WEST VIRGINIA CODE CHAPTER 22 ARTICLE 6

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§22-6-1. Definitions.

As used in this article:

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

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

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

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

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

(f) "Director" means the Secretary of the Department of Environmental Protection as established in article one of this chapter or other person to whom the secretary has delegated authority or duties pursuant to sections six or eight, article one of this chapter.

(g) "Deep well" means any well other than a shallow well or coalbed methane well, drilled to a formation below the top of the uppermost member of the "Onondaga Group";

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

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

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

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

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

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

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

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

(p) "Pollutant" has the same meaning as provided in section three, article eleven of this chapter;

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

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

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

(t) "Shallow well" means any gas well, other than a coalbed methane well, drilled no deeper than one hundred feet below the top of the "Onondaga Group": Provided, That in no event may the "Onondaga Group" formation or any formation below the "Onondaga Group" be produced, perforated or stimulated in any manner;

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

(v) "Waste" means (i) physical waste, as the term is generally understood in the oil and gas industry; (ii) the locating, drilling, equipping, operating or producing of any oil or gas well in a manner that causes, or tends to cause a substantial reduction in the quantity of oil or gas ultimately recoverable from a pool under prudent and proper operations, or that causes or tends to cause a substantial or unnecessary or excessive surface loss of oil or gas; or (iii) the drilling of more deep wells than are reasonably required to recover efficiently and economically the maximum amount of oil and gas from a pool; (iv) substantially inefficient, excessive or improper use, or the substantially unnecessary dissipation of, reservoir energy, it being understood that nothing in this chapter authorizes any agency of the state to impose mandatory spacing of shallow wells except for the provisions of section eight, article nine, chapter twenty-two-c of this code and the provisions of article eight, chapter twenty-two-c of

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this code; (v) inefficient storing of oil or gas: Provided, That storage in accordance with a certificate of public convenience issued by the Federal Energy Regulatory Commission is conclusively presumed to be efficient; and (vi) other underground or surface waste in the production or storage of oil, gas or condensate, however caused. Waste does not include gas vented or released from any mine areas as defined in section two, article one, chapter twenty-two-a of this code, or from adjacent coal seams which are the subject of a current permit issued under article two of chapter twenty-two-a of this code: Provided, however, That nothing in this exclusion is intended to address ownership of the gas;

(w) "Waters of this state" has the same meaning as the term "waters" as provided in section three, article eleven of this chapter;

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

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

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

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§22-6-2. Secretary – powers and duties generally; department records open to public; inspectors.

(a) The secretary shall have as his or her duty the supervision of the execution and enforcement of matters related to oil and gas set out in §22-6-1 *et seq.*, §22-6A-1 *et seq.*, §22-8-1 *et seq.*, §22-9-1 *et seq.*, §22-10-1 *et seq.*, and §22-21-1 *et seq.* of this code.

(b) The secretary is authorized to propose rules for legislative approval in accordance with the provisions of §29A-3-1 *et seq.* of this code necessary to effectuate the above stated purposes.

(c) The secretary shall have full charge of the oil and gas matters set out in §22-6-1 *et seq.*, §22-6A-1 *et seq.*, §22-8-1 *et seq.*, §22-9-1 *et seq.*, §22-10-1 *et seq.*, and §22-21-1 *et seq.* of this code. In addition to all other powers and duties conferred upon him or her, the secretary shall have the power and duty to:

(1) Supervise and direct the activities of the Office of Oil and Gas and see that the purposes set forth in §22-6-2(a) and §22-6-2(b) of this code are carried out;

(2) Determine the number of supervising oil and gas inspectors and oil and gas inspectors needed to carry out the purposes of §22-6-1 *et seq.*, §22-6A-1 *et seq.*, §22-8-1 *et seq.*, §22-9-1 *et seq.*, §22-10-1 *et seq.*, and §22-21-1 *et seq.* of this code and appoint them as such. All appointees must be qualified civil service employees, but no person is eligible for appointment until he or she has served in a probationary status for a period of six months to the satisfaction of the secretary;

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

(4) Make investigations or inspections necessary to ensure compliance with and to enforce the provisions of §22-6-1 *et seq.*, §22-6A-1 *et seq.*, §22-8-1 *et seq.*, §22-9-1 *et seq.*, §22-10-1 *et seq.*, and §22-21-1 *et seq.* of this code;

(5) Prepare report forms to be used by oil and gas inspectors or the supervising inspector in making their findings, orders, and notices upon inspections made in accordance with §22-6-1 *et seq.*, §22-6A-1 *et seq.*, §22-8-1 *et seq.*, §22-9-1 *et seq.*, §22-10-1 *et seq.*, and §22-21-1 *et seq.* of this code;

(6) Employ a hearing officer and such clerks, stenographers, and other employees as may be necessary to carry out his or her duties and the purposes of the Office of Oil and Gas and fix their compensation;

(7) Hear and determine applications made by owners, well operators, and coal operators for the annulment or revision of orders made by oil and gas inspectors or the supervising inspector, and to make inspections, in accordance with the provisions of §22-6-1 *et seq.*, §22-6A-1 *et seq.*, §22-8-1 *et seq.*, and §22-9-1 *et seq.* of this code;

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

(9) Conduct research and studies as the secretary shall deem necessary to aid in protecting the health and safety of persons employed within or at potential or existing oil or gas production fields within this state, to improve drilling and production methods, and to provide for the more efficient protection and preservation of oil and gas-bearing rock strata and property used in connection therewith;

(10) Collect a permit fee of $400 for each permit application filed other than an application for a deep well, horizontal wells regulated pursuant to §22-6A-1 *et seq*. of this code, or a coalbed methane well; and collect a permit fee of $650 for each permit application filed for a deep well: *Provided*, That no permit application fee is required when an application is submitted solely for the plugging or replugging of a well, or to modify an existing application for which the operator previously has submitted a permit fee under this section. All application fees required hereunder are in lieu of and not in addition to any fees imposed under §22-11-1 *et seq*. of this code relating to discharges of stormwater but are in addition to any other fees required by the provisions of §22-6-1 *et seq*. of this code: *Provided, however*, That upon a final determination by the United States Environmental Protection Agency regarding the scope of the exemption under Section 402(l)(2) of the federal Clean Water Act (33 U.S.C. 1342(l)(2)), which determination requires a "national pollutant discharge elimination system" permit for stormwater discharges from the oil and gas operations described therein, any permit fees for stormwater permits required under §22-11-1 *et seq*. of this code for such operations may not exceed $100;

(11) On or after July 1 of each year, collect from the responsible operator of the first 400 wells subject to §22-6-1 *et seq*., §22-6A-1 *et seq*. or §22-21-1 *et seq*. of this code that has not yet been plugged, and that produces more than an average, calculated by dividing the annual production by 365, of 250,000 cubic feet of gas per day or more as reported to the State Tax Commissioner in the previous reporting year, an annual oversight fee of $350 for each well;

(12) On or after July 1 of each year, collect from the responsible operator of the first 400 wells subject to §22-6-1 *et seq*., §22-6A-1 *et seq*. or §22-21-1 *et seq*. of this code that has not yet been plugged, and that produces an average, calculated by dividing the annual production by 365, of less than or equal to 250,000 cubic feet of gas but more than 60,000 cubic feet of gas per day as reported to the State Tax Commissioner in the previous reporting year, an annual oversight fee of $75 for each well;

(13) On or after July 1 of each year, collect from the responsible operator of the first 4,000 wells subject to §22-6-1 *et seq*., §22-6A-1 *et seq*. or §22-21-1 *et seq*. of this code that has not yet been plugged, and that produces an average, calculated by dividing the annual production by 365, of less than or equal to 60,000 cubic feet of gas but more than 10,000 cubic feet of gas per day as reported to the State Tax Commissioner in the previous reporting year, an annual oversight fee of $25 for each well; *Provided*, That responsible

operators with 500 or fewer unplugged wells that produce an average, calculated by dividing the annual production by 365, of less than or equal to 60,000 cubic feet of gas but more than 10,000 cubic feet of gas per day are not subject to fees under this subdivision;

(14) Perform all other duties which are expressly imposed upon the secretary by the provisions of this chapter;

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

(16) Adopt rules with respect to the issuance, denial, retention, suspension, or revocation of permits, authorizations, and requirements of this chapter, which rules shall assure that the rules, permits, and authorizations issued by the secretary are adequate to satisfy the purposes of §22-6-1 *et seq.*, §22-6A-1 *et seq.*, §22-7-1 *et seq.*, §22-8-1 *et seq.*, §22-9-1 *et seq.*, §22-10-1 *et seq.*, and §22-21-1 *et seq*. of this code particularly with respect to the consolidation of the various state and federal programs which place permitting requirements on the exploration, development, production, storage, and recovery of this state's oil and gas; and

(17) Perform such acts as may be necessary or appropriate to secure to this state the benefits of federal legislation establishing programs relating to the exploration, development, production, storage, and recovery of this state's oil and gas, which programs are assumable by the state.

(d) The secretary shall have authority to visit and inspect any well or well site and any other oil or gas facility in this state and may call for the assistance of any oil and gas inspector or inspectors or supervising inspector whenever such assistance is necessary in the inspection of any such well or well site or any other oil or gas facility. Similarly, all oil and gas inspectors and supervising inspectors shall have authority to visit and inspect any well or well site and any other oil or gas facility in this state. Such inspectors shall make all necessary inspections of oil and gas operations required by §22-6-1 *et seq.*, §22-6A-1 *et seq.*, §22-8-1 *et seq.*, §22-9-1 *et seq.*, §22-10-1 *et seq.*, and §22-21-1 *et seq*. of this code; administer and enforce all oil and gas laws and rules; and perform other duties and services as may be prescribed by the secretary. The inspectors shall note and describe all violations of §22-6-1 *et seq.*, §22-6A-1 *et seq.*, §22-8-1 *et seq.*, §22-9-1 *et seq.*, §22-10-1 *et seq.*, and §22-21-1 *et seq*. of this code and promptly report those violations to the secretary in writing, furnishing at the same time a copy of the report to the operator concerned. Any well operator, coal operator operating coal seams beneath the tract of land, or the coal seam owner or lessee, if any, if said owner or lessee is not yet operating said coal seams beneath said tract of land, may request the secretary to have an immediate inspection made. The operator or owner of every well or well site or any other oil or gas facility shall cooperate with the secretary, all oil and gas inspectors and the supervising inspector in making inspections or obtaining information.

(e) Subject to the provisions of §29B-1-1 *et seq*. of this code, all records of the office shall be

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open to the public.

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§22-6-2a. Oil and gas inspectors qualifications and salary.

(a) No person is eligible for appointment as an oil and gas inspector or supervising inspector unless, at the time of probationary appointment, the person: (1) Is a citizen of West Virginia, in good health and of good character, reputation and temperate habits; (2) has had at least two years actual relevant experience in the oil and gas industry: Provided, That no more than one year of the experience requirement may be satisfied by any of following: (i) A bachelor of science degree in science or engineering; (ii) an associate degree in petroleum technology; or (iii) actual relevant environmental experience including, without limitation, experience in wastewater, solid waste or reclamation, each full year of which shall be considered as a year of actual relevant experience in the oil and gas industry; and (3) has good theoretical and practical knowledge of oil and gas drilling and production methods, practices and techniques, sound safety practices and applicable water and mining laws.

(b) In order to qualify for appointment as an oil and gas inspector or supervising inspector by the secretary, an eligible applicant shall submit to a written and oral examination by the Division of Personnel within the Department of Administration and shall furnish any evidence of good health, character and other facts establishing eligibility required by the Division of Personnel. The Office of Oil and Gas shall determine the substance of the examinations administered to candidates for the positions of oil and gas inspector and supervising oil and gas inspector by the Division of Personnel. If the Division of Personnel finds after investigation and examination that an applicant: (1) Is eligible for appointment; and (2) has passed all written and oral examinations, the division shall add the applicant's name and grade to the register of qualified eligible candidates and certify its action to the secretary. No candidate's name may remain on the register for more than three years without requalifying.

(c) Every supervising oil and gas inspector shall be paid not less than $40,000 per year. Every oil and gas inspector shall be paid not less than $35,000 per year.

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§22-6-3. Findings and orders of inspectors concerning violations; determination of reasonable time for abatement; extensions of time for abatement; special inspections; notice of findings and orders.

(a) If an oil and gas inspector, upon making an inspection of a well or well site or any other oil or gas facility, finds that any provision of this article is being violated, the inspector shall also find whether or not an imminent danger to persons exists, or whether or not there exists an imminent danger that a fresh water source or supply will be contaminated or lost. If the inspector finds that such imminent danger exists, an order requiring the operator of such well or well site or other oil or gas facility to cease further operations until such imminent danger has been abated shall be issued by the inspector. If the inspector finds that no such imminent danger exists, the inspector shall determine what would be a reasonable period of time within which such violation should be totally abated. Such findings shall contain reference to the provisions of this article which the inspector finds are being violated, and a detailed description of the conditions which cause and constitute such violation.

(b) The period of time so found by such oil and gas inspector to be a reasonable period of time shall not exceed seven days. Such period may be extended by such inspector, or by any other oil and gas inspector duly authorized by the director, from time to time, for good cause, but not to exceed a total of thirty days, upon the making of a special inspection to ascertain whether or not such violation has been totally abated: Provided, That such thirty-day period may be extended beyond thirty days by such inspectors where abatement is shown to be incapable of accomplishment because of circumstances or conditions beyond the control of the well operator. The director shall cause a special inspection to be made: (A) Whenever an operator of a well or well site or any other oil or gas facility, prior to the expiration of any such period of time, requests the director to cause a special inspection to be made at such well or well site or any other oil or gas facility; and (B) upon expiration of such period of time as originally fixed or as extended, unless the director is satisfied that the violation has been abated. Upon making such special inspection, such oil and gas inspector shall determine whether or not such violation has been totally abated. If the inspector determines that such violation has not been totally abated, the inspector shall determine whether or not such period of time as originally fixed, or as so fixed and extended, should be extended. If the inspector determines that such period of time should be extended, the inspector shall determine what a reasonable extension would be. If the inspector determines that such violation has not been totally abated, and if such period of time as originally fixed, or as so fixed and extended, has then expired, and if the inspector also determines that such period of time should not be further extended, the inspector shall thereupon make an order requiring the operator of such well or well site or other oil or gas facility to cease further operations of such well, well site or facility, as the case may be. Such findings and order shall contain reference to the specific provisions of this article which are being violated.

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

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

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§22-6-4. Review of findings and orders by director; special inspection; annulment, revision, etc., of order; notice.

(a) Any well operator, complaining coal operator, owner or lessee, if any, aggrieved by findings or an order made by an oil or gas inspector pursuant to section three of this article, may within fifteen days apply to the director for annulment or revision of such order. Upon receipt of such application the director shall make a special inspection of the well, well site or other oil and gas facility affected by such order, or cause two duly authorized oil and gas inspectors, other than the oil and gas inspector who made such order or the supervising inspector and one duly authorized oil and gas inspector other than the oil and gas inspector who made such order, to make such inspection of such well, or well site or other oil or gas facility and to report thereon to them. Upon making such special inspection, or upon receiving the report of such special inspection, as the case may be, the director shall make an order which shall include the director's findings and shall annul, revise or affirm the order of the oil and gas inspector.

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

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

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

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§22-6-5. Requirements for findings, orders and notices; posting of findings and orders; judicial review of final orders of director.

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

(b) Notice of any finding or order required by section three or four of this article to be given to an operator shall be given by causing such notice, addressed to the operator of the well, well site or other oil and/or gas facility to which such finding or order pertains, to be delivered to such operator by causing a copy thereof to be sent by registered mail to the permanent address of such operator as filed with the division and by causing a copy thereof to be posted upon the drilling rig or other equipment at the well, well site or other oil and/or gas facility, as the case may be. The requirement of this article that a notice shall be "addressed to the operator of the well, well site or other oil and/or gas facility to which such finding or order pertains," shall not require that the name of the operator for whom it is intended shall be specifically set out in such address. Addressing such notice to "Operator of _____," specifying the well, well site or other oil and/or gas facility sufficiently to identify it, shall satisfy such requirement.

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

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

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

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

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

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

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

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

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

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

(4) The type of well;

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

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

(7) Any permit application fee required by law;

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

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

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

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

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

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

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

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

(f) The well owner or operator shall install the permit number as issued by the director in a

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legible and permanent manner to the well upon completion of any permitted work. The dimensions, specifications and manner of installation shall be in accordance with the rules of the director.

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

(h) The director shall deny the issuance of a permit if the director determines that the applicant has committed a substantial violation of a previously issued permit, including the erosion and sediment control plan, or a substantial violation of one or more of the rules promulgated hereunder, and has failed to abate or seek review of the violation within the time prescribed by the director pursuant to the provisions of sections three and four of this article and the rules promulgated hereunder, which time may not be unreasonable: Provided, That in the event that the director does find that a substantial violation has occurred and that the operator has failed to abate or seek review of the violation in the time prescribed, the director may suspend the permit on which said violation exists, after which suspension the operator shall forthwith cease all well work being conducted under the permit: Provided, however, That the director may reinstate the permit without further notice, at which time the well work may be continued. The director shall make written findings of any such determination and may enforce the same in the circuit courts of this state and the operator may appeal such suspension pursuant to the provisions of section forty of this article. The director shall make a written finding of any such determination.

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

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§22-6-7. Water pollution control permits; powers and duties of the director; penalties.

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

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

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

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

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

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

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

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

(c) Notwithstanding any provision of this article or articles seven, eight, nine or ten of this chapter to the contrary, the director shall have the same powers and duties relating to inspection and enforcement as those granted under article eleven, chapter twenty-two of this code in connection with the issuance of any water pollution control permit or any person required to have such permit.

(d) Any person who violates any provision of this section, any order issued under this section or any permit issued pursuant to this section or any rule of the director relating to water pollution or who willfully or negligently violates any provision of this section or any permit

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issued pursuant to this section or any rule or order of the director relating to water pollution or who fails or refuses to apply for and obtain a permit or who intentionally misrepresents any material fact in an application, record, report, plan or other document files or required to be maintained under this section shall be subject to the same penalties for such violations as are provided for in sections twenty-two and twenty-four, article eleven, chapter twenty-two of this code: Provided, That the provisions of section twenty-six, article eleven, chapter twenty-two of this code relating to exceptions to criminal liability shall also apply.

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

(e) Any water pollution control permit issued pursuant to this section or any order issued in connection with such permit for the purpose of implementing the "national pollutant discharge elimination system" established under the federal Clean Water Act shall be issued by the chief of the office of water resources of the division in consultation with the chief of the office of oil and gas of the division and shall be appealable to the environmental quality board pursuant to the provisions of section twenty-five, article eleven, chapter twenty-two and section seven, article one, chapter twenty-two-b of this code.

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

(a) The Legislature hereby finds and declares:

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

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

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

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

(b) In the light of the foregoing findings, the Legislature hereby declares that it is the policy of this state, to the extent possible, to prevent the extraction, production or marketing of oil or gas under a lease or leases or other continuing contract or contracts providing a flat well royalty or any similar provisions for compensation to the owner of the oil and gas in place, which is not inherently related to the volume of oil or gas produced or marketed, and toward these ends, the Legislature further declares that it is the obligation of this state to prohibit the issuance of any permit required by it for the development of oil or gas where the right to develop, extract, produce, or market the same is based upon such leases or other continuing contractual agreements.

(c) In addition to any requirements contained in this article with respect to the issuance of any permit required for the drilling, redrilling, deepening, fracturing, stimulating,

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pressuring, converting, combining, or physically changing to allow the migration of fluid from one formation to another, no such permit shall be hereafter issued unless the lease or leases or other continuing contract or contracts by which the right to extract, produce or market the oil or gas is filed with the application for such permit. In lieu of filing the lease or leases or other continuing contract or contracts, the applicant for a permit described herein may file the following:

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

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

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

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

(d) Unless the provisions of §22-6-8(e) of this code are met, no such permit shall be hereafter issued for the drilling of a new oil or gas well, or for the redrilling, deepening, fracturing, stimulating, pressuring, converting, combining, or physically changing to allow the migration of fluid from one formation to another, of an existing oil or gas production well, where or if the right to extract, produce, or market the oil or gas is based upon a lease or leases or other continuing contract or contracts providing for flat well royalty or any similar provision for compensation to the owner of the oil or gas in place which is not inherently related to the volume of oil and gas so extracted, produced, and marketed.

(e) To avoid the permit prohibition of §22-6-8(d) of this code, the applicant may file with such application an affidavit which certifies that the affiant is authorized by the owner of the working interest in the well to state that it shall tender to the owner of the oil or gas in place not less than one eighth of the gross proceeds, free from any deductions for post-production expenses, received at the first point of sale to an unaffiliated third-party purchaser in an arm’s length transaction for the oil or gas so extracted, produced or marketed before deducting the amount to be paid to or set aside for the owner of the oil or gas in place, on all such oil or gas to be extracted, produced or marketed from the well. If such affidavit be filed with such application, then such application for permit shall be treated as if such lease or leases or other continuing contract or contracts comply with the provisions of this section.

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

(g) The provisions of this section shall not affect or apply to any lease or leases or other continuing contract or contracts for the underground storage of gas or any well utilized in connection therewith or otherwise subject to the provisions of §22-9-1 et seq. of this code.

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(h) The director shall enforce this requirement irrespective of when the lease or other continuing contract was executed.

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

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§22-6-9. Notice to property owners.

(a) No later than the filing date of the application, the applicant for a permit for any well work shall deliver by personal service or by certified mail, return receipt requested, copies of the application, well plat and erosion and sediment control plan required by section six of this article to each of the following persons:

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

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

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

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

(d) Any person entitled to submit comments shall also be entitled to receive a copy of the permit as issued or a copy of the order denying the permit if such person requests the receipt thereof as a part of the comments concerning said permit application.

(e) Persons entitled to notice may contact the district office of the division to ascertain the names and location of water testing laboratories in the area capable and qualified to test water supplies in accordance with standard accepted methods. In compiling such list of names the division shall consult with the state bureau of public health and local health departments.

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

(a) All persons described in subsections (a) and (b), section nine of this article may file comments with the director as to the location or construction of the applicant's proposed well work within fifteen days after the application is filed with the director.

(b) Prior to the issuance of any permit for well work, the applicant shall certify to the director that the requirements of section nine of this article have been completed by the applicant. Such certification may be by affidavit of personal service or the return receipt card, or other postal receipt for certified mailing.

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§22-6-11. Review of application; issuance of permit in the absence of objections; copy of permits to county assessor.

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

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

The director may cause such inspections to be made of the proposed well work location as to assure adequate review of the application. The permit shall not be issued, or shall be conditioned including conditions with respect to the location of the well and access roads prior to issuance if the director determines that:

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

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

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

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

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

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

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

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

(a) Before drilling for oil or gas, or before fracturing or stimulating a well on any tract of land, the well operator shall have a plat prepared by a licensed land surveyor or registered engineer showing the district and county in which the tract of land is located, the name and acreage of the same, the names of the owners of adjacent tracts, the proposed or actual location of the well determined by survey, the courses and distances of such location from two permanent points or landmarks on said tract and the number to be given the well. In the event the tract of land on which the said well proposed to be drilled or fractured is located is known to be underlain by one or more coal seams, copies of the plat shall be forwarded by registered or certified mail to each and every coal operator operating said coal seams beneath said tract of land, who has mapped the same and filed such maps with the office of miners' health, safety and training in accordance with chapter twenty-two-a of this code and the coal seam owner of record and lessee of record, if any, if said owner or lessee has recorded the declaration provided in section thirty-six of this article, and if said owner or lessee is not yet operating said coal seams beneath said tract of land. With each of such plats there shall be enclosed a notice (form for which shall be furnished on request by the secretary) addressed to the secretary and to each such coal operator, owner and lessee, if any, at their respective addresses, informing them that such plat and notice are being mailed to them respectively by registered or certified mail, pursuant to the requirements of this article.

(b) If no objections are made, or are found by the secretary, to such proposed location or proposed fracturing within fifteen days from receipt of such plat and notice by the secretary, the same shall be filed and become a permanent record of such location or fracturing subject to inspection at any time by any interested person, and the secretary may forthwith issue to the well operator a permit reciting the filing of such plat, that no objections have been made by the coal operators, owners and lessees, if any, or found thereto by the secretary, and authorizing the well operator to drill at such location, or to fracture the well. Unless the secretary has objections to such proposed location or proposed fracturing or stimulating, such permit may be issued prior to the expiration of such fifteen-day period upon the obtaining by the well operator of the consent in writing of the coal operator or operators, owners and lessees, if any, to whom copies of the plat and notice shall have been mailed as herein required, and upon presentation of such written consent to the secretary. The notice above provided for may be given to the coal operator by delivering or mailing it by registered or certified mail as above to any agent or superintendent in actual charge of mines.

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

§22-6-13. Notice to coal operators, owners or lessees and director of intention to fracture certain other wells; contents of such notice; bond; permit required.

Before fracturing any well the well operator shall, by registered or certified mail, forward a notice of intention to fracture such well to the director and to each and every coal operator operating coal seams beneath said tract of land, who has mapped the same and filed such maps with the office of miners' health, safety and training in accordance with chapter twenty-two-a of this code, and the coal seam owner and lessee, if any, if said owner of record or lessee of record has recorded the declaration provided in section thirty-six of this article, and if said owner or lessee is not yet operating said coal seams beneath said tract of land.

The notice shall be addressed to the director and to each such coal operator at their respective addresses, shall contain the number of the drilling permit for such well and such other information as may be required by the director to enable the division and the coal operators to locate and identify such well and shall inform them that such notice is being mailed to them, respectively, by registered or certified mail, pursuant to the requirements of this article. The form for such notice of intention shall be furnished on request by the director.

If no objections are made, or are found by the director to such proposed fracturing within fifteen days from receipt of such notice by the director, the same shall be filed and become a permanent record of such fracturing, subject to inspection at any time by any interested person, and the director shall forthwith issue to the well operator a permit reciting the filing of such notice, that no objections have been made by the coal operators, or found thereto by the director, and authorizing the well operator to fracture such well. Unless the director has objections to such proposed fracturing, such permit shall be issued prior to the expiration of such fifteen-day period upon the obtaining by the well operator of the consent in writing of the coal operator or operators, owners or lessees, if any, to whom notice of intention to fracture shall have been mailed as herein required, and upon presentation of such written consent to the director. The notice above provided for may be given to the coal operator by delivering or mailing it by registered or certified mail as above to any agent or superintendent in actual charge of mines.

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

(a) Before drilling a well for the introduction of liquids for the purposes provided for in section twenty-five of this article or for the introduction of liquids for the disposal of pollutants or the effluent therefrom on any tract of land, or before converting an existing well for such purposes, the well operator shall have a plat prepared by a registered engineer or licensed land surveyor showing the district and county in which the tract of land is located, the name and acreage of the same, the names of the owners of all adjacent tracts, the proposed or actual location of the well or wells determined by a survey, the courses and distances of such location from two permanent points of land marked on said tract and the number to be given to the well, and shall forward by registered or certified mail the original and one copy of the plat to the director. In addition, the well operator shall provide the following information on the plat or by way of attachment thereto to the director in the manner and form prescribed by the director's rules: (1) The location of all wells, abandoned or otherwise located within the area to be affected; (2) where available, the casing records of all such wells; (3) where available, the drilling log of all such wells; (4) the maximum pressure to be introduced; (5) the geological formation into which such liquid or pressure is to be introduced; (6) a general description of the liquids to be introduced; (7) the location of all water-bearing horizons above and below the geological formation into which such pressure, liquid or waste is to be introduced; and (8) such other information as the director by rule may require.

(b) In the event the tract of land on which said well proposed to be drilled or converted for the purposes provided for in this section is located is known to be underlaid with coal seams, copies of the plat and all information required by this section shall be forwarded by the operator by registered or certified mail to each and every coal operator operating coal seams beneath said tract of land, who has mapped the same and filed such maps with the office of miners' health, safety and training in accordance with chapter twenty-two-a of this code, and the coal seam owner of record and lessee of record, if any, if said owner or lessee has recorded the declaration provided in section thirty-six of this article, and if said owner or lessee is not yet operating said seams beneath said tract of land. With each of such plats, there shall be enclosed a notice (form for which shall be furnished on request by the director) addressed to the director and to each such coal operator, owner or lessee, if any, at their respective addresses, informing them that such plat and notice are being mailed to them, respectively, by registered or certified mail, pursuant to the requirements of this section.

(c) If no objections are made by any such coal operator, owner or lessee, or the director, such proposed drilling or converting of the well or wells for the purposes provided for in this section within thirty days from the receipt of such plat and notice by the director, the same shall be filed and become a permanent record of such location or well, subject to inspection at any time by any interested person, and the director may after public notice and

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opportunity to comment, issue such permit authorizing the well operator to drill at such location or convert such existing well or wells for the purposes provided for in this section. The notice above provided for may be given to the coal operator by delivering or mailing it by registered or certified mail as above to any agent or superintendent in actual charge of the mines.

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

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

(a) When a proposed deep well drilling site or oil well drilling site or any site is above a seam or seams of coal, then the coal operator operating said coal seams beneath the tract of land, or the coal seam owner or lessee, if any, if said owner or lessee is not yet operating said coal seams, may within fifteen days from the receipt by the director of the plat and notice required by section twelve of this article, or within fifteen days from the receipt by the director of notice required by section thirteen of this article, file objections in writing (forms for which will be furnished by the director on request) to such proposed drilling or fracturing with the director, setting out therein as definitely as is reasonably possible the ground or grounds on which such objections are based.

If any objection is filed, or if any objection is made by the director, the director shall notify the well operator of the character of the objections and by whom made and fix a time and place, not less than fifteen days from the end of said fifteen-day period, at which such objections will be considered of which time and place the well operator and all objecting coal operators, owners or lessees, if any, shall be given at least ten days' written notice by the director, by registered or certified mail, and summoned to appear. At the time and place so fixed the well operator and the objecting coal operators, owners or lessees, if any, or such of them as are present or represented, shall proceed to consider the objections. In the case of proposed drilling, such parties present or represented may agree upon either the location as made or so moved as to satisfy all objections and meet the approval of the director, and any change in the original location so agreed upon and approved by the director shall be indicated on said plat on file with the director, and the distance and direction of the new location from the original location shall be shown, and as so altered, the plat shall be filed and become a permanent record, and in the case of proposed fracturing, such parties present or represented may agree upon conditions under which the well is to be fractured which will protect life and property and which will satisfy all objections and meet the approval of the director, at which time the plat and notice required by section twelve or the notice required by section thirteen, as the case may be, shall be filed and become a permanent record. Whereupon the director shall forthwith issue to the well operator a drilling or fracturing permit, as the case may be, reciting the filing of the plat and notice required by said section twelve, or the notice required by said section thirteen, as the case may be, that at a hearing duly held a location as shown on the plat or the conditions under which the fracturing is to take place for the protection of life and property were agreed upon and approved, and that the well operator is authorized to drill at such location or to fracture at the site shown on such plat, or to fracture the well identified in the notice required by section thirteen, as the case may be.

(b) In the event the well operator and the objecting coal operators, owners or lessees, if any, or such as are present or represented at such hearing are unable to agree upon a drilling location, or upon a drilling location that meets the approval of the director, then the director

shall proceed to hear the evidence and testimony in accordance with sections one and two, article five, chapter twenty-nine-a of this code, except where such provisions are inconsistent with the article. The director shall take into consideration in arriving at his decision:

(1) Whether the drilling location is above or in close proximity to any mine opening or shaft, entry, travelway, airway, haulageway, drainageway or passageway, or to any proposed extension thereof in any operated or abandoned or operating coal mine or coal mines already surveyed and platted, but not yet being operated;

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

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

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

At the close of the hearing or within ten days thereafter the director shall issue an order:

(1) Refusing to issue a permit;

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

(3) Issuing a permit for a drilling location different from that requested by the well operator.

The order shall state with particularity the reasons for the director's order and shall be mailed by registered or certified mail to the parties present or represented at such hearing. If the director has ruled that a permit will be issued, the director shall issue a permit effective ten days after such order is mailed, except that for good cause shown, the director may stay the issuance of a permit for a period not to exceed thirty days.

If a permit is issued, the director shall indicate the new drilling location on the plat on file and shall number and keep an index of and docket each plat and notice received by mail as provided in section twelve of this article, and each notice mailed as provided in section thirteen of this article, entering in such docket the name of the well operator, and the names and addresses of all persons notified, the dates of hearings and all actions taken by the director. The director shall also prepare a record of the proceedings, which record shall include all applications, plats and other documents filed with the director, all notices given and proof of service thereof, all orders issued, all permits issued and a transcript of the hearing. The record prepared by the director shall be open to inspection by the public.

(c) In the event the well operator and the objecting coal operators, owners or lessees, if any, or such as are present or represented at such hearing, are unable to agree upon the

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conditions under which the well is to be fractured as to protect life and property, or upon conditions of fracturing that meet with the approval of the director, then the director shall proceed to hear the evidence and testimony in accordance with sections one and two, article five, chapter twenty-nine-a of this code, except where such provisions are inconsistent with this article.

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

At the close of the hearing, or within ten days thereafter, the director shall issue an order stating the conditions under which the well is to be fractured, provided the well can be fractured safely, taking into consideration the dangers from creeps, squeezes or other disturbances. If such fracturing cannot be done safely, the director shall issue an order stating with particularity the reasons for refusing to issue a permit.

The order shall state with particularity the reasons for the director's order and shall be mailed by registered or certified mail to the parties present or represented at such hearing. If the director has ruled that a permit will be issued, the director shall issue a permit effective ten days after such order is mailed, except that for good cause shown, the director may stay the issuance of a permit for a period not to exceed thirty days.

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

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§22-6-16. Objections to proposed drilling or converting for introducing liquids or waste into wells; notices and hearings; agreed location or conditions; indication of changes on plats, etc.; issuance of permits; docket of proceeding.

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

(b) In any case wherein a well proposed to be drilled or converted for the purposes provided for in section fourteen of this article shall, in the opinion of the chief of the office of water resources, affect detrimentally the reasonable standards of purity and quality of the waters of the state, such chief shall, within the time period established by the director for the receipt of public comment on such proposed drilling conversion, file with the director such objections in writing to such proposed drilling or conversion, setting out therein as definitely as is reasonably possible the ground or grounds upon which such objections are based and indicating the conditions, consistent with the provisions of this article and the rules promulgated thereunder, as may be necessary for the protection of the reasonable standards of the purity and quality of such waters under which such proposed drilling or conversion may be completed to overcome such objections, if any.

(c) If any objection or objections are so filed, or are made by the director, the director shall notify the well operator of the character of the objections and by whom made and fix a time and place, not less than thirty days from the end of said thirty-day period, at which such objections will be considered, of which time and place the well operator and all objecting coal operators, the owners or lessees, if any, or such chief, shall be given at least ten days' written notice by the director by registered or certified mail, and summoned to appear. At the time and place so fixed the well operator and the objecting coal operators, owners or lessees, if any, or such of them as are present or represented, or such chief, shall proceed to consider the objections. In the case of proposed drilling or converting of a well for the purposes provided for in section fourteen of this article, such parties present or represented may agree upon either the location as made or so moved as to satisfy all objections and meet the approval of the director, and any change in the original location so agreed upon and approved by the director shall be indicated on said plat on file with the director, and the distance and direction of the new location from the original location shall be shown, and, as so altered, the plat shall be filed and become a permanent record. In the case of proposed conversion, such parties present or represented may agree upon conditions under which the conversion is to take place for the protection of life and property or for protection of reasonable standards of purity and quality of the waters of the state. At which time the plat and notice required by section fourteen shall be filed and become a permanent record. Whereupon the director may issue to the well operator a permit to drill or convert, as the

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case may be, reciting the filing of the plat and notice required by said section fourteen that at a hearing duly held a location as shown on the plat or the conditions under which the conversion is to take place for the protection of life and property and reasonable standards of purity and quality of the waters of the state where agreed upon and approved, and that the well operator is authorized to drill at such location or to convert at the site shown on such plat, as the case may be.

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

(A) Whether the drilling location is above or in close proximity to any mine opening or shaft, entry, traveling, air haulage, drainage or passageway, or to any proposed extension thereof, in any operated or abandoned or operating coal mine, or coal mine already surveyed and platted, but not yet being operated;

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

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

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

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

(A) Refusing to issue a permit;

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

(C) Issuing a permit for a drilling location different than that requested by the well operator.

The order shall state with particularity the reasons for the director's order and shall be mailed by registered or certified mail to the parties present or represented at such hearing. If the director has ruled that a permit will be issued, the director shall issue a permit effective ten days after such order is mailed: Except that for good cause shown, the director may stay the issuance of a permit for a period not to exceed thirty days.

(3) If a permit is issued, the director shall indicate the new drilling location on the plat on file with the director and shall number and keep an index of and docket each plat and notice

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mailed to the director as provided in section twelve of this article, and each notice mailed to the director as provided in section thirteen of this article, entering in such docket the name of the well operator, and the names and addresses of all persons notified, the dates of hearings and all actions taken by the director, permits issued or refused, the papers filed and a transcript of the hearing. This shall constitute a record of the proceedings before the director and shall be open to inspection by the public.

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

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

(B) Whether the well can be converted, taking into consideration the reasonable standards of the purity and quality of the waters of the state.

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

(3) The order shall state with particularity the reasons for the director's order and shall be mailed by registered or certified mail to the parties present or represented at such hearing. If the director has ruled that a permit will be issued, such permit shall become effective ten days after the division has mailed such order: Except for good cause shown, the director may stay the issuance of a permit for a period not to exceed thirty days.

(4) If a permit is issued, the director shall indicate the well to be converted on the plat on file with the director, and shall number and keep an index of and docket each plat and notice mailed to the director as provided in section fourteen of this article, entering in such docket the name of the well operator, and the names and addresses of all persons notified, the dates of hearings and all actions taken by the director, permits issued or refused, the papers filed and a transcript of the hearings. This shall constitute a record of the proceedings before the director and shall be open to inspection by the public.

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

When a proposed shallow well drilling site is above a seam or seams of coal, then the owner of any such coal seam may, within fifteen days from the receipt by the director of the plat and notice required by section twelve of this article, file objections in writing (forms for which will be furnished by the director on request) to such proposed drilling with the director, setting out therein as definitely as is reasonably possible the ground or grounds on which such objections are based.

If any such objection is filed, or if any objection is made by the director, the director shall forthwith mail, by registered or certified mail, to the chair of the review board, a notice that an objection to the proposed drilling or deepening of a shallow well has been filed with or made by the director, and shall enclose in such notice a copy of all objections and of the application and plat filed with the director in accordance with the provisions of section twelve of this article.

Thereafter, no further action shall be taken on such application by the director until an order is received from the review board directing the director to:

(a) Refuse a drilling permit; or

(b) Issue a drilling permit for the proposed drilling location; or

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

(d) Issue a drilling permit either for the proposed drilling location or for an alternate drilling location different from that requested by the well operator, but not allow the drilling of the well for a period of not more than one year from the date of issuance of such permit.

Upon receipt of such board order, the director shall promptly undertake the action directed by the review board, except that the director shall not issue a drilling permit unless all other provisions of this article (except section fifteen) pertaining to the application for and approval of a drilling permit have been complied with. All permits issued by the director pursuant to this section shall be effective ten days after issuance unless the review board orders the director to stay the effectiveness of a permit for a period not to exceed thirty days from the date of issuance.

If a permit is issued, the director shall indicate the approved drilling location on the plat filed with the director in accordance with the provisions of section twelve of this article and shall number and keep an index of and docket each plat and notice mailed to the director as provided in section twelve of this article, and each notice mailed to the director as provided in section thirteen of this article, entering in such docket the name of the well operator, and the names and addresses of all persons notified, the dates of conferences, hearings and all

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other actions taken by the director and the review board. The director shall also prepare a record of the proceedings, which record shall include all applications, plats and other documents filed with the director, all notices given and proof of service thereof, all orders issued, all permits issued and a transcript of the hearing. The record prepared by the director shall be open to inspection by the public.

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

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

(b) In the event that gas is found beneath a workable coal bed before the hole has been reduced from the size it had at the coal bed, a packer shall be placed below the coal bed, and above the gas horizon, and the gas by this means diverted to the inside of the adjacent string of casing through perforations made in such casing, and through it passed to the surface without contact with the coal bed. Should gas be found between two workable beds of coal, in a hole, of the same diameter from bed to bed, two packers shall be placed, with perforations in the casing between them, permitting the gas to pass to the surface inside the adjacent casing. In either of the cases here specified, the strings of casing shall extend from their seats to the top of the well.

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

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

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

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§22-6-20. Same -- When well is drilled through horizon of coalbed from which coal has been removed.

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

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

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

No oil or gas well shall be drilled nearer than two hundred feet from an existing water well or dwelling without first obtaining the written consent of the owner of such water well or dwelling.

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§22-6-22. Well report, logs, core samples, and cuttings to be filed; confidentiality and permitted use; authority to promulgate rules; reporting of production data for horizontal wells.

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

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

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

The secretary may promulgate such reasonable rules in accordance with §29A-3-1 et seq. of this code, as may be considered necessary to ensure that the character, depth, and thickness of geological formations encountered are accurately logged: Provided, That the secretary shall not require logging by the use of an electrical logging device: Provided, however, That if electrical, mechanical, or geophysical logs are recorded in the well, the secretary may request copies of these logs: Provided further, That mechanical or geophysical logs may not include vertical seismic profiles or two-dimensional or three-dimensional seismic information.

(b) If a well operator takes core samples, that activity shall be noted within the report, and, within 60 days after filing the completion report, the operator shall, subject to the terms of this article, provide the state Geological and Economic Survey with a complete set of cores, consisting of at least quarter slabs, correctly labeled and identified according to depth. The core samples requested by and provided to the state Geological and Economic Survey may not contain any materials or documents made with regard to analyzing or interpreting the core samples.

(c) If a well operator catches cuttings during the drilling of any deep or shallow well, that activity shall be noted within the report and, within 60 days after filing the completion report, the operator shall, subject to the terms of this article, provide the state Geological and Economic Survey with a sample of the cuttings, correctly labeled and identified according to depth.

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

(1) Except for core samples, any logs, drill cuttings, reports and other information or materials that reveal trade secrets or other confidential business information relating to the competitive interests of the operator or the operator’s privy may not be disclosed to the

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public for one year following delivery, unless the operator consents in writing to a shorter time. At the operator's written request, the period of confidentiality may be extended in annual increments: Provided, That the total period of confidentiality may not exceed three years.

(2) Any core samples may not be disclosed to the public for five years following delivery to the state Geological and Economic Survey, unless the operator consents in writing to a shorter time. At the operator's written request, the period of confidentiality may be extended for an additional five years: Provided, That the total period of confidentiality may not exceed 10 years.

(e) Notwithstanding the provisions of subsection (d) of this section, the state Geological and Economic Survey may store and process confidential information within its minerals mapping or geographic information systems; however, that confidential information may not be revealed to the public until the lapsing of the period of confidentiality created pursuant to subsection (d) of this section. After the period of confidentiality has lapsed, statistics or other information generated as the result of storage and processing may be disclosed in the aggregate through articles, reports, maps, or lectures presented in accordance with generally accepted academic or scientific practices and in a manner to preclude the identification of a particular well or operator.

(f) A quarterly report of the monthly volumes of oil, natural gas, and natural gas liquids produced from any horizontal well drilled shall be filed with the Chief of the Office of Oil and Gas on a form prescribed by the Secretary of the West Virginia Department of Environmental Protection. All reported data shall be made available to the public through the Office of Oil and Gas' website within a reasonable time. The secretary has the express authority pursuant to this article, as well as pursuant to the powers enumerated in §22-6-2 of this code, to promulgate rules and to amend the current rules to require timely quarterly reporting of production data as well as to establish a process for collecting such data.

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

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

Prior to the commencement of plugging operations and the abandonment of any well, the well operator shall either: (a) Notify, by registered or certified mail, the secretary and the coal operator operating coal seams, the coal seam owner of record or lessee of record, if any, to whom notices are required to be given by section twelve of this article, and the coal operators to whom notices are required to be given by section thirteen of this article, of its intention to plug and abandon any such well (using such form of notice as the secretary may provide), giving the number of the well and its location and fixing the time at which the work of plugging and filling will be commenced, which time shall be not less than five days after the day on which such notice so mailed is received or in due course should be received by the secretary, in order that a representative or representatives of the secretary and such coal operator, owner or lessee, if any, may be present at the plugging and filling of the well: Provided, That whether such representatives appear or do not appear, the well operator may proceed at the time fixed to plug and fill the well in the manner hereinafter described; or (b) first obtain the written approval of the secretary and such coal operator, owner or lessee, if any; or (c) in the event the well to be plugged and abandoned is one on which drilling or reworking operations have been continuously progressing pursuant to authorization granted by the secretary, first obtain the verbal permission of the secretary or the secretary's designated representative to plug and abandon the well, except that the well operator shall, within a reasonable period not to exceed five days after the commencement of the plugging operations, give the written notices required by subdivision (a) above.

The well operator shall not be required to prepare or submit to the director a plat prior to the commencement of plugging operations as long as a plat pertaining to the particular well is on file with the director and accurately identifies the location of the well, or so long as there is also on file with the director the coordinates of the well established by a global positioning system. The coordinates established by a global positioning system must be filed with the secretary in either a written or electronic form prescribed by the secretary. The global positioning system used to establish the coordinates shall be accurate within the variance allowed by law for the distance between the actual location of the well and location shown on the plat that is required to be filed with a well permit application, or the secretary may establish the accuracy of the global positioning system by legislative rule promulgated pursuant to section two of this article.

No well may be plugged or abandoned unless prior to the commencement of plugging operations and the abandonment of any well the secretary is furnished a bond as provided in section twenty-six of this article. In no event prior to the commencement of plugging operations shall a lessee under a lease covering a well be required to give or sell the well to

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any person owning an interest in the well, including, but not limited to, the respective lessor, or agent of the lessor, nor may the lessee be required to grant a person with an interest in the well, including, but not limited to, the respective lessor, or agent of the lessor, an opportunity to qualify under section twenty-six of this article to continue operation of the well.

When the plugging, filling and reclamation of a well have been completed, an affidavit, in triplicate, shall be made (on a form to be furnished by the secretary) by two experienced persons who participated in the work, the secretary or the secretary's designated representative, in which affidavit shall be set forth the time and manner in which the well was plugged and filled and the land reclaimed. One copy of this affidavit shall be retained by the well operator, another (or true copies of same) shall be mailed to the coal operator or operators, if any, and the third to the secretary.

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§22-6-24. Methods of plugging well.

Upon the abandonment or cessation of the operation of any well drilled for natural gas or petroleum, or drilled or converted for the introduction of pressure, whether liquid or gas, or for the introduction of liquid for the purposes provided for in §22-6-25 of this article or for the disposal of pollutants or the effluent therefrom the well operator, at the time of such abandonment or cessation, shall fill and plug the well in the following manner:

(a) Where the well does not penetrate workable coal beds, it shall either be filled with mud, clay or other nonporous material from the bottom of the well to a point 20 feet above the top of its lowest oil, gas or water-bearing stratum; or a permanent bridge shall be anchored 30 feet below its lowest oil, gas or water-bearing stratum, and from such bridge it shall be filled with mud, clay or other nonporous material to a point twenty feet above such stratum; at this point there shall be placed a plug of cement or other suitable material which will completely seal the hole. Between this sealing plug and a point 20 feet above the next higher oil, gas or water-bearing stratum, the hole shall be filled, in the manner just described; and at such point there shall be placed another plug of cement or other suitable material which will completely seal the hole. In like manner the hole shall be filled and plugged, with reference to each of its oil, gas or water-bearing strata. However, whenever such strata are not widely separated and are free from water, they may be grouped and treated as a single sand, gas or petroleum horizon, and the aforesaid filling and plugging be performed as though there were but one horizon. After the plugging of all oil, gas or water-bearing strata, as aforesaid, a cement plug shall be placed approximately 10 feet below the bottom of the largest casing in the well; from this point to the surface the well shall be filled with mud, clay or other nonporous material, except that a final cement plug shall be installed from a point 100 feet below the surface to the surface. In case any of the oil or gas-bearing strata in a well shall have been shot, thereby creating cavities which cannot readily be filled in the manner above described, the well operator shall follow either of the following methods:

(1) Should the stratum which has been shot be the lowest one in the well, there shall be placed, at the nearest suitable point, but not less than 20 feet above the stratum, a plug of cement or other suitable material which will completely seal the hole. In the event, however, that the shooting has been done above one or more oil or gas-bearing strata in the well, plugging in the manner specified shall be done at the nearest suitable point, but not less than 20 feet below and above the stratum shot; or

(2) When such cavity shall be in the lowest oil or gas-bearing stratum in the well, a liner shall be placed which shall extend from below the stratum to a suitable point, but not less than 20 feet above the stratum in which shooting has been done. In the event, however, that the shooting has been done above one or more oil or gas-bearing strata in the well, the liner shall be so placed that it will extend not less than 20 feet above, nor less than 20 feet below, the stratum in which shooting has been done. Following the placing of the liner in the manner here specified it shall be compactly filled with cement, mud, clay or other nonporous sealing material.

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(b) Where the well penetrates one or more workable coal beds and a coal protection string of casing has been circulated and cemented into the surface, the well shall be filled and securely plugged in the manner provided in subdivision (a) of this section, except that expanding cement shall be used instead of regular hydraulic cement, to a point approximately 100 feet below the bottom of the coal protection string of casing. From the point the well shall be plugged according to the provisions in paragraph (1) or (2) below:

(1) A 200 foot plug of expanding cement shall be placed in the well. From this point, the well shall be filled with mud, clay or other nonporous material to a point 100 feet below the surface and a plug of cement shall be placed from the point 100 feet below the surface to the surface with a monument installed therein extending 30 inches above ground level.

(2) A 100 foot plug of expanding cement shall be placed in the well so that the top of such plug is located at a point just below the coal protection string of casing. After such plug has been securely placed in the well, the coal protection string of casing shall be emptied of liquid from the surface to a point 100 feet below the lowest workable coal bed or to the bottom of the coal protection string of casing, whichever is shallower. A vent or other device approved by the secretary shall then be installed on the top of the coal protection string of casing in such a manner that will prevent liquids and solids from entering the well but will permit ready access to the full internal diameter of the coal protection string of casing when required. The coal protection string of casing and the vent or other device approved by the secretary shall extend, when finally in place, a distance of not less than 30 inches above ground level and shall be permanently marked with the well number assigned by the secretary;

(c) Where the well penetrates one or more workable coal beds and a coal protection string of casing has not been circulated and cemented into the surface, the well shall be filled and securely plugged in the manner provided in subsection (a) of this section to a point 50 feet below the lowest workable coal bed. Thereafter, a plug of cement shall be placed in the well at a point not less than 40 feet below the lowest workable coal bed. After the cement plug has been securely placed in the well, the well shall be filled with cement to a point 20 feet above the lowest workable coal bed. From this point the well shall be filled with mud, clay or other nonporous material to a point 40 feet beneath the next overlying workable coal bed, if such there be, and the well shall then be filled with cement from this point to a point 20 feet above such workable coal bed, and similarly, in case there are more overlying workable coal beds. After the filling and plugging of the well to a point above the highest workable coal bed, filling and plugging of the well shall continue in the manner provided in subsection (a) of this section to a point 100 feet below the surface, and a plug of cement shall be installed from the point 100 feet below the surface to the surface with a monument installed therein extending 30 inches above ground level;

(d)(1) Where the well penetrates one or more workable coal beds and a coal protection string of casing has not been circulated and cemented into the surface, a coal operator or coal seam owner may request that the well be plugged in the manner provided in subdivision (3) of this subsection rather than by the method provided in subsection (c) of this section.

Such request (forms for which shall be provided by the secretary) must be filed in writing with the secretary prior to the scheduled plugging of the well, and must include the number of the well to be plugged and the name and address of the well operator. At the time such request is filed with the secretary, a copy of such request must also be mailed by registered or certified mail to the well operator named in the request.

(2) Upon receipt of such request, the secretary shall issue an order staying the plugging of the well and shall promptly determine the cost of plugging the well in the manner provided in subdivision (3) of this subsection and the cost of plugging the well in the manner provided in subsection (c) of this section. In making such determination, the secretary shall take into consideration any agreement previously made between the well operator and the coal operator or coal seam owner making the request. If the secretary determines that the cost of plugging the well in the manner provided in subsection (c) of this section exceeds the cost of plugging the well in the manner provided in subdivision (3) of this subsection, the secretary shall grant the request of the coal operator or owner and shall issue an order requiring the well operator to plug the well in the manner provided in subdivision (3) of this subsection. If the secretary determines that the cost of plugging the well in the manner provided in subsection (c) of this section is less than the cost of plugging the well in the manner provided in subdivision (3) of this subsection, the secretary shall request payment into escrow of the difference between the determined costs by the coal operator or coal seam owner making the request. Upon receipt of satisfactory notice of such payment, or upon receipt of notice that the well operator has waived such payment, the secretary shall grant the request of the coal operator or coal seam owner and shall issue an order requiring the well operator to plug the well in the manner provided in subdivision (3) of this subsection. If satisfactory notice of payment into escrow, or notice that the well operator has waived such payment, is not received by the secretary within fifteen days after the request for payment into escrow, the secretary shall issue an order permitting the plugging of the well in the manner provided in subsection (c) of this section. Copies of all orders issued by the secretary shall be sent by registered or certified mail to the coal operator or coal seam owner making the request and to the well operator. When the escrow agent has received certification from the secretary of the satisfactory completion of the plugging work and the reimbursable extra cost thereof (that is, the difference between the secretary's determination of plugging cost in the manner provided in subsection (c) of this section and the well operator's actual plugging cost in the manner provided in subdivision (3) of this subsection), the escrow agent shall pay the reimbursable sum to the well operator or the well operator's nominee from the payment into escrow to the extent available. The amount by which the payment into escrow exceeds the reimbursable sum plus the escrow agent's fee, if any, shall be repaid to the coal owner. If the amount paid to the well operator or the well operator's nominee is less than the actual reimbursable sum, the escrow agent shall inform the coal owner, who shall pay the deficiency to the well operator or the well operator's nominee within thirty days. If the coal operator breaches this duty to pay the deficiency, the well operator shall have a right of action and be entitled to recover damages as if for wrongful conversion of personality, and reasonable attorney fees.

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(3) Where a request of a coal operator or coal seam owner filed pursuant to subdivision (1) of this subsection has been granted by the secretary, the well shall be plugged in the manner provided in subsection (a) of this section, except that expanding cement shall be used instead of regular hydraulic cement, to a point approximately 200 feet below the lowest workable coal bed. A 100 foot plug of expanding cement shall then be placed in the well beginning at the point approximately 200 feet below the lowest workable coal bed and extending to a point approximately 100 feet below the lowest workable coal bed. A string of casing with an outside diameter no less than four and one-half inches shall then be run into the well to a point approximately 100 feet below the lowest workable coal bed and such string of casing shall be circulated and cemented into the surface: *Provided*, That if it is a modern well, then a four and one-half inch casing is not required, if the casing is perforated at the required plug intervals, the cement plugs are placed as necessary to seal the well properly, the cement plugs are tagged to ensure adequate fill within the casing, and plugging within the surface casing circulation will be monitored and information documented to ensure adequate fill within the casing. The casing shall then be emptied of liquid from a point approximately 100 feet below the lowest workable coal bed to the surface, and a vent or other device approved by the secretary shall be installed on the top of the string of casing in such a manner that it will prevent liquids and solids from entering the well but will permit ready access to the full internal diameter of the coal protection string of casing when required. The string of casing and the vent or other device approved by the secretary shall extend, when finally in place, a distance of no less than 30 inches above ground level and shall be permanently marked with the well number assigned by the secretary. Notwithstanding the foregoing provisions of this subdivision, if under particular circumstances a different method of plugging is required to obtain the approval of another governmental agency for the safe mining through of said well, the secretary may approve such different method of plugging if he or she finds the same to be as safe for mining through and otherwise adequate to prevent gas or other fluid migration from the oil and gas reservoirs as the method above specified.

(e) Notwithstanding anything in this section to the contrary, where the well to be plugged is an abandoned well that has no known responsible party and the well operator is also a coal operator that intends to mine through the well, the well shall, at a minimum, be plugged as provided in subdivisions (1) and (2) of this subsection.

(1) The well will be cleaned out and prepared for plugging or replugging as follows:

(A) If the total depth of the well is less than 4,000 feet, the operator shall completely clean out the well from the surface to at least 200 feet below the base of the lowest workable coal bed, but the secretary may require cleaning to a greater depth due to excessive pressure within the well. If the total depth of the well is 4,000 feet or greater, the operator shall completely clean out the well from the surface to at least 400 feet below the base of the lowest workable coal bed. The operator shall provide to the secretary all information it possesses concerning the geological nature of the strata and the pressure of the well, and shall remove all material from the entire diameter of the well, wall to wall;

(B) The operator shall prepare down-hole logs for each well. The logs shall consist of a caliper survey and log(s) suitable for determining the top, bottom, and thickness of all coal seams and potential hydrocarbon-producing strata, as well as the location for a bridge plug. The secretary may approve the use of a down-hole camera survey in lieu of down-hole logs. In addition, the owner shall maintain a journal that describes the depth of each material encountered; the nature of each material encountered; the bit size and type used to drill each portion of the hole; the length and type of each material used to plug the well; the length of casing(s) removed, perforated or ripped, or left in place; any sections where casing was cut or milled; and any other pertinent information concerning cleaning and sealing the well. The operator shall maintain all invoices, work orders, and other records relating to all work on the well as part of the journal and provide to the secretary upon request;

(C) When cleaning, the operator shall make a diligent effort to remove all the casing in the well. If it is not possible to remove all the casing, then the operator shall take appropriate steps to ensure that the annulus between the casing and between the casings and the well walls are filled with expanding cement, with a minimum five tenths of one percent expansion upon setting, and contain no voids. If the casing cannot be removed, it must be cut or milled at all workable coal bed levels. Any casing which remains shall be perforated or ripped. If the total depth of the well is less than 4,000 feet, perforations or rips are required every 50 feet from 200 feet below the base of the lowest mineable coal bed up to one hundred feet above the uppermost workable coal bed. If the total depth of the well is 4,000 feet or greater, perforations or rips are required every 50 feet from 400 feet below the base of the lowest workable coal bed up to 100 feet above the uppermost workable coal bed. If the operator, using a casing bond log, demonstrates to the satisfaction of the secretary that all annuli in the well are already adequately sealed with cement, then the operator shall not be required to perforate or rip the casing. When multiple casing and tubing strings are present in the workable coal bed, any casing which remains shall be ripped or perforated and filled with expanding cement in accordance with this paragraph. The operator shall maintain a casing bond log for each casing and tubing string if used in lieu of ripping or perforating multiple strings;

(D) If the secretary concludes that the completely cleaned well emits excessive amounts of gas, the operator must place a mechanical bridge plug in the well. If the total depth of the well is less than 4,000 feet, the mechanical bridge plug shall be placed in a competent stratum at least 200 feet below the base of the lowest workable coal bed, but above the top of the uppermost hydrocarbon-producing stratum. If the total depth of the well is 4,000 feet or greater, the mechanical bridge plug shall be placed in a competent stratum at least 400 feet below the base of the lowest mineable coal bed, but above the top of the uppermost hydrocarbon-producing stratum: *Provided*, That the secretary may require a greater distance to set the mechanical bridge plug, regardless of the total depth of the well, based upon excessive pressure within the well. The operator shall provide the secretary with all information the operator possesses concerning the geologic nature of the strata and pressure of the well. If it is not possible to set a mechanical bridge plug, an appropriately sized packer may be used; and

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(E) If the upper-most hydrocarbon-producing stratum is within 300 feet of the base of the lowest workable coal bed, the operator shall properly place mechanical bridge plugs as described in paragraph (D) of this subdivision to isolate the hydrocarbon-producing stratum from the expanding cement plug. Nevertheless, if the total depth of the well is less than 4,000 feet, the operator shall place a minimum of 200 feet of expanding cement below the lowest workable coal bed. If the total depth of the well is 4,000 feet or greater, the operator shall place a minimum of 400 feet of expanding cement below the lowest mineable coal bed: *Provided*, That the secretary may require a greater distance to set the mechanical bridge plug, regardless of the total depth of the well, based upon excessive pressure within the well.

(2) After the well is completely cleaned pursuant to subdivision one of this subsection, the operator shall plug or replug the well to the surface as follows:

If the total depth of the well is less than 4,000 feet, the operator shall pump expanding cement slurry down the well to form a plug which runs from at least 200 feet below the base of the lowest workable coal bed to the surface. If the total depth of the well is 4,000 feet or greater, the operator shall pump expanding cement slurry down the well to form a plug which runs from at least 400 feet below the base of the lowest workable coal bed to the surface: *Provided*, That the secretary may, regardless of the total depth of the well, require a lower depth based upon excessive pressure within the well. The expanding cement slurry will be placed in the well under a pressure of at least 200 pounds per square inch. Portland cement shall be used to fill the area from 100 feet above the top of the uppermost workable coal seam to the surface: *Provided*, That the secretary may require a higher distance based upon excessive pressure within the well;

(f) Any person may apply to the secretary for an order to clean out and replug a previously plugged well in a manner which will permit the safe mining through of such well. Such application shall be filed with the secretary and shall contain the well number, a general description of the well location, the name and address of the owner of the surface land upon which the well is located, a copy of or record reference to a deed, lease or other document which entitles the applicant to enter upon the surface land, a description of the methods by which the well was previously plugged, and a description of the method by which such applicant proposes to clean out and replug the well. At the time an application is filed with the secretary, a copy shall be mailed by registered or certified mail to the owner or owners of the land, and the oil and gas lessee of record, if any, of the site upon which the well is located. If no objection to the replugging of the well is filed by any such landowner or oil and gas lessee within 30 days after the filing of the application, and if the secretary determines that the method proposed for replugging the well will permit the safe mining through of such well, the secretary shall grant the application by an order authorizing the replugging of the well. Such order shall specify the method by which the well shall be replugged, and copies thereof shall be mailed by certified or registered mail to the applicant and to the owner or owners of the land, and the oil and gas lessee, if any, of the site upon which such well is located. If any such landowner or oil and gas lessee objects to the replugging of the well, the secretary shall notify the applicant of such objection. Thereafter, the director shall

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schedule a hearing to consider the objection, which hearing shall be held after notice by registered or certified mail to the objectors and the applicant. After consideration of the evidence presented at the hearing, the secretary shall issue an order authorizing the replugging of the well if the secretary determines that replugging of the well will permit the safe mining through of such well. Such order shall specify the manner in which the well shall be replugged and copies thereof shall be sent by registered or certified mail to the applicant and objectors. The secretary shall issue an order rejecting the application if the secretary determines that the proposed method for replugging the well will not permit the safe mining through of such well;

(g) In addition to any other exception set forth in law, an operator will be exempted from the standard requirements for pulling production casing from the well when either of the following circumstances are met:

(1) Where intermediate and freshwater casing strings are not cemented to the surface, any uncemented production casing strings must be removed, but the remaining uncemented casing strings may remain in place and be perforated at depths where cement plugs are set according to existing requirements and standards, to allow for cement to enter the casing annulus as plugs are set. No more than two strings of casing will be perforated at once. Additional casing strings will be pulled when needed to prevent perforating more than two casing strings. Cement plugs must be tagged to ensure adequate fill within the casing. Plugging within the surface casing circulation will be monitored and information documented to ensure adequate fill within the casing.

(2) Where all freshwater and intermediate casing strings are cemented to the surface and production and conductor casing strings are uncemented to surface, production casing is not required to be pulled from the well. Production casing that is uncemented and left in place must be perforated at depths where cement plugs will be set according to existing requirements and standards as set forth in law, to allow for cement to enter the casing annulus as plugs are set. Cement plugs must be tagged to ensure adequate fill within the casing. Plugging within the surface casing circulation will be monitored and information documented to ensure adequate fill within the casing.

(h) All persons adversely affected, by a determination or order of the secretary issued pursuant to the provisions of this section shall be entitled to judicial review in accordance with the provisions of §29A-5-1 *et seq*. and §29A-6-1 *et seq*. of this code.

(i) For the purposes of this section, a "modern well" means a well where all casing strings, other than the production and conductor strings, are cemented to the surface. Any well that is not defined as a "modern well" shall be defined as a "non-modern well."

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

The owner or operator of any well or wells which produce oil or gas may allow such well or wells to remain open for the purpose of introducing water or other liquid pressure into and upon the producing strata for the purpose of recovering the oil contained therein, and may drill additional wells for like purposes, provided that the introduction of such water or other liquid pressure shall be controlled as to volume and pressure and shall be through casing or tubing which shall be so anchored and packed that no water-bearing strata or other oil, or gas-bearing sand or producing stratum, above or below the producing strata into and upon which such pressure is introduced, shall be affected thereby, fulfilling requirements as set forth under section fourteen.

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

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

(b) A separate bond as described in subsection (d) of this section may be furnished for a particular oil or gas well, or for a particular well for the introduction of liquids for the purposes provided in section twenty-five of this article. A separate bond as described in subsection (d) of this section shall be furnished for each well drilled or converted for the introduction of liquids for the disposal of pollutants or the effluent therefrom. Each of these bonds shall be in the sum of $5,000, payable to the State of West Virginia, conditioned on full compliance with all laws, rules relating to the drilling, redrilling, deepening, casing and stimulating of oil and gas wells (or, if applicable, with all laws, rules relating to drilling or converting wells for the introduction of liquids for the purposes provided in section twenty-five of this article or for the introduction of liquids for the disposal of pollutants or the effluent therefrom) and to the plugging, abandonment and reclamation of wells and for furnishing such reports and information as may be required by the director.

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

(d) The form of the bond required by this article shall be approved by the director and may include, at the option of the operator, surety bonding, collateral bonding (including cash and securities) letters of credit, establishment of an escrow account, self-bonding or a combination of these methods. If collateral bonding is used, the operator may elect to deposit cash, or collateral securities or certificates as follows: Bonds of the United States or its possessions, of the federal land bank, or the homeowners' loan corporation; full faith and credit general obligation bonds of the State of West Virginia, or other states, and of any county, district or municipality of the State of West Virginia or other states; or certificates of deposit in a bank in this state, which certificates shall be in favor of the division. The cash deposit or market value of such securities or certificates shall be equal to or greater than the amount of the bond. The director shall, upon receipt of any such deposit of cash, securities or certificates, promptly place the same with the Treasurer of the State of West Virginia whose duty it shall be to receive and hold the same in the name of the state in trust for the purpose of which the deposit is made when the permit is issued. The operator shall be entitled to all interest and income earned on the collateral securities filed by such operator. The operator making the deposit shall be entitled from time to time to receive from the state Treasurer, upon the written approval of the director, the whole or any portion of any cash, securities or certificates so deposited, upon depositing with the Treasurer in lieu thereof, cash or other securities or certificates of the classes herein specified having value equal to or greater than the amount of the bond.

(e) When an operator has furnished a separate bond from a corporate bonding or surety company to drill, fracture or stimulate an oil or gas well and the well produces oil or gas or both, its operator may deposit with the director cash from the sale of the oil or gas or both until the total deposited is $5,000. When the sum of the cash deposited is n $5,000, the separate bond for the well shall be released by the director. Upon receipt of such cash, the director shall immediately deliver the same to the Treasurer of the State of West Virginia. The Treasurer shall hold such cash in the name of the state in trust for the purpose for which the bond was furnished and the deposit was made. The operator shall be entitled to all interest and income which may be earned on the cash deposited so long as the operator is in full compliance with all laws, rules relating to the drilling, redrilling, deepening, casing, plugging, abandonment and reclamation of the well for which the cash was deposited and so long as the operator has furnished all reports and information as may be required by the director. If the cash realized from the sale of oil or gas or both from the well is not sufficient for the operator to deposit with the director the sum of $10,000 within one year of the day the well started producing, the corporate or surety company which issued the bond on the well may notify the operator and the director of its intent to terminate its liability under its bond. The operator then shall have thirty days to furnish a new bond from a corporate bonding or surety company or collateral securities or other forms of security, as provided in the next preceding paragraph of this section with the director. If a new bond or collateral securities or other forms of security are furnished by the operator, the liability of the corporate bonding or surety company under the original bond shall terminate as to any acts and operations of the operator occurring after the effective date of the new bond or the date the collateral securities or other forms of security are accepted by the Treasurer of the State of West Virginia. If the operator does not furnish a new bond or collateral securities or other forms of security, as provided in the next preceding paragraph of this section, with the director, the operator shall immediately plug, fill and reclaim the well in accordance with all of the provisions of law and rules applicable thereto. In such case, the corporate or surety company which issued the original bond shall be liable for any plugging, filling or reclamation not performed in accordance with such laws and rules.

(f) Any separate bond furnished for a particular well prior to the effective date of this chapter shall continue to be valid for all work on the well permitting prior to July 11, 1985; but no permit shall hereafter be issued on such a particular well without a bond complying with the provisions of this section. Any blanket bond furnished prior to July 11, 1985 shall be replaced with a new blanket bond conforming to the requirements of this section, at which time the prior bond shall be discharged by operation of law; and if the director determines that any operator has not furnished a new blanket bond, the director shall notify the operator by certified mail, return receipt requested, of the requirement for a new blanket bond; and failure to submit a new blanket bond within sixty days after receipt of the notice from the director shall work a forfeiture under subsection (i) of this section of the blanket bond furnished prior to July 11, 1985.

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

Upon the release of any such bond, any cash or collateral securities deposited shall be returned by the director to the operator who deposited same.

(h) Whenever the right to operate a well is assigned or otherwise transferred, the assignor or transferor shall notify the department of the name and address of the assignee or transferee by certified mail, return receipt requested, not later than five days after the date of the assignment or transfer. No assignment or transfer by the owner shall relieve the assignor or transferor of the obligations and liabilities unless and until the assignee or transferee files with the department the well name and the permit number of the subject well, the county and district in which the subject well is located, the names and addresses of the assignor or transferor, and assignee or transferee, a copy of the instrument of assignment or transfer accompanied by the applicable bond, cash, collateral security or other forms of security, described in section twelve, fourteen, twenty-three or twenty-six of this article, and the name and address of the assignee's or transferee's designated agent if assignee or transferee would be required to designate such an agent under section six of this article, if assignee or transferee were an applicant for a permit under said section six. Every well operator required to designate an agent under this section shall within five days after the termination of such designation notify the department of such termination and designate a new agent.

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

(i) If any of the requirements of this article or rules promulgated pursuant thereto or the orders of the director have not been complied with within the time limit set by the violation notice as defined in sections three, four and five of this article, the performance bond shall then be forfeited.

(j) When any bond is forfeited pursuant to the provisions of this article or rules promulgated pursuant thereto, the director shall give notice to the Attorney General who shall collect the forfeiture without delay.

(k) All forfeitures shall be deposited in the Treasury of the State of West Virginia in the special reclamation fund as defined in section twenty-nine of this article.

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

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

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§22-6-28. Supervision by director over drilling and reclamation operations; complaints; hearings; appeals.

(a) The director shall exercise supervision over the drilling, casing, plugging, filling and reclamation of all wells and shall have such access to the plans, maps and other records and to the properties of the well operators as may be necessary or proper for this purpose, and, either as the result of its own investigations or pursuant to charges made by any well operator or coal operator, the director may enter, or shall permit any aggrieved person to file before the director, a formal complaint charging any well operator with not drilling or casing, or not plugging or filling, or reclaiming any well in accordance with the provisions of this article, or to the order of the director. True copies of any such complaints shall be served upon or mailed by registered mail to any person so charged, with notice of the time and place of hearing, of which the operator or operators so charged shall be given at least five days' notice. At the time and place fixed for hearing, full opportunity shall be given any person so charged or complaining to be heard and to offer such evidence as desired, and after a full hearing, at which the director may offer in evidence the results of such investigations as the director may have made, the director shall make findings of fact and enter such order as in the director's judgment is just and right and necessary to secure the proper administration of this article, and if the director deems necessary, restraining the well operator from continuing to drill or case any well or from further plugging, filling or reclaiming the same, except under such conditions as the director may impose in order to ensure a strict compliance with the provisions of this article relating to such matters.

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

(c) Any person having an interest which is or may be adversely affected, or who is aggrieved by an order of the director, or by the issuance or denial of a permit, or by the permit's terms and conditions, where the subject to such order, permits or terms and conditions is solid waste, may appeal to the environmental quality board in the same manner as appeals are taken under the solid waste management act, section sixteen, article fifteen of this chapter. For the purpose of this subsection the term solid waste has the same meaning as would be given that term pursuant to section two, article fifteen of this chapter but for the exemption related to waste or material regulated by this chapter, chapter twenty-two-b or chapter twenty-two-c of this code.

WV Legislature

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

(a) There is hereby continued within the Treasury of the State of West Virginia the special fund known as the Oil and Gas Operating Permit and Processing Fund, and the secretary shall deposit with the state Treasurer to the credit of such special fund all fees collected under the provisions of §22-6-2(c)(10), §22-6-2(c)(11), §22-6-2(c)(12), and §22-6-2(c)(13) of this code.

The Oil and Gas Operating Permit and Processing Fund shall be administered by the secretary for the purposes of carrying out the provisions of this chapter. Fees collected under §22-6-2(c)(11), (12) and (13) of this code not used for other purposes may only be transferred to the Oil and Gas Reclamation Fund that is continued in §22-6-29(b) of this code at the discretion of the secretary.

The secretary shall make an annual report to the Governor and to the Legislature on the use of the fund, and shall make a detailed accounting of all expenditures from the Oil and Gas Operating Permit and Processing Fund.

(b) In addition to any other fees required by the provisions of §22-6-1 *et seq*. of this code, every applicant for a permit to drill a well shall, before the permit is issued, pay to the secretary a special reclamation fee of $150 for each activity for which a well work application is required to be filed: *Provided*, That a special reclamation fee shall not be assessed for plugging activities. Such special reclamation fee shall be paid at the time the application for a drilling permit is filed with the secretary and the payment of such reclamation fee shall be a condition precedent to the issuance of said permit.

There is hereby continued within the Treasury of the State of West Virginia the special fund known as the Oil and Gas Reclamation Fund, and the secretary shall deposit with the state Treasurer to the credit of such special fund all special reclamation fees collected. The proceeds of any bond forfeited under the provisions of §22-6-1 *et seq*. of this code shall inure to the benefit of, and shall be deposited in, such Oil and Gas Reclamation Fund.

The Oil and Gas Reclamation Fund shall be administered by the secretary. The secretary shall cause to be prepared plans for the reclaiming and plugging of abandoned wells which have not been reclaimed or plugged or which have been improperly reclaimed or plugged. The secretary, as funds become available in the Oil and Gas Reclamation Fund, shall reclaim and properly plug wells in accordance with said plans and specifications and in accordance with the provisions of §22-6-1 *et seq*. of this code relating to the reclaiming and plugging of wells and all rules promulgated thereunder. Such funds may also be utilized for the purchase of abandoned wells, where such purchase is necessary, and for the reclamation of such abandoned wells, and for any engineering, administrative, and research costs as may be necessary to properly effectuate the reclaiming and plugging of all wells, abandoned or otherwise.

The secretary may avail the division of any federal funds provided on a matching basis that

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may be made available for the purpose of reclaiming or plugging any wells.

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

All wells shall be reclaimed or plugged by contract entered into by the secretary on a competitive bid basis as provided for under the provisions of §5A-3-1 *et seq*. of this code and the rules promulgated thereunder.

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§22-6-29a. Oil and Gas Abandoned Well Plugging Fund.

(a)(1) This section may be referred to as the Oil and Gas Abandoned Well Plugging Fund Act. There is established within the Treasury of the State of West Virginia the special use fund known as the Oil and Gas Abandoned Well Plugging Fund.

(2) The Oil and Gas Abandoned Well Plugging Fund shall be administered by the secretary solely for the purposes of carrying out the provisions of this section.

(3) Any balance remaining in the Oil and Gas Abandoned Well Plugging Fund at the end of any state fiscal year does not revert to the General Revenue Fund but shall remain in the special revenue account and may be used only as provided in this section. The revenues deposited in the Oil and Gas Abandoned Well Plugging Fund may not be designated as nonaligned state special revenue funds under §11B-2-32 of this code.

(b)(1) Using funds from the Oil and Gas Reclamation Fund and the Oil and Gas Abandoned Well Plugging Fund, the secretary shall plug and reclaim abandoned oil and gas wells without a responsible operator in accordance with plans and specifications developed pursuant to the provisions of this article relating to the plugging and reclamation of wells, and the rules establishing well plugging standards adopted thereunder.

(2) Funds from the Oil and Gas Abandoned Well Plugging Fund may only be used to plug abandoned oil and gas wells without a responsible operator and to reclaim the property disturbed from the plugging.

(3) On or before July 1 of each year, the secretary shall make an annual report to the Governor and the Legislature as to the use of the Oil and Gas Abandoned Well Plugging Fund and the Oil and Gas Reclamation Fund. The report shall include the balance in both funds on June 1 of each year. The secretary's annual report shall set forth the number of wells reclaimed or plugged through the use of the Oil and Gas Reclamation Fund and the Oil and Gas Abandoned Well Plugging Fund in the previous year. The report shall identify each reclamation and plugging project, state the number of wells plugged thereby, show the county in which the wells are located, and make a detailed accounting of all expenditures from the Oil and Gas Reclamation Fund and from the Oil and Gas Abandoned Well Plugging Fund. The annual report shall also include a five-year plan detailing current and future projects and activities to plug and reclaim wells.

(4) Wells shall be plugged, and plugged wells reclaimed by contract entered into by the secretary on a competitive bid basis as provided for under the provisions of §5A-3-1 *et seq.* of this code and the rules promulgated thereunder.

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§22-6-30. Reclamation requirements.

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

(a) Within six months after the completion of the drilling process, the operator shall fill all the pits for containing muds, cuttings, salt water and oil that are not needed for production purposes, or are not required or allowed by state or federal law or rule and remove all concrete bases, drilling supplies and drilling equipment. Within such period, the operator shall grade or terrace and plant, seed or sod the area disturbed that is not required in production of the well where necessary to bind the soil and prevent substantial erosion and sedimentation. No pit may be used for the ultimate disposal of salt water. Salt water and oil shall be periodically drained or removed, and properly disposed of, from any pit that is retained so the pit is kept reasonably free of salt water and oil.

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

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

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

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

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

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§22-6-31. Preventing waste of gas; plan of operation required for wasting gas in process of producing oil; rejection thereof.

Natural gas shall not be permitted to waste or escape from any well or pipeline, when it is reasonably possible to prevent such waste, after the owner or operator of such gas, or well, or pipeline, has had a reasonable length of time to shut in such gas in the well, or make the necessary repairs to such well or pipeline to prevent such waste: Provided, That (a) if, in the process of drilling a well for oil or gas, or both, gas is found in such well, and the owner or operator thereof desires to continue to search for oil or gas, or both, by drilling deeper in search of lower oil or gas-bearing strata, or (b) if it becomes necessary to make repairs to any well producing gas, commonly known as "cleaning out," and if in either event it is necessary for the gas in such well to escape therefrom during the process of drilling or making repairs, as the case may be, then the owner or operator of such well shall prosecute such drilling or repairs with reasonable diligence, so that the waste of gas from the well shall not continue longer than reasonably necessary, and if, during the progress of such deeper drilling or repairs, any temporary suspension thereof becomes necessary, the owner or operator of such well shall use all reasonable means to shut in the gas and prevent its waste during such temporary suspension: Provided, however, That in all cases where both oil and gas are found and produced from the same oil and gas-bearing stratum, and where it is necessary for the gas therefrom to waste in the process of producing the oil, the owner or operator shall use all reasonable diligence to conserve and save from waste so much of such gas as it is reasonably possible to save, but in no case shall such gas from any well be wasted in the process of producing oil therefrom until the owner or operator of such well shall have filed with the director a plan of operation for said well showing, among other things, the gas-oil production ratio involved in such operation, which plan shall govern the operation of said well unless the director shall, within ten days from the date on which such plan is submitted to the director, make a finding that such plan fails, under all the facts and circumstances, to propose the exercise of all reasonable diligence to conserve and save from waste so much of such gas as it is reasonably possible to save, in which event production of oil at such well by the wasting of gas shall cease and desist until a plan of operation is approved by the director. Successive plans of operation may be filed by the owner or operator of any such well with the director.

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

If the owner or operator of any such well shall neglect or refuse to drill, case and equip, or plug and abandon, or shut in and conserve from waste the gas produced therefrom, as required to be done and performed by the preceding sections of this article, for a period of twenty days after a written notice so to do, which notice may be served personally upon the owner or operator, or may be posted in a conspicuous place at or near the well, it shall be lawful for the owner or operator of any adjacent or neighboring lands or the director to enter upon the premises where such well is situated and properly case and equip such well, or, in case the well is to be abandoned, to properly plug and abandon it, or in case the well is wasting gas, to properly shut it in and make such needed repairs to the well to prevent the waste of gas, in the manner required to be done by the preceding sections of this article; and the reasonable cost and expense incurred by an owner or operator or the director in so doing shall be paid by the owner or operator of such well and may be recovered as debts of like amount are by law recoverable.

The director may utilize funds and procedures established pursuant to section twenty-nine of this article for the purposes set out in the section. Amounts recovered by the director pursuant to this section shall be deposited in the oil and gas reclamation fund established pursuant to section twenty-nine of this article.

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§22-6-33. Restraining waste.

Aside from and in addition to the imposition of any penalties under this article, it shall be the duty of any circuit court in the exercise of its equity jurisdiction to hear and determine any action which may be filed to restrain the waste of natural gas in violation of this article, and to grant relief by injunction or by other decrees or orders, in accordance with the principles and practice in equity. The plaintiff in such action shall have sufficient standing to maintain the same if the plaintiff shall aver and prove that the plaintiff is interested in the lands situated within the distance of one mile from such well, either as an owner of such land, or of the oil or gas, or both, thereunder, in fee simple, or as an owner of leases thereof or of rights therein for the production of oil and gas or either of them or as the director.

WV Legislature

§22-6-34. Offenses; penalties.

(a) Any person or persons, firm, partnership, partnership association or corporation who willfully violates any provision of this article or any rule or order promulgated hereunder shall be subject to a civil penalty not exceeding $2,500. Each day a violation continues after notice by the division constitutes a separate offense. The penalty shall be recovered by a civil action brought by the division, in the name of the state, before the circuit court of the county in which the subject well or facility is located. All such civil penalties collected shall be credited to the General Fund of the state.

(b) Any person or persons, firm, partnership, partnership association or corporation willfully violating any of the provisions of this article which prescribe the manner of drilling and casing or plugging and filling any well, or which prescribe the methods of conserving gas from waste, shall be guilty of a misdemeanor, and, upon conviction thereof, shall be punished by a fine not exceeding $5,000, or imprisonment in jail for not exceeding twelve months, or both, in the discretion of the court, and prosecutions under this section may be brought in the name of the State of West Virginia in the court exercising criminal jurisdiction in the county in which the violation of such provisions of the article or terms of such order was committed, and at the instance and upon the relation of any citizens of this state.

WV Legislature

§22-6-35. Civil action for contamination or deprivation of fresh water source or supply; presumption.

In any action for contamination or deprivation of a fresh water source or supply within one thousand feet of the site of drilling for an oil or gas well, there shall be a rebuttable presumption that such drilling, and such oil or gas well, or either, was the proximate cause of the contamination or deprivation of such fresh water source or supply.

WV Legislature

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

For purposes of notification under this article, any owner or lessee of coal seams shall file a declaration of the owner's or lessee's interest in such coal seams with the clerk of the county commission in the county where such coal seams are located. Said clerk shall file and index such declaration in accordance with section two, article one, chapter thirty-nine of this code, and shall index the name of the owner or lessee of such coal seams in the grantor index of the record maintained for the indexing of leases.

The declaration shall entitle such owner or lessee to the notices provided in sections twelve, thirteen, fourteen and twenty-three of this article: Provided, That the declaring owner shall be the record owner of the coal seam, and the declaring lessee shall be the record lessee with the owner's or lessee's source or sources of title recorded prior to recording such lessee's declaration.

The declaration shall be acknowledged by such owner or lessee, and in the case of a lessee, may be a part of the coal lease under which the lessee claims. Such declaration may be in the following language:

"DECLARATION OF OIL AND GAS NOTICE"

"The undersigned hereby declares:

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

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

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

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

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

_____

(Signature)

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

The benefits of the foregoing declaration shall be personal to the declaring owner or lessee, and not transferable or assignable in any way.

WV Legislature

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

The rules promulgated and all orders and permits in effect upon the effective date of this article pursuant to the provisions of former article one, chapter twenty-two-b of this code shall remain in full force and effect as if such rules, orders and permits were adopted by the director established in this chapter but all such rules, orders and permits shall be subject to review by the director to ensure they are consistent with the purposes and policies set forth in this chapter.

WV Legislature

§22-6-38. Application of article; exclusions.

This article shall not apply to or affect any well work permitted prior to the effective date of this article under former article one, chapter twenty-two-b of this code, unless such well is, after completion, whether such completion is prior to or subsequent to the effective date of this article, deepened subsequent to the effective date of this article through another coal seam to another formation above the top of the uppermost member of the "Onondaga Group" or to a depth of less than six thousand feet, whichever is shallower.

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§22-6-39. Injunctive relief.

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

(b) Upon application by the director, the circuit courts of this state may, by mandatory or prohibitory injunction compel compliance with the provisions of this article, and all orders and final decisions of the director. The court may issue a temporary injunction in any case pending a decision on the merits of any application filed. Any other section of this code to the contrary notwithstanding, the state shall not be required to furnish bond or other undertaking as a prerequisite to obtaining mandatory, prohibitory or temporary injunctive relief under the provisions of this article.

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

(d) The director shall be represented in all such proceedings by the Attorney General or the Attorney General's assistants or in such proceedings in the circuit courts by the prosecuting attorney of the several counties as well, all without additional compensation. The director, with the written approval of the Attorney General, may employ special counsel to represent the director in any such proceedings.

(e) If the director shall refuse or fail to apply for an injunction to enjoin a violation or threatened violation of any provision of this article, any order or final decision of the director, or any rules promulgated hereunder, within ten days after receipt of a written request to do so by any well operator, coal operator, operating coal seams beneath the tract of land, or the coal seam owner or lessee, if any, if said owner or lessee is not yet operating said coal seams beneath said tract of land, adversely affected by such violation or threatened violation, the person making such request may apply on their own behalf for an injunction to enjoin such violation or threatened violation in any court in which the director might have brought suit. The director shall be made party defendant in such application in addition to the person or persons violating or threatening to violate any provisions of this article, any final order or decision of the director, or any rule promulgated hereunder. The application shall proceed and injunctive relief may be granted in the same manner as if the application

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had been made by the director: Except that the court may require a bond or other undertaking from the plaintiff.

WV Legislature

§22-6-40. Appeal from order of issuance or refusal of permit to drill or fracture; procedure.

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

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

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§22-6-41. Appeal from order of issuance or refusal of permit for drilling location for introduction of liquids or waste or from conditions of converting procedure.

Any party to the proceedings under section sixteen of this article adversely affected by the order of issuance of a drilling permit or to the issuance of a fracturing permit or the refusal of the director to grant a drilling permit or fracturing permit is entitled to judicial review thereof. All of the pertinent provisions of section four, article five, chapter twenty-nine-a of this code shall apply to and govern such judicial review with like effect as if the provisions of section four were set forth in extenso in this section.

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

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