

1 COMMITTEE SUBSTITUTE

2 FOR

3 **Senate Bill No. 424**

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

6 _____
7 [Originating in the Committee on Energy, Industry and Mining;
8 reported February 24, 2011.]
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11
12 A BILL to amend and reenact §22-6-1 of the Code of West Virginia,
13 1931, as amended; to amend said code by adding thereto a new
14 article, designated §22-6A-1, §22-6A-2, §22-6A-3, §22-6A-4,
15 §22-6A-5, §22-6A-6, §22-6A-7, §22-6A-8, §22-6A-9, §22-6A-10,
16 §22-6A-11, §22-6A-12, §22-6A-13, §22-6A-14, §22-6A-15 and §22-
17 6A-16; to amend and reenact §22C-8-2 of said code; and to
18 amend and reenact §22C-9-2 of said code, all relating
19 generally to oil and gas and oil and gas wells; defining
20 certain new terms and amending existing definitions of certain
21 terms; creating Natural Gas Horizontal Well Control Act;
22 providing short title; making legislative findings and
23 declarations of public policy; providing for application of
24 new act; defining terms used in said act; specifying powers

1 and duties of Secretary of Department of Environmental
2 Protection; incorporating by reference certain sections of
3 existing code relating to oil and gas wells; requiring
4 horizontal well permits; requiring application for permit;
5 specifying content of application and required attachments;
6 requiring posting of bond and payment of permit fees;
7 permitting waiver of certain requirements under specified
8 circumstances and for issuance of emergency permits; providing
9 for suspension and reinstatement of permits; providing for
10 appeals of certain actions of Secretary of Department of
11 Environmental Protection; imposing criminal penalties for
12 violation of permit requirements; providing for review of
13 permit applications and for issuance of permits; specifying
14 operator performance standards; providing for copies of
15 permits to be furnished to county assessors; requiring
16 certificate of approval for large impoundment construction;
17 requiring application for certificate; specifying content of
18 application and required attachments and payment of fees;
19 providing for revocation or suspension of certificates;
20 requiring hearing before certificate of approval is amended,
21 suspended or revoked without consent of operator; providing
22 for administrative appeals; providing exceptions for certain
23 farm ponds; authorizing Secretary of Department of
24 Environmental Protection to propose legislative rules for

1 consideration by Legislature; imposing civil money penalties;
2 providing for permit revocation and bond forfeiture; requiring
3 notice to property owners when application for well permit is
4 made or application for certificate of approval of impoundment
5 is filed and providing property owners with certain rights;
6 providing for plugging and abandonment of horizontal wells;
7 requiring promulgation of certain legislative rules;
8 specifying reclamation requirements; requiring performance
9 bonds; providing presumptions and rebuttals in water rights
10 civil actions; imposing civil and criminal penalties for
11 certain offenses; specifying prospective application of act;
12 and excluding for one year the issuance of permits for
13 horizontal drilling in karst formations in Greenbrier and
14 Monroe counties.

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

16 That §22-6-1 of the Code of West Virginia, 1931, as amended,
17 be amended and reenacted; that said code be amended by adding
18 thereto a new article, designated §22-6A-1, §22-6A-2, §22-6A-3,
19 §22-6A-4, §22-6A-5, §22-6A-6, §22-6A-7, §22-6A-8, §22-6A-9, §22-6A-
20 10, §22-6A-11, §22-6A-12, §22-6A-13, §22-6A-14, §22-6A-15 and §22-
21 6A-16; that §22C-8-2 of said code be amended and reenacted; and
22 that §22C-9-2 of said code be amended and reenacted, all to read as
23 follows:

24 **CHAPTER 22. ENVIRONMENTAL RESOURCES.**

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

2 **§22-6-1. Definitions.**

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

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

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

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

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

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

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

24 (g) "Deep well" means any well other than a shallow well or

1 coalbed methane well drilled to a formation below the top of the
2 uppermost member of the "Onondaga Group";

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

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

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

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

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

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

1 seam;

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

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

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

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

15 (r) "Safe mining through of a well" means the mining of coal
16 in a workable coal bed up to a well which penetrates such workable
17 coal bed and through such well so that the casing or plug in the
18 well bore where the well penetrates the workable coal bed is
19 severed;

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

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

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

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

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

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

22 (x) "Well" means any shaft or hole sunk, drilled, bored or dug
23 into the earth or into underground strata for the extraction or
24 injection or placement of any liquid or gas, or any shaft or hole

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

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

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

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

17 **§22-6A-1. Short title.**

18 This article shall be known and cited as the "Horizontal Well
19 Act."

20 **§22-6A-2. Legislative findings; declaration of public policy.**

21 (a) The Legislature finds that:

22 (1) The advent and advancement of new and existing
23 technologies and drilling practices have created the opportunity
24 for the efficient development of natural gas contained in

1 underground shales and other geologic formations.

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

7 (3) In some instances these practices may require the
8 construction of large impoundments for the storage of water or
9 wastewater;

10 (4) Existing laws and regulations developed for conventional
11 oil and gas operations are inadequate to address the potential
12 environmental impacts from these new technologies and practices;
13 and

14 (5) Allowing the responsible development of our state's
15 natural gas resources will enhance the economy of our state and the
16 quality of life for our citizens while assuring the long term
17 protection of the environment.

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

23 (c) The Legislature declares that in view of the urgent need
24 for prompt decision of matters submitted to the secretary under

1 this article, all actions which the secretary, or oil and gas
2 inspectors are required to take under this article, shall be taken
3 as rapidly as practicable, consistent with adequate consideration
4 of the issues involved.

5 **§22-6A-3. Applicability.**

6 Notwithstanding any other provision of this code to the
7 contrary, the provisions of this article shall apply to any natural
8 gas well that is a horizontal well as defined in section four of
9 this article.

10 **22-6A-4. Definitions.**

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

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

17 (1) "Best management practices" means schedules of activities,
18 prohibitions of practices, maintenance procedures, and other
19 management practices to prevent or reduce pollution of waters of
20 this State. For purposes of this article, best management practices
21 also includes those practices and procedures set out in the Erosion
22 and Sediment Control Manual of the Office of Oil and Gas;

23 (2) "Department" means the department of environmental
24 protection.

1 (3) "Horizontal drilling" means a method of drilling a well
2 for the production of natural gas that is intended to maximize the
3 length of wellbore that is exposed to the formation and in which
4 the wellbore is initially vertical but eventually is curved to
5 become horizontal, or nearly horizontal, to parallel a particular
6 geologic formation;

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

9 (5) "Flowback Recycle Impoundment" means an impoundment used
10 for the retention of flowback and freshwater and into which no
11 other wastes of any kind are placed.

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

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

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

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

24 To the extent that horizontal wells governed by this article

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

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

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

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

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

22 (e) The provisions of section ten, article six of this chapter
23 pertaining to the procedures for filing comments relating to
24 proposed well work and the applicant's obligation to certify

1 compliance with applicable notice requirements, with the following
2 exceptions:

3 (i) Under subsection (a), section ten, article six of this
4 chapter the persons described in subsections (a) and (b), section
5 ten of this article shall be entitled to file comments.

6 (ii) Under subsection (a), section ten, article six of this
7 chapter the applicable time period for filing comments shall be
8 thirty days from the filing of an application with the secretary.

9 (f) The provisions of section twelve, article six of this
10 chapter pertaining to plats prerequisite to drilling or fracturing
11 wells, the preparation and contents thereof, notice furnished to
12 coal operators, owners or lessees, the issuance of permits, and
13 required performance bonds, with the following exceptions:

14 (1) Under subsection (a), section twelve, article six of this
15 chapter the plat also shall identify all mineral tract boundaries
16 within the scope of the plat.

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

20 (g) The provisions of section thirteen, article six of this
21 chapter providing for notice of the operator's intention to
22 fracture wells, with the exception that under subsection (c) of
23 section thirteen, article six of this chapter the applicable time
24 periods shall be thirty days in lieu of fifteen days.

1 (h) The provisions of section fifteen, article six of this
2 chapter pertaining to objections to proposed deep well drilling
3 sites above seam or seams of coal, with the exception that the
4 applicable time for filing objections shall be within thirty days
5 of receipt by the secretary of the required plat and/or notice in
6 lieu of fifteen days.

7 (i) The provisions of section seventeen, article six of this
8 chapter pertaining to drilling of shallow gas wells, notice to be
9 provided to the chair of the review board, orders issued by the
10 review board, and permits issued for such drilling, with the
11 exception that the applicable time for filing objections shall be
12 thirty days from the date of receipt by the secretary of the
13 required plat and notice in lieu of fifteen days.

14 (j) The provisions of section eighteen, article six of this
15 chapter providing for protective devices for when a well penetrates
16 one or more workable coal beds and when gas is found beneath or
17 between workable coal beds.

18 (k) The provisions of section nineteen, article six of this
19 chapter providing for protective devices during the life of the
20 well and for dry or abandoned wells.

21 (l) The provisions of section twenty, article six of this
22 chapter providing for protective devices when a well is drilled
23 through the horizon of a coalbed from which the coal has been
24 removed.

1 (m) The provisions of section twenty-one, article six of this
2 chapter requiring the installation of fresh water casings.

3 (n) The provisions of section twenty-two, article six of this
4 chapter relating to the filing of a well completion report and the
5 contents thereof, confidentiality and permitted use, and the
6 secretary's authority to promulgate rules.

7 (o) The provisions of section twenty-seven, article six of
8 this chapter regarding a cause of action for damages caused by an
9 explosion.

10 (p) The provisions of section twenty-eight, article six of
11 this chapter relating to supervision by the secretary over drilling
12 and reclamation operations, the filing of complaints, hearings on
13 the same, and appeals.

14 (q) The provisions of section twenty-nine, article six of this
15 chapter providing for the Operating Permit and Processing Fund, the
16 oil and gas reclamation fund, and associated fees, with the
17 exception that in the opening paragraph of subsection (a), section
18 twenty-nine, article six of this chapter the fees to be credited to
19 the Oil and Gas Operating Permit and Processing Fund shall be the
20 permit fees collected pursuant to subsection (f), section seven of
21 this article.

22 (r) The provisions of section thirty-one, article six of this
23 chapter providing for preventing waste of gas, plans of operation
24 for wasting gas in the process of producing oil and the secretary's

1 rejection thereof.

2 (s) The provisions of section thirty-two, article six of this
3 chapter pertaining to the right of an adjacent owner or operator to
4 prevent waste of gas and the recovery of costs.

5 (t) The provisions of section thirty-three, article six of
6 this chapter relating to circuit court actions to restrain waste.

7 (u) The provisions of section thirty-six, article six of this
8 chapter providing for the declaration of oil and gas notice by
9 owners and lessees of coal seams and setting out the form of such
10 notice, with the exception that under subsection (b) of section
11 thirty-six, article six of this chapter the owner or lessee of coal
12 seams shall be entitled only to the notices provided in sections
13 twelve and thirteen, of article six of this chapter.

14 (v) The provisions of section thirty-nine, article six of this
15 chapter relating to petitions for injunctive relief.

16 (w) The provisions of section forty, article six of this
17 chapter relating to appeals from orders issuing or refusing to
18 issue a permit to drill or fracture, and the procedure therefore.

19 Notwithstanding any other provision of this code to the
20 contrary, no provision of article six of this chapter shall apply
21 to horizontal wells subject to this article except as expressly
22 incorporated by reference in this article.

23 **§22-6A-6. Secretary of Environmental Protection; powers and duties.**

24 The secretary is vested with jurisdiction over all aspects of

1 this article, including, but not limited to, the following powers
2 and duties:

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

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

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

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

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

22 **§22-6A-7. Horizontal well permit required; permit fee; application;**
23 **soil erosion control plan; well site safety plan; site**
24 **construction plan; water management plan; permit fee;**

1 **installation of permit number; suspension of a permit.**

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

6 (b) Every permit application filed under this section shall be
7 on such form as may be prescribed by the secretary, shall be
8 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 notify
12 under any section of this article, together with a certification
13 and evidence that a copy of the application and all other required
14 documentation has been delivered to all such persons;

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

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

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

24 (5) The approximate depth to which the well is to be drilled

1 or deepened, or the actual depth if the well has been drilled;

2 (6) Each formation in which the well will be completed if
3 applicable;

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

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

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

14 (10) If the proposed well work is to plug or replug the well,
15 all information necessary to demonstrate compliance with the
16 legislative rules promulgated by the secretary in accordance with
17 section eleven of this article;

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

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

24 (13) A well site safety plan to address proper safety measures

1 to be employed for the protection of persons on the site as well as
2 the general public. The plan shall encompass all aspects of the
3 operation, including the actual well work for which the permit was
4 obtained, completion activities, and production activities and
5 shall provide an emergency point of contact for the well operator.
6 The well operator shall provide a copy of the well site safety to
7 the local emergency planning committee established pursuant to
8 section seven, article five-a, chapter fifteen of this code, for
9 the emergency planning district in which the well work will occur
10 at least seven days before commencement of well work or site
11 preparation work that involves any disturbance of land; and

12 (14) Any other relevant information which the secretary may
13 reasonably require.

14 (c)(1) An erosion and sediment control plan shall accompany
15 each application for a well work permit under this article. The
16 plan shall contain methods of stabilization and drainage, including
17 a map of the project area indicating the amount of acreage
18 disturbed. The erosion and sediment control plan shall meet the
19 minimum requirements of the West Virginia Erosion and Sediment
20 Control Manual as adopted and from time to time amended by the
21 department. The erosion and sediment control plan shall become part
22 of the terms and conditions of any well work permit that is issued
23 pursuant to this article and the provisions of the plan shall be
24 carried out where applicable in the operation. The erosion and

1 sediment control plan shall set out the proposed method of
2 reclamation which shall comply with the requirements of section
3 twelve of this article.

4 (2) For horizontal well sites that disturb 5 acres or more of
5 surface, excluding pipelines, gathering lines, and roads, the
6 erosion and sediment control plan submitted in accordance with this
7 section shall be certified by a registered professional engineer.

8 (d) For well sites that disturb five acres or more of surface,
9 excluding pipelines, gathering lines, and roads, the operator shall
10 submit a site construction plan that shall be certified by a
11 registered professional engineer and contains information that the
12 secretary may require by rule.

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

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

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

24 (3) The anticipated months when water withdrawals will be

1 made;

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

4 (5) A listing of the anticipated additives that may be used in
5 water used for fracturing or stimulating the well. Upon well
6 completion, a listing of the additives that were actually used in
7 the fracturing or stimulating of the well shall be submitted as
8 part of the completion report required by subsection (n), section
9 five of this article;

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

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

20 (B) For surface waters, a demonstration, using methods
21 acceptable to the secretary, that sufficient in-stream flow will be
22 available immediately downstream of the point of withdrawal. A
23 sufficient in-stream flow is maintained when a pass-by flow that is
24 protective of the identified use of the stream is preserved

1 immediately downstream of the point of withdrawal; and

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

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

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

12 (g) The application for a permit under this section shall be
13 accompanied by the applicable bond as required by section thirteen
14 of this article, the applicable plat required by subsection (f),
15 section five of this article, and a permit fee of \$5,000 for the
16 initial horizontal well drilled at a location and a permit fee of
17 \$1,000 for each additional well drilled on a single well pad at the
18 same location.

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

1 served. Every well operator required to designate an agent under
2 this section shall, within 5 days after the termination of such
3 designation, notify the secretary of such termination and designate
4 a new agent.

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

11 (j) The secretary may waive the requirements of this section
12 and sections eight and ten of this article and subsection (e),
13 section five of this article in any emergency situation, if the
14 secretary deems such action necessary. In such case the secretary
15 may issue an emergency permit which shall be effective for not more
16 than 30 days, unless reissued by the secretary.

17 (k) The secretary shall deny the issuance of a permit if the
18 secretary determines that the applicant has committed a substantial
19 violation of a previously issued permit for a horizontal well,
20 including the applicable erosion and sediment control plan
21 associated with the previously issued permit, or a substantial
22 violation of one or more of the rules promulgated under this
23 article, and has failed to abate or seek review of the violation
24 within the time prescribed by the secretary pursuant to the

1 provisions of subsections (a) and (b), section five of this article
2 and the rules promulgated hereunder, which time may not be
3 unreasonable.

4 (1) In the event the secretary finds that a substantial
5 violation has occurred and that the operator has failed to abate or
6 seek review of the violation in the time prescribed, the secretary
7 may suspend the permit on which said violation exists, after which
8 suspension the operator shall forthwith cease all well work being
9 conducted under the permit. However, the secretary may reinstate
10 the permit without further notice, at which time the well work may
11 be continued. The secretary shall make written findings of any such
12 suspension and may enforce the same in the circuit courts of this
13 state. The operator may appeal a suspension pursuant to the
14 provisions of subsection (w), section five of this article. The
15 secretary shall make a written finding of any such determination.

16 **§22-6A-8. Review of application; issuance of permit in the absence**
17 **of objections; performance standards; copy of permits to**
18 **county assessor.**

19 (a) The secretary shall review each application for a well
20 work permit and shall determine whether or not a permit shall be
21 issued.

22 (b) No permit shall be issued less than 30 days after the
23 filing date of the application for any well work except plugging or
24 replugging; and no permit for plugging or replugging shall be

1 issued less than 5 days after the filing date of the application
2 except a permit for plugging or replugging a dry hole: *Provided,*
3 That if the applicant certifies that all persons entitled to notice
4 of the application under the provisions of this article have been
5 served in person or by certified mail, return receipt requested,
6 with a copy of the well work application, including the erosion and
7 sediment control plan, if required, and the plat required by
8 section seven of this article, and further files written statements
9 of no objection by all such persons, the secretary may issue the
10 well work permit at any time.

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

1 agreement: *Provided*, That in all inquiries the Executive Director
2 of Workforce West Virginia and the Insurance Commissioner shall
3 make response to the Department of Environmental Protection within
4 fifteen calendar days; otherwise, failure to respond timely is
5 considered to indicate the applicant is in compliance and the
6 failure will not be used to preclude issuance of the permit.

7 (d) The secretary may cause such inspections to be made of the
8 proposed well work location as necessary to assure adequate review
9 of the application. The permit shall not be issued, or shall be
10 conditioned including conditions with respect to the location of
11 the well and access roads prior to issuance if the director
12 determines that:

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

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

17 (3) Damage would occur to publicly owned lands or resources;
18 or

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

21 (e) The director shall promptly review all comments filed. If
22 after review of the application and all comments received, the
23 application for a well work permit is approved, and no timely
24 objection or comment has been filed with the director or made by

1 the director under the provisions of subsection (h) and (i), section
2 five of this article, the permit shall be issued, with conditions,
3 if any. Nothing in this section shall be construed to supersede the
4 provisions of section seven or subsections (f) through (i), section
5 five of this article.

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

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

10 (2) Plug all wells in accordance with the requirements of this
11 article and the rules promulgated pursuant thereto when such wells
12 become abandoned pursuant to subsection (k), section five of this
13 article;

14 (3) With respect to disposal of cuttings at the well site,
15 stabilize all waste pits, including the use of impervious
16 materials, if necessary, to assure that any leachate therefrom will
17 not degrade surface or groundwaters below water quality standards
18 established pursuant to applicable federal and State law and that
19 the site is stabilized and revegetated according to the provisions
20 of this article and the rules promulgated thereunder;

21 (4) Grade, terrace and plant, seed or sod the area disturbed
22 that is not required in production of the horizontal well where
23 necessary to bind the soil and prevent substantial erosion and
24 sedimentation;

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

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

6 (7) Protect the quantity and the quality of water in surface
7 and groundwater systems both during and after drilling operations
8 and during reclamation by: (A) Withdrawing water from surface
9 waters of the State by methods deemed appropriate by the secretary,
10 so as to maintain sufficient in-stream flow immediately downstream
11 of the withdrawal location. In no case shall an operator withdraw
12 water from ground or surface waters at volumes beyond which the
13 waters can sustain; (B) Casing, sealing or otherwise managing wells
14 to keep returned fluids from entering ground and surface waters;
15 (C) Conducting oil and gas operations so as to prevent, to the
16 extent possible using the best management practices, additional
17 contributions of suspended or dissolved solids to streamflow or
18 runoff outside the permit area, but in no event shall the
19 contributions be in excess of requirements set by applicable State
20 or federal law; and (D) Identify all water supply wells to the
21 Office of Oil and Gas that are required to be permitted by the
22 Bureau for Public Health under 64 CSR 19. All drinking water wells
23 within 2,500 feet of the water supply well shall be flow tested by
24 the operator upon request of the drinking well owner prior to

1 operating the water supply well.

2 (8) The construction of new roads or the improvement or use of
3 existing roads shall be conducted in accordance with the standards
4 established pursuant to this article or the rules promulgated
5 thereunder for such effects which result from oil and gas
6 operations; and

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

11 (A) Identification of water withdrawal locations. Within 48
12 hours prior to the withdrawal of water, the operator shall identify
13 the location of withdrawal by latitude and longitude and verify
14 that sufficient flow exists to protect designated uses of the
15 stream. The operator shall use methods deemed appropriate by the
16 secretary to determine if sufficient flow is available and must
17 check flows on a daily basis for the duration of the withdrawal.
18 Any variation from the methods previously approved by the secretary
19 for determining if sufficient flow is available must be requested
20 in writing by the operator.

21 (B) Signage for water withdrawal locations. All water
22 withdrawal locations and facilities identified in the water
23 management plan shall be identified with a sign that identifies
24 that the location is a water withdrawal point, the name and

1 telephone number of the operator, and the permit numbers(s) for
2 which the water withdrawn will be utilized.

3 (C) Record keeping and reporting. For all water used for
4 hydraulic fracturing of horizontal wells and for flowback water
5 from hydraulic fracturing activities and produced water from
6 production activities from horizontal wells, an operator shall
7 comply with the following record keeping and reporting
8 requirements:

9 (f) For production activities, the following information shall
10 be recorded and retained by the well operator:

11 (I) The quantity of flowback water from hydraulic fracturing
12 the well;

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

14 (III) The method of management or disposal of the flowback and
15 produced water.

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

18 (I) The quantity of water transported;

19 (II) The collection and delivery or disposal locations of
20 water; and

21 (III) The name of the water hauler.

22 (g) The information maintained pursuant to this subdivision
23 shall be available for inspection by the department along with
24 other required permits and records and maintained for three years

1 after the water withdrawal activity.

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

7 (i) The secretary shall mail a copy of the permit as issued or
8 a copy of the order denying a permit to any person who submitted
9 comments to the director concerning the permit and requested a
10 copy.

11 (j) Upon the issuance of any permit pursuant to the provisions
12 of this article, the secretary shall transmit a copy of such permit
13 to the office of the assessor for the county in which the well is
14 located.

15 **§22-6A-9. Certificate of approval required for large impoundment**
16 **construction; certificate of approval and annual registration**
17 **fees; application required to obtain certificate; term of**
18 **certificate; revocation or suspension of certificates;**
19 **appeals; farm ponds; criminal penalty.**

20 (a) It is unlawful for any person to place, construct,
21 enlarge, alter, repair, remove or abandon any freshwater
22 impoundment or flowback recycle impoundment with capacity of greater
23 than 210,000 gallons used in association with any horizontal well
24 operation until he or she has first secured from the secretary a

1 certificate of approval for the same: *Provided*, That routine
2 repairs that do not affect the safety of the impoundment are not
3 subject to the application and approval requirements. A separate
4 application for a certificate of approval must be submitted by a
5 person for each impoundment he or she desires to place, construct,
6 enlarge, alter, repair, remove or abandon, but one application may
7 be valid for more than one impoundment involved in a single
8 project.

9 (b) The application fee for placement, construction,
10 enlargement, alteration, repair or removal of an impoundment
11 pursuant to this section is \$300, and such fee shall accompany the
12 application for certificate of approval. Operators holding
13 certificates of approval shall be assessed an annual registration
14 fee of \$100, which shall be valid for more than one impoundment
15 involved in a single project.

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

19 (d) The initial term of a certificate of approval issued
20 pursuant to this section shall be one year. Existing certificates
21 of approval shall be extended for one year upon receipt of the
22 annual registration fee, an inspection report, a monitoring and
23 emergency action plan, and a maintenance plan: *Provided*, That where
24 an approved, up-to-date inspection report, monitoring and emergency

1 action plan, and maintenance plan are on file with the department,
2 and where no outstanding violation(s) of the requirements of the
3 certificate of approval or any plan submitted pursuant to this
4 article related to the impoundment exist, then the certificate of
5 approval shall be extended without resubmission of the foregoing
6 documents upon receipt of the annual registration fee.

7 (e) Every application for a certificate of approval shall be
8 made in writing on a form prescribed by the secretary and shall be
9 signed and verified by the applicant. The application shall include
10 a monitoring and emergency action plan and a maintenance plan, the
11 required contents of which shall be established by the secretary by
12 legislative rule. The application shall contain and provide
13 information that may reasonably be required by the secretary to
14 administer the provisions of this article.

15 (f) 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 *Provided,* That when a flowback recycle impoundment will be used to
22 store flowback water, the impoundment shall be designed and
23 constructed using a dual liner system with a leak detection system
24 installed between the two liners.

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

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

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

16 (2) Any person adversely affected by an order entered
17 following this hearing has the right to appeal to the Environmental
18 Quality Board pursuant to the provisions of article one, chapter
19 twenty-two-b of this code.

20 (i) Upon expiration of the certificate of approval, or upon
21 its revocation by the secretary, the operator shall, within 60
22 days, fill all impoundments that are not required or allowed by
23 state or federal law or rule or agreement between the operator and
24 the surface owner that allows the impoundment to remain open for

1 the use and benefit of the surface owner and reclaim the site with
2 the approved erosion and sediment control plan.

3 (j) This section shall not apply to:

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

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

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

19 **§22-6A-10. Notice to property owners.**

20 (a) No later than the filing date of the application, the
21 applicant for a permit for any well work or for a certificate of
22 approval for the construction of an impoundment as required by this
23 article shall deliver, by personal service or by registered mail or
24 by any method of delivery that requires a receipt or signature

1 confirmation, copies of the application, well plat, and erosion and
2 sediment control plan required by section seven of this article to
3 each of the following persons:

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

6 (2) The owners of record of the surface tract or tracts
7 overlying the oil and gas leasehold being developed by the proposed
8 well work, if such surface tract is to be utilized for roads or
9 other land disturbance as described in the erosion and sediment
10 control plan submitted pursuant to subsection (c), section seven of
11 this article; and

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

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

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

23 (b) If more than three tenants in common or other co-owners of
24 interests described in subsection (a) of this section hold

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

14 (c) Materials served upon persons described in subsections (a)
15 and (b) of this section shall contain a statement of the methods
16 and time limits for filing comments, who may file comments, the
17 name and address of the secretary for the purpose of filing
18 comments and obtaining additional information, and a statement that
19 such persons may request, at the time of submitting comments,
20 notice of the permit decision and a list of persons qualified to
21 test water as provided by the Office of Oil and Gas.

22 (d) Any person entitled to submit comments shall also be
23 entitled to receive from the secretary a copy of the permit as
24 issued or a copy of the order modifying or denying the permit if

1 such person requests receipt of them as a part of the comments
2 concerning the permit application.

3 (e) The surface owners described in subdivisions (1), (2) and
4 (4), subsection (a) of this section, and the coal owner, operator
5 or lessee described in subdivision (3) of subsection (a) shall also
6 be entitled to receive notice within seven days but no less than
7 two days before commencement that well work or site preparation
8 work that involves any disturbance of land is expected to commence,
9 if such person requests receipt of that notice as a part of his or
10 her comments concerning the permit application.

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

17 (g) (1) Prior to conducting any seismic activity for seismic
18 exploration for natural gas to be extracted using horizontal
19 drilling methods, the company or person performing the activity
20 must provide notice to Miss Utility of West Virginia Inc. and to
21 all surface owners, mineral owners, and storage field operators on
22 whose property blasting, percussion or other seismic-related
23 activities will occur or whose property interests are within the
24 geographic area encompassed by the seismic study.

1 (2) The notice shall be provided at least 3 days prior to
2 commencement of the seismic activity.

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

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

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

12 The secretary shall promulgate legislative rules governing the
13 procedures for plugging horizontal wells, including rules relating
14 to the methods of plugging such wells and the notices required to
15 be provided in connection therewith.

16 **§22-6A-12. Reclamation requirements.**

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

21 (a) Except as provided elsewhere in this section, within six
22 months after the completion of the drilling process the operator
23 shall fill all the pits and impoundments that are not required or
24 allowed by state or federal law or rule or agreement between the

1 operator and the surface owner that allows the impoundment to
2 remain open for the use and benefit of the surface owner (i.e. a
3 farm pond as described in section nine of this article) and remove
4 all concrete bases, drilling supplies, and drilling equipment.
5 Within that period, the operator shall grade or terrace and plant,
6 seed or sod the area disturbed that is not required in production
7 of the horizontal well where necessary to bind the soil and prevent
8 substantial erosion and sedimentation. No pit may be used for the
9 ultimate disposal of salt water. Salt water and oil shall be
10 periodically drained or removed and properly disposed of from any
11 pit that is retained so the pit is kept reasonably free of salt
12 water and oil. No pits may be left permanent.

13 (b) For well pads containing multiple horizontal wells,
14 reclamation shall be completed within 6 months after the completion
15 of the drilling process for a well, unless the operator commences
16 drilling on a subsequent well at that location within that 6-month
17 period.

18 (c) Within 6 months after a horizontal well that has produced
19 oil or gas is plugged or after the plugging of a dry hole, the
20 operator shall remove all production and storage structures,
21 supplies and equipment and any oil, salt water and debris and fill
22 any remaining excavations. Within that period, the operator shall
23 grade or terrace and plant, seed or sod the area disturbed where
24 necessary to bind the soil and prevent substantial erosion and

1 sedimentation.

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

7 (2) The secretary, upon written application by an operator
8 showing reasonable cause, may extend the period within which
9 reclamation shall be completed, but not to exceed a further 6-month
10 period.

11 (3) If the secretary refuses to approve a request for
12 extension, the refusal shall be by order, which may be appealed
13 pursuant to the provisions of subsection (w), section five of this
14 article.

15 **§22-6A-13. Performance bonds; corporate surety or other security.**

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

20 (b) A separate bond as described in subsection (d) of this
21 section may be furnished for each horizontal well drilled. Each of
22 these bonds shall be in the sum of \$5,000 payable to the State of
23 West Virginia, conditioned on full compliance with all laws, rules
24 relating to the drilling, redrilling, deepening, casing, and

1 stimulating of horizontal wells and to the plugging, abandonment,
2 and reclamation of horizontal wells and for furnishing such reports
3 and information as may be required by the secretary.

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

9 (d) The form of the bond required by this article shall be
10 approved by the secretary and may include, at the option of the
11 operator, surety bonding, collateral bonding (including cash and
12 securities) letters of credit, establishment of an escrow account,
13 self-bonding or a combination of these methods. If collateral
14 bonding is used, the operator may elect to deposit cash, or
15 collateral securities or certificates as follows: Bonds of the
16 United States or its possessions, of the federal land bank, or of
17 the homeowners' loan corporation; full faith and credit general
18 obligation bonds of the State of West Virginia or other states or
19 of any county, district or municipality of the State of West
20 Virginia or other states; or certificates of deposit in a bank in
21 this state, which certificates shall be in favor of the department.
22 The cash deposit or market value of the securities or certificates
23 shall be equal to or greater than the amount of the bond. The
24 secretary shall, upon receipt of any deposit of cash, securities or

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

13 (e) When an operator has furnished a separate bond from a
14 corporate bonding or surety company to drill, fracture or stimulate
15 a horizontal well and the well produces oil or gas or both, its
16 operator may deposit with the secretary cash from the sale of the
17 oil or gas or both until the total deposited is \$5,000. When the
18 sum of the cash deposited is \$5,000, the separate bond for the well
19 shall be released by the secretary. Upon receipt of that cash, the
20 secretary shall immediately deliver that amount to the Treasurer of
21 the State of West Virginia. The State Treasurer shall hold the cash
22 in the name of the state in trust for the purpose for which the
23 bond was furnished and the deposit was made. The operator shall be
24 entitled to all interest and income which may be earned on the cash

1 deposited so long as the operator is in full compliance with all
2 laws and rules relating to the drilling, redrilling, deepening,
3 casing, plugging, abandonment, and reclamation of the well for
4 which the cash was deposited and so long as the operator has
5 furnished all reports and information as may be required by the
6 secretary. If the cash realized from the sale of oil or gas or both
7 from the well is not sufficient for the operator to deposit with
8 the secretary the sum of \$10,000 within one year of the day the
9 well started producing, the corporate or surety company which
10 issued the bond on the well may notify the operator and the
11 secretary of its intent to terminate its liability under its bond.
12 The operator then shall have thirty days to furnish a new bond from
13 a corporate bonding or surety company or collateral securities or
14 other forms of security, as provided in this section with the
15 secretary. If a new bond or collateral securities or other forms of
16 security are furnished by the operator, the liability of the
17 corporate bonding or surety company under the original bond shall
18 terminate as to any acts and operations of the operator occurring
19 after the effective date of the new bond or the date the collateral
20 securities or other forms of security are accepted by the Treasurer
21 of the State of West Virginia. If the operator does not furnish a
22 new bond or collateral securities or other forms of security with
23 the secretary, as provided in this section, the operator shall
24 immediately plug, fill and reclaim the well in accordance with all

1 of the provisions of law and rules applicable thereto. In such
2 case, the corporate or surety company which issued the original
3 bond shall be liable for any plugging, filling or reclamation not
4 performed in accordance with such laws and rules.

5 (f) Any separate bond furnished for a particular well prior to
6 the effective date of this article shall continue to be valid for
7 all work on the well permitted prior to the effective date of this
8 article; but no permit shall hereafter be issued on such a
9 particular well without a bond complying with the provisions of
10 this section. Any blanket bond furnished prior to the effective
11 date of this article shall be replaced with a new blanket bond
12 conforming to the requirements of this section, at which time the
13 prior bond shall be discharged by operation of law; and if the
14 secretary determines that any operator has not furnished a new
15 blanket bond, the secretary shall notify the operator by registered
16 mail or by any method of delivery that requires a receipt or
17 signature confirmation of the requirement for a new blanket bond,
18 and failure to submit a new blanket bond within sixty days after
19 receipt of the notice from the secretary shall work a forfeiture
20 under subsection (i) of this section of the blanket bond furnished
21 prior to the effective date of this article.

22 (g) Any such bond shall remain in force until released by the
23 secretary, and the secretary shall release the same upon
24 satisfaction that the conditions thereof have been fully performed.

1 Upon the release of any such bond, any cash or collateral
2 securities deposited shall be returned by the secretary to the
3 operator who deposited it.

4 (h) Whenever the right to operate a well is assigned or
5 otherwise transferred, the assignor or transferor shall notify the
6 department of the name and address of the assignee or transferee by
7 registered mail or by any method of delivery that requires a
8 receipt or signature confirmation not later than thirty days after
9 the date of the assignment or transfer. No assignment or transfer
10 by the owner shall relieve the assignor or transferor of the
11 obligations and liabilities unless and until the assignee or
12 transferee files with the department the well name and the permit
13 number of the subject well, the county and district in which the
14 subject well is located, the names and addresses of the assignor or
15 transferor, and assignee or transferee, a copy of the instrument of
16 assignment or transfer accompanied by the applicable bond, cash,
17 collateral security or other forms of security, described in this
18 section, and the name and address of the assignee's or transferee's
19 designated agent if assignee or transferee would be required to
20 designate such an agent under this article, if assignee or
21 transferee were an applicant for a permit under this article.
22 Every well operator required to designate an agent under this
23 section shall, within five days after the termination of such
24 designation, notify the department of such termination and

1 designate a new agent.

2 Upon compliance with the requirements of this section by
3 assignor or transferor and assignee or transferee, the secretary
4 shall release assignor or transferor from all duties and
5 requirements of this article and shall give written notice of
6 release to assignor or transferor of any bond and return to
7 assignor or transferor any cash or collateral securities deposited
8 pursuant to this section.

9 (i) If any of the requirements of this article or rules
10 promulgated pursuant thereto or the orders of the secretary has not
11 been complied with within the time limit set by any notice of
12 violation issued pursuant to this article, the performance bond
13 shall then be forfeited.

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

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

20 **§22-6A-14. Civil action for contamination or deprivation of fresh**
21 **water source or supply; presumption.**

22 (a) Nothing in this article affects in any way the rights of
23 any person to enforce or protect, under applicable law, the
24 person's interest in water resources affected by an oil or gas

1 operation.

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

9 (c) In order to rebut the presumption of liability established
10 in subsection (b) of this section, the operator must affirmatively
11 prove one of the following defenses:

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

14 (2) The landowner or water purveyor refused to allow the
15 operator access to the property to conduct a pre-drilling or pre-
16 alteration survey.

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

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

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

23 **§22-6A-15. Offenses; civil and criminal penalties.**

24 (a) Any person or persons, firm, partnership, partnership

1 association or corporation who willfully violates any provision of
2 this article or any rule or order promulgated hereunder shall be
3 subject to a civil penalty not exceeding \$5,000. Each day a
4 violation continues after notice by the department constitutes a
5 separate offense. The penalty shall be recovered by a civil action
6 brought by the department, in the name of the state, before the
7 circuit court of the county in which the subject well or facility
8 is located. All such civil penalties collected shall be credited to
9 the general fund of the state.

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

23 (c) Any person or persons, firm, partnership, partnership
24 association or corporation willfully violating any of the

1 provisions of this article which prescribe the manner of drilling
2 and casing or plugging and filling any well, or which prescribe the
3 methods of conserving gas from waste, shall be guilty of a
4 misdemeanor, and, upon conviction thereof, shall be punished by a
5 fine not exceeding \$5,000, or imprisonment in a regional jail for
6 not more than 12 months, or both, in the discretion of the court,
7 and prosecutions under this section may be brought in the name of
8 the state of West Virginia in the court exercising criminal
9 jurisdiction in the county in which the violation of such
10 provisions of the article or terms of such order was committed.

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

19 (e) Any person who willfully violates any provision of any
20 permit issued under or subject to the provisions of this article or
21 who willfully violates any provision of this article or any rule of
22 the secretary or any order of the secretary or board is guilty of
23 a misdemeanor and, upon conviction thereof, shall be fined not less
24 than \$2,500 dollars nor more than \$25,000 per day of violation, or

1 imprisoned in a county or regional jail not more than one year, or
2 both fined and imprisoned.

3 **§22-6A-16. Application of article; exclusions.**

4 (a) This article shall not apply to or affect any well work
5 permitted for a horizontal well or orders issued regarding
6 horizontal wells prior to the effective date of this article.

7 (b) The secretary may not issue a permit pursuant to this
8 article for one calendar year from the effective date of this
9 article for horizontal wells drilled through karst formations in
10 Greenbrier and Monroe Counties. The department shall conduct a
11 study during the moratorium set forth in this subsection to address
12 the effects of horizontal drilling upon water and drainage issues
13 unique to karst formations and to promulgate legislative rules, if
14 the study determines it is necessary to protect water resources
15 that may be affected by horizontal drilling in karst formations.

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

17 **COMMISSIONS AND COMPACTS**

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

19 **§22C-8-2. Definitions.**

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

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

24 (2) "Chair" means the chair of the shallow gas well review

1 board provided for in section four of this article;

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

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

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

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

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

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

20 (9) "Division" means the state Division of Environmental
21 Protection provided for in chapter twenty-two of this code;

22 (10) "Director" means the Director of the Division of
23 Environmental Protection as established in article one, chapter
24 twenty-two of this code or such other person to whom the division

1 department delegates authority or duties pursuant to sections six
2 or eight, article one, chapter twenty-two of this code;

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

5 (12) "Gas" means all natural gas and all other fluid
6 hydrocarbons not defined as oil in subdivision (15) of this
7 section;

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

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

21 (15) "Oil" means natural crude oil or petroleum and other
22 hydrocarbons, regardless of gravity, which are produced at the well
23 in liquid form by ordinary production methods and which are not the
24 result of condensation of gas after it leaves the underground

1 reservoir;

2 (16) "Owner" when used with reference to any coal seam, shall
3 include any person or persons who own, lease or operate such coal
4 seam;

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

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

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

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

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

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

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

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

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

2 **§22C-9-2. Definitions.**

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

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

8 (2) "Director" means the Director of the Division of
9 Environmental Protection and "chief" means the chief of the office
10 of oil and gas;

11 (3) "Person" means any natural person, corporation,
12 partnership, receiver, trustee, executor, administrator, guardian,
13 fiduciary or other representative of any kind, and includes any
14 government or any political subdivision or any 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 appropriate the
17 oil and gas produced therefrom, either for such person or for such
18 person and others; in the event that there is no oil and gas lease
19 in existence with respect to the tract in question, the owner of
20 the oil and gas rights therein shall be considered as "operator" to
21 the extent of seven-eighths of the oil and gas in that portion of
22 the pool underlying the tract owned by such owner, and as "royalty
23 owner" as to one-eighth interest in such oil and gas; and in the
24 event the oil is owned separately from the gas, the owner of the

1 substance being produced or sought to be produced from the pool
2 shall be considered as "operator" as to such pool;

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

6 (6) "Independent producer" means a producer of crude oil or
7 natural gas whose allowance for depletion is determined under
8 Section 613A of the federal Internal Revenue Code in effect on July
9 1, 1997;

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

15 (8) "Gas" means all natural gas and all other fluid
16 hydrocarbons not defined as oil in subdivision (7) of this section;

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

1 any other pools that may be presented in the same district or on
2 the same geologic structure;

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

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

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

19 (13) "Drilling unit" means the acreage on which one well may
20 be drilled;

21 (14) "Waste" means and includes:

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

24 (B) The locating, drilling, equipping, operating or producing

1 of any oil or gas well in a manner that causes, or tends to cause,
2 a reduction in the quantity of oil or gas ultimately recoverable
3 from a pool under prudent and proper operations, or that causes or
4 tends to cause unnecessary or excessive surface loss of oil or gas;
5 or

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

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

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

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

NOTE: The purpose of this bill is to add a new article to Chapter 22 of the West Virginia Code to regulate the growing practice of drilling horizontal wells for recovery of natural gas. This new article would be known as the "Natural Gas Horizontal Well Control Act." It complements established requirements governing conventional oil and gas wells while adopting additional new requirements to address issues unique to horizontal wells. The definition sections in Article 6, Chapter 22 of the Code, and in Articles 8 and 9, Chapter 22C of the Code, would be amended by modifying certain existing definitions and by adding new definitions.

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

Article 22-6A is entirely new, and therefore underlining and strike-throughs have been omitted.