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Date 3-29-83

WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1983



ENROLLED

Com. Sub. for
HOUSE BILL No. 1392

(By Mr. Martin)



Passed March 11, 1983

In Effect Ninety Days From Passage



ENROLLED
COMMITTEE SUBSTITUTE
FOR
H. B. 1392

(By MR. MARTIN)

[Passed March 11, 1983; in effect ninety days from passage.]

AN ACT to amend and reenact sections one, one-g, one-k, twelve-b, fifteen, sixteen and seventeen, article four, chapter twenty-two of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend and reenact section two, article seven of said chapter twenty-two; to further amend said article four by adding thereto four new sections, designated sections one-m, one-n, one-o and twenty-one; and to further amend said chapter twenty-two by adding thereto a new article, designated article four-c, all relating to defining "waste" and "well work" with regard to oil and gas wells; broadening the scope of an oil and gas inspector's duty to investigate whether imminent danger exists from violations of the provisions of this article; providing for the service of the permit application and other documents upon the owner of surface lands; providing to surface landowners an opportunity to comment on issuance of a permit; permits required for well work; applications; contents thereof; responsible agents named; permit numbers; denial of permits; modification of applications; creating additional reclamation requirements; granting the administrator the right to prevent waste of gas; granting the administrator the same rights as others to restrain waste of natural gas; providing criminal penalties; creating a civil penalty of two thousand five hundred dollars for vio-

lation of the provisions of this article or any rule or order promulgated by the department; raising the criminal penalty fine for willful violation from two thousand dollars to five thousand dollars; providing a cause of action for damages caused by explosions occurring before or after the effective date of this article; providing for compensation to surface owners for damage caused by the production of oil and gas; definitions; creating a rebuttable presumption regarding rotary drilling and severance of oil and gas rights from the surface estate; detailing compensable damages; preserving common law remedies and providing for notice of claim; settlements; election of remedies; arbitration provided; severability; and requiring anyone injecting gas into or storing gas in a storage reservoir to file a map and data required by the federal energy regulatory commission with the department.

Be it enacted by the Legislature of West Virginia:

That sections one, one-g, one-k, twelve-b, fifteen, sixteen and seventeen, article four, chapter twenty-two of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; that section two, article seven of said chapter be amended and reenacted; that article four of said chapter be further amended by adding thereto four new sections, designated sections one-m, one-n, one-o and twenty-one; and that said chapter twenty-two be further amended by adding thereto a new article, designated article four-c, all to read as follows:

ARTICLE 4. OIL AND GAS WELLS.

§22-4-1. Definitions.

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

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

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

7 (c) "Chairman" means the chairman of the West Virginia
8 shallow gas well review board as provided for in section four,
9 article four-b of this chapter;

10 (d) "Chief" means chief of the division of water resources
11 of the department of natural resources;

12 (e) "Coal operator" means any person or persons, firm,
13 partnership, partnership association or corporation that pro-
14 poses to or does operate a coal mine;

15 (f) "Coal seam" and "workable coal bed" are interchange-
16 able terms and mean any seam of coal twenty inches or more
17 in thickness, unless a seam of less thickness is being commer-
18 cially worked, or can in the judgment of the department fore-
19 sceably be commercially worked and will require protection
20 if wells are drilled through it;

21 (g) "Deep well" means any well drilled and completed in a
22 formation at or below the top of the uppermost member of
23 the "Onondaga Group" or at a depth of or greater than six
24 thousand feet, whichever is shallower;

25 (h) "Department" or "department of mines" means, for
26 purposes of this article and articles five and seven of this
27 chapter, the office of oil and gas of the department of mines;

28 (i) "Administrator" means the head of the office of oil and
29 gas of the department of mines and all references to the "de-
30 puty director" shall be defined to mean the administrator of
31 the office of oil and gas;

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

36 (k) "Facility" means any facility utilized in the oil and gas
37 industry in this state and specifically named or referred to
38 in this article or in articles five or seven of this chapter, other
39 than a well or well site;

40 (l) "Gas" means all natural gas and all other fluid hydro-
41 carbons not defined as oil in subdivision (m) of this section;

42 (m) "Oil" means natural crude oil or petroleum and other
43 hydrocarbons, regardless of gravity, which are produced at
44 the well in liquid form by ordinary production methods and

45 which are not the result of condensation of gas after it leaves
46 the underground reservoirs;

47 (n) "Owner" when used with reference to any well, shall
48 include any person or persons, firm, partnership, partnership
49 association or corporation that owns, manages, operates, con-
50 trols or possesses such well as principal, or as lessee or con-
51 tractor, employee or agent of such principal;

52 (o) "Owner" when used with reference to any coal seam,
53 shall include any person or persons who own, lease or oper-
54 ate such coal seam;

55 (p) "Person" means any natural person, corporation, firm,
56 partnership, partnership association, venture, receiver, trustee,
57 executor, administrator, guardian, fiduciary or other represen-
58 tative of any kind, and includes any government or any politi-
59 cal subdivision or any agency thereof;

60 (q) "Plat" means a map, drawing or print showing the lo-
61 cation of a well or wells as herein defined;

62 (r) "Review board" means the West Virginia shallow gas
63 well review board as provided for in section four, article four-
64 b of this chapter;

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

70 (t) "Shallow well" means any gas well drilled and com-
71 pleted in a formation above the top of the uppermost member
72 of the "Onondaga Group" or at a depth less than six thousand
73 feet, whichever is shallower;

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

78 (v) "Waste" means (i) physical waste, as the term is gen-
79 erally understood in the oil and gas industry; (ii) the locating,
80 drilling, equipping, operating or producing of any oil or gas

81 well in a manner that causes, or tends to cause, a substantial
82 reduction in the quantity of oil or gas ultimately recoverable
83 from a pool under prudent and proper operations, or that
84 causes or tends to cause a substantial or unnecessary or exces-
85 sive surface loss of oil or gas; or (iii) the drilling of more deep
86 wells than are reasonably required to recover efficiently and
87 economically the maximum amount of oil and gas from a pool;
88 (iv) substantially inefficient, excessive or improper use, or the
89 substantially unnecessary dissipation of, reservoir energy, it
90 being understood that nothing in this chapter shall be con-
91 strued to authorize any agency of the state to impose manda-
92 tory spacing of shallow wells except for the provisions of sec-
93 tion eight, article four-a of this chapter and the provisions of
94 article four-b of this chapter; (v) inefficient storing of oil or
95 gas: *Provided*, That storage in accordance with a certificate of
96 public convenience issued by the federal energy regulatory
97 commission shall be conclusively presumed to be efficient; and
98 (vi) other underground or surface waste in the production or
99 storage of oil, gas, or condensate, however caused;

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

109 (x) "Well work" means the drilling, re-drilling, deepening,
110 stimulating, pressuring by injection of any fluid, converting
111 from one type of well to another, combining or physically
112 changing to allow the migration of fluid from one formation to
113 another or plugging or replugging of any well;

114 (y) "Well operator" or "operator" means any person or
115 persons, firm, partnership, partnership association or corpor-
116 ation that proposes to or does locate, drill, operate or aban-
117 don any well as herein defined; and

118 (z) "Office of oil and gas" or "office" means the office of

119 oil and gas within the department of mines charged with the
120 responsibility of administering the provisions of chapter
121 twenty-two, articles four, five and seven of the code of West
122 Virginia, one thousand nine hundred thirty-one, as amended.

**§22-4-1g. Findings and orders of inspectors concerning violations;
determination of reasonable time for abatement; ex-
tensions of time for abatement; special inspections;
notice of findings and orders.**

1 (a) If an oil and gas inspector, upon making an inspection
2 of a well or well site or any other oil or gas facility, finds that
3 any provision of this article is being violated, he shall also
4 find whether or not an imminent danger to persons exists, or
5 whether or not there exists an imminent danger that a fresh
6 water source or supply will be contaminated or lost. If he
7 finds that such imminent danger exists, he shall forthwith make
8 an order requiring the operator of such well or well site or
9 other oil or gas facility to cease further operations until such
10 imminent danger has been abated. If he finds that no such
11 imminent danger exists, he shall determine what would be a
12 reasonable period of time within which such violation should
13 be totally abated. Such findings shall contain reference to the
14 provisions of this article which he finds are being violated,
15 and a detailed description of the conditions which cause and
16 constitute such violation.

17 (b) The period of time so found by such oil and gas in-
18 spector to be a reasonable period of time shall not exceed
19 seven days. Such period may be extended by such inspector,
20 or by any other oil and gas inspector duly authorized by the
21 administrator, from time to time, for good cause, but not to
22 exceed a total of thirty days, upon the making of a special in-
23 spection to ascertain whether or not such violation has been
24 totally abated: *Provided*, That such thirty-day period may be
25 extended beyond thirty days by such inspectors where abate-
26 ment is shown to be incapable of accomplishment because of
27 circumstances or conditions beyond the control of the well
28 operator. The administrator shall cause a special inspection to
29 be made: (A) Whenever an operator of a well or well site or
30 any other oil or gas facility, prior to the expiration of any such
31 period of time, requests him to cause a special inspection to

32 be made at such well or well site or any other oil or gas fa-
33 cility; and (B) Upon expiration of such period of time as
34 originally fixed or as extended, unless the administrator is
35 satisfied that the violation has been abated. Upon making such
36 special inspection, such oil and gas inspector shall determine
37 whether or not such violation has been totally abated. If he
38 determines that such violation has not been totally abated, he
39 shall determine whether or not such period of time as original-
40 ly fixed, or as so fixed and extended, should be extended. If
41 he determines that such period of time should be extended, he
42 shall determine what a reasonable extension would be. If he
43 determines that such violation has not been totally abated, and
44 if such period of time as originally fixed, or as so fixed and
45 extended, has then expired, and if he also determines that such
46 period of time should not be further extended, he shall there-
47 upon make an order requiring the operator of such well or
48 well site or other oil or gas facility to cease further operations
49 of such well, well site or facility, as the case may be. Such
50 findings and order shall contain reference to the specific pro-
51 visions of this article which are being violated.

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

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

**§22-4-1k. Permit required for well work; permit fee; application;
soil erosion control plan.**

1 (a) It is unlawful for any person to commence any well
2 work, including site preparation work which involves any dis-
3 turbance of land, without first securing from the administrator
4 a well work permit. An application may propose and a permit
5 may approve two or more activities defined as well work.

6 (b) The application for a well work permit shall be accom-
7 panied by the applicable bond as prescribed by section two,
8 two-b or nine of this article, and the applicable plat required
9 by section two or two-b of this article.

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

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

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

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

25 (4) The type of well;

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

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

29 (7) Any permit application fee required by law;

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

35 (9) If the proposed well work is to convert an oil well or
36 a combination well or to drill a new well for the purpose of
37 introducing pressure for the recovery of oil as provided in
38 section ten-a of this article, specifications in accordance with
39 the data requirements of section two-b of this article;

40 (10) If the proposed well work is to plug or replug the well,
41 (i) specifications in accordance with the data requirements of
42 section nine of this article, (ii) a copy of all logs in the oper-
43 ator's possession as the administrator may require, and (iii) a
44 work order showing in detail the proposed manner of plugging

45 or unplugging the well, in order that a representative of the
46 administrator and any interested persons may be present when
47 the work is done. In the event of an application to drill, redrill
48 or deepen a well, if the well work is unsuccessful so that the
49 well must be plugged and abandoned, and if the well is one on
50 which the well work has been continuously progressing pur-
51 suant to a permit, the operator may proceed to plug the well
52 as soon as he has obtained the verbal permission of the ad-
53 ministrator or his designated representative to plug and aban-
54 don the well, except that the operator shall make reasonable
55 effort to notify as soon as practicable the surface owner and
56 the coal owner, if any, of the land at the well location, and
57 shall also timely file the plugging affidavit required by section
58 nine of this article;

59 (11) If the proposed well work is to stimulate an oil or gas
60 well, specifications in accordance with the data requirements
61 of section two-a of this article;

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

65 (13) Any other relevant information which the administra-
66 tor may require by rule.

67 (d) An erosion and sediment control plan shall accompany
68 each application for a well work permit except for a well work
69 permit to plug or replug any well. Such plan shall contain
70 methods of stabilization and drainage, including a map of the
71 project area indicating the amount of acreage disturbed. The
72 erosion and sediment control plan shall meet the minimum re-
73 quirements of the West Virginia erosion and sediment control
74 manual as adopted and from time to time amended by the of-
75 fice of oil and gas, in consultation with the several soil conser-
76 vation districts pursuant to the control program established in
77 this state through section 208 of the federal Water Pollution
78 Control Act Amendments of 1972. The erosion and sediment
79 control plan shall become part of the terms and conditions of
80 a well work permit, except for a well work permit to plug or
81 replug any well, which is issued and the provisions of the plan
82 shall be carried out where applicable in the operation. The

83 erosion and sediment control plan shall set out the proposed
84 method of reclamation which shall comply with the require-
85 ments of section twelve-b of this article.

86 (e) The well operator named in such application shall desig-
87 nate the name and address of an agent for such operator who
88 shall be the attorney-in-fact for the operator and who shall be a
89 resident of the state of West Virginia upon whom notices,
90 orders or other communications issued pursuant to this article
91 or article five-a, chapter twenty, may be served, and upon
92 whom process may be served. Every well operator required to
93 designate an agent under this section shall within five days
94 after the termination of such designation notify the department
95 of such termination and designate a new agent.

96 (f) The well owner or operator shall install the permit num-
97 ber as issued by the administrator in a legible and permanent
98 manner to the well upon completion of any permitted work.
99 The dimensions, specifications and manner of installation shall
100 be in accordance with the rules of the administrator.

101 (g) The administrator may waive the requirements of this
102 section and sections one-m, one-n and one-o of this article in
103 any emergency situation, if he deems such action necessary.
104 In such case the administrator may issue an emergency permit
105 which would be effective for not more than thirty days, but
106 which would be subject to reissuance by the administrator.

107 (h) For the purpose of ascertaining whether or not issuance
108 of any permit for well work will cause or contribute to a pollu-
109 tion problem, the administrator shall consult with the director
110 of the department of natural resources. In the event the issuance
111 of any such permit may reasonably be expected to cause or con-
112 tribute to any such pollution, then the administrator shall not
113 issue such permit.

114 (i) The administrator shall deny the issuance of a permit if
115 he determines that the applicant has committed a substantial
116 violation of a previously issued permit, including the erosion
117 and sediment control plan, or a substantial violation of one or
118 more of the rules promulgated hereunder, and has failed to
119 abate or seek review of the violation within the time prescribed

120 by the administrator pursuant to the provisions of sections one-
 121 g and one-h of this article and the rules promulgated hereunder,
 122 which time may not be unreasonable: *Provided*, That in the
 123 event that the administrator does find that a substantial viola-
 124 tion has occurred and that the operator has failed to abate or
 125 seek review of the violation in the time prescribed, he may sus-
 126 pend the permit on which said violation exists, after which sus-
 127 pension the operator shall forthwith cease all well work being
 128 conducted under the permit: *Provided, however*, That the ad-
 129 ministrator may reinstate the permit without further notice, at
 130 which time the well work may be continued. The administrator
 131 shall make written findings of any such determination made by
 132 him and may enforce the same in the circuit courts of this state
 133 and the operator may appeal such suspension pursuant to the
 134 provisions of section four of this article. The administrator
 135 shall make a written finding of any such determination.

136 (j) Any person who violates any provision of this section
 137 shall be guilty of a misdemeanor, and, upon conviction there-
 138 of, shall be fined not more than five thousand dollars, or be
 139 imprisoned in the county jail not more than twelve months, or
 140 both fined and imprisoned.

§22-4-1m. Notice to property owners.

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

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

9 (2) The owners of record of the surface tract or tracts
 10 overlying the oil and gas leasehold being developed by the
 11 proposed well work, if such surface tract is to be utilized
 12 for roads or other land disturbance as described in the
 13 erosion and sediment control plan submitted pursuant to sec-
 14 tion one-k of this article.

15 (b) If more than three tenants in common or other co-

16 owners of interests described in subsection (a) of this sec-
17 tion hold interests in such lands, the applicant may serve
18 the documents required upon the person described in the
19 records of the sheriff required to be maintained pursuant to
20 section eight, article one, chapter eleven-a of this code or
21 publish in the county in which the well is located or to be
22 located a Class II legal advertisement as described in section
23 two, article three, chapter fifty-nine of this code, containing
24 such notice and information as the administrator shall pre-
25 scribe by rule, with the first publication date being at least
26 ten days prior to the filing of the permit application: *Provided,*
27 That all owners occupying the tracts where the well work is,
28 or is proposed to be located at the filing date of the permit
29 application shall receive actual service of the documents
30 required by subsection (a) of this section.

31 (c) Materials served upon person described in subsections
32 (a) and (b) of this section shall contain a statement of the
33 methods and time limits for filing comments, who may file
34 comments and the name and address of the administrator for
35 the purpose of filing comments and obtaining additional in-
36 formation and a statement that such persons may request,
37 at the time of submitting comments, notice of the permit
38 decision and a list of persons qualified to test water as
39 provided in this section.

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

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

§22-4-1n. Procedure for filing comments; certification of notice.

1 (a) All persons described in subsections (a) and (b),

2 section one-m of this article may file comments with the
3 administrator as to the location or construction of the appli-
4 cant's proposed well work within fifteen days after the appli-
5 cation is filed with the administrator.

6 (b) Prior to the issuance of any permit for well work, the
7 applicant shall certify to the administrator that the require-
8 ments of section one-m of this article have been completed
9 by the applicant. Such certification may be by affidavit of
10 personal service or the return receipt card or other postal
11 receipt for certified mailing.

**§22-4-1o. Review of application; issuance of permit in the ab-
sence of objections and comments.**

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

4 No permit may be issued less than fifteen days after the
5 filing date of the application for any well work except
6 plugging or replugging; and no permit for plugging or re-
7 plugging may be issued less than five days after the filing date
8 of the application except a permit for plugging or replugging
9 a dry hole: *Provided*, That if the applicant certifies that all
10 persons entitled to notice of the application under the pro-
11 visions of this article have been served in person or by certified
12 mail, return receipt requested, with a copy of the well work
13 application, including the erosion and sediment control plan,
14 if required, and the plat required by section one-k of this
15 article, and further files written statements of no objection
16 by all such persons, the administrator may issue the well work
17 permit at any time.

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

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

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

28 (3) Damage would occur to publicly owned lands or re-
29 sources; or

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

32 The administrator shall promptly review all comments
33 filed. If after review of the application and all comments
34 received, the application for a well work permit is approved,
35 and no timely objection or comment has been filed with the
36 administrator or made by the department under the pro-
37 visions of sections three, three-a or three-b of this article,
38 the permit shall be issued, with conditions, if any. Nothing
39 in this section shall be construed to supersede the provisions
40 of sections one-k, two, two-a, two-b, three, three-a and
41 three-b of this article.

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

§22-4-12b. Reclamation requirements.

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

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

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

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

29 If the administrator refuses to approve a request for ex-
30 tension, he shall do so by order.

31 (c) It shall be the duty of an operator to commence the
32 reclamation of the area of land disturbed in siting, drilling,
33 completing or producing the well in accordance with soil
34 erosion and sediment control plans approved by the ad-
35 ministrator or his designate.

36 (d) The administrator shall promulgate rules setting forth
37 requirements for the safe and efficient installation and burying
38 of all production and gathering pipelines where practical and
39 reasonable except that such rules shall not apply to those pipe-
40 lines regulated by the public service commission.

**§22-4-15. Right of adjacent owner or operator to prevent waste
of gas; recovery of cost.**

1 If the owner or operator of any such well shall neglect or
2 refuse to drill, case and equip, or plug and abandon, or shut in
3 and conserve from waste the gas produced therefrom, as re-
4 quired to be done and performed by the preceding sections of
5 this article, for a period of twenty days after a written notice
6 so to do, which notice may be served personally upon the
7 owner or operator, or may be posted in a conspicuous place
8 at or near the well, it shall be lawful for the owner or opera-
9 tor of any adjacent or neighboring lands or the administrator
10 to enter upon the premises where such well is situated and
11 properly case and equip such well, or, in case the well is to

12 be abandoned, to properly plug and abandon it, or in case the
13 well is wasting gas, to properly shut it in and make such needed
14 repairs to the well to prevent the waste of gas, in the manner
15 required to be done by the preceding sections of this article;
16 and the reasonable cost and expense incurred by an owner,
17 operator or the administrator in so doing shall be paid by the
18 owner or operator of such well and may be recovered as debts
19 of like amount are by law recoverable.

20 The administrator may utilize funds and procedures es-
21 tablished pursuant to section twelve-a of this article for
22 the purposes set out in this section. Amounts recovered by
23 the administrator pursuant to this section shall be deposited
24 in the oil and gas reclamation fund established pursuant to
25 section twelve-a of this article.

§22-4-16. Restraining waste.

1 Aside from and in addition to the imposition of any penal-
2 ties under this article, it shall be the duty of any circuit court
3 in the exercise of its equity jurisdiction to hear and deter-
4 mine any bill or bills in equity which may be filed to restrain
5 the waste of natural gas in violation of this article, and to
6 grant relief by injunction or by other decrees or orders, in
7 accordance with the principles and practice in equity. The
8 plaintiff in such bill shall have sufficient standing to maintain
9 the same if he shall aver and prove that he is interested in the
10 lands situated within the distance of one mile from such well,
11 either as an owner of such land, or of the oil or gas, or both,
12 thereunder, in fee simple, or as an owner of leases thereof or
13 of rights therein for the production of oil and gas or either of
14 them or as the administrator.

§22-4-17. Offenses; penalties.

1 (a) Any person or persons, firm, partnership, partnership
2 association or corporation who willfully violates any provision
3 of this article or any rule or order promulgated hereunder shall
4 be subject to a civil penalty not exceeding two thousand five
5 hundred dollars. Each day a violation continues after notice
6 by the office of oil and gas constitutes a separate offense. The
7 penalty shall be recovered by a civil action brought by the

8 office of oil and gas, in the name of the state, before the cir-
 9 cuit court of the county in which the subject well or facility
 10 is located. All such civil penalties collected shall be credited
 11 to the general fund of the state.

12 (b) Any person or persons, firm, partnership, partnership
 13 association or corporation willfully violating any of the pro-
 14 visions of this article which prescribe the manner of drilling
 15 and casing or plugging and filling any well, or which prescribe
 16 the methods of conserving gas from waste, or which fix the
 17 distance from wells within which mining operations shall not
 18 be conducted without the approval of the office of oil and gas,
 19 or violating the terms of any order of the office of oil and gas
 20 allowing mining operations within a lesser distance of any
 21 well than that prescribed by the article, is guilty of a misde-
 22 meanor, and, upon conviction thereof, shall be punished by a
 23 fine not exceeding five thousand dollars, or imprisoned in jail
 24 for not exceeding twelve months, or both, in the discretion of
 25 the court, and prosecutions under this section may be brought
 26 in the name of the state of West Virginia in the court exer-
 27 cising criminal jurisdiction in the county in which the violation
 28 of such provisions of the article or terms of such order was
 29 committed, and at the instance and upon the relation of any
 30 citizens of this state.

§22-4-21. Cause of action for damages caused by explosions.

1 Any person suffering personal injury or property damage
 2 due to any explosion caused by any permittee, shall have a
 3 cause of action against such permittee for three years after
 4 the explosion regardless of whether the explosion occurred
 5 before or after the effective date of this article.

**ARTICLE 4C. OIL AND GAS PRODUCTION DAMAGE COMPENSA-
 TION.**

§22-4C-1. Legislative findings and purpose.

1 (a) The Legislature finds the following:
 2 (1) Exploration for and development of oil and gas re-
 3 serves in this state must coexist with the use, agricultural or
 4 otherwise, of the surface of certain land and that each consti-
 5 tutes a right equal to the other.

6 (2) Modern methods of extraction of oil and gas require
7 the use of substantially more surface area than the methods
8 commonly in use at the time most mineral estates in this state
9 were severed from the fee tract; and, specifically, the drilling
10 of wells by the rotary drilling method was virtually unknown
11 in this state prior to the year one thousand nine hundred
12 sixty, so that no person theretofore severing his oil and gas
13 from his surface land and no person theretofore leasing his oil
14 and gas with the right to explore for and develop the same
15 could reasonably have known nor could it have been reason-
16 ably contemplated that rotary drilling operations imposed a
17 greater burden on the surface than the cable tool drilling
18 method heretofore employed in this state; and since the year
19 one thousand nine hundred sixty, the use of rotary drilling
20 methods has spread slowly but steadily in this state, with con-
21 comitant public awareness of its impact on surface land; and
22 that the public interest requires that the surface owner be en-
23 titled to fair compensation for the loss of the use of his surface
24 area during the rotary drilling operation, but recognizing the
25 right of the oil and gas operator to conduct rotary drilling
26 operations as allowed by law.

27 (3) Prior to the first day of January, one thousand nine
28 hundred sixty, the rotary method of drilling oil or gas wells was
29 virtually unknown to the surface owners of this state nor was
30 such method reasonably contemplated during the negotiations
31 which occasioned the severance of either oil or gas from the
32 surface.

33 (4) The Legislature further finds and creates a rebuttable
34 presumption that even after the thirty-first day of December,
35 one thousand nine hundred fifty-nine, and prior to the effective
36 date of this article, it was unlikely that any surface owner knew
37 or should have known of the rotary method of drilling oil or
38 gas wells, but, that such knowledge was possible and that the
39 rotary method of drilling oil or gas wells could have, in some
40 instances, been reasonably contemplated by the parties during
41 the negotiations of the severance of the oil and gas from the
42 surface. This presumption against knowledge of the rotary
43 drilling method may be rebutted by a clear preponderance of
44 the evidence showing that the surface owner or his predecessor

45 of record did in fact know of the rotary drilling method at the
46 time he or his predecessor executed a severance deed or lease
47 of oil and gas and that he fairly contemplated the rotary drill-
48 ing method and received compensation for the same.

49 (b) Any surface owner entitled to claim any finding or any
50 presumption which is not rebutted as provided in this section
51 shall be entitled to the compensation and damages of this
52 article.

53 (c) The Legislature declares that the public policy of this
54 state shall be that the compensation and damages provided in
55 this article for surface owners may not be diminished by any
56 provision in a deed, lease or other contract entered into after
57 the effective date of this article.

58 (d) It is the purpose of this article to provide constitu-
59 tionally permissible protection and compensation to surface
60 owners of lands on which oil and gas wells are drilled from the
61 burden resulting from drilling operations commenced after the
62 effective date of this article. This article is to be interpreted in
63 the light of the legislative intent expressed herein. This article
64 shall be interpreted to benefit surface owners, regardless of
65 whether the oil and gas mineral estate was separated from the
66 surface estate and regardless of who executed the document
67 which gave the oil and gas developer the right to conduct
68 drilling operations on the land. Section four of this article
69 shall be interpreted to benefit all persons.

§22-4C-2. Definitions.

1 (a) In this article, unless the context or subject matter
2 otherwise requires:

3 (1) "Agricultural production" means the production of any
4 growing grass or crop attached to the surface of the land,
5 whether or not the grass or crop is to be sold commercially,
6 and the production of any farm animals, whether or not the
7 animals are to be sold commercially;

8 (2) "Drilling operations" means the actual drilling or re-
9 drilling of an oil or gas well commenced subsequent to the
10 effective date of this article, and the related preparation

11 of the drilling site and access road, which requires entry,
12 upon the surface estate;

13 (3) "Oil and gas developer" means the person who secures
14 the drilling permit required by article four of this chapter;

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

20 (5) "Surface estate" means an estate in or ownership of
21 the surface of a particular tract of land overlying the oil
22 or gas leasehold being developed; and

23 (6) "Surface owner" means a person who owns an estate in
24 fee in the surface of land, either solely or as a co-owner.

§22-4C-3. Compensation of surface owners for drilling operations.

1 (a) The oil and gas developer shall be obligated to pay the
2 surface owner compensation for:

3 (1) Lost income or expenses incurred as a result of being
4 unable to dedicate land actually occupied by the driller's opera-
5 tion or to which access is prevented by such drilling operation
6 to the uses to which it was dedicated prior to commencement
7 of the activity for which a permit was obtained measured from
8 the date the operator enters upon the land until the date
9 reclamation is completed, (2) the market value of crops
10 destroyed, damaged or prevented from reaching market, (3)
11 any damage to a water supply in use prior to the commencement
12 of the permitted activity, (4) the cost of repair of personal
13 property up to the value of replacement by personal property
14 of like age, wear and quality, and (5) the diminution in value,
15 if any, of the surface lands and other property after com-
16 pletion of the surface disturbance done pursuant to the activity
17 for which the permit was issued determined according to the
18 actual use made thereof by the surface owner immediately
19 prior to the commencement of the permitted activity.

20 The amount of damages may be determined by any formula

21 mutually agreeable between the surface owner and the oil and
22 gas developer.

23 (b) Any reservation or assignment of the compensation pro-
24 vided in this section apart from the surface estate except to a
25 tenant of the surface estate is prohibited.

26 (c) In the case of surface lands owned by more than one
27 person as tenants in common, joint tenants or other co-owner-
28 ship, any claim for compensation under this article shall be
29 for the benefit of all such co-owners. The resolution of a claim
30 for compensation provided in this article shall operate as a
31 bar to the assertion of additional claims under this section
32 arising out of the same drilling operations.

§22-4C-4. Common law right of action preserved; offsets.

1 (a) Nothing in section three or elsewhere in this article
2 shall be construed to diminish in any way the common law
3 remedies, including damages, of a surface owner or any
4 other person against the oil and gas developer for the un-
5 reasonable, negligent or otherwise wrongful exercise of the
6 contractual right, whether express or implied, to use the
7 surface of the land for the benefit of his mineral interest.

8 (b) An oil and gas operator shall be entitled to offset
9 compensation agreed to be paid or awarded to a surface owner
10 under section three against any damages sought by or awarded
11 to the surface owner through the assertions of common law
12 remedies respecting the surface land actually occupied by
13 the same drilling operation.

14 (c) An oil and gas operator shall be entitled to offset
15 damages agreed to be paid or awarded to a surface owner
16 through the assertion of common law remedies against com-
17 pensation sought by or awarded to the surface owner under
18 section three respecting the surface land actually occupied
19 by the same drilling operation.

§22-4C-5. Notification of claim.

1 Any surface owner, to receive compensation under section
2 three of this article, shall notify the oil and gas developer
3 of the damages sustained by the person within two years

4 after the date that the oil and gas developer files notice that
5 he is commencing reclamation under section twelve-b,
6 article four of this chapter. Such notice shall be given to
7 surface owners by registered or certified mail, return receipt
8 requested, and shall be complete upon mailing. If more than
9 three tenants in common or other co-owners hold interests
10 in such lands, the developer may give such notice to the
11 person described in the records of the sheriff required to be
12 maintained pursuant to section eight, article one, chapter
13 eleven-a of this code or publish in the county in which the
14 well is located or to be located a Class II legal advertisement
15 as described in section two, article three, chapter fifty-nine
16 of this code, containing such notice and information as the
17 administrator shall prescribe by rule.

§22-4C-6. Agreement; offer of settlement.

1 Unless the parties provide otherwise by written agreement,
2 within sixty days after the oil and gas developer received the
3 notification of claim specified in section five of this article,
4 the oil and gas developer shall either make an offer of
5 settlement to the surface owner seeking compensation, or
6 reject the claim. The surface owner may accept or reject
7 any offer so made.

§22-4C-7. Rejection; legal action; arbitration; fees and costs.

1 (a) Unless the oil and gas developer has paid the surface
2 owner a negotiated settlement of compensation within sixty
3 days after the date the notification of claim was mailed
4 under section five of this article, the surface owner may,
5 within eighty days after the notification mail date, either
6 (i) bring an action for compensation in the circuit court of
7 the county in which the well is located, or (ii) elect instead,
8 by written notice delivered by personal service or by certified
9 mail, return receipt requested, to the designated agent named
10 by the oil and gas developer under the provisions of section
11 one-k, article four of this chapter, to have his compensation
12 finally determined by binding arbitration pursuant to article
13 ten, chapter fifty-five of this code.

14 Settlement negotiations, offers and counter-offers between
15 the surface owner and the oil and gas developer shall not be

16 admissible as evidence in any arbitration or judicial proceed-
17 ing authorized under this article, or in any proceeding result-
18 ing from the assertion of common law remedies.

19 (b) The compensation to be awarded to the surface owner
20 shall be determined by a panel of three disinterested arbi-
21 trators. The first arbitrator shall be chosen by the surface
22 owner in his notice of election under this section to the oil
23 and gas developer; the second arbitrator shall be chosen by
24 the oil and gas developer within ten days after receipt of
25 the notice of election; and the third arbitrator shall be chosen
26 jointly by the first two arbitrators within twenty days there-
27 after. If they are unable to agree upon the third arbitrator
28 within twenty days, then the two arbitrators are hereby
29 empowered to and shall forthwith submit the matter to the
30 court under the provisions of section one, article ten, chapter
31 fifty-five of this code, so that, among other things, the third
32 arbitrator can be chosen by the judge of the circuit court of
33 the county wherein the surface estate lies.

34 (c) The following persons shall be deemed interested and
35 not be appointed as arbitrators: Any person who is personally
36 interested in the land on which rotary drilling is being per-
37 formed or has been performed, or in any interest or right
38 therein, or in the compensation and any damages to be
39 awarded therefor, or who is related by blood or marriage
40 to any person having such personal interest, or who stands
41 in the relation of guardian and ward, master and servant,
42 principal and agent, or partner, real estate broker, or surety
43 to any person having such personal interest, or who has
44 enmity against or bias in favor of any person who has
45 such personal interest or who is the owner of, or interested
46 in, such land or the oil or gas development thereof. No
47 person shall be deemed interested or incompetent to act as
48 arbitrator by reason of his being an inhabitant of the county,
49 district or municipal corporation wherein the land is located,
50 or holding an interest in any other land therein.

51 (d) The panel of arbitrators shall hold hearings and take
52 such testimony and receive such exhibits as shall be necessary
53 to determine the amount of compensation to be paid to the

54 surface owner. However, no award of compensation shall be
55 made to the surface owner unless the panel of arbitrators
56 has first viewed the surface estate in question. A transcript of
57 the evidence may be made but shall not be required.

58 (e) Each party shall pay the compensation of his own
59 arbitrator and one half of the compensation of the third
60 arbitrator, or his own court costs as the case may be.

§22-4C-8. Application of article.

1 The remedies provided by this article shall not preclude
2 any person from seeking other remedies allowed by law.

§22-4C-9. Severability.

1 If any section, subsection, subdivision, subparagraph, sen-
2 tence or clause of this article is adjudged to be unconstitutional
3 or invalid, such invalidation shall not affect the validity of
4 the remaining portions of this article, and, to this end, the
5 provisions of this article are hereby declared to be sever-
6 able.

ARTICLE 7. UNDERGROUND GAS STORAGE RESERVOIRS.

**§22-7-2. Filing of maps and data by persons operating or pro-
posing to operate gas storage reservoirs.**

1 (a) Any person who, on the effective date of this article,
2 is injecting gas into or storing gas in a storage reservoir which
3 underlies or is within three thousand linear feet of an operat-
4 ing coal mine which is operating in a coal seam that extends
5 over the storage reservoir or the reservoir protective area
6 shall, within sixty days thereafter, file with the department
7 a copy of a map and certain data in the form and manner
8 provided in this subsection.

9 Any person who, on the effective date of this article,
10 is injecting gas into or storing gas in a storage reservoir
11 which is not at such date under or within three thousand
12 linear feet, but is less than ten thousand linear feet from
13 an operating coal mine which is operating in a coal seam
14 that extends over the storage reservoir or the reservoir
15 protective area, shall file such map and data within such
16 time in excess of sixty days as the department may fix.

17 Any person who, after the effective date of this article,
18 proposes to inject or store gas in a storage reservoir located
19 as above shall file the required map and data with the de-
20 partment not less than six months prior to the starting of
21 actual injection or storage.

22 The map provided for herein shall be prepared by a
23 competent engineer or geologist. It shall show the stratum
24 or strata in which the existing or proposed storage reservoir
25 is or is to be located, the geographic location of the outside
26 boundaries of the said storage reservoir and the reservoir
27 protective area, the location of all known oil or gas wells
28 which have been drilled into or through the storage stratum
29 within the reservoir or within three thousand linear feet
30 thereof, indicating which of these wells have been, or are
31 to be cleaned out and plugged or reconditioned for storage
32 and also indicating the proposed location of all additional
33 wells which are to be drilled within the storage reservoir or
34 within three thousand linear feet thereof.

35 The following information, if available, shall be furnished
36 for all known oil or gas wells which have been drilled into
37 or through the storage stratum within the storage reservoir
38 or within three thousand linear feet thereof; name of the
39 operator, date drilled, total depth, depth of production if the
40 well was productive of oil or gas, the initial rock pressure
41 and volume, the depths at which all coal seams were en-
42 countered and a copy of the driller's log or other similar
43 information. At the time of the filing of the aforesaid maps
44 and data such person shall file a detailed statement of what
45 efforts he has made to determine, (1) that the wells shown
46 on said map are accurately located thereon, and (2) that to
47 the best of his knowledge they are all the oil or gas wells
48 which have ever been drilled into or below the storage
49 stratum within the proposed storage reservoir or within the
50 reservoir protective area. This statement shall also include
51 information as to whether or not the initial injection is for
52 testing purposes, the maximum pressures at which injection
53 and storage of gas is contemplated, and a detailed explanation
54 of the methods to be used or which theretofore have been
55 used in drilling, cleaning out, reconditioning or plugging

56 wells in the storage reservoir or within the reservoir pro-
57 tective area. The map and data required to be filed hereunder
58 shall be amended or supplemented semiannually in case any
59 material changes have occurred: *Provided*, That the depart-
60 ment may require a storage operator to amend or supplement
61 such map or data at more frequent intervals if material changes
62 have occurred justifying such earlier filing.

63 At the time of the filing of the above maps and data,
64 and the filing of amended or supplemental maps or data, the
65 department shall give written notice of said filing to all
66 persons who may be affected under the provisions of this
67 subsection by the storage reservoir described in such maps or
68 data. Such notices shall contain a description of the boun-
69 daries of such storage reservoir. When a person operating
70 a coal mine or owning an interest in coal properties which
71 are or may be affected by the storage reservoir, requests
72 in writing a copy of any map or data filed with the department
73 such copy shall be furnished by the storage operator.

74 (b) Any person who, on the effective date of this article,
75 is injecting gas into or storing gas in any other storage
76 reservoir in this state not subject to subsection (a) of this
77 section shall, on or before the first day of July, one thousand
78 nine hundred eighty-three, file with the department a map
79 in the same detail as the map required for a storage reservoir
80 subject to subsection (a) of this section; and, if the initial
81 injection of gas into the storage reservoir by such person
82 or any predecessor occurred after the thirty-first day of
83 December, one thousand nine hundred seventy, data in the
84 same detail as the data required for a storage reservoir shall
85 be filed subject to subsection (a) of this section: *Provided*,
86 That in the case of a storage reservoir the operation of which
87 has been certificated by the federal power commission or
88 the federal energy regulatory commission under section seven
89 of the federal Natural Gas Act, the person may, in lieu of
90 the data, submit copies of the application and all amendments
91 and supplements of record in the federal docket, together with
92 the certificate of public convenience and necessity and any
93 amendments thereto.

94 Any person who, after the effective date of this article,

95 proposes to inject or store gas in any other storage reservoir
96 in this state not subject to subsection (a) of this section shall
97 file with the department a map and data in the same detail
98 as the map and data required for a storage reservoir subject
99 to subsection (a) of this section not less than six months prior
100 to the starting of actual injection or storage: *Provided*, That in
101 the case of a storage reservoir the operation of which will be re-
102 quired to be certificated by the federal energy regulatory com-
103 mission, the person may, in lieu of the data, submit copies of
104 the application and all amendments and supplementals filed in
105 the federal docket, together with the certificate of public con-
106 venience and necessity and any amendments thereto, within
107 twenty days after the same have been filed by such person or
108 issued by the federal energy regulatory commission.

109 At the time of the filing of the above maps and data or
110 documents in lieu of data and filing of amended or supple-
111 mental maps or data or documents in lieu of data, or upon
112 receipt of an application filed with the federal energy regul-
113 tory commission for a new storage reservoir, the department
114 shall give notice of said filing by a Class II legal advertisement
115 in accordance with the provisions of article three, chapter
116 fifty-nine of this code, the publication area for which shall
117 be the county or counties in which the storage reservoir is
118 located. Such legal advertisements shall contain a description
119 of the boundaries of such storage reservoir. The storage
120 operator shall pay for the legal advertisement upon receipt
121 of the invoice therefor from the department. When any
122 person owning an interest in land which is or may be affected
123 by the storage reservoir requests in writing a copy of any
124 map or data or documents in lieu of data filed with the de-
125 partment, such copy shall be furnished by the storage operator.

126 (c) The department shall also intervene in the federal
127 docket, and participate in the proceedings for the purpose
128 of assuring that the certificate of public convenience and
129 necessity issued by the federal energy regulatory commission
130 does not authorize operations or practices in conflict with
131 the provisions of this article. The department may cooperate
132 with the public service commission if the commission also
133 intervenes. The attorney general is hereby directed to provide

134 legal representation to the department to achieve the purposes
135 of this subsection.

136 (d) For all purposes of this article, the outside boundaries
137 of a storage reservoir shall be defined by the location of those
138 wells around the periphery of the storage reservoir which had
139 no gas production when drilled in said storage stratum:
140 *Provided, however,* That the boundaries as thus defined shall
141 be originally fixed or subsequently changed where, based upon
142 the number and nature of such wells, upon the geological and
143 production knowledge of the storage stratum, its character,
144 permeability, and distribution, and operating experience, it is
145 determined in a conference or hearing under section ten of
146 this article that modification should be made.

The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Harriet B. Peltier

Chairman Senate Committee

Donald Anello

Chairman House Committee

Originating in the House.

Takes effect ninety days from passage.

Todd C. Willis

Clerk of the Senate

Donald L. Kopp

Clerk of the House of Delegates

Waverly P. McGraw

President of the Senate

W. M. Lee, Jr.

Speaker House of Delegates

The within *is approved* this the *29*
day of *March*, 1983.

John D. Poyner

Governor

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SECR. OF STATE