

1 **farm ponds.**

2 (a) The Legislature finds that large ~~impoundments and pits,~~
3 ~~(i.e.~~ impoundments or pits with a capacity of two hundred ten
4 thousand gallons or more, not associated with a specific well work
5 permit, must be properly regulated and controlled. It is the
6 intent of the Legislature by this section to provide for the
7 regulation and supervision of large impoundments or pits not
8 associated with a well work permit. This section does not apply to
9 large pits or impoundments authorized under a well work permit.

10 (b) It is unlawful for ~~any~~ a person to place, construct,
11 enlarge, alter, repair, remove or abandon ~~any~~ a freshwater
12 impoundment or pit with capacity of two hundred ten thousand
13 gallons or more used in association with ~~any~~ a horizontal well
14 operation until he or she ~~has first secured~~ first secures from the
15 secretary a certificate of approval for the same. ~~Provided, That~~
16 Routine repairs that do not affect the safety of the impoundment
17 are not subject to the application and approval requirements. A
18 separate application for a certificate of approval shall be
19 submitted by a person for each impoundment he or she desires to
20 place, construct, enlarge, alter, repair, remove or abandon. ~~but~~
21 One application may be valid for more than one impoundment that
22 supports one or more well pads.

23 (c) The application fee for placement, construction,
24 enlargement, alteration, repair or removal of an impoundment

1 pursuant to this section is \$300 and the fee shall accompany the
2 application for certificate of approval. Operators holding
3 certificates of approval ~~shall be~~ are assessed an annual
4 registration fee of \$100 which is valid for more than one
5 impoundment that supports one or more well pads.

6 (d) ~~Any~~ The certificate of approval required by this section
7 shall be issued or denied no later than sixty days from the
8 submission of an application containing the information required by
9 this section. ~~However,~~ If the application for a certificate of
10 approval is submitted with the application for a horizontal well
11 permit, the certificate shall be issued or denied no later than
12 thirty days from the submission of the permit application.

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

1 (f) Every application for a certificate of approval shall be
2 made in writing on a form prescribed by the secretary and ~~shall be~~
3 signed and verified by the applicant. The application shall
4 include a monitoring and emergency action plan, ~~and~~ a maintenance
5 plan and a removal-plan when operations cease, the required
6 contents of which shall be established by the secretary by
7 legislative rule. In addition to other requirements the secretary
8 may establish by legislative rule, the removal-plan shall include
9 a rule which requires a composite soil sampling and testing of the
10 ground area underneath the black plastic after the pit or
11 impoundment has been drained and the plastic removed. The
12 application shall contain and provide information that may
13 reasonably be required by the secretary to administer the
14 provisions of this article.

15 (g) Plans and specifications for the placement, construction,
16 erosion and sediment control, enlargement, alteration, repair or
17 removal and reclamation of impoundments shall be the charge of a
18 registered professional engineer licensed to practice in West
19 Virginia. ~~Any~~ Plans or specifications submitted to the department
20 shall bear the seal of a registered professional engineer.

21 (h) Each certificate of approval issued by the secretary
22 pursuant to the provisions of this article may contain other terms
23 and conditions the secretary prescribes.

24 (i) The secretary may revoke or suspend any certificate of

1 approval whenever the secretary determines that the impoundment for
2 which the certificate was issued constitutes an imminent danger to
3 human life or property. If necessary to safeguard human life or
4 property, the secretary may also amend the terms and conditions of
5 ~~any~~ a certificate by issuing a new certificate containing the
6 revised terms and conditions.

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

12 (2) ~~Any~~ A person adversely affected by an order entered
13 following ~~this~~ the hearing has the right to appeal to the
14 Environmental Quality Board pursuant to the provisions of article
15 one, chapter twenty-two-b of this code.

16 ~~(j) Upon expiration of the certificate of approval, the~~
17 ~~operator shall within six months, or upon its revocation by the~~
18 ~~secretary, the operator shall within sixty days, Within six months~~
19 ~~of the expiration of the certificate of approval or within sixty~~
20 ~~days upon the revocation of a certificate of approval, the operator~~
21 shall fill all impoundments that are not required or allowed by
22 state or federal law or rule or agreement between the operator and
23 the surface owner allowing the impoundment to remain open for the
24 use and benefit of the surface owner and reclaim the site in

1 accordance with the approved removal plan submitted as part of the
2 application for a certificate of approval and the approved erosion
3 and sediment control plan.

4 (k) This section does not apply to:

5 (1) Farm ponds constructed by the operator with the written
6 consent of the surface owner, which will be used after completion
7 of the drilling activity primarily for agricultural purposes
8 including, without limitation, livestock watering, irrigation,
9 retention of animal wastes and fish culture. ~~Any~~ An impoundment
10 that is intended to be left permanent as a farm pond under this
11 subdivision shall meet the requirements set forth by the United
12 States Department of Agriculture's Natural Resources Conservation
13 Service "Conservation Practice Standard - Ponds" (Code 378).

14 (2) Farm ponds subject to certificates of approval under
15 article fourteen of this chapter.

16 (1) The secretary is authorized to propose rules for
17 legislative approval in accordance with the provisions of article
18 three, chapter twenty-nine-a of this code, necessary to effectuate
19 the provisions of this section.

NOTE: The purpose of this bill is to require, as part of a removal-plan, a composite soil sampling and testing be performed on the ground area underneath a pit or impoundment after it has been drained and the plastic removed.

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