WEST VIRGINIA LEGISLATURE
REGULAR SESSION, 1983

ENROLLED

(Com. Ref. for)
HOUSE BILL No. 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 meaning, as used in this article:

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

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

7 (c) "Chairman" means the chairman of the West Virginia shallow gas well review board as provided for in section four, article four-b of this chapter;
(d) "Chief" means chief of the division of water resources of the department of natural resources;

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

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

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

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

(i) "Administrator" means the head of the office of oil and gas of the department of mines and all references to the "deputy director" shall be defined to mean the administrator of the office of oil and gas;

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

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

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

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

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

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

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

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

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

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

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

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

(v) "Waste" means (i) physical waste, as the term is gen-
erally understood in the oil and gas industry; (ii) the locating,
drilling, equipping, operating or producing of any oil or gas
well in a manner that causes, or tends to cause, a substantial reduction in the quantity of oil or gas ultimately recoverable from a pool under prudent and proper operations, or that causes or tends to cause a substantial or unnecessary or excessive surface loss of oil or gas; or (iii) the drilling of more deep wells than are reasonably required to recover efficiently and economically the maximum amount of oil and gas from a pool; (iv) substantially inefficient, excessive or improper use, or the substantially unnecessary dissipation of, reservoir energy, it being understood that nothing in this chapter shall be construed to authorize any agency of the state to impose mandatory spacing of shallow wells except for the provisions of section eight, article four-a of this chapter and the provisions of article four-b of this chapter; (v) inefficient storing of oil or gas: Provided, That storage in accordance with a certificate of public convenience issued by the federal energy regulatory commission shall be conclusively presumed to be efficient; and (vi) other underground or surface waste in the production or storage of oil, gas, or condensate, however caused;

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

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

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

(z) "Office of oil and gas" or "office" means the office of
oil and gas within the department of mines charged with the responsibility of administering the provisions of chapter twenty-two, articles four, five and seven of the code of West 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; extensions of time for abatement; special inspections; notice of findings and orders.

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

(b) The period of time so found by such oil and gas inspector to be a reasonable period of time shall not exceed seven days. Such period may be extended by such inspector, or by any other oil and gas inspector duly authorized by the administrator, from time to time, for good cause, but not to exceed a total of thirty days, upon the making of a special inspection to ascertain whether or not such violation has been totally abated: Provided, That such thirty-day period may be extended beyond thirty days by such inspectors where abatement is shown to be incapable of accomplishment because of circumstances or conditions beyond the control of the well operator. The administrator shall cause a special inspection to be made: (A) Whenever an operator of a well or well site or any other oil or gas facility, prior to the expiration of any such period of time, requests him to cause a special inspection to
be made at such well or well site or any other oil or gas fa-


cility; and (B) Upon expiration of such period of time as

originally fixed or as extended, unless the administrator is

satisfied that the violation has been abated. Upon making such

special inspection, such oil and gas inspector shall determine

whether or not such violation has been totally abated. If he
determines that such violation has not been totally abated, he
shall determine whether or not such period of time as original-
ly fixed, or as so fixed and extended, should be extended. If
he determines that such period of time should be extended, he
shall determine what a reasonable extension would be. If he
determines that such violation has not been totally abated, and
if such period of time as originally fixed, or as so fixed and
extended, has then expired, and if he also determines that such
period of time should not be further extended, he shall there-
upon make an order requiring the operator of such well or
well site or other oil or gas facility to cease further operations
of such well, well site or facility, as the case may be. Such
findings and order shall contain reference to the specific pro-
visions of this article which are being violated.

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

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

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

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

(b) The application for a well work permit shall be accom-
panied by the applicable bond as prescribed by section two,
two-b or nine of this article, and the applicable plat required
by section two or two-b of this article.
(c) Every permit application filed under this section shall be verified and shall contain the following:

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

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

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

(4) The type of well;

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

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

(7) Any permit application fee required by law;

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

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

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

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

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

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

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

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

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

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

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

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

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

§22-4-1m. Notice to property owners.

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

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

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

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

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

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

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

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

(a) All persons described in subsections (a) and (b),
section one-m of this article may file comments with the
administrator as to the location or construction of the appli-
cant's proposed well work within fifteen days after the appli-
cation is filed with the administrator.

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

§22-4-10. Review of application; issuance of permit in the ab-
ance of objections and comments.

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

No permit may be issued less than fifteen days after the
filing date of the application for any well work except
plugging or replugging; and no permit for plugging or re-
plugging 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 pro-
visions of this article have been served in person or by certified
mail, return receipt requested, with a copy of the well work
application, including the erosion and sediment control plan,
if required, and the plat required by section one-k of this
article, and further files written statements of no objection
by all such persons, the administrator may issue the well work
permit at any time.

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

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

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

If the administrator refuses to approve a request for extension, he shall do so by order.

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

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

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

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

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

§22-4-16. Restraining waste.

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

§22-4-17. Offenses; penalties.

(a) Any person or persons, firm, partnership, partnership
association or corporation who willfully violates any provision
of this article or any rule or order promulgated hereunder shall
be subject to a civil penalty not exceeding two thousand five
hundred dollars. Each day a violation continues after notice
by the office of oil and gas constitutes a separate offense. The
penalty shall be recovered by a civil action brought by the
office of oil and gas, in the name of the state, before the cir-
cuit court of the county in which the subject well or facility
is located. All such civil penalties collected shall be credited
to the general fund of the state.

(b) Any person or persons, firm, partnership, partnership
association or corporation willfully violating any of the pro-
visions 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, or which fix the
distance from wells within which mining operations shall not
be conducted without the approval of the office of oil and gas,
or violating the terms of any order of the office of oil and gas
allowing mining operations within a lesser distance of any
well than that prescribed by the article, is guilty of a misde-
meanor, and, upon conviction thereof, shall be punished by a
fine not exceeding five thousand dollars, or imprisoned in jail
for not exceeding twelve months, or both, in the discretion of
the court, and prosecutions under this section may be brought
in the name of the state of West Virginia in the court exer-
cising 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.

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

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

(a) The Legislature finds the following:

(1) Exploration for and development of oil and gas re-
erves in this state must coexist with the use, agricultural or
otherwise, of the surface of certain land and that each consti-
tutes a right equal to the other.
(2) Modern methods of extraction of oil and gas require the use of substantially more surface area than the methods commonly in use at the time most mineral estates in this state were severed from the fee tract; and, specifically, the drilling of wells by the rotary drilling method was virtually unknown in this state prior to the year one thousand nine hundred sixty, so that no person theretofore severing his oil and gas from his surface land and no person theretofore leasing his oil and gas with the right to explore for and develop the same could reasonably have known nor could it have been reason-ably contemplated that rotary drilling operations imposed a greater burden on the surface than the cable tool drilling method heretofore employed in this state; and since the year one thousand nine hundred sixty, the use of rotary drilling methods has spread slowly but steadily in this state, with con-comitant public awareness of its impact on surface land; and that the public interest requires that the surface owner be ent-titled to fair compensation for the loss of the use of his surface area during the rotary drilling operation, but recognizing the right of the oil and gas operator to conduct rotary drilling operations as allowed by law.

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

(4) The Legislature further finds and creates a rebuttable presumption that even after the thirty-first day of December, one thousand nine hundred fifty-nine, and prior to the effective date of this article, it was unlikely that any surface owner knew or should have known of the rotary method of drilling oil or gas wells, but, that such knowledge was possible and that the rotary method of drilling oil or gas wells could have, in some instances, been reasonably contemplated by the parties during the negotiations of the severance of the oil and gas from the surface. This presumption against knowledge of the rotary drilling method may be rebutted by a clear preponderance of the evidence showing that the surface owner or his predecessor
of record did in fact know of the rotary drilling method at the
time he or his predecessor executed a severance deed or lease
of oil and gas and that he fairly contemplated the rotary drill-
ing method and received compensation for the same.

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

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

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

§22-4C-2. Definitions.

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

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

(2) "Drilling operations" means the actual drilling or re-
drilling of an oil or gas well commenced subsequent to the
effective date of this article, and the related preparation...
of the drilling site and access road, which requires entry, upon the surface estate;

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

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

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

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

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

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

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

The amount of damages may be determined by any formula
mutually agreeable between the surface owner and the oil and
gas developer.

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

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

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

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

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

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

§22-4C-5. Notification of claim.

Any surface owner, to receive compensation under section
three of this article, shall notify the oil and gas developer
of the damages sustained by the person within two years
after the date that the oil and gas developer files notice that
he is commencing reclamation under section twelve-b,
article four of this chapter. Such notice shall be given to
surface owners by registered or certified mail, return receipt
requested, and shall be complete upon mailing. If more than
three tenants in common or other co-owners hold interests
in such lands, the developer may give such notice to the
person described in the records of the sheriff required to be
maintained pursuant to section eight, article one, chapter
eleven-a of this code or publish in the county in which the
well is located or to be located a Class II legal advertisement
as described in section two, article three, chapter fifty-nine
of this code, containing such notice and information as the
administrator shall prescribe by rule.

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

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

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

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

Settlement negotiations, offers and counter-offers between
the surface owner and the oil and gas developer shall not be
admissible as evidence in any arbitration or judicial proceeding authorized under this article, or in any proceeding resulting from the assertion of common law remedies.

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

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

(d) The panel of arbitrators shall hold hearings and take such testimony and receive such exhibits as shall be necessary to determine the amount of compensation to be paid to the
surface owner. However, no award of compensation shall be made to the surface owner unless the panel of arbitrators has first viewed the surface estate in question. A transcript of the evidence may be made but shall not be required.

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

§22-4C-8. Application of article.

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

§22-4C-9. Severability.

If any section, subsection, subdivision, subparagraph, sentence or clause of this article is adjudged to be unconstitutional or invalid, such invalidation shall not affect the validity of the remaining portions of this article, and, to this end, the provisions of this article are hereby declared to be severable.

ARTICLE 7. UNDERGROUND GAS STORAGE RESERVOIRS.

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

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

Any person who, on the effective date of this article, is injecting gas into or storing gas in a storage reservoir which is not at such date under or within three thousand linear feet, but is less than ten thousand linear feet from an operating coal mine which is operating in a coal seam that extends over the storage reservoir or the reservoir protective area, shall file such map and data within such time in excess of sixty days as the department may fix.
Any person who, after the effective date of this article, proposes to inject or store gas in a storage reservoir located as above shall file the required map and data with the department not less than six months prior to the starting of actual injection or storage.

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

The following information, if available, shall be furnished for all known oil or gas wells which have been drilled into or through the storage stratum within the storage reservoir or within three thousand linear feet thereof; name of the operator, date drilled, total depth, depth of production if the well was productive of oil or gas, the initial rock pressure and volume, the depths at which all coal seams were encountered and a copy of the driller's log or other similar information. At the time of the filing of the aforesaid maps and data such person shall file a detailed statement of what efforts he has made to determine, (1) that the wells shown on said map are accurately located thereon, and (2) that to the best of his knowledge they are all the oil or gas wells which have ever been drilled into or below the storage stratum within the proposed storage reservoir or within the reservoir protective area. This statement shall also include information as to whether or not the initial injection is for testing purposes, the maximum pressures at which injection and storage of gas is contemplated, and a detailed explanation of the methods to be used or which theretofore have been used in drilling, cleaning out, reconditioning or plugging
wells in the storage reservoir or within the reservoir protective area. The map and data required to be filed hereunder shall be amended or supplemented semiannually in case any material changes have occurred: Provided, That the department may require a storage operator to amend or supplement such map or data at more frequent intervals if material changes have occurred justifying such earlier filing.

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

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

Any person who, after the effective date of this article,
proposes to inject or store gas in any other storage reservoir in this state not subject to subsection (a) of this section shall file with the department a map and data in the same detail as the map and data required for a storage reservoir subject to subsection (a) of this section not less than six months prior to the starting of actual injection or storage: Provided, That in the case of a storage reservoir the operation of which will be required to be certificated by the federal energy regulatory commission, the person may, in lieu of the data, submit copies of the application and all amendments and supplementals filed in the federal docket, together with the certificate of public convenience and necessity and any amendments thereto, within twenty days after the same have been filed by such person or issued by the federal energy regulatory commission.

At the time of the filing of the above maps and data or documents in lieu of data and filing of amended or supplemental maps or data or documents in lieu of data, or upon receipt of an application filed with the federal energy regulatory commission for a new storage reservoir, the department shall give notice of said filing by a Class II legal advertisement in accordance with the provisions of article three, chapter fifty-nine of this code, the publication area for which shall be the county or counties in which the storage reservoir is located. Such legal advertisements shall contain a description of the boundaries of such storage reservoir. The storage operator shall pay for the legal advertisement upon receipt of the invoice therefor from the department. When any person owning an interest in land which is or may be affected by the storage reservoir requests in writing a copy of any map or data or documents in lieu of data filed with the department, such copy shall be furnished by the storage operator.

(c) The department shall also intervene in the federal docket, and participate in the proceedings for the purpose of assuring that the certificate of public convenience and necessity issued by the federal energy regulatory commission does not authorize operations or practices in conflict with the provisions of this article. The department may cooperate with the public service commission if the commission also intervenes. The attorney general is hereby directed to provide
(d) For all purposes of this article, the outside boundaries of a storage reservoir shall be defined by the location of those wells around the periphery of the storage reservoir which had no gas production when drilled in said storage stratum: Provided, however, That the boundaries as thus defined shall be originally fixed or subsequently changed where, based upon the number and nature of such wells, upon the geological and production knowledge of the storage stratum, its character, permeability, and distribution, and operating experience, it is determined in a conference or hearing under section ten of this article that modification should be made.
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Chairman Senate Committee

Donald Amello
Chairman House Committee

Originating in the House.

Takes effect ninety days from passage.

Clerk of the Senate

Donald L. Yopp
Clerk of the House of Delegates

Wane P. McLean
President of the Senate

Speaker House of Delegates

The within ___________ this the ___________ day of ___________, 1983.

Governor