

FILED IN THE OFFICE OF
THE SECRETARY OF STATE
THIS DATE 12/22/2011
ADMINISTRATIVE LAW DIVISION

WEST VIRGINIA LEGISLATURE
FOURTH EXTRAORDINARY SESSION, 2011



ENROLLED

House Bill No. 401

(By Mr. Speaker, Mr. Thompson)
[By Request of the Executive]



Passed December 14, 2011

In Effect From Passage

HB 401

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H. B. 401

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(BY MR SPEAKER, MR. THOMPSON)
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[Passed December 14, 2011; in effect from passage.]

AN ACT to repeal §22C-7-1, §22C-7-2 and §22C-7-3 of the Code of West Virginia, 1931, as amended; to amend said code by adding thereto a new section, designated §5B-2B-4a; to amend and reenact §22-6-1 and §22-6-2 of said code; to amend said code by adding thereto a new section, designated §22-6-2a; to amend said code by adding thereto a new article, designated §22-6A-1, §22-6A-2, §22-6A-3, §22-6A-3a, §22-6A-4, §22-6A-5, §22-6A-6, §22-6A-7, §22-6A-8, §22-6A-9, §22-6A-10, §22-6A-10a, §22-6A-11, §22-6A-12, §22-6A-13, §22-6A-14, §22-6A-15, §22-6A-16, §22-6A-17, §22-6A-18, §22-6A-19, §22-6A-20, §22-6A-21, §22-6A-22, §22-6A-23 and §22-6A-24; to amend said code by adding thereto a new article, designated §22-6B-1, §22-6B-2, §22-6B-3, §22-6B-4, §22-6B-5, §22-6B-6, §22-6B-7 and §22-6B-8; to amend and reenact §22C-8-2 of said code; and to amend and reenact §22C-9-2 of said code, all relating generally to oil and gas wells; requiring West Virginia Workforce Investment Council to complete certain reviews and provide report to Legislature; expanding powers of Secretary of the Department of Environmental Protection; authorizing secretary to determine number of oil and gas inspectors and supervisors and to make investigations or inspections to ensure compliance with applicable law; providing for inspector qualifications, duties and minimum

salaries; creating Natural Gas Horizontal Well Control Act; providing short title; making legislative findings and declarations of public policy; requiring secretary to submit written report to Legislature on number of waivers granted; providing for applicability of act and exceptions; providing special considerations regarding karst formations; requiring the secretary to propose emergency and legislative rules pertaining to drilling in karst formations; defining terms; making horizontal wells subject to certain provisions in article six, chapter twenty-two of the Code of West Virginia; specifying powers and duties of secretary, including certain rule-making power and reporting duties; requiring permit for horizontal wells; establishing permit application requirements and contents; requiring bond and permit fees; providing for issuance of emergency permits; providing for denial, suspension and reinstatement of permits in certain circumstances; providing for application review, requirements for issuance of permit and permit requirements; establishing performance standards; providing for copies of permits to be furnished to county assessors; requiring certificate of approval for large pits or impoundments construction; requiring application for certificate; establishing application requirements and payment of fees; providing for modification, revocation or suspension of certificate and hearing procedure, including an administrative appeals process; providing exceptions for certain farm ponds; authorizing secretary to propose legislative rules governing large pits and impoundment; providing certain notices to certain property owners regarding certain applications and intent to enter property to survey or to conduct seismic activity; requiring the submission of certain documents and information to be provided with such notice; clarifying that notice to certain lienholders is not notice to certain landowners; providing for public notice and comment; requiring applicant to file Class II ad and allowing submission of written comments to Department of Environmental Protection; establishing certain information to be contained in the

published newspaper notice; providing for the publishing public comment received by the Department of Environmental Protection on the department's public website; clarifying method of delivery of notice; establishing procedure for filing written comments; establishing well location restrictions; requiring the secretary to prepare a report to the legislature on noise, light dust and volatile organic compounds and their relationship to well location restrictions for occupied dwellings; allowing the secretary to propose guidelines and procedures for controlling and mitigating levels of noise, light, dust and volatile organic compounds in relation to horizontal drilling activities; requiring promulgation of legislative rules for plugging and abandonment of horizontal wells; exempting certain wells from Natural Gas Horizontal Well Control Act; establishing reclamation requirements; requiring performance bonds or other security; providing notice of planned operation and contents of notice to certain surface owners; providing notice to certain surface owner and offer for compensation for certain damages to certain surface owner; providing for reimbursement of property taxes to surface owner; providing for civil action, rebuttable presumption and relief for water contamination or deprivation; establishing water rights and replacement procedure; establishing civil penalties and offenses; establishing criminal penalties and offenses; requiring gas operations to submit certification from Division of Highways that operator has entered into road maintenance agreement pursuant to Division of Highways Oil and Gas Road Policy; creating public website and electronic notification registry of horizontal well permit applications and public notice of website; providing for the publication of information pertaining to permit applications on that public website; providing for air quality study, report to Legislature and rulemaking; requiring secretary to report to Legislature regarding safety of pits and impoundments; providing casing and cement standards; authorizing secretary to promulgate legislative and emergency rules relating to casing and cement

standards; authorizing secretary to promulgate legislative rules governing pits and impoundments; providing secretary authority to establish, revise and grant waivers regarding casing and cement standards and programs; creating the Oil and Gas Horizontal Well Production Damage Compensation Act; providing legislative findings and purpose; defining terms; providing conditions and parameters for compensation of surface owners for drilling operations; preserving common law right of action and providing offset for compensation or damages paid; requiring notice of claims by surface owners; providing manner in which oil and gas operator must provide notice of reclamation; providing for offers of settlement; providing procedures for civil actions, arbitration and fees; preserving alternate remedies; and modifying definitions of “shallow wells” and “deep wells”.

Be it enacted by the Legislature of West Virginia:

That §22C-7-1, §22C-7-2 and §22C-7-3 of the Code of West Virginia, 1931, as amended, be repealed; that said code be amended by adding thereto a new section, designated §5B-2B-4a; that §22-6-1 and §22-6-2 of said code be amended and reenacted; that said code be amended by adding thereto a new section, designated §22-6-2a; that said code be amended by adding thereto a new article, designated §22-6A-1, §22-6A-2, §22-6A-3, §22-6A-3a, §22-6A-4, §22-6A-5, §22-6A-6, §22-6A-7, §22-6A-8, §22-6A-9, §22-6A-10, §22-6A-10a, §22-6A-11, §22-6A-12, §22-6A-13, §22-6A-14, §22-6A-15, §22-6A-16, §22-6A-17, §22-6A-18, §22-6A-19, §22-6A-20, §22-6A-21, §22-6A-22, §22-6A-23 and §22-6A-24; that said code be amended by adding thereto a new article, designated §22-6B-1, §22-6B-2, §22-6B-3, §22-6B-4, §22-6B-5, §22-6B-6, §22-6B-7 and §22-6B-8; that §22C-8-2 of said code be amended and reenacted; and that §22C-9-2 of said code be amended and reenacted, all to read as follows:

**CHAPTER 5B. ECONOMIC DEVELOPMENT ACT OF
1985.**

**ARTICLE 2B. WEST VIRGINIA WORKFORCE INVESTMENT
ACT.**

§5B-2B-4a. Report to Legislature.

1 (a) The Legislature finds that:

2 (1) The advent and advancement of new technologies in
3 horizontal drilling and the production of horizontal wells
4 defined in article six-a, chapter twenty-two of this code has
5 created thousands and has the potential to create thousands of
6 additional drilling, production, construction, manufacturing,
7 and related jobs in West Virginia and in the Appalachian
8 Basin;

9 (2) This economic opportunity presents new and exciting
10 opportunities for jobs for West Virginians;

11 (3) The state needs to take all necessary steps to retain,
12 educate and train West Virginians to have the skills necessary to
13 compete for job opportunities resulting from horizontal drilling;
14 and

15 (4) Specific attention shall be made by the state of West
16 Virginia to train and educate West Virginia citizens that have
17 not historically or traditionally been exposed to the oil and
18 gas industry through training programs offered by
19 community colleges, technical schools and institutions and
20 small business owners. Small business owners shall be made
21 aware by the State of West Virginia of any and all programs
22 and grants available to assist them in training said
23 individuals.

24 (b) To assist in maximizing the economic opportunities
25 available with horizontal drilling, the council shall make a
26 report to the Joint Committee on Government and Finance
27 and the Legislative Oversight Commission on Education
28 Accountability on or before November 1 of each year
29 through 2016, detailing a comprehensive review of the direct
30 and indirect economic impact of employers engaged in the
31 production of horizontal wells in the State of West Virginia,
32 as more specifically defined in article six-a, chapter twenty-
33 two of this code, which shall include:

34 (1) A review of the total number of jobs created;

35 (2) A review of total payroll of all jobs created;

36 (3) The average salary per job type;

37 (4) A review of the number of employees domiciled in the
38 State of West Virginia;

39 (5) A review of total economic impact;

40 (6) The council's recommendations for the establishment of
41 an overall workforce investment public education agenda with
42 goals and benchmarks toward maximizing job creation
43 opportunities in the State of West Virginia;

44 (7) A review of number of jobs created for minorities based
45 on race, ethnicity and gender;

46 (8) A review of number of jobs created for individuals re-
47 employed from the state of West Virginia's unemployment
48 rosters;

49 (9) A review of number of jobs created for returning veterans;
50 and

51 (10) A review of number of jobs created for legal West
52 Virginia residents and non-West Virginia residents.

53 (c) To the extent permitted by federal law, and to the extent
54 necessary for the council to comply with this section, the council,
55 Workforce West Virginia, the Division of Labor, and the Office
56 of the Insurance Commissioner may enter into agreements
57 providing for the sharing of job data and related information.

CHAPTER 22. ENVIRONMENTAL RESOURCES.

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

§22-6-1. Definitions.

1 As used in this article:

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

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

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

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

12 (e) "Coal seam" and "workable coal bed" are
13 interchangeable terms and mean any seam of coal twenty
14 inches or more in thickness, unless a seam of less thickness
15 is being commercially worked, or can in the judgment of the

16 department foreseeably be commercially worked and will
17 require protection if wells are drilled through it;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

71 (t) "Shallow well" means any gas well, other than a
72 coalbed methane well, drilled no deeper than one hundred
73 feet below the top of the "Onondaga Group": *Provided, That*
74 in no event may the "Onondaga Group" formation or any

75 formation below the “Onondaga Group” be produced,
76 perforated or stimulated in any manner;

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

82 (v) “Waste” means (i) physical waste, as the term is
83 generally understood in the oil and gas industry; (ii) the
84 locating, drilling, equipping, operating or producing of any
85 oil or gas well in a manner that causes, or tends to cause a
86 substantial reduction in the quantity of oil or gas ultimately
87 recoverable from a pool under prudent and proper operations,
88 or that causes or tends to cause a substantial or unnecessary
89 or excessive surface loss of oil or gas; or (iii) the drilling of
90 more deep wells than are reasonably required to recover
91 efficiently and economically the maximum amount of oil and
92 gas from a pool; (iv) substantially inefficient, excessive or
93 improper use, or the substantially unnecessary dissipation of,
94 reservoir energy, it being understood that nothing in this chapter
95 authorizes any agency of the state to impose mandatory spacing
96 of shallow wells except for the provisions of section eight,
97 article nine, chapter twenty-two-c of this code and the provisions
98 of article eight, chapter twenty-two-c of this code; (v) inefficient
99 storing of oil or gas: *Provided*, That storage in accordance with
100 a certificate of public convenience issued by the Federal Energy
101 Regulatory Commission is conclusively presumed to be
102 efficient; and (vi) other underground or surface waste in the
103 production or storage of oil, gas or condensate, however caused.
104 Waste does not include gas vented or released from any mine
105 areas as defined in section two, article one, chapter twenty-two-a
106 of this code, or from adjacent coal seams which are the subject
107 of a current permit issued under article two of chapter twenty-
108 two-a of this code: *Provided, however*, That nothing in this
109 exclusion is intended to address ownership of the gas;

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

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

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

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

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

1 (a) The secretary shall have as his or her duty the
2 supervision of the execution and enforcement of matters
3 related to oil and gas set out in this article and in articles six-
4 a, eight, nine, ten and twenty-one of this chapter.

5 (b) The secretary is authorized to propose rules for
6 legislative approval in accordance with the provisions of
7 article three, chapter twenty-nine-a of this code necessary to
8 effectuate the above stated purposes.

9 (c) The secretary shall have full charge of the oil and gas
10 matters set out in this article and in articles six-a, eight, nine,
11 ten and twenty-one of this chapter. In addition to all other
12 powers and duties conferred upon him or her, the secretary
13 shall have the power and duty to:

14 (1) Supervise and direct the activities of the office of oil
15 and gas and see that the purposes set forth in subsections (a)
16 and (b) of this section are carried out;

17 (2) Determine the number of supervising oil and gas
18 inspectors and oil and gas inspectors needed to carry out the
19 purposes of this article and articles six-a, eight, nine, ten, and
20 twenty-one of this chapter and appoint them as such. All
21 appointees must be qualified civil service employees, but no
22 person is eligible for appointment until he or she has served
23 in a probationary status for a period of six months to the
24 satisfaction of the secretary;

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

27 (4) Make investigations or inspections necessary to
28 ensure compliance with and to enforce the provisions of this
29 article and articles six-a, eight, nine, ten, and twenty-one of
30 this chapter;

31 (5) Prepare report forms to be used by oil and gas
32 inspectors or the supervising inspector in making their
33 findings, orders and notices, upon inspections made in
34 accordance with this article and articles six-a, eight, nine, ten
35 and twenty-one of this chapter;

36 (6) Employ a hearing officer and such clerks,
37 stenographers and other employees, as may be necessary to
38 carry out his or her duties and the purposes of the office of oil
39 and gas and fix their compensation;

40 (7) Hear and determine applications made by owners,
41 well operators and coal operators for the annulment or
42 revision of orders made by oil and gas inspectors or the
43 supervising inspector, and to make inspections, in accordance
44 with the provisions of this article and articles eight and nine
45 of this chapter;

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

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

56 (10) Collect a permit fee of \$400 for each permit
57 application filed other than an application for a deep well,
58 horizontal wells regulated pursuant to article six-a of this
59 chapter, or a coalbed methane well; and collect a permit fee
60 of \$650 for each permit application filed for a deep well:
61 *Provided*, That no permit application fee is required when an
62 application is submitted solely for the plugging or replugging
63 of a well, or to modify an existing application for which the
64 operator previously has submitted a permit fee under this
65 section. All application fees required hereunder are in lieu of
66 and not in addition to any fees imposed under article eleven
67 of this chapter relating to discharges of stormwater but are in
68 addition to any other fees required by the provisions of this
69 article: *Provided, however*, That upon a final determination
70 by the United States Environmental Protection Agency
71 regarding the scope of the exemption under section 402(1)(2)
72 of the federal Clean Water Act (33 U.S.C. 1342(1)(2)), which

73 determination requires a “national pollutant discharge
74 elimination system” permit for stormwater discharges from
75 the oil and gas operations described therein, any permit fees
76 for stormwater permits required under article eleven of this
77 chapter for such operations may not exceed \$100.

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

80 (12) Perform all duties as the permit issuing authority for
81 the state in all matters pertaining to the exploration,
82 development, production, storage and recovery of this state’s
83 oil and gas;

84 (13) Adopt rules with respect to the issuance, denial,
85 retention, suspension or revocation of permits, authorizations
86 and requirements of this chapter, which rules shall assure that
87 the rules, permits and authorizations issued by the secretary
88 are adequate to satisfy the purposes of this article and articles
89 six-a, seven, eight, nine, ten and twenty-one of this chapter
90 particularly with respect to the consolidation of the various
91 state and federal programs which place permitting
92 requirements on the exploration, development, production,
93 storage and recovery of this state’s oil and gas; and

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

99 (d) The secretary shall have authority to visit and inspect
100 any well or well site and any other oil or gas facility in this
101 state and may call for the assistance of any oil and gas
102 inspector or inspectors or supervising inspector whenever
103 such assistance is necessary in the inspection of any such

104 well or well site or any other oil or gas facility. Similarly, all
105 oil and gas inspectors and supervising inspectors shall have
106 authority to visit and inspect any well or well site and any
107 other oil or gas facility in this state. Such inspectors shall
108 make all necessary inspections of oil and gas operations
109 required by this article and articles six-a, eight, nine, ten and
110 twenty-one of this chapter; administer and enforce all oil and
111 gas laws and rules; and perform other duties and services as
112 may be prescribed by the secretary. The inspectors shall note
113 and describe all violations of this article and articles six-a,
114 eight, nine, ten or twenty-one of this chapter and promptly
115 report those violations to the secretary in writing, furnishing
116 at the same time a copy of the report to the operator
117 concerned. Any well operator, coal operator operating coal
118 seams beneath the tract of land, or the coal seam owner or
119 lessee, if any, if said owner or lessee is not yet operating said
120 coal seams beneath said tract of land may request the
121 secretary to have an immediate inspection made. The
122 operator or owner of every well or well site or any other oil
123 or gas facility shall cooperate with the secretary, all oil and
124 gas inspectors and the supervising inspector in making
125 inspections or obtaining information.

126 (e) Subject to the provisions of article one, chapter
127 twenty-nine-b of this code, all records of the office shall be
128 open to the public.

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

1 (a) No person is eligible for appointment as an oil and gas
2 inspector or supervising inspector unless, at the time of
3 probationary appointment, the person: (1) is a citizen of
4 West Virginia, in good health and of good character,
5 reputation and temperate habits; (2) has had at least two years
6 actual relevant experience in the oil and gas industry:
7 *Provided*, That no more than one year of the experience

8 requirement may be satisfied by any of following: (i) A
9 bachelor of science degree in science or engineering; (ii) an
10 associate degree in petroleum technology; or (iii) actual
11 relevant environmental experience including, without
12 limitation, experience in wastewater, solid waste or
13 reclamation, each full year of which shall be considered as a
14 year of actual relevant experience in the oil and gas industry;
15 and (3) has good theoretical and practical knowledge of oil
16 and gas drilling and production methods, practices and
17 techniques, sound safety practices and applicable water and
18 mining laws.

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

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

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

§22-6A-1. Short title.

1 This article shall be known and cited as the “Horizontal Well
2 Act”.

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

1 (a) The Legislature finds that:

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

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

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

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

18 (5) The secretary should have broad authority to
19 condition the issuance of well work permits when, in the
20 secretary’s discretion, it is necessary to protect the safety of
21 persons, to prevent inadequate or ineffective erosion and

22 sediment control plans, to prevent damage to publicly owned
23 lands or resources, to protect fresh water sources or supplies
24 or to otherwise protect the environment;

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

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

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

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

46 (c) The Legislature declares that in view of the urgent
47 need for prompt decision of matters submitted to the secretary
48 under this article, all actions which the secretary or oil and
49 gas inspectors are required to take under this article shall be
50 taken as rapidly as practicable, consistent with adequate
51 consideration of the issues involved.

§22-6A-3. Applicability; exceptions.

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

§22-6A-3a. Karst terrain; rulemaking.

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

10 (b) In order to carry out the purposes of this section, the
11 secretary, in consultation with the state geologist, shall
12 propose emergency and legislative rules in accordance with
13 the provisions of chapter twenty-nine-a of this code to
14 establish designated geographic regions of the state where the
15 provisions of this section are applicable and to establish
16 standards for drilling horizontal wells in naturally occurring

17 karst terrain. For horizontal wells drilled into naturally
18 occurring karst terrain in such designated geographic regions,
19 the rules shall, at a minimum:

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

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

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

§22-6A-4. Definitions.

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

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

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

15 (2) “Department” means the Department of
16 Environmental Protection;

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

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

23 (5) “Horizontal drilling” means a method of drilling a
24 well for the production of natural gas that is intended to
25 maximize the length of wellbore that is exposed to the
26 formation and in which the wellbore is initially vertical but
27 is eventually curved to become horizontal, or nearly
28 horizontal, to parallel a particular geologic formation;

29 (6) “Horizontal well” means any well site, other than a
30 coalbed methane well, drilled using a horizontal drilling
31 method, and which disturbs three acres or more of surface,
32 excluding pipelines, gathering lines and roads, or utilizes
33 more than two hundred ten thousand gallons of water in any
34 thirty-day period;

35 (7) “Impoundment” means a man-made excavation or
36 diked area for the retention of fluids;

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

42 (9) “Perennial stream” means a stream or portion of a
43 stream that flows year-round, is considered a permanent

44 stream and for which base flow is maintained by ground-
45 water discharge to the streambed due to the ground-water
46 elevation adjacent to the stream being higher than the
47 elevation of the streambed;

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

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

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

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

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

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

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

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

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

23 (5) The provisions of section eight, article six of this
24 chapter relating to the prohibition of permits for wells on flat
25 well royalty leases and requirements for permits;

26 (6) The provisions of section twelve, article six of this
27 chapter pertaining to plats prerequisite to drilling or
28 fracturing wells, the preparation and contents thereof, notice
29 furnished to coal operators, owners or lessees, the issuance of
30 permits and required performance bonds, with the following
31 exceptions:

32 (A) Under subsection (a), section twelve, article six of
33 this chapter, the plat also shall identify all surface tract
34 boundaries within the scope of the plat proposed to be
35 crossed by the horizontal lateral of the horizontal well and the
36 proposed path of such horizontal lateral, and

37 (B) Under subsection (b), section twelve, article six of
38 this chapter, any reference to a time period shall be thirty
39 days in lieu of fifteen days;

40 (7) The provisions of section thirteen, article six of this
41 chapter providing for notice of the operator's intention to
42 fracture wells, with the exception that under the third
43 paragraph of section thirteen, article six of this chapter, the
44 applicable periods shall be thirty days in lieu of fifteen days;

45 (8) The provisions of section fifteen, article six of this
46 chapter pertaining to objections to proposed deep well
47 drilling sites above seam or seams of coal, with the exception
48 that the applicable time for filing objections is within thirty
49 days of receipt by the secretary of the required plat and/or
50 notice in lieu of fifteen days;

51 (9) The provisions of section seventeen, article six of this
52 chapter pertaining to drilling of shallow gas wells, notice to
53 be provided to the chair of the review board, orders issued by
54 the review board and permits issued for such drilling, with
55 the exception that the applicable time for filing objections is
56 thirty days from the date of receipt by the secretary of the
57 required plat and notice in lieu of fifteen days;

58 (10) The provisions of section eighteen, article six of this
59 chapter providing for protective devices for when a well
60 penetrates one or more workable coal beds and when gas is
61 found beneath or between workable coal beds;

62 (11) The provisions of section nineteen, article six of this
63 chapter providing for protective devices during the life of the
64 well and for dry or abandoned wells;

65 (12) The provisions of section twenty, article six of this
66 chapter providing for protective devices when a well is
67 drilled through the horizon of a coal bed from which the coal
68 has been removed;

69 (13) The provisions of section twenty-one, article six of
70 this chapter requiring the installation of fresh water casings;

71 (14) The provisions of section twenty-two, article six of
72 this chapter relating to the filing of a well completion log and
73 the contents thereof, confidentiality and permitted use and the
74 secretary's authority to promulgate rules;

75 (15) The provisions of section twenty-seven, article six
76 of this chapter regarding a cause of action for damages
77 caused by an explosion;

78 (16) The provisions of section twenty-eight, article six of
79 this chapter relating to supervision by the secretary over
80 drilling and reclamation operations, the filing of complaints,
81 hearings on the same and appeals;

82 (17) The provisions of section twenty-nine, article six of
83 this chapter providing for the Operating Permit and
84 Processing Fund, the oil and gas reclamation fund and
85 associated fees, with the exception that in the first paragraph
86 of subsection (a), section twenty-nine, article six of this
87 chapter, the fees to be credited to the Oil and Gas Operating
88 Permit and Processing Fund are the permit fees collected
89 pursuant to section seven of this article;

90 (18) The provisions of section thirty-one, article six of
91 this chapter providing for preventing waste of gas, plans of
92 operation for wasting gas in the process of producing oil and
93 the secretary's rejection thereof;

94 (19) The provisions of section thirty-two, article six of
95 this chapter pertaining to the right of an adjacent owner or
96 operator to prevent waste of gas and the recovery of costs;

97 (20) The provisions of section thirty-three, article six of
98 this chapter relating to circuit court actions to restrain waste;

99 (21) The provisions of section thirty-six, article six of this
100 chapter providing for the declaration of oil and gas notice by
101 owners and lessees of coal seams and setting out the form of
102 such notice;

103 (22) The provisions of section thirty-nine, article six of
104 this chapter relating to petitions for injunctive relief; and

105 (23) The provisions of section forty, article six of this
106 chapter relating to appeals from orders issuing or refusing to
107 issue a permit to drill or fracture, and the procedure therefore.

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

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

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

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

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

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

11 (4) To propose any necessary legislative rules, in
12 accordance with the provisions of chapter twenty-nine-a of
13 this code to implement the provisions of this article;

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

16 (b) Except for the duties and obligations conferred by
17 statute upon the shallow gas well review board pursuant to
18 article eight, chapter twenty-two-c of this code, the coalbed
19 methane review board pursuant to article twenty-one of this
20 chapter, and the oil and gas conservation commission
21 pursuant to article nine, chapter twenty-two-c of this code,
22 the secretary has sole and exclusive authority to regulate the
23 permitting, location, spacing, drilling, fracturing, stimulation,
24 well completion activities, operation, any and all other
25 drilling and production processes, plugging and reclamation
26 of oil and gas wells and production operations within the
27 state.

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

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

1 (a) It is unlawful for any person to commence any well
2 work, including site preparation work which involves any

3 disturbance of land, for a horizontal well without first
4 securing from the secretary a well work permit pursuant to
5 this article.

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

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

16 (2) The names and addresses of every coal operator
17 operating coal seams under the tract of land on which the
18 well is or may be located, and the coal seam owner of record
19 and lessee of record required to be given notice by
20 subdivision (6), subsection (a), section five of this article, if
21 any, if said owner or lessee is not yet operating said coal
22 seams;

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

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

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

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

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

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

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

46 (10) If the proposed well work is to plug or replug the
47 well, all information necessary to demonstrate compliance
48 with the legislative rules promulgated by the secretary in
49 accordance with section thirteen of this article;

50 (11) If the proposed well work is to stimulate a horizontal
51 well, all information necessary to demonstrate compliance
52 with the requirements of subdivision (7), subsection (a),
53 section five of this article;

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

57 (13) A well site safety plan to address proper safety
58 measures to be employed for the protection of persons on the
59 site as well as the general public. The plan shall encompass all
60 aspects of the operation, including the actual well work for
61 which the permit was obtained, completion activities and
62 production activities, and shall provide an emergency point of
63 contact for the well operator. The well operator shall provide a

64 copy of the well site safety plan to the local emergency planning
65 committee established pursuant to section seven, article five-a,
66 chapter fifteen of this code, for the emergency planning district
67 in which the well work will occur at least seven days before
68 commencement of well work or site preparation work that
69 involves any disturbance of land;

70 (14) A certification from the operator that (i) it has
71 provided the owners of the surface described in subdivisions
72 (1), (2) and (4), subsection (b), section ten of this article, the
73 information required by subsections (b) and (c), section
74 sixteen of this article; (ii) that the requirement was deemed
75 satisfied as a result of giving the surface owner notice of
76 entry to survey pursuant to subsection (a), section ten of this
77 article; or (iii) the notice requirements of subsection (b),
78 section sixteen of this article were waived in writing by the
79 surface owner; and

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

82 (c)(1) An erosion and sediment control plan shall
83 accompany each application for a well work permit under
84 this article. The plan shall contain methods of stabilization
85 and drainage, including a map of the project area indicating
86 the amount of acreage disturbed. The erosion and sediment
87 control plan shall meet the minimum requirements of the
88 West Virginia Erosion and Sediment Control Manual as
89 adopted and from time to time amended by the department.
90 The erosion and sediment control plan shall become part of
91 the terms and conditions of any well work permit that is
92 issued pursuant to this article and the provisions of the plan
93 shall be carried out where applicable in the operation. The
94 erosion and sediment control plan shall set out the proposed
95 method of reclamation which shall comply with the
96 requirements of section fourteen of this article.

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

102 (d) For well sites that disturb three acres or more of
103 surface, excluding pipelines, gathering lines and roads, the
104 operator shall submit a site construction plan that shall be
105 certified by a registered professional engineer and contains
106 information that the secretary may require by rule.

107 (e) In addition to the other requirements of this section,
108 if the drilling, fracturing or stimulating of the horizontal well
109 requires the use of water obtained by withdrawals from
110 waters of this state in amounts that exceed two hundred ten
111 thousand gallons during any thirty day period, the application
112 for a well work permit shall include a water management
113 plan, which may be submitted on an individual well basis or
114 on a watershed basis, and which shall include the following
115 information:

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

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

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

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

126 (5) A listing of the anticipated additives that may be used
127 in water utilized for fracturing or stimulating the well. Upon
128 well completion, a listing of the additives that were actually
129 used in the fracturing or stimulating of the well shall be
130 submitted as part of the completion log or report required by
131 subdivision (14), subsection (a), section five of this article;

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

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

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

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

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

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

157 (g) The application for a permit under this section shall
158 be accompanied by the applicable bond as required by
159 section fifteen of this article, the applicable plat required by
160 subdivision (6), subsection (a), section five of this article and
161 a permit fee of \$10,000 for the initial horizontal well drilled
162 at a location and a permit fee of \$5,000 for each additional
163 horizontal well drilled on a single well pad at the same
164 location.

165 (h) The well operator named in the application shall
166 designate the name and address of an agent for the operator
167 who is the attorney-in-fact for the operator and who is a
168 resident of the State of West Virginia upon whom notices,
169 orders or other communications issued pursuant to this article
170 or article eleven of this chapter may be served, and upon
171 whom process may be served. Every well operator required
172 to designate an agent under this section shall, within five
173 days after the termination of the designation, notify the
174 secretary of the termination and designate a new agent.

175 (i) The well owner or operator shall install the permit
176 number as issued by the secretary and a contact telephone
177 number for the operator in a legible and permanent manner
178 to the well upon completion of any permitted work. The
179 dimensions, specifications, and manner of installation shall
180 be in accordance with the rules of the secretary.

181 (j) The secretary may waive the requirements of this
182 section and sections eight, ten, eleven and twenty-four of this
183 article in any emergency situation, if the secretary deems the
184 action necessary. In such case the secretary may issue an
185 emergency permit which is effective for not more than thirty
186 days, unless reissued by the secretary.

187 (k) The secretary shall deny the issuance of a permit if
188 the secretary determines that the applicant has committed a

189 substantial violation of a previously issued permit for a
190 horizontal well, including the applicable erosion and
191 sediment control plan associated with the previously issued
192 permit, or a substantial violation of one or more of the rules
193 promulgated under this article, and in each instance has failed
194 to abate or seek review of the violation within the time
195 prescribed by the secretary pursuant to the provisions of
196 subdivisions (1) and (2), subsection (a), section five of this
197 article and the rules promulgated hereunder, which time may
198 not be unreasonable.

199 (l) In the event the secretary finds that a substantial
200 violation has occurred and that the operator has failed to
201 abate or seek review of the violation in the time prescribed,
202 the secretary may suspend the permit on which said violation
203 exists, after which suspension the operator shall forthwith
204 cease all well work being conducted under the permit.
205 However, the secretary may reinstate the permit without
206 further notice, at which time the well work may be continued.
207 The secretary shall make written findings of any such
208 suspension and may enforce the same in the circuit courts of
209 this state. The operator may appeal a suspension pursuant to
210 the provisions of subdivision (23), subsection (a), section five
211 of this article. The secretary shall make a written finding of
212 any such determination.

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

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

4 (b) No permit may be issued less than thirty days after the
5 filing date of the application for any well work except

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

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

41 (d) The secretary may cause such inspections to be made
42 of the proposed well work location as necessary to assure
43 adequate review of the application. The permit may not be
44 issued, or may be conditioned including conditions with
45 respect to the location of the well and access roads prior to
46 issuance if the director determines that:

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

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

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

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

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

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

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

67 (f) The secretary shall promptly review all written
68 comments filed by persons entitled to notice pursuant to

69 subsection (b), section ten of this article. If after review of
70 the application and all written comments received from
71 persons entitled to notice pursuant to subsection (b), section
72 ten of this article, the application for a well work permit is
73 approved, and no timely objection has been filed with the
74 secretary by the coal operator operating coal seams beneath
75 the tract of land, or the coal seam owner or lessee, if any, if
76 said owner or lessee is not yet operating said coal seams, or
77 made by the secretary under the provisions of section ten and
78 eleven of this article, the permit shall be issued, with
79 conditions, if any. This section does not supersede the
80 provisions of section seven or subdivisions (6) through (9),
81 subsection (a), section five of this article.

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

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

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

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

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

100 (5) Protect the quantity and the quality of water in surface
101 and groundwater systems both during and after drilling
102 operations and during reclamation by: (A) Withdrawing
103 water from surface waters of the state by methods deemed
104 appropriate by the secretary, so as to maintain sufficient in-
105 stream flow immediately downstream of the withdrawal
106 location. In no case shall an operator withdraw water from
107 ground or surface waters at volumes beyond which the waters
108 can sustain; (B) Casing, sealing or otherwise managing wells
109 to keep returned fluids from entering ground and surface
110 waters; (C) Conducting oil and gas operations so as to
111 prevent, to the extent possible using the best management
112 practices, additional contributions of suspended or dissolved
113 solids to streamflow or runoff outside the permit area, but in
114 no event shall the contributions be in excess of requirements
115 set by applicable state or federal law; and (D) Registering all
116 water supply wells drilled and operated by the operator with
117 the Office of Oil and Gas. All drinking water wells within
118 one thousand five hundred feet of a water supply well shall
119 be flow and quality tested by the operator upon request of the
120 drinking well owner prior to operating the water supply well.
121 The secretary shall propose legislative rules to identify
122 appropriate methods for testing water flow and quality.

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

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

134 secretary to determine if sufficient flow exists to protect
135 designated uses of the stream.

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

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

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

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

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

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

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

157 (I) The quantity of water transported;

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

160 (III) The name of the water hauling company.

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

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

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

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

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

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

7 impoundments or pits not associated with a well work permit.
8 This section does not apply to large pits or impoundments
9 authorized under a well work permit.

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

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

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

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

52 (f) Every application for a certificate of approval shall be
53 made in writing on a form prescribed by the secretary and
54 shall be signed and verified by the applicant. The application
55 shall include a monitoring and emergency action plan and a
56 maintenance plan, the required contents of which shall be
57 established by the secretary by legislative rule. The
58 application shall contain and provide information that may
59 reasonably be required by the secretary to administer the
60 provisions of this article.

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

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

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

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

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

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

96 (k) This section does not apply to:

97 (1) Farm ponds constructed by the operator with the
98 written consent of the surface owner, which will be used after
99 completion of the drilling activity primarily for agricultural
100 purposes, including without limitation livestock watering,
101 irrigation, retention of animal wastes and fish culture. Any

102 impoundment that is intended to be left permanent as a farm
103 pond under this subdivision shall meet the requirements set
104 forth by the United States Department of Agriculture's
105 Natural Resources Conservation Service "Conservation
106 Practice Standard - Ponds" (Code 378).

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

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

§22-6A-10. Notice to property owners.

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

16 (b) No later than the filing date of the application, the
17 applicant for a permit for any well work or for a certificate of
18 approval for the construction of an impoundment or pit as
19 required by this article shall deliver, by personal service or by

20 registered mail or by any method of delivery that requires a
21 receipt or signature confirmation, copies of the application,
22 the erosion and sediment control plan required by section
23 seven of this article, and the well plat to each of the following
24 persons:

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

27 (2) The owners of record of the surface tract or tracts
28 overlying the oil and gas leasehold being developed by the
29 proposed well work, if the surface tract is to be used for roads
30 or other land disturbance as described in the erosion and
31 sediment control plan submitted pursuant to subsection (c),
32 section seven of this article;

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

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

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

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

49 (c)(1) If more than three tenants in common or other co-
50 owners of interests described in subsection (b) of this section
51 hold interests in the lands, the applicant may serve the
52 documents required upon the person described in the records
53 of the sheriff required to be maintained pursuant to section
54 eight, article one, chapter eleven-a of this code.

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

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

65 (e) Prior to filing an application for a permit for a horizontal
66 well under this article, the applicant shall publish in the county
67 in which the well is located or is proposed to be located a Class
68 II legal advertisement as described in section two, article three,
69 chapter fifty-nine of this code, containing notice of the public
70 website required to be established and maintained pursuant to
71 section twenty-one of this article and language indicating the
72 ability of the public to submit written comments on the proposed
73 permit, with the first publication date being at least ten days prior
74 to the filing of the permit application. The secretary shall
75 consider, in the same manner required by subsection (f), section
76 eight of this article and subdivision one, subsection (c), section
77 eleven of this article, written comments submitted in response to
78 the legal advertisement received by the secretary within thirty
79 days following the last required publication date: *Provided*, That
80 such parties submitting written comments pursuant to this
81 subsection are not entitled to participate in the processes and

82 proceedings that exist under sections fifteen, seventeen or forty,
83 article six of this chapter, as applicable and incorporated into this
84 article by section five of this article.

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

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

100 (h) The surface owners described in subdivisions (1), (2)
101 and (4), subsection (b) of this section, and the coal owner,
102 operator or lessee described in subdivision (3) of that
103 subsection is also entitled to receive notice within seven days
104 but no less than two days before commencement that well
105 work or site preparation work that involves any disturbance
106 of land is expected to commence.

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

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

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

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

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

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

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

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

1 (a) All persons described in subsection (b), section ten of
2 this article may file written comments with the secretary as

3 to the location or construction of the applicant's proposed
4 well work within thirty days after the application is filed with
5 the secretary.

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

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

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

31 (3) The secretary shall retain all applications, plats and
32 other documents filed with the secretary, any proposed
33 revisions thereto, all notices given and proof of service
34 thereof and all orders issued and all permits issued. Subject
35 to the provisions of article one, chapter twenty-nine-b of this

36 code, the record prepared by the secretary is open to
37 inspection by the public.

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

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

29 (b) No well pad may be prepared or well drilled within
30 one hundred feet measured horizontally from any perennial

31 stream, natural or artificial lake, pond or reservoir, or a
32 wetland, or within three hundred feet of a naturally
33 reproducing trout stream. No wellpad may be located within
34 one thousand feet of a surface or ground water intake of a
35 public water supply. The distance from the public water
36 supply as identified by the department shall be measured as
37 follows:

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

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

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

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

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

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

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

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

§22-6A-14. Reclamation requirements.

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

5 (1) Except as provided elsewhere in this article, within
6 six months after a horizontal well is drilled and completed on
7 a well pad designed for a single horizontal well, the operator
8 shall fill all the pits and impoundments that are not required
9 or allowed by state or federal law or rule or agreement
10 between the operator and the surface owner that allows the

11 impoundment to remain open for the use and benefit of the
12 surface owner (i.e. a farm pond as described in section nine
13 of this article) and remove all concrete bases, drilling
14 supplies and drilling equipment: *Provided*, That
15 impoundments or pits for which certificates have been
16 approved pursuant to section nine of this article shall be
17 reclaimed at a time and in a manner as provided in the
18 applicable certificate and section nine. Within that six-month
19 period, the operator shall grade or terrace and plant, seed or
20 sod the area disturbed that is not required in production of the
21 horizontal well in accordance with the erosion and sediment
22 control plan. No pit may be used for the ultimate disposal of
23 salt water. Salt water and oil shall be periodically drained or
24 removed and properly disposed of from any pit that is
25 retained so the pit is kept reasonably free of salt water and
26 oil. Pits may not be left open permanently.

27 (2) For well pads designed to contain multiple horizontal
28 wells, partial reclamation shall begin upon completion of the
29 construction of the well pad. For purposes of this section, the
30 term partial reclamation means grading or terracing and
31 planting, or seeding the area disturbed that is not required in
32 drilling, completing or producing any of the horizontal wells
33 on the well pad in accordance with the erosion and sediment
34 control plan. This partial reclamation satisfies the reclamation
35 requirements of this section for a maximum of twenty-four
36 months between the drilling of horizontal wells on a well pad
37 designed to contain multiple horizontal wells: *Provided*,
38 That the maximum aggregate period in which partial
39 reclamation satisfies the reclamation requirements of this
40 section is five years from completion of the construction of
41 the well pad. Within six months after the completion of the
42 final horizontal well on the pad or the expiration of the five-
43 year maximum aggregate partial reclamation period,
44 whichever occurs first, the operator shall complete final
45 reclamation of the well pad as set forth in this subsection.

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

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

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

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

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

5 (b) A separate bond as described in subsection (d) of this
6 section may be furnished for each horizontal well drilled.
7 Each of these bonds shall be in the sum of \$50,000 payable
8 to the State of West Virginia, conditioned on full compliance
9 with all laws, rules relating to the drilling, redrilling,

10 deepening, casing and stimulating of horizontal wells and to
11 the plugging, abandonment and reclamation of horizontal
12 wells and for furnishing reports and information required by
13 the secretary.

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

20 (d) The form of the bond required by this article shall be
21 approved by the secretary and may include, at the option of
22 the operator, surety bonding, collateral bonding, including
23 cash and securities, letters of credit, establishment of an
24 escrow account, self-bonding or a combination of these
25 methods. If collateral bonding is used, the operator may elect
26 to deposit cash, or collateral securities or certificates as
27 follows: Bonds of the United States or its possessions, of the
28 federal land bank, or of the homeowners' loan corporation;
29 full faith and credit general obligation bonds of the State of
30 West Virginia or other states or of any county, district or
31 municipality of the State of West Virginia or other states; or
32 certificates of deposit in a bank in this state, which
33 certificates shall be in favor of the department. The cash
34 deposit or market value of the securities or certificates shall
35 be equal to or greater than the amount of the bond. The
36 secretary shall, upon receipt of any deposit of cash, securities
37 or certificates, promptly place the same with the Treasurer of
38 the State of West Virginia whose duty it is to receive and
39 hold them in the name of the state in trust for the purpose of
40 which the deposit is made when the permit is issued. The
41 operator is entitled to all interest and income earned on the
42 collateral securities filed by the operator. The operator
43 making the deposit is entitled from time to time to receive

44 from the State Treasurer, upon the written approval of the
45 secretary, the whole or any portion of any cash, securities or
46 certificates so deposited, upon depositing with the State
47 Treasurer in lieu thereof, cash or other securities or
48 certificates of the classes herein specified having value equal
49 to or greater than the amount of the bond.

50 (e) When an operator has furnished a separate bond from a
51 corporate bonding or surety company to drill, fracture or
52 stimulate a horizontal well and the well produces oil or gas or
53 both, its operator may deposit with the secretary cash from the
54 sale of the oil or gas or both until the total deposited is \$50,000.
55 When the sum of the cash deposited is \$50,000, the separate
56 bond for the well shall be released by the secretary. Upon receipt
57 of that cash, the secretary shall immediately deliver that amount
58 to the State Treasurer, who shall hold the cash in the name of the
59 state in trust for the purpose for which the bond was furnished
60 and the deposit was made. The operator is entitled to all interest
61 and income which may be earned on the cash deposited so long
62 as the operator is in full compliance with all laws and rules
63 relating to the drilling, redrilling, deepening, casing, plugging,
64 abandonment and reclamation of the well for which the cash was
65 deposited and so long as the operator has furnished all reports
66 and information required by the secretary. The secretary may
67 establish procedures under which an operator may substitute a
68 new bond for an existing bond or provide a new bond under
69 certain circumstances specified in a legislative rule promulgated
70 in accordance with chapter twenty-nine-a of this code.

71 (f) Any separate bond furnished for a particular well prior
72 to the effective date of this article continues to be valid for all
73 work on the well permitted prior to the effective date of this
74 article; but no permit may be issued on such a particular well
75 without a bond complying with the provisions of this section.
76 Any blanket bond furnished prior to the effective date of this
77 article shall be replaced with a new blanket bond conforming

78 to the requirements of this section, at which time the prior
79 bond is discharged by operation of law; and if the secretary
80 determines that any operator has not furnished a new blanket
81 bond, the secretary shall notify the operator by registered
82 mail or by any method of delivery that requires a receipt or
83 signature confirmation of the requirement for a new blanket
84 bond, and failure to submit a new blanket bond within sixty
85 days after receipt of the notice from the secretary works a
86 forfeiture under subsection (i) of this section of the blanket
87 bond furnished prior to the effective date of this article.

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

94 (h) (1) Whenever the right to operate a well is assigned
95 or otherwise transferred, the assignor or transferor shall
96 notify the department of the name and address of the assignee
97 or transferee by registered mail or by any method of delivery
98 that requires a receipt or signature confirmation not later than
99 thirty days after the date of the assignment or transfer. No
100 assignment or transfer by the owner relieves the assignor or
101 transferor of the obligations and liabilities unless and until
102 the assignee or transferee files with the department the well
103 name and the permit number of the subject well, the county
104 and district in which the subject well is located, the names
105 and addresses of the assignor or transferor, and assignee or
106 transferee, a copy of the instrument of assignment or transfer
107 accompanied by the applicable bond, cash, collateral security
108 or other forms of security described in this section, and the
109 name and address of the assignee's or transferee's designated
110 agent if the assignee or transferee would be required to
111 designate an agent under this article if the assignee or

112 transferee were an applicant for a permit under this article.
113 Every well operator required to designate an agent under this
114 section shall, within five days after the termination of the
115 designation, notify the department of the termination and
116 designate a new agent.

117 (2) Upon compliance with the requirements of this
118 section by the assignor or transferor and assignee or
119 transferee, the secretary shall release the assignor or
120 transferor from all duties and requirements of this article and
121 shall give written notice of release to the assignor or
122 transferor of any bond and return to the assignor or transferor
123 any cash or collateral securities deposited pursuant to this
124 section.

125 (i) If any of the requirements of this article or rules
126 promulgated pursuant thereto or the orders of the secretary
127 has not been complied with within the time limit set by any
128 notice of violation issued pursuant to this article, the
129 performance bond shall then be forfeited.

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

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

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

1 (a) The provisions of article seven of this chapter do not
2 apply to horizontal wells governed by this article. In lieu
3 thereof, the provisions of article six-b of this chapter shall

4 provide for the compensation of surface owners for damage
5 caused by drilling horizontal wells.

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

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

25 (1) A copy of this code section;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

36 (e) Any operator shall replace the water supply of an
37 owner of interest in real property who obtains all or part of
38 that owner's supply of water for domestic, agricultural,
39 industrial or other legitimate use from an underground or
40 surface source with a comparable water supply where the
41 secretary determines that the water supply has been affected

42 by contamination, diminution or interruption proximately
43 caused by the oil or gas operation, unless waived in writing
44 by that owner.

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

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

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

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

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

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

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

68 (i) Notwithstanding the denial of the operator of
69 responsibility for the damage to the real property owner's water

70 supply or the status of any appeal on determination of liability
71 for the damage to the real property owner's water supply, the
72 operator may not discontinue providing the required water
73 service until authorized to do so by the secretary or a court of
74 competent jurisdiction.

§22-6A-19. Offenses; civil and criminal penalties.

1 (a) Any person or persons, firm, partnership, partnership
2 association or corporation who willfully violates any
3 provision of this article or any rule or order promulgated
4 under this article or any permit issued pursuant to this article
5 is subject to a civil penalty not exceeding \$5,000. Each day
6 a violation continues after notice by the department
7 constitutes a separate offense. The penalty shall be recovered
8 by a civil action brought by the department, in the name of
9 the state, before the circuit court of the county in which the
10 subject well or facility is located. All the civil penalties
11 collected shall be credited to the General Fund of the state.

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

27 (c) Notwithstanding the provisions of subsections (a) and
28 (b) of this section, any person or persons, firm, partnership,
29 partnership association or corporation willfully violating any
30 of the provisions of this article which prescribe the manner of
31 drilling and casing or plugging and filling any well or which
32 prescribe the methods of conserving gas from waste, shall be
33 guilty of a misdemeanor, and, upon conviction thereof shall
34 be punished by a fine not exceeding five thousand dollars, or
35 imprisonment in jail not exceeding twelve months, or both,
36 in the discretion of the court, and prosecution under this
37 section may be brought in the name of the State of West
38 Virginia in the court exercising criminal jurisdiction in the
39 county in which the violation of such provisions of the article
40 or terms of such order was committed, and at the instance and
41 upon the relation of any citizens of this state.

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

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

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

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

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

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

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

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

10 secretary shall promulgate legislative rules establishing these
11 new requirements.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

36 (B) The diameter of the borehole;

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

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

42 (E) The estimated location of centralizers;

43 (F) The proposed borehole conditioning procedures; and

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

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

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

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

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

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

69 (3) Installation of intermediate production casing;

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

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

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

79 (f) *Minimum casing standards.*

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

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

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

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

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

96 (g) *Minimum cement standards.*

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

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

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

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

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

**ARTICLE 6B. OIL AND GAS HORIZONTAL WELL
P R O D U C T I O N D A M A G E
C O M P E N S A T I O N .**

§22-6B-1. Legislative findings and purpose; applicability.

1 (a) The Legislature finds the following:

2 (1) Exploration for and development of oil and gas
3 reserves in this state must coexist with the use, agricultural or
4 otherwise, of the surface of certain land and that each
5 constitutes a right equal to the other.

6 (2) The surface owner of lands on which horizontal wells
7 are drilled shall be compensated for damages to the surface
8 of the land pursuant to the provisions of this article.

9 (b) The Legislature declares that the public policy of this
10 state shall be that the compensation and damages provided in
11 this article for surface owners may not be diminished by any
12 provision in a deed, lease or other contract of conveyance
13 entered into after December 31, 2011.

14 (c) It is the purpose of this article to provide
15 Constitutionally permissible protection and compensation to
16 surface owners of lands on which horizontal wells are drilled
17 from the burden resulting from drilling operations
18 commenced after January 1, 2012. This article is to be
19 interpreted in the light of the legislative intent expressed
20 herein. This article shall be interpreted to benefit surface
21 owners, regardless of whether the oil and gas mineral estate
22 was separated from the surface estate and regardless of who
23 executed the document which gave the oil and gas developer
24 the right to conduct drilling operations on the land. Section
25 four of this article shall be interpreted to benefit all persons.

26 (d) The provisions of this article apply to any natural gas
27 well, other than a coalbed methane well, drilled using a
28 horizontal drilling method, and which disturbs three acres or
29 more of surface, excluding pipelines, gathering lines and
30 roads or uses more than two hundred ten thousand gallons of
31 water in any thirty-day period. Article seven of this chapter
32 does not apply to any damages associated with the drilling of
33 a horizontal well.

§22-6B-2. Definitions.

1 In this article:

2 (1) "Drilling operations" means the actual drilling or
3 redrilling of a horizontal well commenced subsequent to the
4 effective date of this article, and the related preparation of the
5 drilling site and access road, which requires entry, upon the
6 surface estate;

7 (2) "Horizontal drilling" means a method of drilling a
8 well for the production of natural gas that is intended to
9 maximize the length of wellbore that is exposed to the
10 formation and in which the wellbore is initially vertical but
11 is eventually curved to become horizontal, or nearly
12 horizontal, to parallel a particular geologic formation;

13 (3) "Horizontal well" means any well site, other than a
14 coalbed methane well, drilled using a horizontal drilling
15 method, and which disturbs three acres or more of surface,
16 excluding pipelines, gathering lines and roads, or uses more
17 than two hundred ten thousand gallons of water in any thirty-
18 day period;

19 (4) "Oil and gas developer" means the person who
20 secures the drilling permit required by article six-a of this
21 chapter;

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

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

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

§22-6B-3. Compensation of surface owners for drilling operations.

1 (a) The oil and gas developer is 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
5 operation, or to which access is prevented by the drilling
6 operation, to the uses to which it was dedicated prior to
7 commencement of the activity for which a permit was
8 obtained, measured from the date the operator enters upon the
9 land and commences drilling operations until the date
10 reclamation is completed;

11 (2) The market value of crops, including timber,
12 destroyed, damaged or prevented from reaching market;

13 (3) Any damage to a water supply in use prior to the
14 commencement of the permitted activity;

15 (4) The cost of repair of personal property up to the value
16 of replacement by personal property of like age, wear and
17 quality; and

18 (5) The diminution in value, if any, of the surface lands
19 and other property after completion of the surface disturbance
20 done pursuant to the activity for which the permit was issued
21 determined according to the market value of the actual use
22 made thereof by the surface owner immediately prior to the
23 commencement of the permitted activity.

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

27 (b) Any reservation or assignment of the compensation
28 provided in this section apart from the surface estate except
29 to a tenant of the surface estate is prohibited.

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

§22-6B-4. Common law right of action preserved; offsets.

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

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

14 (c) An oil and gas developer is entitled to offset damages
15 agreed to be paid or awarded to a surface owner through the
16 assertion of common-law remedies against compensation

17 sought by or awarded to the surface owner under section
18 three of this article respecting the surface land actually
19 occupied by the same drilling operation.

§22-6B-5. Notification of claim.

1 Any surface owner, to receive compensation under
2 section three of this article, shall notify the oil and gas
3 developer of the damages sustained by the person within two
4 years after the date that the oil and gas developer files notice
5 that final reclamation is commencing under section fourteen,
6 article six-a of this chapter. The notice of reclamation shall
7 be given to surface owners by registered or certified mail,
8 return receipt requested, and is complete upon mailing. If
9 more than three tenants in common or other co-owners hold
10 interests in the lands, the oil and gas developer may give the
11 notice to the person described in the records of the sheriff
12 required to be maintained pursuant to section eight, article
13 one, chapter eleven-a of this code or publish in the county in
14 which the well is located or to be located a Class II legal
15 advertisement as described in section two, article three,
16 chapter fifty-nine of this code, containing the notice and
17 information the secretary prescribes by rule.

§22-6B-6. Agreement; offer of settlement.

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

§22-6B-7. Rejection; legal action; arbitration; fees and costs.

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

15 (2) Settlement negotiations, offers and counter-offers
16 between the surface owner and the oil and gas developer are
17 not admissible as evidence in any arbitration or judicial
18 proceeding authorized under this article, or in any proceeding
19 resulting from the assertion of common law remedies.

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

33 chosen by the judge of the circuit court of the county in
34 which the surface estate lies.

35 (c) The following persons are considered interested and
36 may not be appointed as arbitrators: Any person who is
37 personally interested in the land on which horizontal drilling
38 is being performed or has been performed, or in any interest
39 or right therein, or in the compensation and any damages to
40 be awarded therefor, or who is related by blood or marriage
41 to any person having such personal interest, or who stands in
42 the relation of guardian and ward, master and servant,
43 principal and agent, or partner, real estate broker, or surety to
44 any person having such personal interest, or who has enmity
45 against or bias in favor of any person who has such personal
46 interest or who is the owner of, or interested in, the land or
47 the oil and gas development of the land. A person is not
48 considered interested or incompetent to act as arbitrator by
49 reason of being an inhabitant of the county, district or
50 municipal corporation in which the land is located, or holding
51 an interest in any other land therein.

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

59 (e) Each party shall pay the compensation of the party's
60 arbitrator and one half of the compensation of the third
61 arbitrator for each party's own court costs as the case may be.

§B-8. A: Section of article.

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

**CHAPTER 22C. ENVIRONMENTAL RESOURCES;
BOARDS, AUTHORITIES, COMMISSIONS AND
COMPACTS.**

ARTICLE 8. SHALLOW GAS WELL REVIEW BOARD.

§22C-8-2. Definitions.

1 As used in this article:

2 (1) "Board" means the Shallow Gas Well Review Board
3 provided for in section four of this article;

4 (2) "Chair" means the chair of the Shallow Gas Well
5 Review Board provided for in section four of this article;

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

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

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

17 (6) "Commissioner" means the Oil and Gas Conservation
18 Commissioner provided for in section four, article nine of this
19 chapter;

20 (7) "Correlative rights" means the reasonable opportunity
21 of each person entitled thereto to recover and receive without

22 waste the gas in and under a tract or tracts, or the equivalent
23 thereof;

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

27 (9) "Division" means the state Department of
28 Environmental Protection provided for in chapter twenty-two
29 of this code;

30 (10) "Director" means the Secretary of the Department of
31 Environmental Protection as established in article one,
32 chapter twenty-two of this code or other person to whom the
33 secretary delegates authority or duties pursuant to sections six
34 or eight, article one, chapter twenty-two of this code;

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

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

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

51 (14) “Just and equitable share of production” means, as
52 to each person, an amount of gas in the same proportion to
53 the total gas production from a well as that person’s acreage
54 bears to the total acreage in the drilling unit;

55 (15) “Oil” means natural crude oil or petroleum and other
56 hydrocarbons, regardless of gravity, which are produced at
57 the well in liquid form by ordinary production methods and
58 which are not the result of condensation of gas after it leaves
59 the underground reservoir;

60 (16) “Owner” when used with reference to any coal seam,
61 includes any person or persons who own, lease or operate the
62 coal seam;

63 (17) “Person” means any natural person, corporation,
64 firm, partnership, partnership association, venture, receiver,
65 trustee, executor, administrator, guardian, fiduciary or other
66 representative of any kind, and includes any government or
67 any political subdivision or any agency thereof;

68 (18) “Plat” means a map, drawing or print showing the
69 location of one or more wells or a drilling unit;

70 (19) “Pool” means an underground accumulation of gas
71 in a single and separate natural reservoir (ordinarily a porous
72 sandstone or limestone). It is characterized by a single
73 natural-pressure system so that production of gas from one
74 part of the pool tends to or does affect the reservoir pressure
75 throughout its extent. A pool is bounded by geologic barriers
76 in all directions, such as geologic structural conditions,
77 impermeable strata, and water in the formation, so that it is
78 effectively separated from any other pools which may be
79 present in the same district or in the same geologic structure;

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

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

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

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

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

ARTICLE 9. OIL AND GAS CONSERVATION.

§ 9-2. Definitions.

(a) *As used in this article:*

(1) "Commission" means the Oil and Gas Conservation
 Commission and "commissioner" means the Oil and Gas
 Conservation Commissioner as provided for in section four
 of this article.

6 (2) "Director" means the Secretary of the Department of
7 Environmental Protection and "chief" means the Chief of the
8 Office of Oil and Gas;

9 (3) "Person" means any natural person, corporation,
10 partnership, receiver, trustee, executor, administrator,
11 guardian, fiduciary or other representative of any kind, and
12 includes any government or any political subdivision or any
13 agency thereof;

14 (4) "Operator" means any owner of the right to develop,
15 operate and produce oil and gas from a pool and to appropriate
16 the oil and gas produced therefrom, either for that person or for
17 that person and others; in the event that there is no oil and gas
18 lease in existence with respect to the tract in question, the owner
19 of the oil and gas rights therein is the "operator" to the extent of
20 seven-eighths of the oil and gas in that portion of the pool
21 underlying the tract owned by such owner, and as "royalty
22 owner" as to one-eighth interest in such oil and gas; and in the
23 event the oil is owned separately from the gas, the owner of the
24 substance being produced or sought to be produced from the
25 pool is the "operator" as to that pool;

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

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

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

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

41 (9) "Pool" means an underground accumulation of
42 petroleum or gas in a single and separate reservoir (ordinarily
43 a porous sandstone or limestone). It is characterized by a
44 single natural-pressure system so that production of
45 petroleum or gas from one part of the pool affects the
46 reservoir pressure throughout its extent. A pool is bounded
47 by geologic barriers in all directions, such as geologic
48 structural conditions, impermeable strata, and water in the
49 formations, so that it is effectively separated from any other
50 pools that may be present in the same district or on the same
51 geologic structure;

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

55 (11) "Shallow well" means any well other than a coalbed
56 methane well, drilled no deeper than one hundred feet below
57 the top of the "Onondaga Group": *Provided*, That in no
58 event may the "Onondaga Group" formation or any
59 formation below the "Onondaga Group" be produced,
60 perforated or stimulated in any manner;

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

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

66 (14) "Waste" means and includes:

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

69 (B) The locating, drilling, equipping, operating or
70 producing of any oil or gas well in a manner that causes, or
71 tends to cause, a reduction in the quantity of oil or gas
72 ultimately recoverable from a pool under prudent and proper
73 operations, or that causes or tends to cause unnecessary or
74 excessive surface loss of oil or gas; or

75 (C) The drilling of more deep wells than are reasonably
76 required to recover efficiently and economically the
77 maximum amount of oil and gas from a pool. Waste does not
78 include gas vented or released from any mine areas as
79 defined in section two, article one, chapter twenty-two-a of
80 this code or from adjacent coal seams which are the subject
81 of a current permit issued under article two of chapter
82 twenty-two-a of this code: *Provided*, That this exclusion
83 does not address ownership of the gas;

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

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

92 (b) Unless the context clearly indicates otherwise, the use
93 of the word "and" and the word "or" are interchangeable, as,
94 for example, "oil and gas" means oil or gas or both."

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



Chairman, House Committee

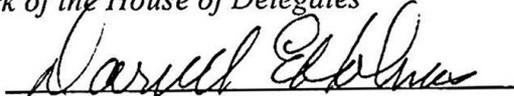


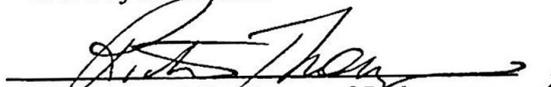
Chairman, Senate Committee

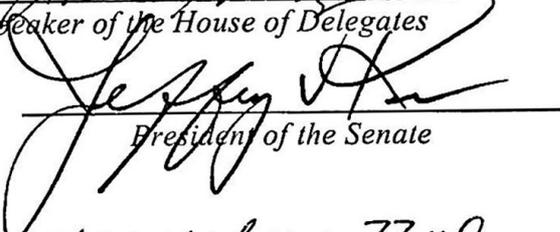
Originating in the House.

To take effect from passage.


Clerk of the House of Delegates


Clerk of the Senate


Speaker of the House of Delegates


President of the Senate

The within is approved this the 22nd
day of December, 2011.


Governor

PRESENTED TO THE GOVERNOR

DEC 2 2 2011

Time 8:50 am