (k) The secretary is authorized to propose rules for legisla-  
101 tive approval in accordance with the provisions of article  
102 three, chapter twenty-nine-a of this code, necessary to  
103 effectuate the provisions of this section.

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

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

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

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

16 (2) The owners of record of the surface tract or tracts  
17 overlying the oil and gas leasehold being developed by the

18 proposed well work, if such surface tract is to be utilized for  
19 roads or other land disturbance as described in the erosion  
20 and sediment control plan submitted pursuant to subsection  
21 (c), section seven of this article;

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

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

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

33 (c) If more than three tenants in common or other co-  
34 owners of interests described in subsection (b) of this section  
35 hold interests in such lands, the applicant may serve the  
36 documents required upon the person described in the records  
37 of the sheriff required to be maintained pursuant to section  
38 eight, article one, chapter eleven-a of this code, or publish in  
39 the county in which the well is located or is proposed to be



40 located a Class II legal advertisement as described in section  
41 two, article three, chapter fifty-nine of this code, containing  
42 such notice and information as the secretary shall prescribe  
43 by rule, with the first publication date being at least ten days  
44 prior to the filing of the permit application: *Provided*, That  
45 all owners occupying the tracts where the well work is or is  
46 proposed to be located on the filing date of the permit  
47 application shall receive actual service of the documents  
48 required by subsection (b) of this section.

49 (d) Materials served upon persons described in subsections  
50 (b) and (c) of this section shall contain a statement of the  
51 methods and time limits for filing comments, who may file  
52 comments, the name and address of the secretary for the  
53 purpose of filing comments and obtaining additional infor-  
54 mation, and a statement that such persons may request, at  
55 the time of submitting comments, notice of the permit  
56 decision and a list of persons qualified to test water as  
57 provided by the Office of Oil and Gas.

58 (e) Any person entitled to submit comments shall also be  
59 entitled to receive from the secretary a copy of the permit as  
60 issued or a copy of the order modifying or denying the permit

61 if such person requests receipt of them as a part of the  
62 comments concerning the permit application.

63 (f) The surface owners described in subdivisions (1), (2) and  
64 (4), subsection (b) of this section, and the coal owner,  
65 operator or lessee described in subdivision (3) of said  
66 subsection shall also be entitled to receive notice within  
67 seven days but no less than two days before commencement  
68 that well work or site preparation work that involves any  
69 disturbance of land is expected to commence.

70 (g) Persons entitled to notice may contact the department  
71 to ascertain the names and locations of water testing labora-  
72 tories in the subject area capable and qualified to test water  
73 supplies in accordance with standard accepted methods. In  
74 compiling that list of names the department shall consult  
75 with the state Bureau of Public Health and local health  
76 departments.

77 (h)(1) Prior to conducting any seismic activity for seismic  
78 exploration for natural gas to be extracted using horizontal  
79 drilling methods, the company or person performing the  
80 activity must provide notice to Miss Utility of West Virginia  
81 Inc. and to all surface owners, mineral owners, and storage  
82 field operators on whose property blasting, percussion or

83 other seismic-related activities will occur or whose property  
84 interests are within the geographic area encompassed by the  
85 seismic study.

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

88 (3) The notice shall also include a reclamation plan in  
89 accordance with the erosion and sediment control manual  
90 that provides for the reclamation of any areas disturbed as a  
91 result of the seismic activity, including filling of shotholes  
92 utilized for blasting.

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

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

1 The secretary shall promulgate legislative rules governing  
2 the procedures for plugging horizontal wells, including rules  
3 relating to the methods of plugging such wells and the  
4 notices required to be provided in connection therewith.

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

1 The operator of a horizontal well shall reclaim the land  
2 surface within the area disturbed in siting, drilling, complet-

3 ing or producing the well in accordance with the following  
4 requirements:

5 (a) Except as provided elsewhere in this section, within six  
6 months after the completion of the drilling process the  
7 operator shall fill all the pits and impoundments that are not  
8 required or allowed by state or federal law or rule or agree-  
9 ment between the operator and the surface owner that allows  
10 the impoundment to remain open for the use and benefit of  
11 the surface owner (i.e. a farm pond as described in section  
12 nine of this article) and remove all concrete bases, drilling  
13 supplies, and drilling equipment. Within that period, the  
14 operator shall grade or terrace and plant, seed or sod the  
15 area disturbed that is not required in production of the  
16 horizontal well where necessary to bind the soil and prevent  
17 substantial erosion and sedimentation. No pit may be used  
18 for the ultimate disposal of salt water. Salt water and oil  
19 shall be periodically drained or removed and properly  
20 disposed of from any pit that is retained so the pit is kept  
21 reasonably free of salt water and oil. No pits may be left  
22 permanent.

23 (b) For well pads containing multiple horizontal wells,  
24 reclamation shall be completed within six months after the

25 completion of the drilling process for a well, unless the  
26 operator commences drilling on a subsequent well at that  
27 location within that six-month period.

28 (c) Within six months after a horizontal well that has  
29 produced oil or gas is plugged or after the plugging of a dry  
30 hole, the operator shall remove all production and storage  
31 structures, supplies and equipment and any oil, salt water  
32 and debris and fill any remaining excavations. Within that  
33 period, the operator shall grade or terrace and plant, seed or  
34 sod the area disturbed where necessary to bind the soil and  
35 prevent substantial erosion and sedimentation.

36 (d)(1) It shall be the duty of the operator to commence the  
37 reclamation of the area of land disturbed in siting, drilling,  
38 completing or producing the horizontal well in accordance  
39 with soil erosion and sediment control plans approved by the  
40 secretary or the secretary's designee pursuant to this article.

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

45 (3) If the secretary refuses to approve a request for exten-  
46 sion, the refusal shall be by order, which may be appealed

47 pursuant to the provisions of subsection (w), section five of  
48 this article.

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

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

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

14 (c) When an operator makes or has made application for  
15 permits to drill or stimulate a number of horizontal wells, the  
16 operator may, in lieu of furnishing a separate bond, furnish  
17 a blanket bond in the sum of \$50,000 payable to the State of  
18 West Virginia, and conditioned as aforesaid in subsection (b)  
19 of this section.

20 (d) The form of the bond required by this article shall be  
21 approved by the secretary and may include, at the option of  
22 the operator, surety bonding, collateral bonding (including  
23 cash and securities) letters of credit, establishment of an  
24 escrow account, self-bonding or a combination of these  
25 methods. If collateral bonding is used, the operator may elect  
26 to deposit cash, or collateral securities or certificates as  
27 follows: Bonds of the United States or its possessions, of the  
28 federal land bank, or of the homeowners' loan corporation;  
29 full faith and credit general obligation bonds of the State of  
30 West Virginia or other states or of any county, district or  
31 municipality of the State of West Virginia or other states; or  
32 certificates of deposit in a bank in this state, which certifi-  
33 cates shall be in favor of the department. The cash deposit or  
34 market value of the securities or certificates shall be equal to  
35 or greater than the amount of the bond. The secretary shall,  
36 upon receipt of any deposit of cash, securities or certificates,  
37 promptly place the same with the Treasurer of the State of  
38 West Virginia whose duty it shall be to receive and hold the  
39 same in the name of the state in trust for the purpose of  
40 which the deposit is made when the permit is issued. The  
41 operator shall be entitled to all interest and income earned

42 on the collateral securities filed by such operator. The  
43 operator making the deposit shall be entitled from time to  
44 time to receive from the State Treasurer, upon the written  
45 approval of the secretary, the whole or any portion of any  
46 cash, securities or certificates so deposited, upon depositing  
47 with the State Treasurer in lieu thereof, cash or other  
48 securities or certificates of the classes herein specified  
49 having value equal to or greater than the amount of the  
50 bond.

51 (e) When an operator has furnished a separate bond from  
52 a corporate bonding or surety company to drill, fracture or  
53 stimulate a horizontal well and the well produces oil or gas  
54 or both, its operator may deposit with the secretary cash  
55 from the sale of the oil or gas or both until the total depos-  
56 ited is \$5,000. When the sum of the cash deposited is \$5,000,  
57 the separate bond for the well shall be released by the  
58 secretary. Upon receipt of that cash, the secretary shall  
59 immediately deliver that amount to the Treasurer of the  
60 State of West Virginia. The State Treasurer shall hold the  
61 cash in the name of the state in trust for the purpose for  
62 which the bond was furnished and the deposit was made. The  
63 operator shall be entitled to all interest and income which



64 may be earned on the cash deposited so long as the operator  
65 is in full compliance with all laws and rules relating to the  
66 drilling, redrilling, deepening, casing, plugging, abandon-  
67 ment, and reclamation of the well for which the cash was  
68 deposited and so long as the operator has furnished all  
69 reports and information as may be required by the secretary.  
70 If the cash realized from the sale of oil or gas or both from  
71 the well is not sufficient for the operator to deposit with the  
72 secretary the sum of \$10,000 within one year of the day the  
73 well started producing, the corporate or surety company  
74 which issued the bond on the well may notify the operator  
75 and the secretary of its intent to terminate its liability under  
76 its bond. The operator then shall have thirty days to furnish  
77 a new bond from a corporate bonding or surety company or  
78 collateral securities or other forms of security, as provided in  
79 this section with the secretary. If a new bond or collateral  
80 securities or other forms of security are furnished by the  
81 operator, the liability of the corporate bonding or surety  
82 company under the original bond shall terminate as to any  
83 acts and operations of the operator occurring after the  
84 effective date of the new bond or the date the collateral  
85 securities or other forms of security are accepted by the

86 Treasurer of the State of West Virginia. If the operator does  
87 not furnish a new bond or collateral securities or other forms  
88 of security with the secretary, as provided in this section, the  
89 operator shall immediately plug, fill and reclaim the well in  
90 accordance with all of the provisions of law and rules  
91 applicable thereto. In such case, the corporate or surety  
92 company which issued the original bond shall be liable for  
93 any plugging, filling or reclamation not performed in  
94 accordance with such laws and rules.

95 (f) Any separate bond furnished for a particular well prior  
96 to the effective date of this article shall continue to be valid  
97 for all work on the well permitted prior to the effective date  
98 of this article; but no permit shall hereafter be issued on such  
99 a particular well without a bond complying with the provi-  
100 sions of this section. Any blanket bond furnished prior to the  
101 effective date of this article shall be replaced with a new  
102 blanket bond conforming to the requirements of this section,  
103 at which time the prior bond shall be discharged by opera-  
104 tion of law; and if the secretary determines that any operator  
105 has not furnished a new blanket bond, the secretary shall  
106 notify the operator by registered mail or by any method of  
107 delivery that requires a receipt or signature confirmation of

108 the requirement for a new blanket bond, and failure to  
109 submit a new blanket bond within sixty days after receipt of  
110 the notice from the secretary shall work a forfeiture under  
111 subsection (i) of this section of the blanket bond furnished  
112 prior to the effective date of this article.

113 (g) Any such bond shall remain in force until released by  
114 the secretary, and the secretary shall release the same upon  
115 satisfaction that the conditions thereof have been fully  
116 performed. Upon the release of any such bond, any cash or  
117 collateral securities deposited shall be returned by the  
118 secretary to the operator who deposited it.

119 (h) Whenever the right to operate a well is assigned or  
120 otherwise transferred, the assignor or transferor shall notify  
121 the department of the name and address of the assignee or  
122 transferee by registered mail or by any method of delivery  
123 that requires a receipt or signature confirmation not later  
124 than thirty days after the date of the assignment or transfer.  
125 No assignment or transfer by the owner shall relieve the  
126 assignor or transferor of the obligations and liabilities unless  
127 and until the assignee or transferee files with the department  
128 the well name and the permit number of the subject well, the  
129 county and district in which the subject well is located, the

130 names and addresses of the assignor or transferor, and  
131 assignee or transferee, a copy of the instrument of assign-  
132 ment or transfer accompanied by the applicable bond, cash,  
133 collateral security or other forms of security, described in  
134 this section, and the name and address of the assignee's or  
135 transferee's designated agent if assignee or transferee would  
136 be required to designate such an agent under this article, if  
137 assignee or transferee were an applicant for a permit under  
138 this article. Every well operator required to designate an  
139 agent under this section shall, within five days after the  
140 termination of such designation, notify the department of  
141 such termination and designate a new agent.

142 Upon compliance with the requirements of this section by  
143 assignor or transferor and assignee or transferee, the secre-  
144 tary shall release assignor or transferor from all duties and  
145 requirements of this article and shall give written notice of  
146 release to assignor or transferor of any bond and return to  
147 assignor or transferor any cash or collateral securities  
148 deposited pursuant to this section.

149 (i) If any of the requirements of this article or rules  
150 promulgated pursuant thereto or the orders of the secretary  
151 has not been complied with within the time limit set by any

152 notice of violation issued pursuant to this article, the  
153 performance bond shall then be forfeited.

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

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

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

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 any action for contamination or  
7 deprivation of a fresh water source or supply within one  
8 thousand feet of the site of drilling for a horizontal well,  
9 there shall be a rebuttable presumption that the drilling and  
10 the well or either, was the proximate cause of the contamina-  
11 tion or deprivation of the fresh water source or supply.

12 (c) In order to rebut the presumption of liability estab-  
13 lished in subsection (b) of this section, the operator must  
14 affirmatively prove one of the following defenses:

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

18 (2) The landowner or water purveyor refused to allow the  
19 operator access to the property to conduct a pre-drilling or  
20 pre-alteration survey.

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

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

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

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

1 (a) Any person or persons, firm, partnership, partnership  
2 association or corporation who willfully violates any provi-  
3 sion of this article or any rule or order promulgated hereun-  
4 der shall be subject to a civil penalty not exceeding \$5,000.  
5 Each day a violation continues after notice by the depart-  
6 ment constitutes a separate offense. The penalty shall be

7 recovered by a civil action brought by the department, in the  
8 name of the state, before the circuit court of the county in  
9 which the subject well or facility is located. All such civil  
10 penalties collected shall be credited to the general fund of  
11 the state.

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

26 (c) Any person or persons, firm, partnership, partnership  
27 association or corporation willfully violating any of the  
28 provisions of this article which prescribe the manner of

29 drilling and casing or plugging and filling any well, or which  
30 prescribe the methods of conserving gas from waste, shall be  
31 guilty of a misdemeanor, and, upon conviction thereof, shall  
32 be punished by a fine not exceeding \$5,000, or imprisonment  
33 in a regional jail for not more than 12 months, or both, in the  
34 discretion of the court, and prosecutions under this section  
35 may be brought in the name of the state of West Virginia in  
36 the court exercising criminal jurisdiction in the county in  
37 which the violation of such provisions of the article or terms  
38 of such order was committed.

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

47 (e) Any person who willfully violates any provision of any  
48 permit issued under or subject to the provisions of this  
49 article or who willfully violates any provision of this article  
50 or any rule of the secretary or any order of the secretary or



51 board is guilty of a misdemeanor and, upon conviction  
52 thereof, shall be fined not less than \$2,500 dollars nor more  
53 than \$25,000 per day of violation, or imprisoned in a county  
54 or regional jail not more than one year, or both fined and  
55 imprisoned.

**§22-6A-16. Local ordinances.**

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

**§22-6A-17. Division 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 Division of High-  
3 ways that the operator has entered into a required Division  
4 of Highways road maintenance agreement for horizontal  
5 drilling operations and is in compliance with all laws,  
6 regulations and conditions required by the Division of

7 Highways relating to use, maintenance and repair of all state  
8 and county roads to be utilized for access to a well location,  
9 including, but not limited to, those roads used for the  
10 transportation of water, machinery or any other items or  
11 materials related to the construction and operation of the  
12 well. The operator shall be responsible and liable for all  
13 actions of the operator's agents, employees, subcontractors  
14 and others under the direction of the operator regarding  
15 performance under the agreement provided herein above.  
16 Upon notice that the operator is failing to comply with the  
17 letter of certification as required by this section, the division  
18 shall deem such violation as a violation of a permit condition  
19 for construction or operation of the well pursuant to this  
20 article.

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

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

**§22C-8-2. Definitions.**

1 Unless the context in which used clearly requires a  
2 different meaning, as used in this article:  
3 (1) "Board" means the shallow gas well review board  
4 provided for in section four of this article;

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

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

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

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

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

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

25 (8) "Deep well" means any well other than a shallow well  
26 or coalbed methane well, drilled and completed in to a

27 formation ~~at or~~ below the top of the uppermost member of  
28 the “Onondaga Group”;

29 (9) “Division” means the state Division of Environmental  
30 Protection provided for in chapter twenty-two of this code;

31 (10) “Director” means the Director of the Division of  
32 Environmental Protection as established in article one,  
33 chapter twenty-two of this code or such other person to  
34 whom the division department delegates authority or duties  
35 pursuant to sections six or eight, article one, chapter  
36 twenty-two of this code;

37 (11) “Drilling unit” means the acreage on which the board  
38 decides one well may be drilled under section ten of this  
39 article;

40 (12) “Gas” means all natural gas and all other fluid  
41 hydrocarbons not defined as oil in subdivision (15) of this  
42 section;

43 (13) “Gas operator” means any person who owns or has the  
44 right to develop, operate and produce gas from a pool and to  
45 appropriate the gas produced therefrom either for such  
46 person or for such person and others. In the event that there  
47 is no gas lease in existence with respect to the tract in  
48 question, the person who owns or has the gas rights therein

49 shall be considered a “gas operator” to the extent of  
50 seven-eighths of the gas in that portion of the pool underlying  
51 the tract owned by such person, and a “royalty owner” to the  
52 extent of one-eighth of such gas;

53 (14) “Just and equitable share of production” means, as to  
54 each person, an amount of gas in the same proportion to the  
55 total gas production from a well as that person’s acreage  
56 bears to the total acreage in the drilling unit;

57 (15) “Oil” means natural crude oil or petroleum and other  
58 hydrocarbons, regardless of gravity, which are produced at  
59 the well in liquid form by ordinary production methods and  
60 which are not the result of condensation of gas after it leaves  
61 the underground reservoir;

62 (16) “Owner” when used with reference to any coal seam,  
63 shall include any person or persons who own, lease or  
64 operate such coal seam;

65 (17) “Person” means any natural person, corporation, firm,  
66 partnership, partnership association, venture, receiver,  
67 trustee, executor, administrator, guardian, fiduciary or other  
68 representative of any kind, and includes any government or  
69 any political subdivision or any agency thereof;

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

72 (19) "Pool" means an underground accumulation of gas in  
73 a single and separate natural reservoir (ordinarily a porous  
74 sandstone or limestone). It is characterized by a single  
75 natural-pressure system so that production of gas from one  
76 part of the pool tends to or does affect the reservoir pressure  
77 throughout its extent. A pool is bounded by geologic barriers  
78 in all directions, such as geologic structural conditions,  
79 impermeable strata, and water in the formation, so that it is  
80 effectively separated from any other pools which may be  
81 present in the same district or in the same geologic structure;

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

85 (21) "Shallow well" means any gas well other than a  
86 coalbed methane well, drilled no deeper than one hundred  
87 feet below the top of the "Onondaga Group": and completed  
88 in a formation above the top of the uppermost member of the  
89 "Onondaga Group." *Provided, That in drilling a shallow well*  
90 *the well operator may penetrate into the "Onondaga Group"*  
91 *to a reasonable depth, not in excess of twenty feet, in order*

92 ~~to allow for logging and completion operations, but~~ in no  
93 event may the “Onondaga Group” formation or any forma-  
94 tion below the “Onondaga Group” be otherwise produced,  
95 perforated or stimulated in any manner;

96 (22) “Tracts comprising a drilling unit” means that all  
97 separately owned tracts or portions thereof which are  
98 included within the boundary of a drilling unit;

99 (23) “Well” means any shaft or hole sunk, drilled, bored or  
100 dug into the earth or into underground strata for the extrac-  
101 tion, injection or placement of any liquid or gas, or any shaft  
102 or hole sunk or used in conjunction with such extraction,  
103 injection or placement. The term “well” does not include any  
104 shaft or hole sunk, drilled, bored or dug into the earth for the  
105 sole purpose of core drilling or pumping or extracting  
106 therefrom potable, fresh or usable water for household,  
107 domestic, industrial, agricultural or public use; and

108 (24) “Well operator” means any person who proposes to or  
109 does locate, drill, operate or abandon any well.

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

**§22C-9-2. Definitions.**

- 1 (a) Unless the context in which used clearly requires a
- 2 different meaning, as used in this article:

3 (1) "Commission" means Oil and Gas Conservation  
4 Commission and "commissioner" means the oil and gas  
5 conservation commissioner as provided for in section four of  
6 this article;

7 (2) "Director" means the Director of the Division of  
8 Environmental Protection and "chief" means the chief of the  
9 Office of Oil and Gas;

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

15 (4) "Operator" means any owner of the right to develop,  
16 operate and produce oil and gas from a pool and to appropri-  
17 ate the oil and gas produced therefrom, either for such  
18 person or for such person and others; in the event that there  
19 is no oil and gas lease in existence with respect to the tract  
20 in question, the owner of the oil and gas rights therein shall  
21 be considered as "operator" to the extent of seven-eighths of  
22 the oil and gas in that portion of the pool underlying the  
23 tract owned by such owner, and as "royalty owner" as to  
24 one-eighth interest in such oil and gas; and in the event the



25 oil is owned separately from the gas, the owner of the  
26 substance being produced or sought to be produced from the  
27 pool shall be considered as “operator” as to such pool;

28 (5) “Royalty owner” means any owner of oil and gas in  
29 place, or oil and gas rights, to the extent that such owner is  
30 not an operator as defined in subdivision (4) of this section;

31 (6) “Independent producer” means a producer of crude oil  
32 or natural gas whose allowance for depletion is determined  
33 under Section 613A of the federal Internal Revenue Code in  
34 effect on July 1, 1997;

35 (7) “Oil” means natural crude oil or petroleum and other  
36 hydrocarbons, regardless of gravity, which are produced at  
37 the well in liquid form by ordinary production methods and  
38 which are not the result of condensation of gas after it leaves  
39 the underground reservoir;

40 (8) “Gas” means all natural gas and all other fluid hydro-  
41 carbons not defined as oil in subdivision (7) of this section;

42 (9) “Pool” means an underground accumulation of petro-  
43 leum or gas in a single and separate reservoir (ordinarily a  
44 porous sandstone or limestone). It is characterized by a  
45 single natural-pressure system so that production of petro-  
46 leum or gas from one part of the pool affects the reservoir

47 pressure throughout its extent. A pool is bounded by geologic  
48 barriers in all directions, such as geologic structural condi-  
49 tions, impermeable strata, and water in the formations, so  
50 that it is effectively separated from any other pools that may  
51 be presented in the same district or on the same geologic  
52 structure;

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

56 (11) "Shallow well" means any well other than a coalbed  
57 methane well, drilled no deeper than one hundred feet below  
58 the top of the "Onondaga Group": ~~and completed in a~~  
59 ~~formation above the top of the uppermost member of the~~  
60 ~~"Onondaga Group:"~~ *Provided, That in drilling a shallow well*  
61 *the operator may penetrate into the "Onondaga Group" to a*  
62 *reasonable depth, not in excess of twenty feet, in order to*  
63 *allow for logging and completion operations, but in no event*  
64 *may the "Onondaga Group" formation or any formation*  
65 *below the "Onondaga Group" be otherwise produced,*  
66 *perforated or stimulated in any manner;*

67 (12) "Deep well" means any well, other than a shallow well  
68 or coalbed methane well, drilled and completed in to a

69 formation ~~at or~~ below the top of the uppermost member of  
70 the “Onondaga Group;”

71 (13) “Drilling unit” means the acreage on which one well  
72 may be drilled;

73 (14) “Waste” means and includes:

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

76 (B) The locating, drilling, equipping, operating or produc-  
77 ing of any oil or gas well in a manner that causes, or tends to  
78 cause, a reduction in the quantity of oil or gas ultimately  
79 recoverable from a pool under prudent and proper opera-  
80 tions, or that causes or tends to cause unnecessary or  
81 excessive surface loss of oil or gas; or

82 (C) The drilling of more deep wells than are reasonably  
83 required to recover efficiently and economically the maxi-  
84 mum amount of oil and gas from a pool. Waste does not  
85 include gas vented or released from any mine areas as  
86 defined in section two, article one, chapter twenty-two-a of  
87 this code or from adjacent coal seams which are the subject  
88 of a current permit issued under article two of chapter  
89 twenty-two-a of this code: *Provided*, That nothing in this  
90 exclusion is intended to address ownership of the gas;

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

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

99 (b) Unless the context clearly indicates otherwise, the use  
100 of the word "and" and the word "or" shall be interchange-  
101 able, as, for example, "oil and gas" shall mean oil or gas or  
102 both.