

1 Bill No.

2
3 (By _____,

4 By Request of the Executive)

5 _____
6 [Introduced _____; referred to the Committee on

7 _____.]

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

1 relating generally to oil and gas wells; requiring West
2 Virginia Workforce Investment Council to complete certain
3 reviews and provide report to legislature; expanding powers of
4 secretary of the department of environmental protection;
5 authorizing secretary to determine number of oil and gas
6 inspectors and supervisors and to make investigations or
7 inspections to ensure compliance with applicable law;
8 providing for inspector qualifications, duties and minimum
9 salaries; creating Natural Gas Horizontal Well Control Act;
10 providing short title; making legislative findings and
11 declarations of public policy; providing for applicability of
12 act and exceptions; providing special considerations and rule
13 making for karst formations; defining terms; making horizontal
14 wells subject to certain provisions in article six, chapter
15 twenty-two of the Code of West Virginia; specifying powers and
16 duties of secretary, including certain rule making power and
17 reporting duties; requiring permit for horizontal wells;
18 establishing permit application requirements and contents;
19 requiring bond and permit fees; providing for issuance of
20 emergency permits; providing for denial, suspension and
21 reinstatement of permits in certain circumstances; providing
22 for application review, requirements for issuance of permit
23 and permit requirements; establishing performance standards;
24 providing for copies of permits to be furnished to county

1 assessors; requiring certificate of approval for large pits or
2 impoundment construction; requiring application for
3 certificate; establishing application requirements and payment
4 of fees; providing for modification, revocation or suspension
5 of certificate and hearing procedure, including an
6 administrative appeals process; providing exceptions for
7 certain farm ponds; authorizing secretary to propose
8 legislative rules governing large pits and impoundment;
9 providing notice to certain property owners of certain
10 applications, intent to enter property or conduct seismic
11 activity; establishing procedure for filing written comments;
12 establishing well location restrictions; requiring
13 promulgation of legislative rules for plugging and abandonment
14 of horizontal wells; establishing reclamation requirements;
15 requiring performance bonds or other security; providing
16 notice of planned operation and contents of notice to certain
17 surface owners; providing notice to certain surface owner and
18 offer for compensation for certain damages to certain surface
19 owner; providing for reimbursement of property taxes to
20 surface owner; providing for civil action, rebuttable
21 presumption and relief for water contamination or deprivation;
22 establishing water rights and replacement procedure;
23 establishing civil penalties and offenses; requiring gas
24 operations to submit certification from Division of Highways

1 that operator has entered into road maintenance agreement
2 pursuant to Division of Highways Oil and Gas Road Policy;
3 creating public website and electronic notification registry
4 of horizontal well permit applications and public notice of
5 website; providing for air quality study, report to
6 Legislature and rule making; requiring secretary to report to
7 Legislature regarding safety of pits and impoundments;
8 providing casing and cement standards; authorizing secretary
9 to promulgate legislative and emergency rules relating to
10 casing and cement standards; authorizing secretary to
11 promulgate legislative rules governing pits and impoundments;
12 providing secretary authority to establish, revise and grant
13 waivers regarding casing and cement standards and programs;
14 creating the oil and gas horizontal well production damage
15 compensation act; providing legislative findings and purpose;
16 defining terms; providing conditions and parameters for
17 compensation of surface owners for drilling operations;
18 preserving common law right of action and providing offset for
19 compensation or damages paid; requiring notice of claims by
20 surface owners; providing manner in which oil and gas operator
21 must provide notice of reclamation; providing for offers of
22 settlement; providing procedures for civil actions,
23 arbitration and fees; preserving alternate remedies; and
24 modifying definitions of shallow wells and deep wells.

1 *Be it enacted by the Legislature of West Virginia:*

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

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

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

19 **§5B-2B-4a. Report to legislature.**

20 (a) The Legislature finds that:

21 (1) The advent and advancement of new technologies in
22 horizontal drilling and the production of horizontal wells defined
23 in article six-a, chapter twenty-two of this code has created
24 thousands and has the potential to create thousands of additional

1 drilling, production, construction, manufacturing, and related jobs
2 in West Virginia and in the Appalachian Basin;

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

5 (3) The state needs to take all necessary steps to retain,
6 educate and train West Virginians to have the skills necessary to
7 compete for job opportunities resulting from horizontal drilling.

8 (b) To assist in maximizing the economic opportunities
9 available with horizontal drilling, the council shall make a report
10 to the Joint Committee on Government and Finance and the
11 Legislative Oversight Commission on Education Accountability on or
12 before the first day of November of each year through 2016,
13 detailing a comprehensive review of the direct and indirect
14 economic impact of employers engaged in the production of
15 horizontal wells in the State of West Virginia, as more
16 specifically defined in article six-a chapter twenty two of this
17 code, which shall include:

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

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

20 (3) The average salary per job type;

21 (4) A review of the number of employees domiciled in the State
22 of West Virginia;

23 (5) A review of total economic impact; and

24 (6) The council's recommendations for the establishment of an

1 overall workforce investment public education agenda with goals and
2 benchmarks toward maximizing job creation opportunities in the
3 State of West Virginia.

4 (c) To the extent permitted by federal law, and to the extent
5 necessary for the council to comply with this section, the Council,
6 Workforce West Virginia, the Division of Labor, and the Office of
7 the Insurance Commissioner may enter into agreements providing for
8 the sharing of job data and related information.

9 **CHAPTER 22. ENVIRONMENTAL RESOURCES.**

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

11 **§22-6-1. Definitions.**

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

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

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

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

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

23 (e) "Coal seam" and "workable coal bed" are interchangeable
24 terms and mean any seam of coal twenty inches or more in thickness,

1 unless a seam of less thickness is being commercially worked, or
2 can in the judgment of the department foreseeably be commercially
3 worked and will require protection if wells are drilled through it;

4 ~~(f) "Director" means the director of the division of
5 environmental protection as established in article one of this
6 chapter or such other person to whom the director has delegated
7 authority or duties pursuant to sections six or eight, article one
8 of this chapter.~~

9 (g) "Deep well" means any well other than a shallow well or
10 coalbed methane well, drilled ~~and completed in to~~ a formation ~~at or~~
11 below the top of the uppermost member of the "Onondaga Group";

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

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

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

22 (k) "Oil" means natural crude oil or petroleum and other
23 hydrocarbons, regardless of gravity, which are produced at the well
24 in liquid form by ordinary production methods and which are not the

1 result of condensation of gas after it leaves the underground
2 reservoirs;

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

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

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

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

18 (p) "Pollutant" shall have the same meaning as provided in
19 subsection (16), section three, article eleven of this chapter;

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

23 ~~(q)~~(r) "Safe mining through of a well" means the mining of
24 coal in a workable coal bed up to a well which penetrates such

1 workable coal bed and through such well so that the casing or plug
2 in the well bore where the well penetrates the workable coal bed is
3 severed;

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

9 ~~(r)~~(s) "Shallow well" means any gas well, other than a coalbed
10 methane well, drilled no deeper than one hundred feet below the top
11 of the "Onondaga Group" and completed in a formation above the top
12 of the uppermost member of the "Onondaga Group": Provided, That in
13 drilling a shallow well the operator may penetrate into the
14 "Onondaga Group" to a reasonable depth, not in excess of twenty
15 feet, in order to allow for logging and completion operations, but
16 in no event may the "Onondaga Group" formation or any formation
17 below the "Onondaga Group" be otherwise produced, perforated or
18 stimulated in any manner;

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

23 ~~(t)~~(u) "Waste" means (i) physical waste, as the term is
24 generally understood in the oil and gas industry; (ii) the

1 locating, drilling, equipping, operating or producing of any oil or
2 gas well in a manner that causes, or tends to cause a substantial
3 reduction in the quantity of oil or gas ultimately recoverable from
4 a pool under prudent and proper operations, or that causes or tends
5 to cause a substantial or unnecessary or excessive surface loss of
6 oil or gas; or (iii) the drilling of more deep wells than are
7 reasonably required to recover efficiently and economically the
8 maximum amount of oil and gas from a pool; (iv) substantially
9 inefficient, excessive or improper use, or the substantially
10 unnecessary dissipation of, reservoir energy, it being understood
11 that nothing in this chapter shall be construed to authorize any
12 agency of the state to impose mandatory spacing of shallow wells
13 except for the provisions of section eight, article nine, chapter
14 twenty-two-c of this code and the provisions of article eight,
15 chapter twenty-two-c of this code; (v) inefficient storing of oil
16 or gas: *Provided*, That storage in accordance with a certificate of
17 public convenience issued by the federal energy regulatory
18 commission shall be conclusively presumed to be efficient; and (vi)
19 other underground or surface waste in the production or storage of
20 oil, gas or condensate, however caused. Waste does not include gas
21 vented or released from any mine areas as defined in section two,
22 article one, chapter twenty-two-a of this code, or from adjacent
23 coal seams which are the subject of a current permit issued under
24 article two of chapter twenty-two-a of this code: *Provided*,

1 however, That nothing in this exclusion is intended to address
2 ownership of the gas;

3 (v) "Waters of this state" shall have the same meaning as the
4 term "waters" as provided in subsection (23), section three,
5 article eleven of this chapter;

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

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

20 ~~(w)~~(y) "Well operator" or "operator" means any person or
21 persons, firm, partnership, partnership association or corporation
22 that proposes to or does locate, drill, operate or abandon any well
23 as herein defined; .

24 ~~(x) "Pollutant" shall have the same meaning as provided in~~

1 ~~subsection (17), section three, article eleven, chapter twenty-two~~
2 ~~of this code; and~~

3 ~~(y) "Waters of this state" shall have the same meaning as the~~
4 ~~term "waters" as provided in subsection (23), section three,~~
5 ~~article eleven, chapter twenty-two of this code.~~

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

8 (a) The Secretary shall have as his or her duty the
9 supervision of the execution and enforcement of matters related to
10 oil and gas set out in this article and in articles six-a, eight,
11 and nine, ten and twenty-one of this chapter.

12 (b) The Secretary is authorized to propose rules for
13 legislative approval in accordance with the provisions of article
14 three, chapter twenty-nine-a of this code necessary to effectuate
15 the above stated purposes.

16 (c) The Secretary shall have full charge of the oil and gas
17 matters set out in this article and in articles six-a, eight, and
18 nine, ten and twenty-one of this chapter. In addition to all other
19 powers and duties conferred upon him or her, the Secretary shall
20 have the power and duty to:

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

24 (2) ~~Employ a supervising oil and gas inspector and oil and gas~~

1 ~~inspectors~~ Determine the number of supervising oil and gas
2 inspectors and oil and gas inspectors needed to carry out the
3 purposes of this article and articles six-a, eight, nine, ten, and
4 twenty-one of this chapter and appoint them as such. All
5 appointees shall be qualified civil service employees, but no
6 person is eligible for appointment until he or she has served in a
7 probationary status for a period of six months to the satisfaction
8 of the Secretary;

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

11 (4) ~~Suspend for good cause any oil and gas inspector or~~
12 ~~supervising inspector without compensation for a period not~~
13 ~~exceeding thirty days in any calendar year~~ Make investigations or
14 inspections necessary to ensure compliance with and to enforce the
15 provisions of this article and articles six-a, eight, nine, ten,
16 and twenty-one of this chapter;

17 (5) Prepare report forms to be used by oil and gas inspectors
18 or the supervising inspector in making their findings, orders and
19 notices, upon inspections made in accordance with this article and
20 articles ~~seven,~~ six-a, eight, nine, ~~and ten,~~ and twenty-one of this
21 chapter;

22 (6) Employ a hearing officer and such clerks, stenographers
23 and other employees, as may be necessary to carry out his or her
24 duties and the purposes of the office of oil and gas and fix their

1 compensation;

2 (7) Hear and determine applications made by owners, well
3 operators and coal operators for the annulment or revision of
4 orders made by oil and gas inspectors or the supervising inspector,
5 and to make inspections, in accordance with the provisions of this
6 article and articles eight and nine of this chapter;

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

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

17 (10) Collect a permit fee of \$400 for each permit application
18 filed other than an application for a deep well, horizontal wells
19 regulated pursuant to article six-a of this chapter, or a coalbed
20 methane well; and collect a permit fee of \$650 for each permit
21 application filed for a deep well: *Provided*, That no permit
22 application fee shall be required when an application is submitted
23 solely for the plugging or replugging of a well, or to modify an
24 existing application for which the operator previously has

1 submitted a permit fee under this section. All application fees
2 required hereunder shall be in lieu of and not in addition to any
3 fees imposed under article eleven of this chapter relating to
4 discharges of stormwater but shall be in addition to any other fees
5 required by the provisions of this article: *Provided, however,*
6 That upon a final determination by the United States Environmental
7 Protection Agency regarding the scope of the exemption under
8 section 402(1)(2) of the federal Clean Water Act (33 U.S.C.
9 1342(1)(2)), which determination requires a "national pollutant
10 discharge elimination system" permit for stormwater discharges from
11 the oil and gas operations described therein, any permit fees for
12 stormwater permits required under article eleven of this chapter
13 for such operations shall not exceed \$100.

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

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

20 (13) Adopt rules with respect to the issuance, denial,
21 retention, suspension or revocation of permits, authorizations and
22 requirements of this chapter, which rules shall assure that the
23 rules, permits and authorizations issued by the Secretary are
24 adequate to satisfy the purposes of this article and articles six-

1 a, seven, eight, nine, ~~and ten~~ and twenty-one of this chapter
2 particularly with respect to the consolidation of the various state
3 and federal programs which place permitting requirements on the
4 exploration, development, production, storage and recovery of this
5 state's oil and gas: ~~Provided, That notwithstanding any provisions~~
6 ~~of this article and articles seven, eight, nine and ten of this~~
7 ~~chapter to the contrary, the environmental quality board shall have~~
8 ~~the sole authority pursuant to section three, article three,~~
9 ~~chapter twenty-two b to promulgate rules setting standards of water~~
10 ~~quality applicable to waters of the state; and~~

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

16 (d) The Secretary shall have authority to visit and inspect
17 any well or well site and any other oil or gas facility in this
18 state and may call for the assistance of any oil and gas inspector
19 or inspectors or supervising inspector whenever such assistance is
20 necessary in the inspection of any such well or well site or any
21 other oil or gas facility. Similarly, all oil and gas inspectors
22 and the supervising inspector(s) shall have authority to visit and
23 inspect any well or well site and any other oil or gas facility in
24 this state. Such inspectors shall make all necessary inspections of

1 oil and gas operations required by this article and articles six-a,
2 eight, nine, ten and twenty-one of this chapter; administer and
3 enforce all oil and gas laws and rules; and perform other duties
4 and services as may be prescribed by the secretary. The inspectors
5 shall note and describe all violations of this article and articles
6 six-a, eight, nine, ten or twenty-one of this chapter and promptly
7 report those violations to the secretary in writing, furnishing at
8 the same time a copy of the report to the operator concerned. Any
9 well operator, coal operator operating coal seams beneath the tract
10 of land, or the coal seam owner or lessee, if any, if said owner or
11 lessee is not yet operating said coal seams beneath said tract of
12 land may request the Secretary to have an immediate inspection
13 made. The operator or owner of every well or well site or any
14 other oil or gas facility shall cooperate with the Secretary, all
15 oil and gas inspectors and the supervising inspector in making
16 inspections or obtaining information.

17 ~~(e) Oil and gas inspectors shall devote their full time and~~
18 ~~undivided attention to the performance of their duties, and they~~
19 ~~shall be responsible for the inspection of all wells or well sites~~
20 ~~or other oil or gas facilities in their respective districts as~~
21 ~~often as may be required in the performance of their duties.~~

22 ~~(f)~~ (e) Subject to the provisions of article one, chapter
23 twenty-nine-b of this code, all records of the office shall be open
24 to the public.

1 **§22-6-2a. Oil and gas inspectors qualifications and salary.**

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

18 (b) In order to qualify for appointment as an oil and gas
19 inspector or supervising inspector by the secretary, an eligible
20 applicant shall submit to a written and oral examination by the
21 Division of Personnel within the Department of Administration and
22 shall furnish any evidence of good health, character and other facts
23 establishing eligibility required by the Division of Personnel. The
24 Office of Oil and Gas shall determine the substance of the

1 examinations administered to candidates for the positions of oil and
2 gas inspector and supervising oil and gas inspector by the Division
3 of Personnel. If the Division of Personnel finds after
4 investigation and examination that an applicant: (1) Is eligible
5 for appointment; and (2) has passed all written and oral
6 examinations, the division shall add the applicant's name and grade
7 to the register of qualified eligible candidates and certify its
8 action to the secretary. No candidate's name may remain on the
9 register for more than three years without re-qualifying.

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

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

14 **§22-6A-1. Short title.**

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

17 **§22-6A-2. Legislative findings; declaration of public policy.**

18 (a) The Legislature finds that:

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

23 (2) These practices have resulted in a new type and scale of
24 natural gas development that utilize horizontal drilling techniques,

1 allow the development of multiple wells from a single surface
2 location, and may involve fracturing processes that use and produce
3 large amounts of water;

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

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

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

16 (6) Concomitant with the broad powers to condition the issuance
17 of well work permits, the secretary should also have broad authority
18 to waive certain minimum requirements of this article when, in his
19 or her discretion, such waiver is appropriate;

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

23 (8) Allowing the responsible development of our state's natural
24 gas resources will enhance the economy of our state and the quality

1 of life for our citizens while assuring the long term protection of
2 the environment.

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

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

14 **§22-6A-3. Applicability; exceptions.**

15 Notwithstanding any other provision of this code to the
16 contrary, the provisions of this article shall apply to any natural
17 gas well, other than a coalbed methane well, drilled using a
18 horizontal drilling method, and which disturbs three acres or more
19 of surface, excluding pipelines, gathering lines and roads, or
20 utilizes more than two hundred ten thousand gallons of water in any
21 thirty day period: *Provided*, That this article shall not apply to
22 or affect any well work permitted for a horizontal well or orders
23 issued regarding horizontal wells prior to the effective date of
24 this article.

1 **§22-6A-3a. Karst terrain; rulemaking.**

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

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

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

24 (2) Provide any other requirements deemed necessary by the

1 secretary to protect the unique characteristics of naturally
2 occurring karst geology, which requirements may include baseline
3 water testing within an established distance from a drilling site.

4 (c) Nothing in this section shall be construed to allow the
5 department to prevent drilling in naturally occurring karst geology.

6 **22-6A-4. Definitions.**

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

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

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

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

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

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

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

10 (6) "Horizontal well" means any well site, other than a coalbed
11 methane well, drilled using a horizontal drilling method, and which
12 disturbs three acres or more of surface, excluding pipelines,
13 gathering lines and roads, or utilizes more than two hundred ten
14 thousand gallons of water in any thirty day period;

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

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

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

1 streambed due to the ground-water elevation adjacent to the stream
2 being higher than the elevation of the streambed;

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

8 (11) "Secretary" means the Cabinet Secretary of the Department
9 of Environmental Protection as established in article one of this
10 chapter or such other person to whom the secretary has delegated
11 authority or duties pursuant to sections six or eight, article one
12 of this chapter; and

13 (12) "Water purveyor" means any person engaged in the business
14 of selling water to another and who is regulated by the Bureau for
15 Public Health pursuant to title sixty-four, series three of the W.
16 Va. Code of State Rules.

17 **§22-6A-5. Application of article six of this chapter to horizontal**
18 **wells subject to this article.**

19 To the extent that horizontal wells governed by this article
20 are similar to conventional oil and gas wells regulated under
21 article six of this chapter, the following sections of article six
22 of this chapter are hereby incorporated by reference in this
23 article:

24 (a) The provisions of section three, article six of this

1 chapter relating to the findings and orders of inspectors concerning
2 violations, the determination of reasonable time for abatement,
3 extensions of time for abatement, special inspections and notice of
4 findings and orders.

5 (b) The provisions of section four, article six of this chapter
6 providing for the review of findings and orders by the secretary,
7 special inspections and applications for annulment or revision of
8 orders by the secretary.

9 (c) The provisions of section five, article six of this chapter
10 relating to the requirements for findings, orders and notices,
11 notice to the operator of findings and orders and judicial review
12 of final orders of the secretary.

13 (d) The provisions of section seven, article six of this
14 chapter relating to the issuance of water pollution control permits,
15 the powers and duties of the secretary related thereto and penalties
16 for violations of the same.

17 (e) The provisions of section eight, article six of this
18 chapter relating to the prohibition of permits for wells on flat
19 well royalty leases and requirements for permits.

20 (f) The provisions of section twelve, article six of this
21 chapter pertaining to plats prerequisite to drilling or fracturing
22 wells, the preparation and contents thereof, notice furnished to
23 coal operators, owners or lessees, the issuance of permits and
24 required performance bonds, with the following exceptions:

1 (1) Under subsection (a), section twelve, article six of this
2 chapter, the plat also shall identify all surface tract boundaries
3 within the scope of the plat proposed to be crossed by the
4 horizontal lateral of the horizontal well and the proposed path of
5 such horizontal lateral.

6 (2) Under subsection (b), section twelve, article six of this
7 chapter, any reference to a time period shall be thirty days in lieu
8 of fifteen days.

9 (g) The provisions of section thirteen, article six of this
10 chapter providing for notice of the operator's intention to fracture
11 wells, with the exception that under the third paragraph of section
12 thirteen, article six of this chapter, the applicable periods shall
13 be thirty days in lieu of fifteen days.

14 (h) The provisions of section fifteen, article six of this
15 chapter pertaining to objections to proposed deep well drilling
16 sites above seam or seams of coal, with the exception that the
17 applicable time for filing objections shall be within thirty days
18 of receipt by the secretary of the required plat and/or notice in
19 lieu of fifteen days.

20 (i) The provisions of section seventeen, article six of this
21 chapter pertaining to drilling of shallow gas wells, notice to be
22 provided to the chair of the review board, orders issued by the
23 review board and permits issued for such drilling, with the
24 exception that the applicable time for filing objections shall be

1 thirty days from the date of receipt by the secretary of the
2 required plat and notice in lieu of fifteen days.

3 (j) The provisions of section eighteen, article six of this
4 chapter providing for protective devices for when a well penetrates
5 one or more workable coal beds and when gas is found beneath or
6 between workable coal beds.

7 (k) The provisions of section nineteen, article six of this
8 chapter providing for protective devices during the life of the well
9 and for dry or abandoned wells.

10 (l) The provisions of section twenty, article six of this
11 chapter providing for protective devices when a well is drilled
12 through the horizon of a coalbed from which the coal has been
13 removed.

14 (m) The provisions of section twenty-one, article six of this
15 chapter requiring the installation of fresh water casings.

16 (n) The provisions of section twenty-two, article six of this
17 chapter relating to the filing of a well completion log and the
18 contents thereof, confidentiality and permitted use and the
19 secretary's authority to promulgate rules.

20 (o) The provisions of section twenty-seven, article six of this
21 chapter regarding a cause of action for damages caused by an
22 explosion.

23 (p) The provisions of section twenty-eight, article six of this
24 chapter relating to supervision by the secretary over drilling and

1 reclamation operations, the filing of complaints, hearings on the
2 same and appeals.

3 (q) The provisions of section twenty-nine, article six of this
4 chapter providing for the Operating Permit and Processing Fund, the
5 oil and gas reclamation fund and associated fees, with the exception
6 that in the first paragraph of subsection (a), section twenty-nine,
7 article six of this chapter, the fees to be credited to the Oil and
8 Gas Operating Permit and Processing Fund shall be the permit fees
9 collected pursuant to section seven of this article.

10 (r) The provisions of section thirty-one, article six of this
11 chapter providing for preventing waste of gas, plans of operation
12 for wasting gas in the process of producing oil and the secretary's
13 rejection thereof.

14 (s) The provisions of section thirty-two, article six of this
15 chapter pertaining to the right of an adjacent owner or operator to
16 prevent waste of gas and the recovery of costs.

17 (t) The provisions of section thirty-three, article six of this
18 chapter relating to circuit court actions to restrain waste.

19 (u) The provisions of section thirty-six, article six of this
20 chapter providing for the declaration of oil and gas notice by
21 owners and lessees of coal seams and setting out the form of such
22 notice.

23 (v) The provisions of section thirty-nine, article six of this
24 chapter relating to petitions for injunctive relief.

1 (w) The provisions of section forty, article six of this
2 chapter relating to appeals from orders issuing or refusing to issue
3 a permit to drill or fracture, and the procedure therefore.

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

10 **§22-6A-6. Secretary of Department of Environmental Protection;**
11 **powers and duties.**

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

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

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

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

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

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

3 (6) Except for the duties and obligations conferred by statute
4 upon the shallow gas well review board pursuant to article eight,
5 chapter twenty-two-c of this code, the coalbed methane review board
6 pursuant to article twenty-one of this chapter, and the oil and gas
7 conservation commission pursuant to article nine, chapter twenty-
8 two-c of this code, the secretary has sole and exclusive authority
9 to regulate the permitting, location, spacing, drilling, fracturing,
10 stimulation, well completion activities, operation, any and all
11 other drilling and production processes, plugging and reclamation
12 of oil and gas wells and production operations within the state.

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

21 **§22-6A-7. Horizontal well permit required; permit fee; application;**
22 **soil erosion control plan; well site safety plan; site**
23 **construction plan; water management plan; permit fee;**
24 **installation of permit number; suspension of a permit.**

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

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

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

14 (2) The name and address of every coal operator operating coal
15 seams under the tract of land on which the well is or may be
16 located, and the coal seam owner of record and lessee of record
17 required to be given notice by subsection (f), section five of this
18 article, if any, if said owner or lessee is not yet operating said
19 coal seams;

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

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

23 (5) The approximate total depth to which the well is to be
24 drilled or deepened, or the actual depth if the well has been

1 drilled; the proposed angle and direction of the well; the actual
2 depth or the approximate depth at which the well to be drilled
3 deviates from vertical, the angle and direction of the non-vertical
4 well bore until the well reaches its total target depth or its
5 actual final depth and the length and direction of any actual or
6 proposed horizontal lateral or well bore;

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

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

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

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

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

23 (11) If the proposed well work is to stimulate a horizontal
24 well, all information necessary to demonstrate compliance with the

1 requirements of subsection (g), section five of this article;

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

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

17 (14) A certification from the operator that (i) it has provided
18 the owners of the surface described in subdivisions (1), (2) and
19 (4), subsection (b), section ten of this article six-a, the
20 information required by subsections (b) and (c), section sixteen of
21 this article six-a; (ii) that such requirement was deemed satisfied
22 as a result of giving such surface owner notice of entry to survey
23 pursuant to subsection (a), section ten of this article six-a; or
24 (iii) the notice requirements of subsection (b), section sixteen of

1 this article six-a were waived in writing by the surface owner; and

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

4 (c) (1) An erosion and sediment control plan shall accompany
5 each application for a well work permit under this article. The
6 plan shall contain methods of stabilization and drainage, including
7 a map of the project area indicating the amount of acreage
8 disturbed. The erosion and sediment control plan shall meet the
9 minimum requirements of the West Virginia Erosion and Sediment
10 Control Manual as adopted and from time to time amended by the
11 department. The erosion and sediment control plan shall become part
12 of the terms and conditions of any well work permit that is issued
13 pursuant to this article and the provisions of the plan shall be
14 carried out where applicable in the operation. The erosion and
15 sediment control plan shall set out the proposed method of
16 reclamation which shall comply with the requirements of section
17 fourteen of this article.

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

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

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

3 (e) In addition to the other requirements of this section, if
4 the drilling, fracturing or stimulating of the horizontal well
5 requires the use of water obtained by withdrawals from waters of
6 this state in amounts that exceed two hundred ten thousand gallons
7 during any thirty day period, the application for a well work permit
8 shall include a water management plan, which may be submitted on an
9 individual well basis or on a watershed basis, and which shall
10 include the following information:

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

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

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

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

20 (5) A listing of the anticipated additives that may be used in
21 water utilized for fracturing or stimulating the well. Upon well
22 completion, a listing of the additives that were actually used in
23 the fracturing or stimulating of the well shall be submitted as part
24 of the completion log or report required by subsection (n), section

1 five of this article;

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

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

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

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

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

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

24 (g) The application for a permit under this section shall be

1 accompanied by the applicable bond as required by section fifteen
2 of this article, the applicable plat required by subsection (f),
3 section five of this article and a permit fee of \$10,000 for the
4 initial horizontal well drilled at a location and a permit fee of
5 \$5,000 for each additional horizontal well drilled on a single well
6 pad at the same location.

7 (h) The well operator named in the application shall designate
8 the name and address of an agent for the operator who shall be the
9 attorney-in-fact for the operator and who shall be a resident of the
10 State of West Virginia upon whom notices, orders or other
11 communications issued pursuant to this article or article eleven of
12 this chapter may be served, and upon whom process may be served.
13 Every well operator required to designate an agent under this
14 section shall, within five days after the termination of such
15 designation, notify the secretary of such termination and designate
16 a new agent.

17 (i) The well owner or operator shall install the permit number
18 as issued by the secretary and a contact telephone number for the
19 operator in a legible and permanent manner to the well upon
20 completion of any permitted work. The dimensions, specifications,
21 and manner of installation shall be in accordance with the rules of
22 the secretary.

23 (j) The secretary may waive the requirements of this section
24 and sections eight, ten, eleven and twenty-four of this article in

1 any emergency situation, if the secretary deems such action
2 necessary. In such case the secretary may issue an emergency permit
3 which shall be effective for not more than thirty days, unless
4 reissued by the secretary.

5 (k) The secretary shall deny the issuance of a permit if the
6 secretary determines that the applicant has committed a substantial
7 violation of a previously issued permit for a horizontal well,
8 including the applicable erosion and sediment control plan
9 associated with the previously issued permit, or a substantial
10 violation of one or more of the rules promulgated under this
11 article, and in each instance has failed to abate or seek review of
12 the violation within the time prescribed by the secretary pursuant
13 to the provisions of subsections (a) and (b), section five of this
14 article and the rules promulgated hereunder, which time may not be
15 unreasonable.

16 (l) In the event the secretary finds that a substantial
17 violation has occurred and that the operator has failed to abate or
18 seek review of the violation in the time prescribed, the secretary
19 may suspend the permit on which said violation exists, after which
20 suspension the operator shall forthwith cease all well work being
21 conducted under the permit. However, the secretary may reinstate the
22 permit without further notice, at which time the well work may be
23 continued. The secretary shall make written findings of any such
24 suspension and may enforce the same in the circuit courts of this

1 state. The operator may appeal a suspension pursuant to the
2 provisions of subsection (w), section five of this article. The
3 secretary shall make a written finding of any such determination.

4 **§22-6A-8. Review of application; issuance of permit; performance**
5 **standards; copy of permits to county assessor.**

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

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

21 (c) Prior to the issuance of any permit, the secretary shall
22 ascertain from the Executive Director of Workforce West Virginia and
23 the Insurance Commissioner whether the applicant is in default
24 pursuant to the provisions of section six-c, article two, chapter

1 twenty-one-a of this code, and in compliance with section five,
2 article two, chapter twenty-three of this code, with regard to any
3 required subscription to the Unemployment Compensation Fund or to
4 the Workers' Compensation Fund, the payment of premiums and other
5 charges to the fund, the timely filing of payroll reports and the
6 maintenance of adequate deposits. If the applicant is delinquent or
7 defaulted, or has been terminated by the executive director or the
8 Insurance Commissioner, the permit may not be issued until the
9 applicant returns to compliance or is restored by the executive
10 director or the Insurance Commissioner under a reinstatement
11 agreement: *Provided*, That in all inquiries the Executive Director
12 of Workforce West Virginia and the Insurance Commissioner shall make
13 response to the Department of Environmental Protection within
14 fifteen calendar days; otherwise, failure to respond timely is
15 considered to indicate the applicant is in compliance and the
16 failure will not be used to preclude issuance of the permit.

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

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

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

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

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

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

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

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

19 (f) The secretary shall promptly review all written comments
20 filed by persons entitled to notice pursuant to subsection (b),
21 section ten of this article. If after review of the application and
22 all written comments received from persons entitled to notice
23 pursuant to subsection (b), section ten of this article, the
24 application for a well work permit is approved, and no timely

1 objection has been filed with the secretary by the coal operator
2 operating coal seams beneath the tract of land, or the coal seam
3 owner or lessee, if any, if said owner or lessee is not yet
4 operating said coal seams, or made by the secretary under the
5 provisions of section ten and eleven of this article, the permit
6 shall be issued, with conditions, if any. Nothing in this section
7 shall be construed to supersede the provisions of section seven or
8 subsections (f) through (i), section five of this article.

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

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

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

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

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

1 (5) Protect the quantity and the quality of water in surface
2 and groundwater systems both during and after drilling operations
3 and during reclamation by: (A) Withdrawing water from surface waters
4 of the state by methods deemed appropriate by the secretary, so as
5 to maintain sufficient in-stream flow immediately downstream of the
6 withdrawal location. In no case shall an operator withdraw water
7 from ground or surface waters at volumes beyond which the waters can
8 sustain; (B) Casing, sealing or otherwise managing wells to keep
9 returned fluids from entering ground and surface waters; (C)
10 Conducting oil and gas operations so as to prevent, to the extent
11 possible using the best management practices, additional
12 contributions of suspended or dissolved solids to streamflow or
13 runoff outside the permit area, but in no event shall the
14 contributions be in excess of requirements set by applicable state
15 or federal law; and (D) Registering all water supply wells drilled
16 and operated by the operator with the Office of Oil and Gas. All
17 drinking water wells within one thousand five hundred feet of such
18 water supply well shall be flow and quality tested by the operator
19 upon request of the drinking well owner prior to operating the water
20 supply well. The secretary shall propose legislative rules to
21 identify appropriate methods for testing water flow and quality.

22 (6) In addition to the other requirements of this subsection,
23 an operator proposing to drill any horizontal well requiring the
24 withdrawal of more than two hundred ten thousand gallons in a thirty

1 day period shall have the following requirements added to its
2 permit:

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

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

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

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

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

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

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

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

6 (I) The quantity of water transported;

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

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

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

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

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

23 (i) Upon the issuance of any permit pursuant to the provisions
24 of this article, the secretary shall transmit a copy of such permit

1 to the office of the assessor for the county in which the well is
2 located.

3 **§22-6A-9. Certificate of approval required for large pits or**
4 **impoundment construction; certificate of approval and annual**
5 **registration fees; application required to obtain certificate; term**
6 **of certificate; revocation or suspension of certificates; appeals;**
7 **farm ponds.**

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

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

1 to place, construct, enlarge, alter, repair, remove or abandon, but
2 one application may be valid for more than one impoundment that
3 supports one or more well pads.

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

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

18 (e) The initial term of a certificate of approval issued
19 pursuant to this section shall be one year. Existing certificates
20 of approval shall be extended for one year upon receipt of the
21 annual registration fee, an inspection report, a monitoring and
22 emergency action plan, and a maintenance plan: *Provided*, That where
23 an approved, up-to-date inspection report, monitoring and emergency
24 action plan, and maintenance plan are on file with the department,

1 and where no outstanding violation of the requirements of the
2 certificate of approval or any plan submitted pursuant to this
3 article related to the impoundment exist, then the certificate of
4 approval shall be extended without resubmission of the foregoing
5 documents upon receipt of the annual registration fee.

6 (f) Every application for a certificate of approval shall be
7 made in writing on a form prescribed by the secretary and shall be
8 signed and verified by the applicant. The application shall include
9 a monitoring and emergency action plan and a maintenance plan, the
10 required contents of which shall be established by the secretary by
11 legislative rule. The application shall contain and provide
12 information that may reasonably be required by the secretary to
13 administer the provisions of this article.

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

20 (h) Each certificate of approval issued by the secretary
21 pursuant to the provisions of this article may contain other terms
22 and conditions as the secretary may prescribe.

23 (i) The secretary may revoke or suspend any certificate of
24 approval whenever the secretary determines that the impoundment for

1 which the certificate was issued constitutes an imminent danger to
2 human life or property. If necessary to safeguard human life or
3 property, the secretary may also amend the terms and conditions of
4 any certificate by issuing a new certificate containing the revised
5 terms and conditions.

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

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

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

23 (k) This section shall not apply to:

24 (A) Farm ponds constructed by the operator with the written

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

9 (B) Farm ponds subject to certificates of approval under
10 article fourteen of this chapter.

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

15 **§22-6A-10. Notice to property owners.**

16 (a) Prior to filing a permit application, the operator shall
17 provide notice of planned entry to the surface owner of at least
18 seventy-two hours but no more than forty-five days prior to entering
19 the surface tract to conduct any plat surveys required pursuant to
20 this article.

21 (b) No later than the filing date of the application, the
22 applicant for a permit for any well work or for a certificate of
23 approval for the construction of an impoundment or pit as required
24 by this article shall deliver, by personal service or by registered

1 mail or by any method of delivery that requires a receipt or
2 signature confirmation, copies of the application, the erosion and
3 sediment control plan required by section seven of this article, and
4 the well plat to each of the following persons:

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

7 (2) The owners of record of the surface tract or tracts
8 overlying the oil and gas leasehold being developed by the proposed
9 well work, if such surface tract is to be utilized for roads or
10 other land disturbance as described in the erosion and sediment
11 control plan submitted pursuant to subsection (c), section seven of
12 this article;

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

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

22 (5) Any surface owner or water purveyor who is known to the
23 applicant to have a water well, spring or water supply source
24 located within one thousand five hundred feet of the center of the

1 well pad which is used to provide water for consumption by humans
2 or domestic animals; and

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

5 (c) If more than three tenants in common or other co-owners of
6 interests described in subsection (b) of this section hold interests
7 in such lands, the applicant may serve the documents required upon
8 the person described in the records of the sheriff required to be
9 maintained pursuant to section eight, article one, chapter eleven-a
10 of this code.

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

17 (e) Semiannually, the department shall publish a Class II legal
18 advertisement, as described in section two, article three, chapter
19 fifty-nine of this code, to appear in newspapers serving, in the
20 aggregate, every county of the state notifying the public of the
21 website required to be maintained by the department pursuant to
22 section twenty-one of this article six-a, and that members of the
23 public may register to receive electronic notifications of
24 horizontal well permit applications, filings and notices by county

1 of interest.

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

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

15 (h) The surface owners described in subdivisions (1), (2) and
16 (4), subsection (b) of this section, and the coal owner, operator
17 or lessee described in subdivision (3) of said subsection shall also
18 be entitled to receive notice within seven days but no less than two
19 days before commencement that well work or site preparation work
20 that involves any disturbance of land is expected to commence.

21 (i) Persons entitled to notice pursuant to subsection (b) of
22 this section may contact the department to ascertain the names and
23 locations of water testing laboratories in the subject area capable
24 and qualified to test water supplies in accordance with standard

1 accepted methods. In compiling that list of names the department
2 shall consult with the state Bureau of Public Health and local
3 health departments.

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

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

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

18 (4) Nothing in this subsection shall be construed to decide
19 questions as to whether seismic activity may be secured by mineral
20 owners, surface owners or other ownership interests.

21 **§22-6A-11. Procedure for filing written comments; procedures for**
22 **considering objections and comments; issues to be**
23 **considered; and newspaper notice.**

24 (a) All persons described in subsection (b), section ten of

1 this article may file written comments with the secretary as to the
2 location or construction of the applicant's proposed well work
3 within thirty days after the application is filed with the
4 secretary.

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

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

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

1 participate in the processes and proceedings that exist under
2 sections fifteen, seventeen or forty, article six of this chapter,
3 as applicable and as incorporated into this article by section five
4 of this article.

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

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

13 (a) Wells may not be drilled within two hundred fifty feet
14 measured horizontally from any existing water well or developed
15 spring used for human or domestic animal consumption. The center of
16 well pads may not be located within six hundred twenty-five feet of
17 an occupied dwelling structure, or a building two thousand five
18 hundred square feet or larger used to house or shelter dairy cattle
19 or poultry husbandry. This limitation is applicable to those wells,
20 developed springs, dwellings or agricultural buildings that existed
21 on the date a notice to the surface owner of planned entry for
22 surveying or staking as provided in section ten of this article or
23 a notice of intent to drill a horizontal well as provided in
24 subsection (b), section sixteen of this article was provided,

1 whichever shall first occur, and to any dwelling under construction
2 prior to such date. This limitation may be waived by written
3 consent of the surface owner transmitted to the department and
4 recorded in the real property records maintained by the clerk of
5 the county commission for the county in which such property is
6 located. Furthermore, the well operator may be granted a variance
7 by the secretary from said distance restrictions upon submission of
8 a plan which shall identify the sufficient measures, facilities or
9 practices to be employed during well site construction, drilling
10 and operations. The variance, if granted, shall include such terms
11 and conditions as the department may require to ensure the safety
12 and protection of affected persons and property. Such terms and
13 conditions may include insurance, bonding and indemnification, as
14 well as technical requirements.

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

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

1 reservoir.

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

5 (3) For a groundwater source, the distance shall be measured
6 from the wellhead or spring.

7 The department may, in its discretion, waive such distance
8 restrictions upon submission of a plan identifying sufficient
9 measures, facilities or practices to be employed during well site
10 construction, drilling and operations to protect the waters of the
11 state. Such waiver, if granted, shall impose such permit conditions
12 as the secretary deems necessary.

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

19 **§22-6A-13. Plugging of horizontal wells.**

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

24 **§22-6A-14. Reclamation requirements.**

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

5 (1) Except as provided elsewhere in this article, within six
6 months after a horizontal well is drilled and completed on a well
7 pad designed for a single horizontal well, the operator shall fill
8 all the pits and impoundments that are not required or allowed by
9 state or federal law or rule or agreement between the operator and
10 the surface owner that allows the impoundment to remain open for
11 the use and benefit of the surface owner (i.e. a farm pond as
12 described in section nine of this article) and remove all concrete
13 bases, drilling supplies and drilling equipment: *Provided*, That
14 impoundments or pits for which certificates have been approved
15 pursuant to section nine of this article shall be reclaimed at a
16 time and in a manner as provided in the applicable certificate and
17 section nine. Within that six-month period, the operator shall
18 grade or terrace and plant, seed or sod the area disturbed that is
19 not required in production of the horizontal well in accordance
20 with the erosion and sediment control plan. No pit may be used for
21 the ultimate disposal of salt water. Salt water and oil shall be
22 periodically drained or removed and properly disposed of from any
23 pit that is retained so the pit is kept reasonably free of salt
24 water and oil. No pits may be left open permanently.

1 (2) For well pads designed to contain multiple horizontal
2 wells, partial reclamation shall begin upon completion of the
3 construction of the well pad. For purposes of this section, the
4 term partial reclamation means grading or terracing and planting,
5 or seeding the area disturbed that is not required in drilling,
6 completing or producing any of the horizontal wells on the well pad
7 in accordance with the erosion and sediment control plan. Such
8 partial reclamation shall satisfy the reclamation requirements of
9 this section fourteen for a maximum of twenty-four months between
10 the drilling of horizontal wells on a well pad designed to contain
11 multiple horizontal wells: *Provided*, That the maximum aggregate
12 period in which partial reclamation shall satisfy the reclamation
13 requirements of this section fourteen shall be five years from
14 completion of the construction of the well pad. Within six months
15 after the completion of the final horizontal well on the pad or the
16 expiration of the five-year maximum aggregate partial reclamation
17 period, whichever shall first occur, the operator shall complete
18 final reclamation of the well pad as set forth in subsection (a)
19 above.

20 (3) Within six months after a horizontal well that has
21 produced oil or gas is plugged or after the plugging of a dry hole,
22 the operator shall remove all production and storage structures,
23 supplies and equipment and any oil, salt water and debris and fill
24 any remaining excavations. Within that six-month period, the

1 operator shall grade or terrace and plant, seed or sod the area
2 disturbed where necessary to bind the soil and prevent substantial
3 erosion and sedimentation.

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

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

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

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

20 (b) A separate bond as described in subsection (d) of this
21 section may be furnished for each horizontal well drilled. Each of
22 these bonds shall be in the sum of \$50,000 payable to the State of
23 West Virginia, conditioned on full compliance with all laws, rules
24 relating to the drilling, redrilling, deepening, casing and

1 stimulating of horizontal wells and to the plugging, abandonment
2 and reclamation of horizontal wells and for furnishing such reports
3 and information as may be required by the secretary.

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

9 (d) The form of the bond required by this article shall be approved
10 by the secretary and may include, at the option of the operator,
11 surety bonding, collateral bonding, including cash and securities,
12 letters of credit, establishment of an escrow account, self-bonding
13 or a combination of these methods. If collateral bonding is used,
14 the operator may elect to deposit cash, or collateral securities or
15 certificates as follows: Bonds of the United States or its
16 possessions, of the federal land bank, or of the homeowners' loan
17 corporation; full faith and credit general obligation bonds of the
18 State of West Virginia or other states or of any county, district
19 or municipality of the State of West Virginia or other states; or
20 certificates of deposit in a bank in this state, which certificates
21 shall be in favor of the department. The cash deposit or market
22 value of the securities or certificates shall be equal to or
23 greater than the amount of the bond. The secretary shall, upon
24 receipt of any deposit of cash, securities or certificates,

1 promptly place the same with the Treasurer of the State of West
2 Virginia whose duty it shall be to receive and hold the same in the
3 name of the state in trust for the purpose of which the deposit is
4 made when the permit is issued. The operator shall be entitled to
5 all interest and income earned on the collateral securities filed
6 by such operator. The operator making the deposit shall be entitled
7 from time to time to receive from the State Treasurer, upon the
8 written approval of the secretary, the whole or any portion of any
9 cash, securities or certificates so deposited, upon depositing with
10 the State Treasurer in lieu thereof, cash or other securities or
11 certificates of the classes herein specified having value equal to
12 or greater than the amount of the bond.

13 (e) When an operator has furnished a separate bond from a
14 corporate bonding or surety company to drill, fracture or stimulate
15 a horizontal well and the well produces oil or gas or both, its
16 operator may deposit with the secretary cash from the sale of the
17 oil or gas or both until the total deposited is \$50,000. When the
18 sum of the cash deposited is \$50,000, the separate bond for the
19 well shall be released by the secretary. Upon receipt of that cash,
20 the secretary shall immediately deliver that amount to the
21 Treasurer of the State of West Virginia. The State Treasurer shall
22 hold the cash in the name of the state in trust for the purpose for
23 which the bond was furnished and the deposit was made. The
24 operator shall be entitled to all interest and income which may be

1 earned on the cash deposited so long as the operator is in full
2 compliance with all laws and rules relating to the drilling,
3 redrilling, deepening, casing, plugging, abandonment and
4 reclamation of the well for which the cash was deposited and so
5 long as the operator has furnished all reports and information as
6 may be required by the secretary. The secretary may establish
7 procedures under which an operator may substitute a new bond for an
8 existing bond or provide a new bond under certain circumstances
9 specified in a legislative rule promulgated in accordance with
10 chapter twenty-nine-a of this code.

11 (f) Any separate bond furnished for a particular well prior to
12 the effective date of this article shall continue to be valid for
13 all work on the well permitted prior to the effective date of this
14 article; but no permit shall hereafter be issued on such a
15 particular well without a bond complying with the provisions of
16 this section. Any blanket bond furnished prior to the effective
17 date of this article shall be replaced with a new blanket bond
18 conforming to the requirements of this section, at which time the
19 prior bond shall be discharged by operation of law; and if the
20 secretary determines that any operator has not furnished a new
21 blanket bond, the secretary shall notify the operator by registered
22 mail or by any method of delivery that requires a receipt or
23 signature confirmation of the requirement for a new blanket bond,
24 and failure to submit a new blanket bond within sixty days after

1 receipt of the notice from the secretary shall work a forfeiture
2 under subsection (i) of this section of the blanket bond furnished
3 prior to the effective date of this article.

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

10 (h) Whenever the right to operate a well is assigned or
11 otherwise transferred, the assignor or transferor shall notify the
12 department of the name and address of the assignee or transferee by
13 registered mail or by any method of delivery that requires a
14 receipt or signature confirmation not later than thirty days after
15 the date of the assignment or transfer. No assignment or transfer
16 by the owner shall relieve the assignor or transferor of the
17 obligations and liabilities unless and until the assignee or
18 transferee files with the department the well name and the permit
19 number of the subject well, the county and district in which the
20 subject well is located, the names and addresses of the assignor or
21 transferor, and assignee or transferee, a copy of the instrument of
22 assignment or transfer accompanied by the applicable bond, cash,
23 collateral security or other forms of security described in this
24 section, and the name and address of the assignee's or transferee's

1 designated agent if the assignee or transferee would be required to
2 designate such an agent under this article if the assignee or
3 transferee were an applicant for a permit under this article.
4 Every well operator required to designate an agent under this
5 section shall, within five days after the termination of such
6 designation, notify the department of such termination and
7 designate a new agent.

8 Upon compliance with the requirements of this section by the
9 assignor or transferor and assignee or transferee, the secretary
10 shall release the assignor or transferor from all duties and
11 requirements of this article and shall give written notice of
12 release to the assignor or transferor of any bond and return to the
13 assignor or transferor any cash or collateral securities deposited
14 pursuant to this section.

15 (i) If any of the requirements of this article or rules
16 promulgated pursuant thereto or the orders of the secretary has not
17 been complied with within the time limit set by any notice of
18 violation issued pursuant to this article, the performance bond
19 shall then be forfeited.

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

23 (k) All forfeitures shall be deposited in the Treasury of the
24 State of West Virginia in the Oil and Gas Reclamation Fund as

1 defined in section twenty-nine, article six of this chapter.

2 **§22-6A-16. Compensation of surface owners for drilling operations.**

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

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

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

1 The notice required by this subsection shall include:

2 (1) A copy of this code section;

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

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

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

13 **§22-6A-17. Reimbursement of property taxes of encumbered**
14 **properties.**

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

23 **§22-6A-18. Civil action for contamination or deprivation of fresh**
24 **water source or supply; presumption; water rights and**

1 **replacement; waiver of replacement.**

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

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

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

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

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

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

24 (4) The pollution occurred more than six months after

1 completion of drilling or alteration activities.

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

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

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

18 (f) The secretary may order the operator conducting the oil or
19 gas operation to: (1) Provide an emergency drinking water supply
20 within twenty-four hours; (2) provide temporary water supply within
21 seventy-two hours; (3) within thirty days begin activities to
22 establish a permanent water supply or submit a proposal to the
23 secretary outlining the measures and timetables to be utilized in
24 establishing a permanent supply. The total time for providing a

1 permanent water supply may not exceed two years. If the operator
2 demonstrates that providing a permanent replacement water supply
3 cannot be completed within two years, the secretary may extend the
4 time frame on case-by-case basis; and (4) pay all reasonable costs
5 incurred by the real property owner in securing a water supply.

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

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

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

19 **§22-6A-19. Offenses; civil penalties.**

20 (a) Any person or persons, firm, partnership, partnership
21 association or corporation who willfully violates any provision of
22 this article or any rule or order promulgated hereunder or any
23 permit issued pursuant to this article shall be subject to a civil
24 penalty not exceeding \$5,000. Each day a violation continues after

1 notice by the department constitutes a separate offense. The
2 penalty shall be recovered by a civil action brought by the
3 department, in the name of the state, before the circuit court of
4 the county in which the subject well or facility is located. All
5 such civil penalties collected shall be credited to the general
6 fund of the state.

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

21 (c) Any person who intentionally misrepresents any material
22 fact in an application, record, report, plan or other document
23 filed or required to be maintained under the provisions of this
24 article or any rules promulgated by the secretary thereunder shall

1 be fined not less than \$1,000 nor more than \$10,000.

2 **§22-6A-20. Division of Highways certification.**

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

11 **§22-6A-21. Establishment of public website information and**
12 **electronic notification registry regarding**
13 **horizontal well permit applications.**

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

22 (b) The secretary shall also establish a registration and e-
23 notification process by which individuals, corporations and
24 agencies may register to receive electronic notice of horizontal

1 well applications filings and notices, by county of interest. Once
2 established, individuals, agencies and corporations interested who
3 are properly registered to receive e-notices of filings and actions
4 on horizontal well permits shall receive electronic notifications
5 of applications and notices of permits issued for horizontal
6 drilling in their designated county or counties of interest.

7 **§22-6A-22. Air quality study and rulemaking.**

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

18 **§22-6A-23. Impoundment and pit safety study; rulemaking.**

19 The secretary shall, by January 1, 2013, report to the
20 Legislature on the safety of pits and impoundments utilized
21 pursuant to section nine of this article including an evaluation of
22 whether testing and special regulatory provision is needed for
23 radioactivity or other toxins held in the pits and impoundments.
24 Upon a finding that greater monitoring, safety and design

1 requirements or other specialized permit conditions are necessary,
2 the secretary shall propose for promulgation legislative rules
3 establishing these new requirements.

4 **§22-6A-24. Casing and cement standards.**

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

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

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

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

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

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

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

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

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

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

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

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

14 (B) The diameter of the borehole;

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

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

20 (E) The estimated location of centralizers;

21 (F) The proposed borehole conditioning procedures; and

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

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

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

14 (e) The rules promulgated by the Secretary shall provide
15 procedures for the following:

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

19 (2) installation of the surface and coal protection casing
20 including remedial procedures addressing lost circulation during
21 surface or coal casing;

22 (3) installation of intermediate production casing;

23 (4) correction of defective casing and cementing, including
24 requirements that the operator report the defect to the secretary

1 within 24 hours of discovery by the operator;

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

5 (6) any other procedure or requirements deemed necessary by
6 the secretary.

7 (f) Minimum casing standards.

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

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

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

19 (4) Casing shall not be disturbed for a period of at least
20 eight hours after the completion of cementing operations; and

21 (5) No gas or oil production or pressure shall exist on the
22 surface casing or the coal protection casing.

23 (g) Minimum cement standards.

24 (1) All cement used in the well must meet the appropriate

1 nationally recognized standards and must secure the casing to the
2 wellbore, isolate the wellbore from all fluids, contain all
3 pressures during all phases of drilling and operation of the well,
4 and protect the casing from corrosion and degradation; and

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

8 (h) Notwithstanding the minimum casing and cementing standards
9 set forth in subsections (f) and (g) of this section, the secretary
10 shall have the power to:

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

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

20 **CHAPTER 22. ENVIRONMENTAL RESOURCES.**

21 **ARTICLE 6B. OIL AND GAS HORIZONTAL WELL PRODUCTION DAMAGE**

22 **COMPENSATION.**

23 **§22-6B-1. Legislative findings and purpose; applicability.**

24 (a) The Legislature finds the following:

1 (1) Exploration for and development of oil and gas reserves in
2 this state must coexist with the use, agricultural or otherwise, of
3 the surface of certain land.

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

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

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

24 (e) The provisions of this article shall apply to any natural

1 gas well, other than a coalbed methane well, drilled using a
2 horizontal drilling method, and which disturbs three acres or more
3 of surface, excluding pipelines, gathering lines and roads, or
4 utilizes more than two hundred ten thousand gallons of water in any
5 thirty day period. Article seven of this chapter shall not apply
6 to any damages associated with the drilling of a horizontal well.

7 **§22-6B-2. Definitions.**

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

10 (1) "Drilling operations" means the actual drilling or
11 redrilling of a horizontal well commenced subsequent to the
12 effective date of this article, and the related preparation of the
13 drilling site and access road, which requires entry, upon the
14 surface estate;

15 (2) "Horizontal drilling" means a method of drilling a well
16 for the production of natural gas that is intended to maximize the
17 length of wellbore that is exposed to the formation and in which
18 the wellbore is initially vertical but is eventually curved to
19 become horizontal, or nearly horizontal, to parallel a particular
20 geologic formation;

21 (3) "Horizontal well" means any well site, other than a
22 coalbed methane well, drilled using a horizontal drilling method,
23 and which disturbs three acres or more of surface, excluding
24 pipelines, gathering lines and roads, or utilizes more than two

1 hundred ten thousand gallons of water in any thirty day period;

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

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

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

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

14 **§22-6B-3. Compensation of surface owners for drilling operations.**

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

17 (1) Lost income or expenses incurred as a result of being
18 unable to dedicate land actually occupied by the driller's
19 operation, or to which access is prevented by such drilling
20 operation, to the uses to which it was dedicated prior to
21 commencement of the activity for which a permit was obtained,
22 measured from the date the operator enters upon the land and
23 commences drilling operations until the date reclamation is
24 completed;

1 (2) the market value of crops, including timber, destroyed,
2 damaged or prevented from reaching market;

3 (3) any damage to a water supply in use prior to the
4 commencement of the permitted activity;

5 (4) the cost of repair of personal property up to the value of
6 replacement by personal property of like age, wear and quality; and

7 (5) the diminution in value, if any, of the surface lands and
8 other property after completion of the surface disturbance done
9 pursuant to the activity for which the permit was issued determined
10 according to the market value of the actual use made thereof by the
11 surface owner immediately prior to the commencement of the
12 permitted activity.

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

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

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

1 drilling operations.

2 **§22-6B-4. Common law right of action preserved; offsets.**

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

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

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

22 **§22-6B-5. Notification of claim.**

23 Any surface owner, to receive compensation under section three
24 of this article, shall notify the oil and gas developer of the

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

15 **§22-6B-6. Agreement; offer of settlement.**

16 Unless the parties provide otherwise by written agreement,
17 within sixty days after the oil and gas developer received the
18 notification of claim specified in section five of this article,
19 the oil and gas developer shall either make an offer of settlement
20 to the surface owner seeking compensation, or reject the claim. The
21 surface owner may accept or reject any offer so made: *Provided,*
22 That the oil and gas developer may make a final offer within
23 seventy five days after receiving the notification of claim
24 specified in section five of this article.

1 **§22-6B-7. Rejection; legal action; arbitration; fees and costs.**

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

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

19 (b) The compensation to be awarded to the surface owner shall
20 be determined by a panel of three disinterested arbitrators. The
21 first arbitrator shall be chosen by the surface owner in such
22 party's notice of election under this section to the oil and gas
23 developer; the second arbitrator shall be chosen by the oil and gas
24 developer within ten days after receipt of the notice of election;

1 and the third arbitrator shall be chosen jointly by the first two
2 arbitrators within twenty days thereafter. If they are unable to
3 agree upon the third arbitrator within twenty days, then the two
4 arbitrators are hereby empowered to and shall immediately submit
5 the matter to the court under the provisions of section one,
6 article ten, chapter fifty-five of this code, so that, among other
7 things, the third arbitrator can be chosen by the judge of the
8 circuit court of the county wherein the surface estate lies.

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

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

8 (e) Each party shall pay the compensation of such party's
9 arbitrator and one half of the compensation of the third
10 arbitrator, or such party's own court costs as the case may be.

11 **§22-6B-8. Application of article.**

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

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

16 **ARTICLE 8. SHALLOW GAS WELL REVIEW BOARD.**

17 **§22C-8-2. Definitions.**

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

20 (1) "Board" means the shallow gas well review board provided
21 for in section four of this article;

22 (2) "Chair" means the chair of the shallow gas well review
23 board provided for in section four of this article;

24 (3) "Coal operator" means any person who proposes to or does

1 operate a coal mine;

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

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

9 (6) "Commissioner" means the Oil and Gas Conservation
10 Commissioner provided for in section four, article nine of this
11 chapter;

12 (7) "Correlative rights" means the reasonable opportunity of
13 each person entitled thereto to recover and receive without waste
14 the gas in and under a tract or tracts, or the equivalent thereof;

15 (8) "Deep well" means any well other than a shallow well or
16 coalbed methane well, drilled ~~and completed in~~ to a formation ~~at or~~
17 below the top of the uppermost member of the "Onondaga Group";

18 (9) "Division" means the state Division of Environmental
19 Protection provided for in chapter twenty-two of this code;

20 ~~(10) "Director" means the Director of the Division of~~
21 ~~Environmental Protection as established in article one, chapter~~
22 ~~twenty-two of this code or such other person to whom the division~~
23 ~~department delegates authority or duties pursuant to sections six~~
24 ~~or eight, article one, chapter twenty-two of this code;~~

1 ~~(11)~~ (10) "Drilling unit" means the acreage on which the board
2 decides one well may be drilled under section ten of this article;

3 ~~(12)~~ (11) "Gas" means all natural gas and all other fluid
4 hydrocarbons not defined as oil in subdivision (15) of this
5 section;

6 ~~(13)~~ (12) "Gas operator" means any person who owns or has the
7 right to develop, operate and produce gas from a pool and to
8 appropriate the gas produced therefrom either for such person or
9 for such person and others. In the event that there is no gas lease
10 in existence with respect to the tract in question, the person who
11 owns or has the gas rights therein shall be considered a "gas
12 operator" to the extent of seven-eighths of the gas in that portion
13 of the pool underlying the tract owned by such person, and a
14 "royalty owner" to the extent of one-eighth of such gas;

15 ~~(14)~~ (13) "Just and equitable share of production" means, as
16 to each person, an amount of gas in the same proportion to the
17 total gas production from a well as that person's acreage bears to
18 the total acreage in the drilling unit;

19 ~~(15)~~ (14) "Oil" means natural crude oil or petroleum and other
20 hydrocarbons, regardless of gravity, which are produced at the well
21 in liquid form by ordinary production methods and which are not the
22 result of condensation of gas after it leaves the underground
23 reservoir;

24 ~~(16)~~ (15) "Owner" when used with reference to any coal seam,

1 shall include any person or persons who own, lease or operate such
2 coal seam;

3 ~~(17)~~ (16) "Person" means any natural person, corporation,
4 firm, partnership, partnership association, venture, receiver,
5 trustee, executor, administrator, guardian, fiduciary or other
6 representative of any kind, and includes any government or any
7 political subdivision or any agency thereof;

8 ~~(18)~~ (17) "Plat" means a map, drawing or print showing the
9 location of one or more wells or a drilling unit;

10 ~~(19)~~ (18) "Pool" means an underground accumulation of gas in
11 a single and separate natural reservoir (ordinarily a porous
12 sandstone or limestone). It is characterized by a single
13 natural-pressure system so that production of gas from one part of
14 the pool tends to or does affect the reservoir pressure throughout
15 its extent. A pool is bounded by geologic barriers in all
16 directions, such as geologic structural conditions, impermeable
17 strata, and water in the formation, so that it is effectively
18 separated from any other pools which may be present in the same
19 district or in the same geologic structure;

20 ~~(20)~~ (19) "Royalty owner" means any owner of gas in place, or
21 gas rights, to the extent that such owner is not a gas operator as
22 defined in subdivision (13) of this section;

23 (20) "Secretary" means the Cabinet Secretary of the Department
24 of Environmental Protection as established in article one, chapter

1 twenty-two of this code or such other person to whom the division
2 department delegates authority or duties pursuant to sections six
3 or eight, article one, chapter twenty-two of this code;

4 (21) "Shallow well" means any gas well other than a coalbed
5 methane well, drilled no deeper than one hundred feet below the top
6 of the "Onondaga Group": and completed in a formation above the top
7 of the uppermost member of the "Onondaga Group:" *Provided, That in*
8 *drilling a shallow well the well operator may penetrate into the*
9 *"Onondaga Group" to a reasonable depth, not in excess of twenty*
10 *feet, in order to allow for logging and completion operations, but*
11 *in no event may the "Onondaga Group" formation or any formation*
12 *below the "Onondaga Group" be otherwise produced, perforated or*
13 *stimulated in any manner;*

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

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

1 public use; and

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

4 **ARTICLE 9. OIL AND GAS CONSERVATION.**

5 **§22C-9-2. Definitions.**

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

8 (1) "Commission" means Oil and Gas Conservation Commission and
9 "commissioner" means the oil and gas conservation commissioner as
10 provided for in section four of this article;

11 (2) ~~"Director"~~ "Secretary" means the ~~Director~~ Cabinet
12 Secretary of the ~~Division~~ of Environmental Protection and "chief"
13 means the chief of the Office of Oil and Gas;

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

18 (4) "Operator" means any owner of the right to develop,
19 operate and produce oil and gas from a pool and to appropriate the
20 oil and gas produced therefrom, either for such person or for such
21 person and others; in the event that there is no oil and gas lease
22 in existence with respect to the tract in question, the owner of
23 the oil and gas rights therein shall be considered as "operator" to
24 the extent of seven-eighths of the oil and gas in that portion of

1 the pool underlying the tract owned by such owner, and as "royalty
2 owner' as to one-eighth interest in such oil and gas; and in the
3 event the oil is owned separately from the gas, the owner of the
4 substance being produced or sought to be produced from the pool
5 shall be considered as "operator" as to such pool;

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

9 (6) "Independent producer" means a producer of crude oil or
10 natural gas whose allowance for depletion is determined under
11 Section 613A of the federal Internal Revenue Code in effect on July
12 1, 1997;

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

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

20 (9) "Pool" means an underground accumulation of petroleum or
21 gas in a single and separate reservoir (ordinarily a porous
22 sandstone or limestone). It is characterized by a single
23 natural-pressure system so that production of petroleum or gas from
24 one part of the pool affects the reservoir pressure throughout its

1 extent. A pool is bounded by geologic barriers in all directions,
2 such as geologic structural conditions, impermeable strata, and
3 water in the formations, so that it is effectively separated from
4 any other pools that may be presented in the same district or on
5 the same geologic structure;

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

9 (11) "Shallow well" means any well other than a coalbed
10 methane well, drilled no deeper than one hundred feet below the top
11 of the "Onondaga Group": ~~and completed in a formation above the top~~
12 ~~of the uppermost member of the "Onondaga Group:"~~ *Provided, That in*
13 ~~drilling a shallow well the operator may penetrate into the~~
14 ~~"Onondaga Group" to a reasonable depth, not in excess of twenty~~
15 ~~feet, in order to allow for logging and completion operations, but~~
16 in no event may the "Onondaga Group" formation or any formation
17 below the "Onondaga Group" be otherwise produced, perforated or
18 stimulated in any manner;

19 (12) "Deep well" means any well, other than a shallow well or
20 coalbed methane well, drilled ~~and completed in~~ to a formation ~~at or~~
21 below the top of the uppermost member of the "Onondaga Group;"

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

24 (14) "Waste" means and includes:

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

3 (B) The locating, drilling, equipping, operating or producing
4 of any oil or gas well in a manner that causes, or tends to cause,
5 a reduction in the quantity of oil or gas ultimately recoverable
6 from a pool under prudent and proper operations, or that causes or
7 tends to cause unnecessary or excessive surface loss of oil or gas;
8 or

9 (C) The drilling of more deep wells than are reasonably
10 required to recover efficiently and economically the maximum amount
11 of oil and gas from a pool. Waste does not include gas vented or
12 released from any mine areas as defined in section two, article
13 one, chapter twenty-two-a of this code or from adjacent coal seams
14 which are the subject of a current permit issued under article two
15 of chapter twenty-two-a of this code: *Provided*, That nothing in
16 this exclusion is intended to address ownership of the gas;

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

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

1 (b) Unless the context clearly indicates otherwise, the use of
2 the word "and" and the word "or" shall be interchangeable, as, for
3 example, "oil and gas" shall mean oil or gas or both.

NOTE: The purpose of this bill is to establish a specialized regulatory process for large gas drilling operations conducting horizontal drilling activities that disturb three acres or more or use more than 210,000 gallons of water in 30 days; establishes additional permitting conditions to provide requirements particular to this activity; and provide procedures for fair compensation to surface owners.

Strike-throughs indicate language that would be stricken from the present law, and underscoring indicates new language that would be added.

Strike-throughs and underscoring have been omitted from §5B-2B-4a and §22-6-2a, both new sections; §§22-6A-1 to 24, a new article; and §§22-6B-1 to 8, a new article.