WEST VIRGINIA CODE CHAPTER 22 ARTICLE 6A

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§22-6A-1. Short title.

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

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

(a) The Legislature finds that:

(1) The advent and advancement of new and existing technologies and drilling practices have created the opportunity for the efficient development of natural gas contained in underground shales and other geologic formations;

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

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

(4) Existing laws and regulations developed for conventional oil and gas operations do not adequately address these new technologies and practices;

(5) The secretary should have broad authority to condition the issuance of well work permits when, in the secretary's discretion, it is necessary to protect the safety of persons, to prevent inadequate or ineffective erosion and sediment control plans, to prevent damage to publicly owned lands or resources, to protect fresh water sources or supplies or to otherwise protect the environment;

(6) Concomitant with the broad powers to condition the issuance of well work permits, the secretary should also have broad authority to waive certain minimum requirements of this article when, in his or her discretion, such waiver is appropriate: Provided, That the secretary shall submit a written report of the number of waivers granted to the Legislature commencing January 1, 2013, and each year thereafter;

(7) Practices involving reuse of water in the fracturing and stimulating of horizontal wells should be considered and encouraged by the department, as appropriate; and

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

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

(c) The Legislature declares that in view of the urgent need for prompt decision of matters submitted to the secretary under this article, all actions which the secretary or oil and gas inspectors are required to take under this article shall be taken as rapidly as practicable,

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consistent with adequate consideration of the issues involved.

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§22-6A-3. Applicability; exceptions.

Notwithstanding any other provision of this code to the contrary, the provisions of this article shall apply to any natural gas well, other than a coalbed methane well, drilled using a horizontal drilling method, and which disturbs three acres or more of surface, excluding pipelines, gathering lines and roads, or utilizes more than two hundred ten thousand gallons of water in any thirty day period: Provided, That this article does not apply to or affect any well work permitted for a horizontal well or orders issued regarding horizontal wells or permit applications pending prior to the effective date of this article: Provided, however, That this article shall not apply to or affect any rights bargained for in any agreement between a surface owner and operator made prior to the effective date of this article.

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§22-6A-3a. Karst terrain; rulemaking.

(a) Because drilling horizontal wells in naturally occurring karst terrain may require precautions not necessary in other parts of the state, the secretary may require additional safeguards to protect this geological formation. When drilling horizontal wells in naturally occurring karst terrain, such additional safeguards may include changing proposed well locations to avoid damage to water resources, special casing programs, and additional or special review of drilling procedures.

(b) In order to carry out the purposes of this section, the secretary, in consultation with the state geologist, shall propose emergency and legislative rules in accordance with the provisions of chapter twenty-nine-a of this code to establish designated geographic regions of the state where the provisions of this section are applicable and to establish standards for drilling horizontal wells in naturally occurring karst terrain. For horizontal wells drilled into naturally occurring karst terrain in such designated geographic regions, the rules shall, at a minimum:

(1) Require operators to perform certain predrilling testing to identify the location of caves and other voids, faults and relevant features in the strata and the location of surface features prevalent in naturally occurring karst terrain such as sink holes; and

(2) Provide any other requirements deemed necessary by the secretary to protect the unique characteristics of naturally occurring karst terrain, which requirements may include baseline water testing within an established distance from a drilling site.

(c) Nothing in this section allows the department to prevent drilling in naturally occurring karst terrain.

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§22-6A-4. Definitions.

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

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

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

(2) "Department" means the Department of Environmental Protection;

(3) "Flowback Recycle Pit" means a pit used for the retention of flowback and freshwater and into which no other wastes of any kind are placed;

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

(5) "Horizontal drilling" means a method of drilling a well for the production of natural gas or the injection or placement of any fluid or gas, not otherwise prohibited by law or rule, including carbon dioxide, to enhance recovery of oil and natural gas that is intended to maximize the length of wellbore that is exposed to the formation and in which the wellbore is initially vertical but is eventually curved to become horizontal, or nearly horizontal, to parallel a particular geologic formation;

(6) "Horizontal well" means any well site, other than a coalbed methane well, drilled using a horizontal drilling method, and which disturbs three acres or more of surface, excluding pipelines, gathering lines and roads, or utilizes more than two hundred ten thousand gallons of water in any thirty day period for the production of natural gas, including injection or placement of any fluid or gas, not otherwise prohibited by law or rule, including carbon dioxide, to enhance recovery of oil and natural gas;

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

(8) "Karst terrain" means a terrain, generally underlain by limestone or dolomite, in which the topography is formed chiefly by the dissolving of rock, and which may be characterized by sinkholes, sinking streams, closed depressions, subterranean drainage and caves;

(9) "Perennial stream" means a stream or portion of a stream that flows year-round, is considered a permanent stream and for which base flow is maintained by ground-water discharge to the streambed due to the ground-water elevation adjacent to the stream being

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higher than the elevation of the streambed;

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

(11) "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;

(12) "Water purveyor" means any person engaged in the business of selling water to another and who is regulated by the Bureau for Public Health pursuant to title sixty-four, series three of the West Virginia Code of State Rules; and

(13) "Well work" means the drilling, redrilling, deepening, stimulating, pressuring by injection or placement of any fluid or gas, not otherwise prohibited by law or rule, including carbon dioxide, 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.

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

(a) To the extent that horizontal wells governed by this article are similar to conventional oil and gas wells regulated under article six of this chapter, the following sections of article six of this chapter are hereby incorporated by reference in this article:

(1) The provisions of §22-6-3 of this code relating to the findings and orders of inspectors concerning violations, the determination of reasonable time for abatement, extensions of time for abatement, special inspections and notice of findings and orders;

(2) The provisions of §22-6-4 of this code providing for the review of findings and orders by the secretary, special inspections and applications for annulment or revision of orders by the secretary;

(3) The provisions of §22-6-5 of this code relating to the requirements for findings, orders and notices, notice to the operator of findings and orders and judicial review of final orders of the secretary;

(4) The provisions of §22-6-7 of this code relating to the issuance of water pollution control permits, the powers and duties of the secretary related thereto and penalties for violations of the same;

(5) The provisions of §22-6-8 of this code of this chapter relating to the prohibition of permits for wells on flat well royalty leases and requirements for permits;

(6) The provisions of §22-6-12 of this code pertaining to plats prerequisite to drilling or fracturing wells, the preparation and contents thereof, notice furnished to coal operators, owners or lessees, the issuance of permits and required performance bonds, with the following exceptions:

(A) Under subsection (a), §22-6-12 of this code, the plat also shall identify all surface tract boundaries within the scope of the plat proposed to be crossed by the horizontal lateral of the horizontal well and the proposed path of such horizontal lateral, and

(B) Under subsection (b), §22-6-12 of this code, any reference to a time period shall be thirty days in lieu of fifteen days;

(7) The provisions of §22-6-13 of this code providing for notice of the operator's intention to fracture wells, with the exception that under the third paragraph of §22-6-13 of this code, the applicable periods shall be thirty days in lieu of fifteen days;

(8) The provisions of §22-6-14 of this code providing requirements related only to the introduction of liquids for the purposes for enhanced recovery, with the exception that the type of wells used for enhanced recovery referenced in §22-6-14(a) of this code shall also include the introduction of fluids or gases, not otherwise prohibited by law or rule, including

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carbon dioxide, for the purposes provided for in §22-6-25 of this code;

(9) The provisions of §22-6-15 of this code pertaining to objections to proposed deep well drilling sites above seam or seams of coal, with the exception that the applicable time for filing objections is within thirty days of receipt by the secretary of the required plat and/or notice in lieu of fifteen days;

(10) The provisions of §22-6-16 of this code pertaining to the process of issuing permits related only to the introduction of liquids or waste for the purposes for enhanced recovery, with the exception that the type of wells used for enhanced recovery referenced in §22-6-16 of this code shall also include the introduction of fluids or gases, not otherwise prohibited by law or rule, including carbon dioxide, for the purposes provided for in §22-6-25 of this code;

(11) The provisions of §22-6-17 of this code pertaining to drilling of shallow gas wells, notice to be provided to the chair of the review board, orders issued by the review board and permits issued for such drilling, with the exception that the applicable time for filing objections is thirty days from the date of receipt by the secretary of the required plat and notice in lieu of fifteen days;

(12) The provisions of §22-6-18 of this code providing for protective devices for when a well penetrates one or more workable coal beds and when gas is found beneath or between workable coal beds;

(13) The provisions of §22-6-19 of this code providing for protective devices during the life of the well and for dry or abandoned wells;

(14) The provisions of §22-6-20 of this code providing for protective devices when a well is drilled through the horizon of a coalbed from which the coal has been removed;

(15) The provisions of §22-6-21 of this code requiring the installation of fresh water casings;

(16) The provisions of §22-6-22 of this code relating to the filing of a well completion log and the contents thereof, confidentiality and permitted use and the secretary's authority to promulgate rules;

(17) The provisions of §22-6-25 of this code regarding the introduction of liquid pressure into producing strata to recover oil contained therein, with the exception that (i) the purposes of wells set forth in §22-6-25 of this code may also be for introducing fluid or gaseous pressure, including carbon dioxide, and (ii) the substance that is the subject of recovery also includes natural gas;

(18) The provisions of §22-6-27 of this code regarding a cause of action for damages caused by an explosion;

(19) The provisions of §22-6-28 of this code of this chapter relating to supervision by the secretary over drilling and reclamation operations, the filing of complaints, hearings on the

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same and appeals;

(20) The provisions of §22-6-29 of this code providing for the Operating Permit and Processing Fund, the oil and gas reclamation fund and associated fees, with the exception that in the first paragraph of subsection (a), §22-6-29 of this code, the fees to be credited to the Oil and Gas Operating Permit and Processing Fund are the permit fees collected pursuant to section seven of this article;

(21) The provisions of §22-6-31 of this code providing for preventing waste of gas, plans of operation for wasting gas in the process of producing oil and the secretary's rejection thereof;

(22) The provisions of §22-6-32 of this code pertaining to the right of an adjacent owner or operator to prevent waste of gas and the recovery of costs;

(23) The provisions of §22-6-33 of this code relating to circuit court actions to restrain waste;

(24) The provisions of §22-6-36 of this code providing for the declaration of oil and gas notice by owners and lessees of coal seams and setting out the form of such notice;

(25) The provisions of §22-6-39 of this code relating to petitions for injunctive relief; and

(26) The provisions of §22-6-40 of this code of this chapter relating to appeals from orders issuing or refusing to issue a permit to drill or fracture, and the procedure therefore.

(b) Notwithstanding any other provision of this code to the contrary, no provision of article six of this chapter shall apply to horizontal wells subject to this article except as expressly incorporated by reference in this article. Any conflict between the provisions of article six and the provisions of this article shall be resolved in favor of this article.

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

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

(1) All powers and duties conferred upon the secretary pursuant to article six, chapter twenty-two of this code;

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

(3) To utilize any oil and gas inspectors or other employees of the department in the enforcement of the provisions of this article;

(4) To propose any necessary legislative rules, in accordance with the provisions of §29A-1-1 *et seq*. of this code to implement the provisions of this article;

(5) To make investigations and inspections necessary to ensure compliance with the provisions of this article;

(b) Except for the duties and obligations conferred by statute upon the shallow gas well review board pursuant to §22C-8-1 *et seq*. of this code, the coalbed methane review board pursuant to §22-21-1 *et seq*. of this code, and the oil and gas conservation commission pursuant to §22C-9-1 *et seq*. of this code, the secretary has sole and exclusive authority to regulate the permitting, location, spacing, drilling, fracturing, stimulation, well completion activities, operation, enhanced recovery, any and all other drilling and production processes, plugging and reclamation of oil and gas wells and production operations within the state.

(c) The secretary shall, on a monthly basis, make a written report to the Governor disclosing, for all well work permits issued in a particular month, the average number of days elapsed between the date on which a complete application for a well work permit was filed and the date on which such well work permit was issued. This report shall be posted to the website required to be established and maintained pursuant to section twenty-one of this article.

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

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

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

(1) The names and addresses of: (A) The well operator; (B) the agent required to be designated under subsection (k) of this section; and (C) every person whom the applicant shall 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 names and addresses 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 §22-6A-5(a)(6) of this code, if any, if the owner or lessee is not yet operating the coal seams;

(3) The number of the well or other identification the secretary may require;

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

(5) The approximate total depth to which the well is to be drilled or deepened, or the actual depth if the well has been drilled; the proposed angle and direction of the well; the actual depth or the approximate depth at which the well to be drilled deviates from vertical, the angle, and direction of the nonvertical well bore until the well reaches its total target depth or its actual final depth; and the length and direction of any actual or proposed horizontal lateral or well bore;

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

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

(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 existing well, all information required by this section, all formations from which production is anticipated, and any plans to plug any portion of the well;

(10) If the proposed well work is to plug or replug the well, all information necessary to

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demonstrate compliance with the legislative rules promulgated by the secretary in accordance with §22-6A-13 of this code;

(11) If the proposed well work is to stimulate a horizontal well, all information necessary to demonstrate compliance with the requirements of §22-6A-5(a)(7) of this code;

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

(13) A well site safety plan to address proper safety measures to be employed for the protection of persons on the site as well as the general public. The plan shall encompass all aspects of the operation, including the actual well work for which the permit was obtained, completion activities and production activities, and shall provide an emergency point of contact for the well operator. The well operator shall provide a copy of the well site safety plan to the local emergency planning committee established pursuant to §15-5A-7 of this code for the emergency planning district in which the well work will occur at least seven days before commencement of well work or site preparation work that involves any disturbance of land;

(14) A certification from the operator that: (A) It has provided the owners of the surface described in §22-6A-10(b)(1), §22-6A-10(b)(2), and §22-6A-10(b)(4) of this code, the information required by §22-6A-16(b) and §22-6A-16(c) of this code; (B) that the requirement was deemed satisfied as a result of giving the surface owner notice of entry to survey pursuant to §22-6A-10(a) of this code; or (C) the notice requirements of §22-6A-16(b) of this code were waived in writing by the surface owner; and

(15) Any other relevant information which the secretary may reasonably require.

(c)(1) An erosion and sediment control plan shall accompany each application for a well work permit under this article. The 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 department. The erosion and sediment control plan shall become part of the terms and conditions of any well work permit that is issued pursuant to this article 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 §22-6A-14 of this code.

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

(d) For well sites that disturb three acres or more of surface, excluding pipelines, gathering lines and roads, the operator shall submit a site construction plan that shall be certified by a

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registered professional engineer and contains information that the secretary may require by rule.

(e) In addition to the other requirements of this section, if the drilling, fracturing, or stimulating of the horizontal well requires the use of water obtained by withdrawals from waters of this state in amounts that exceed 210,000 gallons during any 30-day period, the application for a well work permit shall include a water management plan, which may be submitted on an individual well basis or on a watershed basis, and which shall include the following information:

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

(2) The anticipated volume of each water withdrawal;

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

(4) The planned management and disposition of wastewater after completion from fracturing, refracturing, stimulation, and production activities;

(5) A listing of the anticipated additives that may be used in water utilized for fracturing or stimulating the well. Upon well completion, a listing of the additives that were actually used in the fracturing or stimulating of the well shall be submitted as part of the completion log or report required by §22-6A-5(a)(14) of this code;

(6) For all surface water withdrawals, a water management plan that includes the information requested in subdivisions (1) through (5) of this subsection and the following:

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

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

(C) Methods to be used for surface water withdrawal to minimize adverse impact to aquatic life; and

(7) This subsection is intended to be consistent with and does not supersede, revise, repeal, or otherwise modify §22-11-1 *et seq.*, §22-12-1 *et seq.*, or §22-26-1 *et seq.* of this code and does not revise, repeal, or otherwise modify the common law doctrine of riparian rights in West Virginia law.

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

(g) The application for a permit under this section shall be accompanied by the applicable bond as required by §22-6A-15 of this code, the applicable plat required by §22-6A-5(a)(6) of this code, and a permit fee of $10,000 for the initial horizontal well drilled at a location and a permit fee of $5,000 for each additional horizontal well drilled on a single well pad at the same location.

(h)(1) An applicant may enter into an expedited permit application process with the secretary for a well permit and pay an additional expedited permit fee of $20,000 for the initial horizontal well drilled at a location and an additional expedited permit fee of $10,000 for each additional horizontal well drilled on a single well pad at the same location: *Provided*, That deep well permitting is excluded from this expedited permit process due to the independent board review and approval requirement which is outside the secretary's control.

(2) Upon entering into an expedited permit process and meeting all the criteria set forth in this article, the secretary shall issue or deny a permit within 45 days of the submission of a permit application under this article, unless the secretary seeks additional information or modification from the applicant, which would toll the 45 day period until the secretary receives the required responsive information from the applicant.

(3) Each day the agency exceeds: (A) The 45-day deadline for approval or denial of an expedited initial horizontal well drilled, the secretary shall refund $1,333.33 per day up to and including day 60 after the submission of a permit application until the expedited fee is reduced to the normal permit fee amount; or (B) the 45-day deadline for approval or denial of an expedited permit for any additional horizontal well drilled on a single well pad at the same location, the secretary shall be required to refund $666.66 per day up to and including day 60 after the submission of a permit application, until the expedited fee is reduced to the normal permit fee amount.

(4)(A) After all refunds are paid by the secretary, one half of the additional expedited permit fee shall be deposited in the Oil and Gas Operating Permit and Processing Fund and shall be used by the agency to cover costs to review, process, and approve or deny the applicable horizontal well permit applications and modifications pending before the agency.

(B) After all refunds are paid by the secretary, one half of the additional expedited permit fee shall be deposited in the Oil and Gas Reclamation Fund and used specifically for the reclamation and plugging of orphaned oil or gas wells.

(i)(1) An applicant may enter into an expedited permit modification application process with the secretary for a well permit and pay an additional expedited permit modification fee of $5,000 for the modification of the permit for any horizontal well drilled at a location: *Provided*, That deep well permit modifications are excluded from this expedited

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permit modification process if the modification is subject to independent board review and approval.

(2) Upon entering into an expedited permit modification process and meeting all the criteria set forth in this article, the secretary shall issue or deny a permit modification within 20 days of the submission of a permit modification application under this article, unless the secretary seeks additional information or further modification from the applicant, which would toll the 20 day period until the secretary receives the required responsive information from the applicant.

(3) Each day the agency exceeds the 20-day deadline for approval or denial of an expedited horizontal well permit modification, the secretary shall refund $500 per day up to and including day 30 after the submission of an expedited permit modification application, until the expedited permit modification fee of $5,000 is reduced to zero.

(4)(A) After all refunds are paid by the secretary, one half of the expedited permit modification fee shall be deposited in the Oil and Gas Operating Permit and Processing Fund and shall be used by the agency to cover costs to review, process, and approve or deny the applicable horizontal well permit applications and modifications pending before the agency.

(B) After all refunds are paid by the secretary, one half of the expedited permit modification fee shall be deposited in the Oil and Gas Reclamation Fund and used specifically for the reclamation and plugging of orphaned oil or gas wells.

(j) Any balance in the Oil and Gas Reclamation Fund, earmarked specifically for the reclamation and plugging of orphaned oil or gas wells pursuant to §22-6A-7(h)(4)(B) and §22-6A-7(i)(4)(B) of this code, which remains at the end of any state fiscal year does not revert to the General Revenue Fund but shall remain in the special revenue account as indicated and may be used only as provided in §22-6-29(b) of this code. The revenues deposited in the Oil and Gas Reclamation Fund, earmarked specifically for the reclamation and plugging of orphaned oil or gas wells pursuant to §22-6A-7(h)(4)(B) and §22-6A-7(i)(4)(B) of this code may not be designated as nonaligned state special revenue funds under §11B-2-32 of this code.

(k) The well operator named in the application shall designate the name and address of an agent for the operator who is the attorney-in-fact for the operator and who is a resident of the State of West Virginia upon whom notices, orders, or other communications issued pursuant to this article or §22-11-1 *et seq*. of this code 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 the designation, notify the secretary of the termination and designate a new agent.

(l) The well owner or operator shall install the permit number as issued by the secretary and a contact telephone number for the operator in a legible and permanent manner to the well upon completion of any permitted work. The dimensions, specifications, and manner of

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installation shall be in accordance with the rules of the secretary.

(m) The secretary may waive the requirements of this section and §22-6A-8, §22-6A-10, §22-6A-11, and §22-6A-24 of this code in any emergency situation if the secretary considers the action necessary. In that case the secretary may issue an emergency permit which is effective for not more than 30 days, unless reissued by the secretary.

(n) The secretary shall deny the issuance of a permit if the secretary determines that the applicant has committed a substantial violation of a previously issued permit for a horizontal well, including the applicable erosion and sediment control plan associated with the previously issued permit, or a substantial violation of one or more of the rules promulgated under this article, and in each instance has failed to abate or seek review of the violation within the time prescribed by the secretary pursuant to the provisions of §22-6A-5(a)(1) and §22-6A-5(a)(2) of this code and the rules promulgated hereunder, which time may not be unreasonable.

(o) If the secretary finds 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 secretary may suspend the permit on which the violation exists, after which suspension the operator shall forthwith cease all well work being conducted under the permit. However, the secretary may reinstate the permit without further notice, at which time the well work may be continued. The secretary shall make written findings of the suspension and may enforce the same in the circuit courts of this state. The operator may appeal a suspension pursuant to the provisions of §22-6A-5(a)(23) of this code. The secretary shall make a written finding of any such determination.

(p) Any well work permit issued in accordance with this section may be transferred with the prior written approval of the secretary upon his or her finding that the proposed transferee meets all requirements for holding a well work permit, notwithstanding any other provision of this article or rule adopted pursuant to this article. Application for the transfer of any well work permit shall be upon forms prescribed by the secretary and submitted with a permit transfer fee of $500. Within 90 days of the receipt of approval by the secretary, the transferee shall give notice of the transfer to those persons entitled to notice in §22-6A-10(b) of this code by personal service or by registered mail or by any method of delivery that requires a receipt or signature confirmation, and shall further update the emergency point of contact provided pursuant to §22-6A-7(b)(13).

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§22-6A-7a. Modifications of permits.

A permit issued pursuant to this article may be modified to address changes to the permit if the secretary determines that the modification fully meets all applicable requirements and is consistent with the issuance of the original permit.

The secretary may deny the application for a permit modification as outlined for new permits under this article.

A request to modify a permit issued pursuant to this article shall be on forms prescribed by the secretary and accompanied by a fee of $2,500.

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

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

(b) No permit may be issued less than thirty days after the filing date of the application for any well work except plugging or replugging; and no permit for plugging or replugging may 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 subsection (b), section ten 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 well plat, and further files written statements of no objection by all such persons, the secretary may issue the well work permit at any time.

(c) Prior to the issuance of any permit, the secretary shall ascertain from the Executive Director of Workforce West Virginia and the Insurance Commissioner whether the applicant is in default pursuant to the provisions of section six-c, article two, chapter twenty-one-a of this code, and in compliance with section five, article two, chapter twenty-three of this code, with regard to any required subscription to the Unemployment Compensation Fund or mandatory Workers' Compensation insurance, the payment of premiums and other charges to the fund, the timely filing of payroll reports and the maintenance of adequate deposits. If the applicant is delinquent or defaulted, or has been terminated by the executive director or the Insurance Commissioner, the permit may not be issued until the applicant returns to compliance or is restored by the executive director or the Insurance Commissioner under a reinstatement agreement: Provided, That in all inquiries the Executive Director of Workforce West Virginia and the Insurance Commissioner shall make response to the Department of Environmental Protection within fifteen calendar days; otherwise, failure to respond timely is considered to indicate the applicant is in compliance and the failure will not be used to preclude issuance of the permit.

(d) The secretary may cause such inspections to be made of the proposed well work location as necessary to assure adequate review of the application. The permit may not be issued, or may 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;

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

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

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

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(e) In addition to the considerations set forth in subsection (d) of this section, in determining whether a permit should be issued, issued with conditions, or denied, the secretary shall determine that:

(1) The well location restrictions of section twelve of this article have been satisfied, unless the requirements have been waived by written consent of the surface owner or the secretary has granted a variance to the restrictions, each in accordance with section twelve of this article;

(2) The water management plan submitted to the secretary, if required by subdivision (e), section seven of this article, has been received and approved.

(f) The secretary shall promptly review all written comments filed by persons entitled to notice pursuant to subsection (b), section ten of this article. If after review of the application and all written comments received from persons entitled to notice pursuant to subsection (b), section ten of this article, the application for a well work permit is approved, and no timely objection has been filed with the secretary by the 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, or made by the secretary under the provisions of section ten and eleven of this article, the permit shall be issued, with conditions, if any. This section does not supersede the provisions of section seven or subdivisions (6) through (9), subsection (a), section five of this article.

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

(1) Plug all wells in accordance with the requirements of this article and the rules promulgated pursuant thereto when the wells become abandoned;

(2) With respect to disposal of cuttings at the well site, all drill cuttings and associated drilling mud generated from horizontal well sites shall be disposed of in an approved solid waste facility, or if the surface owner consents, the drill cuttings and associated drilling mud may be managed on-site in a manner approved by the secretary;

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

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

(5) Protect the quantity and the quality of water in surface and groundwater systems both during and after drilling operations and during reclamation by: (A) Withdrawing water from surface waters of the state by methods deemed appropriate by the secretary, so as to maintain sufficient in-steam flow immediately downstream of the withdrawal location. In no

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case shall an operator withdraw water from ground or surface waters at volumes beyond which the waters can sustain; (B) Casing, sealing or otherwise managing wells to keep returned fluids from entering ground and surface waters; (C) Conducting oil and gas operations so as to prevent, to the extent possible using the best management practices, additional contributions of suspended or dissolved solids to streamflow or runoff outside the permit area, but in no event shall the contributions be in excess of requirements set by applicable state or federal law; and (D) Registering all water supply wells drilled and operated by the operator with the Office of Oil and Gas. All drinking water wells within one thousand five hundred feet of a water supply well shall be flow and quality tested by the operator upon request of the drinking well owner prior to operating the water supply well. The secretary shall propose legislative rules to identify appropriate methods for testing water flow and quality.

(6) In addition to the other requirements of this subsection, an operator proposing to drill any horizontal well requiring the withdrawal of more than two hundred ten thousand gallons in a thirty day period shall have the following requirements added to its permit:

(A) Identification of water withdrawal locations. Within forty-eight hours prior to the withdrawal of water, the operator shall identify to the department the location of withdrawal by latitude and longitude and verify that sufficient flow exists to protect designated uses of the stream. The operator shall use methods deemed appropriate by the secretary to determine if sufficient flow exists to protect designated uses of the stream.

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

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

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

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

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

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

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

(I) The quantity of water transported;

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

(III) The name of the water hauling company.

(iii) The information maintained pursuant to this subdivision shall be available for inspection by the department along with other required permits and records and maintained for three years after the water withdrawal activity.

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

(h) The secretary shall mail a copy of the permit as issued or a copy of the order denying a permit to any person entitled to submit written comments pursuant to subsection (a), section eleven of this article and who requested a copy.

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

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§22-6A-9. Certificate of approval required for large pits or impoundment construction; certificate of approval and annual registration fees; application required to obtain certificate; term of certificate; revocation or suspension of certificates; appeals; farm ponds.

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

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

(c) The application fee for placement, construction, enlargement, alteration, repair or removal of an impoundment pursuant to this section is $300, and the fee shall accompany the application for certificate of approval. Operators holding certificates of approval shall be assessed an annual registration fee of $100, which is valid for more than one impoundment that supports one or more well pads.

(d) Any certificate of approval required by this section shall be issued or denied no later than sixty days from the submission of an application containing the information required by this section. However, if the application for a certificate of approval is submitted with the application for a horizontal well permit, the certificate shall be issued or denied no later than thirty days from the submission of the permit application.

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

(f) Every application for a certificate of approval shall be made in writing on a form

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prescribed by the secretary and shall be signed and verified by the applicant. The application shall include a monitoring and emergency action plan and a maintenance plan, the required contents of which shall be established by the secretary by legislative rule. The application shall contain and provide information that may reasonably be required by the secretary to administer the provisions of this article.

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

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

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

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

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

(j) Upon expiration of the certificate of approval, the operator shall within six months, or upon its revocation by the secretary, the operator shall within sixty days, fill all impoundments that are not required or allowed by state or federal law or rule or agreement between the operator and the surface owner allowing the impoundment to remain open for the use and benefit of the surface owner and reclaim the site in accordance with the approved erosion and sediment control plan.

(k) This section does not apply to:

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

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

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

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§22-6A-10. Notice to property owners.

(a) Prior to filing a permit application, the operator shall provide notice of planned entry on to the surface tract to conduct any plat surveys required pursuant to this article. Such notice shall be provided at least seven days but no more than forty-five days prior to such entry to: (1) The surface owner of such tract; (2) to any owner or lessee of coal seams beneath such tract that has filed a declaration pursuant to section thirty-six, article six, chapter twenty-two of this code; and (3) any owner of minerals underlying such tract in the county tax records. The notice shall include a statement that copies of the state Erosion and Sediment Control Manual and the statutes and rules related to oil and gas exploration and production may be obtained from the Secretary, which statement shall include contact information, including the address for a web page on the Secretary's website, to enable the surface owner to obtain copies from the secretary.

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

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

(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 the surface tract is to be used for roads or other land disturbance as described in the erosion and sediment control plan submitted pursuant to subsection (c), section seven of this article;

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

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

(5) Any surface owner or water purveyor who is known to the applicant to have a water well, spring or water supply source located within one thousand five hundred feet of the center of the well pad which is used to provide water for consumption by humans or domestic animals; and

(6) The operator of any natural gas storage field within which the proposed well work activity is to take place.

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(c)(1) If more than three tenants in common or other co-owners of interests described in subsection (b) of this section hold interests in the 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.

(2) Notwithstanding any provision of this article to the contrary, notice to a lien holder is not notice to a landowner, unless the lien holder is the landowner.

(d) With respect to surface landowners identified in subsection (b) or water purveyors identified in subdivision (5), subsection (b) of this section, notification shall be made on forms and in a manner prescribed by the secretary sufficient to identify, for those persons, the rights afforded them under sections eleven and twelve of this article, and the opportunity for testing their water well.

(e) Prior to filing an application for a permit for a horizontal well under this article, the applicant shall publish in the county in which the well is located or is proposed to be located a Class II legal advertisement as described in section two, article three, chapter fifty-nine of this code, containing notice of the public website required to be established and maintained pursuant to section twenty-one of this article and language indicating the ability of the public to submit written comments on the proposed permit, with the first publication date being at least ten days prior to the filing of the permit application. The secretary shall consider, in the same manner required by subsection (f), section eight of this article and subdivision one, subsection (c), section eleven of this article, written comments submitted in response to the legal advertisement received by the secretary within thirty days following the last required publication date: Provided, That such parties submitting written comments pursuant to this subsection are not entitled to participate in the processes and proceedings that exist under sections fifteen, seventeen or forty, article six of this chapter, as applicable and incorporated into this article by section five of this article.

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

(g) Any person entitled to submit written comments to the secretary pursuant to subsection (a), section eleven of this article, shall also be entitled to receive from the secretary a copy of the permit as issued or a copy of the order modifying or denying the permit if the person requests receipt of them as a part of the written comments submitted concerning the permit application.

(h) The surface owners described in subdivisions (1), (2) and (4), subsection (b) of this section, and the coal owner, operator or lessee described in subdivision (3) of that subsection is also entitled to receive notice within seven days but no less than two days

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before commencement that well work or site preparation work that involves any disturbance of land is expected to commence.

(i) Persons entitled to notice pursuant to subsection (b) of this section may contact the department to ascertain the names and locations of water testing laboratories in the subject area capable and qualified to test water supplies in accordance with standard accepted methods. In compiling that list of names the department shall consult with the state Bureau for Public Health and local health departments.

(j)(1) Prior to conducting any seismic activity for seismic exploration for natural gas to be extracted using horizontal drilling methods, the company or person performing the activity shall provide notice to Miss Utility of West Virginia Inc. and to all surface owners, coal owners and lessees, and natural gas storage field operators on whose property blasting, percussion or other seismic-related activities will occur.

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

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

(4) Nothing in this subsection decides questions as to whether seismic activity may be secured by mineral owners, surface owners or other ownership interests.

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§22-6A-10a. Method of Delivery of Notice.

Notwithstanding any provision of this article to the contrary, all notices required by this article shall be delivered by the method set forth in subsection (b), section ten of this article, which notice shall provide that further information may be obtained from the department's website.

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§22-6A-11. Procedure for filing written comments; procedures for considering objections and comments; issues to be considered; and newspaper notice.

(a) All persons described in subsection (b), section ten of this article may file written comments with the secretary as to the location or construction of the applicant's proposed well work within thirty days after the application is filed with the secretary.

(b) The applicant shall tender proof of and certify to the secretary that the notice requirements of section ten of this article have been completed by the applicant. The certification of notice to the person may be made by affidavit of personal service, the return receipt card or other postal receipt for certified mailing.

(c)(1) The secretary shall promptly review all written comments filed by the persons entitled to notice under subsection (b), section ten of this article. The secretary shall notify the applicant of the character of the written comments submitted no later than fifteen days after the close of the comment period.

(2) Any objections of the affected coal operators and coal seam owners and lessees shall be addressed through the processes and procedures that exist under sections fifteen, seventeen and forty, article six of this chapter, as applicable and as incorporated into this article by section five of this article. The written comments filed by the parties entitled to notice under subdivisions (1), (2), (4), (5) and (6), subsection (b), section ten of this article shall be considered by the secretary in the permit issuance process, but the parties are not entitled to participate in the processes and proceedings that exist under sections fifteen, seventeen or forty, article six of this chapter, as applicable and as incorporated into this article by section five of this article.

(3) The secretary shall retain all applications, plats and other documents filed with the secretary, any proposed revisions thereto, all notices given and proof of service thereof and all orders issued and all permits issued. Subject to the provisions of article one, chapter twenty-nine-b of this code, the record prepared by the secretary is open to inspection by the public.

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§22-6A-12. Well location restrictions.

(a) Wells may not be drilled within two hundred fifty feet measured horizontally from any existing water well or developed spring used for human or domestic animal consumption. The center of well pads may not be located within six hundred twenty-five feet of an occupied dwelling structure, or a building two thousand five hundred square feet or larger used to house or shelter dairy cattle or poultry husbandry. This limitation is applicable to those wells, developed springs, dwellings or agricultural buildings that existed on the date a notice to the surface owner of planned entry for surveying or staking as provided in section ten of this article or a notice of intent to drill a horizontal well as provided in subsection (b), section sixteen of this article was provided, whichever occurs first, and to any dwelling under construction prior to that date. This limitation may be waived by written consent of the surface owner transmitted to the department and recorded in the real property records maintained by the clerk of the county commission for the county in which such property is located. Furthermore, the well operator may be granted a variance by the secretary from these distance restrictions upon submission of a plan which identifies the sufficient measures, facilities or practices to be employed during well site construction, drilling and operations. The variance, if granted, shall include terms and conditions the department requires to ensure the safety and protection of affected persons and property. The terms and conditions may include insurance, bonding and indemnification, as well as technical requirements.

(b) No well pad may be prepared or well drilled within one hundred feet measured horizontally from any perennial stream, natural or artificial lake, pond or reservoir, or a wetland, or within three hundred feet of a naturally reproducing trout stream. No wellpad may be located within one thousand feet of a surface or ground water intake of a public water supply. The distance from the public water supply as identified by the department shall be measured as follows:

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

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

(3) For a groundwater source, the distance shall be measured from the wellhead or spring. The department may, in its discretion, waive these distance restrictions upon submission of a plan identifying sufficient measures, facilities or practices to be employed during well site construction, drilling and operations to protect the waters of the state. A waiver, if granted, shall impose any permit conditions as the secretary considers necessary.

(c) Notwithstanding the foregoing provisions of this section, nothing contained in this section prevents an operator from conducting the activities permitted or authorized by a Clean Water Act Section 404 permit or other approval from the United States Army Corps of Engineers within any waters of the state or within the restricted areas referenced in this

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section.

(d) The well location restrictions set forth in this section shall not apply to any well on a multiple well pad if at least one of the wells was permitted or has an application pending prior to the effective date of this article.

(e) The secretary shall, by December 31, 2012, report to the Legislature on the noise, light, dust and volatile organic compounds generated by the drilling of horizontal wells as they relate to the well location restrictions regarding occupied dwelling structures pursuant to this section. Upon a finding, if any, by the secretary that the well location restrictions regarding occupied dwelling structures are inadequate or otherwise require alteration to address the items examined in the study required by this subsection, the secretary shall have the authority to propose for promulgation legislative rules establishing guidelines and procedures regarding reasonable levels of noise, light, dust and volatile organic compounds relating to drilling horizontal wells, including reasonable means of mitigating such factors, if necessary.

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§22-6A-13. Plugging of horizontal wells.

The secretary shall propose legislative rules for promulgation to govern the procedures for plugging horizontal wells, including rules relating to the methods of plugging the wells and the notices required to be provided in connection with plugging the wells.

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§22-6A-14. Reclamation requirements.

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

(1) Except as provided elsewhere in this article, within six months after a horizontal well is drilled and completed on a well pad designed for a single horizontal well, the operator shall fill all the pits and impoundments that are not required or allowed by state or federal law or rule or agreement between the operator and the surface owner that allows the impoundment to remain open for the use and benefit of the surface owner (i.e. a farm pond as described in section nine of this article) and remove all concrete bases, drilling supplies and drilling equipment: Provided, That impoundments or pits for which certificates have been approved pursuant to section nine of this article shall be reclaimed at a time and in a manner as provided in the applicable certificate and said section. Within that six-month period, the operator shall grade or terrace and plant, seed or sod the area disturbed that is not required in production of the horizontal well in accordance with the erosion and sediment control plan. 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. Pits may not be left open permanently.

(2) For well pads designed to contain multiple horizontal wells, partial reclamation shall begin upon completion of the construction of the well pad. For purposes of this section, the term "partial reclamation" means grading or terracing and planting or seeding the area disturbed that is not required in drilling, completing or producing any of the horizontal wells on the well pad in accordance with the erosion and sediment control plan. This partial reclamation satisfies the reclamation requirements of this section: Provided, That the maximum period in which partial reclamation satisfies the reclamation requirements of this section is five years from completion of the construction of the well pad. For purposes of this subdivision, construction of a well pad will be deemed to be complete twelve months after construction is commenced if construction of the well pad is not actually completed prior to that date. Within six months after expiration of the five-year maximum partial reclamation period, the operator shall complete final reclamation of the well pad as set forth in this subsection.

(3) Within six months after a horizontal 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 that six-month 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.

(4) The operator shall reclaim the area of land disturbed in siting, drilling, completing or producing the horizontal well in accordance with the erosion and sediment control plans approved by the secretary or the secretary's designee pursuant to this article.

(b) The secretary, upon written application by an operator showing reasonable cause, may extend the period within which reclamation must be completed, but not to exceed a further six-month period. If the secretary refuses to approve a request for extension, the refusal shall be by order, which may be appealed pursuant to the provisions of subdivision (23), subsection (a), section five of this article.

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

(a) No permit may 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 each horizontal well drilled. Each of these bonds shall be in the sum of $50,000 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 horizontal wells and to the plugging, abandonment and reclamation of horizontal wells and for furnishing reports and information required by the secretary.

(c) When an operator makes or has made application for permits to drill or stimulate a number of horizontal wells, the operator may, in lieu of furnishing a separate bond, furnish a blanket bond in the sum of $250,000 payable to the State of West Virginia, and conditioned as provided in subsection (b) of this section.

(d) The form of the bond required by this article shall be approved by the secretary 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 of the homeowners' loan corporation; full faith and credit general obligation bonds of the State of West Virginia or other states or 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 department. The cash deposit or market value of the securities or certificates shall be equal to or greater than the amount of the bond. The secretary shall, upon receipt of any deposit of cash, securities or certificates, promptly place the same with the Treasurer of the State of West Virginia whose duty it is to receive and hold them in the name of the state in trust for the purpose of which the deposit is made when the permit is issued. The operator is entitled to all interest and income earned on the collateral securities filed by the operator. The operator making the deposit is entitled from time to time to receive from the State Treasurer, upon the written approval of the secretary, the whole or any portion of any cash, securities or certificates so deposited, upon depositing with the State 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 a horizontal well and the well produces oil or gas or both, its operator may deposit with the secretary cash from the sale of the oil or gas or both until the total deposited is $50,000. When the sum of the cash deposited is $50,000, the separate bond for the well shall be released by the secretary. Upon receipt of that cash, the secretary shall immediately deliver that amount to the State Treasurer, who shall hold the

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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 is 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 and 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 required by the secretary. The secretary may establish procedures under which an operator may substitute a new bond for an existing bond or provide a new bond under certain circumstances specified in a legislative rule promulgated in accordance with chapter twenty-nine-a of this code.

(f) Any separate bond furnished for a particular well prior to the effective date of this article continues to be valid for all work on the well permitted prior to the effective date of this article; but no permit may be issued on such a particular well without a bond complying with the provisions of this section. Any blanket bond furnished prior to the effective date of this article shall be replaced with a new blanket bond conforming to the requirements of this section, at which time the prior bond is discharged by operation of law; and if the secretary determines that any operator has not furnished a new blanket bond, the secretary shall notify the operator by registered mail or by any method of delivery that requires a receipt or signature confirmation 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 secretary works a forfeiture under subsection (i) of this section of the blanket bond furnished prior to the effective date of this article.

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

(h)(1) 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 registered mail or by any method of delivery that requires a receipt or signature confirmation not later than thirty days after the date of the assignment or transfer. No assignment or transfer by the owner relieves 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 this section, and the name and address of the assignee's or transferee's designated agent if the assignee or transferee would be required to designate an agent under this article if the assignee or transferee were an applicant for a permit under this article. Every well operator required to designate an agent under this section shall, within five days after the termination of the designation, notify the department of the termination and designate a new agent.

(2) Upon compliance with the requirements of this section by the assignor or transferor and

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assignee or transferee, the secretary shall release the assignor or transferor from all duties and requirements of this article and shall give written notice of release to the assignor or transferor of any bond and return to the assignor or transferor any cash or collateral securities deposited pursuant to this section.

(i) If any of the requirements of this article or rules promulgated pursuant thereto or the orders of the secretary has not been complied with within the time limit set by any notice of violation issued pursuant to 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 secretary shall collect the forfeiture without delay.

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

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§22-6A-16. Compensation of surface owners for drilling operations.

(a) The provisions of article seven of this chapter do not apply to horizontal wells governed by this article. In lieu thereof, the provisions of article six-b of this chapter shall provide for the compensation of surface owners for damage caused by drilling horizontal wells.

(b) At least ten days prior to filing a permit application, an operator shall, by certified mail return receipt requested or hand delivery, give the surface owner notice of its intent to enter upon the surface owner's land for the purpose of drilling a horizontal well: Provided, That notice given pursuant to subsection (a), section ten of this article satisfies the requirements of this subsection as of the date the notice was provided to the surface owner: Provided, however, That the notice requirements of this subsection may be waived in writing by the surface owner. The notice, if required, shall include the name, address, telephone number, and if available, facsimile number and electronic mail address of the operator and the operator's authorized representative.

(c) No later than the date for filing the permit application, an operator shall, by certified mail return receipt requested or hand delivery, give the surface owner whose land will be used for the drilling of a horizontal well notice of the planned operation. The notice required by this subsection shall include:

(1) A copy of this code section;

(2) The information required to be provided by subsection (b), section ten of this article to a surface owner whose land will be used in conjunction with the drilling of a horizontal well; and

(3) A proposed surface use and compensation agreement containing an offer of compensation for damages to the surface affected by oil and gas operations to the extent the damages are compensable under article six-b of this chapter.

(d) The notices required by this section shall be given to the surface owner at the address listed in the records of the sheriff at the time of notice.

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§22-6A-17. Reimbursement of property taxes of encumbered properties.

In addition to any compensation owed by the operator to the surface owner pursuant to the provisions of article six-b of this chapter, the operator shall pay the surface owner a one-time payment of $2,500 to compensate for payment of real property taxes for surface lands and surrounding lands that are encumbered or disturbed by construction or operation of the horizontal well pad regardless of how many wells are drilled on a single pad or how many permits are issued for the pad.

WV Legislature

§22-6A-18. Civil action for contamination or deprivation of fresh water source or supply; presumption; water rights and replacement; waiver of replacement.

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

(b) Unless rebutted by one of the defenses established in subsection (c) of this section, in any action for contamination or deprivation of a fresh water source or supply within one thousand five hundred feet of the center of the well pad for horizontal well, there is a rebuttable presumption that the drilling and the oil or gas well or either was the proximate cause of the contamination or deprivation of the fresh water source or supply.

(c) In order to rebut the presumption of liability established in subsection (b) of this section, the operator must prove by a preponderance of the evidence one of the following defenses:

(1) The pollution existed prior to the drilling or alteration activity as determined by a predrilling or prealteration water well test.

(2) The landowner or water purveyor refused to allow the operator access to the property to conduct a predrilling or prealteration water well test.

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

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

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

(d) Any operator electing to preserve its defenses under subdivision (1), subsection (c) of this section shall retain the services of an independent certified laboratory to conduct the predrilling or prealteration water well test. A copy of the results of the test shall be submitted to the department and the surface owner or water purveyor in a manner prescribed by the secretary.

(e) Any operator shall replace the water supply of an owner of interest in real property who obtains all or part of that owner's supply of water for domestic, agricultural, industrial or other legitimate use from an underground or surface source with a comparable water supply where the secretary determines that the water supply has been affected by contamination, diminution or interruption proximately caused by the oil or gas operation, unless waived in writing by that owner.

(f) The secretary may order the operator conducting the oil or gas operation to:

(1) Provide an emergency drinking water supply within twenty-four hours;

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(2) Provide temporary water supply within seventy-two hours;

(3) Within thirty days begin activities to establish a permanent water supply or submit a proposal to the secretary outlining the measures and timetables to be used in establishing a permanent supply. The total time in providing a permanent water supply may not exceed two years. If the operator demonstrates that providing a permanent replacement water supply cannot be completed within two years, the secretary may extend the time frame on case-by-case basis; and

(4) Pay all reasonable costs incurred by the real property owner in securing a water supply.

(g) A person as described in subsection (b) of this section aggrieved under the provisions of subsections (b), (e) or (f) of this section may seek relief in court.

(h) The secretary shall propose rules for legislative approval in accordance with the provisions of article three, chapter twenty-nine-a of this code to implement the requirements of this section.

(i) Notwithstanding the denial of the operator of responsibility for the damage to the real property owner's water supply or the status of any appeal on determination of liability for the damage to the real property owner's water supply, the operator may not discontinue providing the required water service until authorized to do so by the secretary or a court of competent jurisdiction.

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§22-6A-19. Offenses; civil and criminal 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 under this article or any permit issued pursuant to this article is subject to a civil penalty not exceeding $5,000. Each day a violation continues after notice by the department constitutes a separate offense. The penalty shall be recovered by a civil action brought by the department, in the name of the state, before the circuit court of the county in which the subject well or facility is located. All the civil penalties collected shall be credited to the General Fund of the state.

(b) Notwithstanding the provisions of subsection (a)and (c) of this section, any person or persons, firm, partnership, partnership association or corporation who willfully disposes of waste fluids, drill cuttings or any other liquid substance generated in the development of a horizontal well in violation of this article or any rule or order promulgated under this article or in violation of any other state or federal statutes, rules or regulations, and which disposal was found to have had a significant adverse environmental impact on surface or groundwater by the secretary, is subject to a civil penalty not exceeding $100,000. The penalty shall be recovered by a civil action brought by the department, in the name of the state, before the circuit court of the county in which the subject well or facility is located. All the civil penalties collected shall be credited to the General Fund of the state.

(c) Notwithstanding the provisions of subsections (a) and (b) of this section, 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 five thousand dollars, or imprisonment in jail not exceeding twelve months, or both, in the discretion of the court, and prosecution 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.

(d) Any person who intentionally misrepresents any material fact in an application, record, report, plan or other document filed or required to be maintained under the provisions of this article or any rules promulgated by the secretary under this article shall be fined not less than $1,000 nor more than $10,000.

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§22-6A-20. Division of Highways certification.

As part of the permit application for horizontal wells, the operator shall submit a letter of certification from the Division of Highways that the operator has, pursuant to the Division of Highways Oil and Gas Road Policy, entered into an agreement with the Division of Highways pertaining to the state local service roads associated with the proposed well work set forth in the permit application or has certified that no such agreement is required by the Oil and Gas Road Policy and the reasons therefor.

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§22-6A-21. Establishment of public website information and electronic notification registry regarding horizontal well permit applications.

(a) No later than ninety days after the effective date of this article, the secretary shall establish resources on the department's public website which will list searchable information related to all horizontal well applications filed in this state, including information sufficient to identify the county and approximate location of each horizontal well for which a permit application is filed, the referenced well application number, date of application, name of the applicant, and any written comments submitted by the public.

(b) The secretary shall also establish a registration and e-notification process by which individuals, corporations and agencies may register to receive electronic notice of horizontal well applications filings and notices, by county of interest. Once established, individuals, agencies and corporations interested who are properly registered to receive e-notices of filings and actions on horizontal well permits shall receive electronic notifications of applications and notices of permits issued for horizontal drilling in their designated county or counties of interest.

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§22-6A-22. Air quality study and rulemaking.

The secretary shall, by July 1, 2013, report to the Legislature on the need, if any, for further regulation of air pollution occurring from well sites, including the possible health impacts, the need for air quality inspections during drilling, the need for inspections of compressors, pits and impoundments, and any other potential air quality impacts that could be generated from this type of drilling activity that could harm human health or the environment. If he or she finds that specialized permit conditions are necessary, the secretary shall promulgate legislative rules establishing these new requirements.

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§22-6A-23. Impoundment and pit safety study; rulemaking.

The secretary shall, by January 1, 2013, report to the Legislature on the safety of pits and impoundments utilized pursuant to section nine of this article including an evaluation of whether testing and special regulatory provision is needed for radioactivity or other toxins held in the pits and impoundments. Upon a finding that greater monitoring, safety and design requirements or other specialized permit conditions are necessary, the secretary shall propose for promulgation legislative rules establishing these new requirements.

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§22-6A-24. Casing and cement standards.

(a) The operator may only drill through fresh groundwater zones in a manner that will minimize any disturbance of the zones. Further, the operator shall construct the well and conduct casing and cementing activities for all horizontal wells in a manner that will provide for control of the well at all times, prevent the migration of gas and other fluids into the fresh groundwater and coal seams, and prevent pollution of or diminution of fresh groundwater.

(b) The secretary shall propose legislative and emergency rules in accordance with the provisions of article three, chapter twenty-nine-a of this code to carry out the purposes of this section.

(c) Rules promulgated by the secretary pursuant to this section shall include provisions to accomplish the following:

(1) Effective control of the horizontal well by the operator;

(2) Prevention of the migration of gas or other fluids into sources of fresh groundwater or into coal seams;

(3) Prevention of pollution of or diminution of fresh groundwater;

(4) Prevention of blowouts, explosions, or fires; and

(5) Appropriate disposition of brines and discharges from the drilling or operation of horizontal well.

(d) Procedures for the filing, approval, and revision of casing program:

(1) The operator shall prepare a casing program demonstrating how the horizontal well is to be drilled, cased, and cemented. The program shall comply with rules promulgated by the secretary.

(2) The rules regarding the casing program shall require the following information:

(A) The anticipated depth and thickness of any producing formation, expected pressures, anticipated fresh groundwater zones, and the method or information by which the depth of the deepest fresh groundwater was determined;

(B) The diameter of the borehole;

(C) The casing type, whether the casing to be utilized is new or used, and the depth, diameter, wall thickness, and burst pressure rating for the casing;

(D) The cement type, yield, additives, and estimated amount of cement to be used;

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(E) The estimated location of centralizers;

(F) The proposed borehole conditioning procedures; and

(G) Any alternative methods or materials required by the secretary as a condition of the well work permit.

(3) A copy of casing program shall be kept at the well site.

(4) Supervisory oil and gas inspectors and oil and gas inspectors may approve revisions to previously approved casing programs when conditions encountered during the drilling process so require: Provided, That any revisions to casing programs approved by inspectors as aforesaid shall ensure that the revised casing programs are at least as protective of the environment as the casing and cementing standards required by this section. Any revisions to the casing program made as a result of on-site modifications shall be documented in the program by the inspector approving the modification. The person making any revisions to the program shall initial and date the revisions and make the revised program available for inspection by the department.

(e) The rules promulgated by the secretary shall provide procedures for the following:

(1) Appropriate installation and use of conductor pipe, which shall be installed in a manner that prevents the subsurface infiltration of surface water or fluids;

(2) Installation of the surface and coal protection casing including remedial procedures addressing lost circulation during surface or coal casing;

(3) Installation of intermediate production casing;

(4) Correction of defective casing and cementing, including requirements that the operator report the defect to the secretary within twenty-four hours of discovery by the operator;

(5) Investigation of natural gas migration, including requirements that the operator promptly notify the secretary and conduct an investigation of the incident; and

(6) Any other procedure or requirements considered necessary by the secretary.

(f) Minimum casing standards.

(1) All casing installed in the well, whether new or used, shall have a pressure rating that exceeds the anticipated maximum pressure to which the casing will be exposed and meet appropriate nationally recognized standards.

(2) The casing shall be of sufficient quality and condition to withstand the effects of tension and maintain its structural integrity during installation, cementing, and subsequent drilling and production operations.

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(3) Centralizers shall be used, with the proper spacing for such well, during the casing installation to ensure that the casing is centered in the hole.

(4) Casing may not be disturbed for a period of at least eight hours after the completion of cementing operations.

(5) No gas or oil production or pressure may exist on the surface casing or the annulus or the coal protection casing annulus.

(g) Minimum cement standards.

(1) All cement used in the well must meet the appropriate nationally recognized standards and must secure the casing to the wellbore, isolate the wellbore from all fluids, contain all pressures during all phases of drilling and operation of the well, and protect the casing from corrosion and degradation.

(2) Cement used in conjunction with surface and coal protection casing must provide zonal isolation in the casing annulus.

(h) Notwithstanding the minimum casing and cementing standards set forth in subsections (f) and (g) of this section, the secretary may:

(1) Revise the casing and cementing standards applicable to horizontal wells from time to time through the legislative rulemaking process so long as the revised casing and cementing standards are at least as protective of the environment; and

(2) Approve alternative casing programs submitted with applications for well work permits so long as the secretary determines that the casing program submitted with the application is at least as protective of the environment as the casing and cementing standards required by this section.

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