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H. B. 401

(By Mr Speaker, (Mr. Thompson))

(By Request of the Executive)

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[Introduced December 11, 2011.]  
[Passed December 14, 2011; in effect from passage.]

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**EDITOR'S NOTE 12/23/2011: This version of the legislation that passed was prepared by the West Virginia Surface Owner's Rights Organization to show the changes made from current law/code. Please advise us at [info@wvsoro.org](mailto:info@wvsoro.org) if you find any errors in the fonts or editorial comments we made to highlight these changes.**

**This version shows changes from current code by underlining new language and ~~overstriking~~ language that was deleted.**

**However, that does not tell the whole tale. "New" Articles 6A and 6B are the bulk of the bill. They are the two new articles that are now applicable to most horizontal wells. The bulk of "new" Article 6A and almost all of "new" Article 6B, were based heavily on current Articles 6 and 7, which now will only apply to all other wells. This version of the legislation does not show the differences between existing Article 6 and new Article 6A. In new Article 6B, this version does show changes from the current surface damage compensation (Article 7), which is now applicable to only to other wells. In new article 6B, additions to existing Article 7 are double underlined and bolded, and deletions are ~~overstruck and bolded~~. All of the 6B changes favor the industry and none of the changes to Article 7 suggested by SORO to deal with their problems with the article were made.**

**Note also that to save paper and aid readability, the line spacing and font were was changed in this version. Therefore the pages and lines of this version will not match up to the versions of the legislation obtained from the Legislature's web site.**

**This version does contain a Table of Contents at the end to help the reader find code sections.**

A BILL to repeal §22C-7-1, §22C-7-2 and §22C-7-3 of the Code of West Virginia, 1931, as amended; to amend said code by adding thereto a new section, designated §5B-2B-4a; to amend and reenact §22-6-1 and §22-6-2 of said code; to amend said code

1 by adding thereto a new section, designated §22-6-2a; to amend  
2 said code by adding thereto a new article, designated §22-6A-  
3 1, §22-6A-2, §22-6A-3, §22-6A-3a, §22-6A-4, §22-6A-5, §22-6A-  
4 6, §22-6A-7, §22-6A-8, §22-6A-9, §22-6A-10, §22-6A-10a, §22-  
5 6A-11, §22-6A-12, §22-6A-13, §22-6A-14, §22-6A-15, §22-6A-16,  
6 §22-6A-17, §22-6A-18, §22-6A-19, §22-6A-20, §22-6A-21, §22-6A-  
7 22, §22-6A-23 and §22-6A-24; to amend said code by adding  
8 thereto a new article, designated §22-6B-1, §22-6B-2, §22-6B-  
9 3, §22-6B-4, §22-6B-5, §22-6B-6, §22-6B-7 and §22-6B-8; to  
10 amend and reenact §22C-8-2 of said code; and to amend and  
11 reenact §22C-9-2 of said code, all relating generally to oil  
12 and gas wells; requiring West Virginia Workforce Investment  
13 Council to complete certain reviews and provide report to  
14 Legislature; expanding powers of Secretary of the Department  
15 of Environmental Protection; authorizing secretary to  
16 determine number of oil and gas inspectors and supervisors and  
17 to make investigations or inspections to ensure compliance  
18 with applicable law; providing for inspector qualifications,  
19 duties and minimum salaries; creating Natural Gas Horizontal  
20 Well Control Act; providing short title; making legislative  
21 findings and declarations of public policy; requiring  
22 secretary to submit written report to Legislature on number of  
23 waivers granted; providing for applicability of act and  
24 exceptions; providing special considerations regarding karst  
25 formations; requiring the secretary to propose emergency and  
26 legislative rules pertaining to drilling in karst formations;  
27 defining terms; making horizontal wells subject to certain  
28 provisions in article six, chapter twenty-two of the Code of  
29 West Virginia; specifying powers and duties of secretary,  
30 including certain rule-making power and reporting duties;  
31 requiring permit for horizontal wells; establishing permit  
32 application requirements and contents; requiring bond and  
33 permit fees; providing for issuance of emergency permits;  
34 providing for denial, suspension and reinstatement of permits

1 in certain circumstances; providing for application review,  
2 requirements for issuance of permit and permit requirements;  
3 establishing performance standards; providing for copies of  
4 permits to be furnished to county assessors; requiring  
5 certificate of approval for large pits or impoundments  
6 construction; requiring application for certificate;  
7 establishing application requirements and payment of fees;  
8 providing for modification, revocation or suspension of  
9 certificate and hearing procedure, including an administrative  
10 appeals process; providing exceptions for certain farm ponds;  
11 authorizing secretary to propose legislative rules governing  
12 large pits and impoundment; providing certain notices to  
13 certain property owners regarding certain applications and  
14 intent to enter property to survey or to conduct seismic  
15 activity; requiring the submission of certain documents and  
16 information to be provided with such notice; clarifying that  
17 notice to certain lienholders is not notice to certain  
18 landowners; providing for public notice and comment; requiring  
19 applicant to file Class II ad and allowing submission of  
20 written comments to Department of Environmental Protection;  
21 establishing certain information to be contained in the  
22 published newspaper notice; providing for the publishing  
23 public comment received by the Department of Environmental  
24 Protection on the department's public website; clarifying  
25 method of delivery of notice; establishing procedure for  
26 filing written comments; establishing well location  
27 restrictions; requiring the secretary to prepare a report to  
28 the legislature on noise, light dust and volatile organic  
29 compounds and their relationship to well location restrictions  
30 for occupied dwellings; allowing the secretary to propose  
31 guidelines and procedures for controlling and mitigating  
32 levels of noise, light, dust and volatile organic compounds  
33 in relation to horizontal drilling activities; requiring  
34 promulgation of legislative rules for plugging and abandonment

1 of horizontal wells; exempting certain wells from Natural Gas  
2 Horizontal Well Control Act; establishing reclamation  
3 requirements; requiring performance bonds or other security;  
4 providing notice of planned operation and contents of notice  
5 to certain surface owners; providing notice to certain surface  
6 owner and offer for compensation for certain damages to  
7 certain surface owner; providing for reimbursement of property  
8 taxes to surface owner; providing for civil action, rebuttable  
9 presumption and relief for water contamination or deprivation;  
10 establishing water rights and replacement procedure;  
11 establishing civil penalties and offenses; establishing  
12 criminal penalties and offenses; requiring gas operations to  
13 submit certification from Division of Highways that operator  
14 has entered into road maintenance agreement pursuant to  
15 Division of Highways Oil and Gas Road Policy; creating public  
16 website and electronic notification registry of horizontal  
17 well permit applications and public notice of website;  
18 providing for the publication of information pertaining to  
19 permit applications on that public website; providing for air  
20 quality study, report to Legislature and rulemaking; requiring  
21 secretary to report to Legislature regarding safety of pits  
22 and impoundments; providing casing and cement standards;  
23 authorizing secretary to promulgate legislative and emergency  
24 rules relating to casing and cement standards; authorizing  
25 secretary to promulgate legislative rules governing pits and  
26 impoundments; providing secretary authority to establish,  
27 revise and grant waivers regarding casing and cement standards  
28 and programs; creating the Oil and Gas Horizontal Well  
29 Production Damage Compensation Act; providing legislative  
30 findings and purpose; defining terms; providing conditions and  
31 parameters for compensation of surface owners for drilling  
32 operations; preserving common law right of action and  
33 providing offset for compensation or damages paid; requiring  
34 notice of claims by surface owners; providing manner in which

1 oil and gas operator must provide notice of reclamation;  
2 providing for offers of settlement; providing procedures for  
3 civil actions, arbitration and fees; preserving alternate  
4 remedies; and modifying definitions of "shallow wells" and  
5 "deep wells".

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

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

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

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

24 **§5B-2B-4a. Report to Legislature.**

25 **(a) The Legislature finds that:**

26 **(1) The advent and advancement of new technologies in horizontal drilling and the**  
27 **production of horizontal wells defined in article six-a, chapter twenty-two of this code has created**  
28 **thousands and has the potential to create thousands of additional drilling, production, construction,**  
29 **manufacturing, and related jobs in West Virginia and in the Appalachian Basin;**

30 **(2) This economic opportunity presents new and exciting opportunities for jobs for West**  
31 **Virginians;**

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

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

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

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

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

14 (3) The average salary per job type;

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

16 (5) A review of total economic impact;

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

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

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

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

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

26 © To the extent permitted by federal law, and to the extent necessary for the council to  
27 comply with this section, the council, Workforce West Virginia, the Division of Labor, and the  
28 Office of the Insurance Commissioner may enter into agreements providing for the sharing of job  
29 data and related information.

30 **CHAPTER 22. ENVIRONMENTAL RESOURCES.**

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

1     **§22-6-1. Definitions.**

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

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

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

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

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

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

14            (f) "Director" means the ~~director of the division~~ Secretary of the Department of  
15 Environmental Protection as established in article one of this chapter or ~~such~~ other person to whom  
16 the ~~director~~ secretary has delegated authority or duties pursuant to sections six or eight, article one  
17 of this chapter.

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

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

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

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

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

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

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

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

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

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

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

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

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

22 ~~(t)~~ (t) "Shallow well" means any gas well, other than a coalbed methane well, drilled and  
23 completed in a formation above the top of the uppermost member of the "Onondaga Group" no  
24 deeper than one hundred feet below the top of the "Onondaga Group": *Provided, That in drilling*  
25 ~~a shallow well the operator may penetrate into the "Onondaga Group" to a reasonable depth, not in~~  
26 ~~excess of twenty feet, in order to allow for logging and completion operations, but in no event may~~  
27 ~~the "Onondaga Group" formation or any formation below the "Onondaga Group" be otherwise~~  
28 ~~produced, perforated or stimulated in any manner;~~

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

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

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

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

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

31           (†) (z) "Well operator" or "operator" means any person or persons, firm, partnership,

1 partnership association or corporation that proposes to or does locate, drill, operate or abandon any  
2 well as herein defined.

3 ~~(x) "Pollutant" shall have the same meaning as provided in subsection (17), section three,~~  
4 ~~article eleven, chapter twenty-two of this code; and~~

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

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

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

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

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

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

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

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

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

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

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

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

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

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

18 (10) Collect a permit fee of \$400 for each permit application filed other than an application  
19 for a deep well, horizontal wells 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 application filed for a deep well:  
21 *Provided*, That no permit application fee ~~shall be~~ is required when an application is submitted solely  
22 for the plugging or replugging of a well, or to modify an existing application for which the operator  
23 previously has submitted a permit fee under this section. All application fees required hereunder  
24 ~~shall be~~ are in lieu of and not in addition to any fees imposed under article eleven of this chapter  
25 relating to discharges of stormwater but ~~shall be~~ are in addition to any other fees required by the  
26 provisions of this article: *Provided, however*, That upon a final determination by the United States  
27 Environmental Protection Agency regarding the scope of the exemption under section 402(1)(2) of  
28 the federal Clean Water Act (33 U.S.C. 1342(1)(2)), which determination requires a “national  
29 pollutant discharge elimination system” permit for stormwater discharges from the oil and gas  
30 operations described therein, any permit fees for stormwater permits required under article eleven  
31 of this chapter for such operations ~~shall~~ may not exceed \$100.

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

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

5 (13) Adopt rules with respect to the issuance, denial, retention, suspension or revocation of  
6 permits, authorizations and requirements of this chapter, which rules shall assure that the rules,  
7 permits and authorizations issued by the secretary are adequate to satisfy the purposes of this article  
8 and articles six-a, seven, eight, nine, ~~and ten~~ and twenty-one of this chapter particularly with respect  
9 to the consolidation of the various state and federal programs which place permitting requirements  
10 on the exploration, development, production, storage and recovery of this state's oil and gas  
11 ~~Provided, That notwithstanding any provisions of this article and articles seven, eight, nine and ten~~  
12 ~~of this chapter to the contrary, the Environmental Quality Board shall have the sole authority~~  
13 ~~pursuant to section three, article three, chapter twenty-two-b to promulgate rules setting standards~~  
14 ~~of water quality applicable to waters of the state; and~~

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

18 (d) The secretary shall have authority to visit and inspect any well or well site and any other  
19 oil or gas facility in this state and may call for the assistance of any oil and gas inspector or  
20 inspectors or supervising inspector whenever such assistance is necessary in the inspection of any  
21 such well or well site or any other oil or gas facility. Similarly, all oil and gas inspectors and ~~the~~  
22 ~~supervising inspector~~ supervising inspectors shall have authority to visit and inspect any well or well  
23 site and any other oil or gas facility in this state. Such inspectors shall make all necessary  
24 inspections of oil and gas operations required by this article and articles six-a, eight, nine, ten and  
25 twenty-one of this chapter; administer and enforce all oil and gas laws and rules; and perform other  
26 duties and services as may be prescribed by the secretary. The inspectors shall note and describe all  
27 violations of this article and articles six-a, eight, nine, ten or twenty-one of this chapter and promptly  
28 report those violations to the secretary in writing, furnishing at the same time a copy of the report  
29 to the operator concerned. Any well operator, coal operator operating coal seams beneath the tract  
30 of land, or the coal seam owner or lessee, if any, if said owner or lessee is not yet operating said coal  
31 seams beneath said tract of land may request the secretary to have an immediate inspection made.

1 The operator or owner of every well or well site or any other oil or gas facility shall cooperate with  
2 the secretary, all oil and gas inspectors and the supervising inspector in making inspections or  
3 obtaining information.

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

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

10 **§22-6-2a. Oil and gas inspectors qualifications and salary.**

11 **EDITOR'S NOTE: The bill repeals §22-7-1 through 3, the oil and gas inspector's**  
12 **examining board. This new section replaces the requirements -- unfortunately still requiring**  
13 **that inspectors have to work in the industry before being inspectors.**

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

27 (b) In order to qualify for appointment as an oil and gas inspector or supervising inspector  
28 by the secretary, an eligible applicant shall submit to a written and oral examination by the Division  
29 of Personnel within the Department of Administration and shall furnish any evidence of good health,  
30 character and other facts establishing eligibility required by the Division of Personnel. The Office  
31 of Oil and Gas shall determine the substance of the examinations administered to candidates for the  
32 positions of oil and gas inspector and supervising oil and gas inspector by the Division of Personnel.  
33 If the Division of Personnel finds after investigation and examination that an applicant: (1) is

1 eligible for appointment; and (2) has passed all written and oral examinations, the division shall add  
2 the applicant's name and grade to the register of qualified eligible candidates and certify its action  
3 to the secretary. No candidate's name may remain on the register for more than three years without  
4 requalifying.

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

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

9 **EDITOR'S NOTE: New Article 6A (which is the bulk of the bill) was**  
10 **based heavily on current Article 6 that will now only apply to all other wells.**  
11 **The differences between current Article 6 and this new article 6A are not**  
12 **shown.**

### 13 **§22-6A-1. Short title.**

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

### 15 **§22-6A-2. Legislative findings; declaration of public policy.**

16 (a) The Legislature finds that:

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

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

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

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

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

31 (6) Concomitant with the broad powers to condition the issuance of well work permits, the  
32 secretary should also have broad authority to waive certain minimum requirements of this article

1 when, in his or her discretion, such waiver is appropriate: *Provided*, That the secretary shall submit  
2 a written report of the number of waivers granted to the Legislature commencing January 1, 2013,  
3 and each year thereafter;

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

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

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

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

17 **§22-6A-3. Applicability; exceptions.**

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

27 **§22-6A-3a. Karst terrain; rulemaking.**

28 (a) Because drilling horizontal wells in naturally occurring karst terrain may require  
29 precautions not necessary in other parts of the state, the secretary may require additional safeguards  
30 to protect this geological formation. When drilling horizontal wells in naturally occurring karst  
31 terrain, such additional safeguards may include changing proposed well locations to avoid damage

1 to water resources, special casing programs, and additional or special review of drilling procedures.

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

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

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

14 © Nothing in this section allows the department to prevent drilling in naturally occurring  
15 karst terrain.

16 **§22-6A-4. Definitions.**

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

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

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

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

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

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

31 (5) “Horizontal drilling” means a method of drilling a well for the production of natural gas

1 that is intended to maximize the length of wellbore that is exposed to the formation and in which the  
2 wellbore is initially vertical but is eventually curved to become horizontal, or nearly horizontal, to  
3 parallel a particular geologic formation;

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

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

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

12 (9) “Perennial stream” means a stream or portion of a stream that flows year-round, is  
13 considered a permanent stream and for which base flow is maintained by ground-water discharge  
14 to the streambed due to the ground-water elevation adjacent to the stream being higher than the  
15 elevation of the streambed;

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

19 (11) “Secretary” means the Secretary of the Department of Environmental Protection as  
20 established in article one of this chapter or other person to whom the secretary has delegated  
21 authority or duties pursuant to sections six or eight, article one of this chapter; and

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

25 **§22-6A-5. Application of article six of this chapter to horizontal wells subject to this article.**

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

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

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

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

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

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

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

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

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

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

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

28          (9) The provisions of section seventeen, article six of this chapter pertaining to drilling of  
29 shallow gas wells, notice to be provided to the chair of the review board, orders issued by the review  
30 board and permits issued for such drilling, with the exception that the applicable time for filing  
31 objections is thirty days from the date of receipt by the secretary of the required plat and notice in

1 lieu of fifteen days;

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

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

7 (12) The provisions of section twenty, article six of this chapter providing for protective  
8 devices when a well is drilled through the horizon of a coalbed from which the coal has been  
9 removed;

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

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

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

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

20 (17) The provisions of section twenty-nine, article six of this chapter providing for the  
21 Operating Permit and Processing Fund, the oil and gas reclamation fund and associated fees, with  
22 the exception that in the first paragraph of subsection (a), section twenty-nine, article six of this  
23 chapter, the fees to be credited to the Oil and Gas Operating Permit and Processing Fund are the  
24 permit fees collected pursuant to section seven of this article;

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

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

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

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

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

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

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

12 **§22-6A-6. Secretary of Department of Environmental Protection; powers and duties.**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

23           (14) A certification from the operator that (i) it has provided the owners of the surface  
24 described in subdivisions (1), (2) and (4), subsection (b), section ten of this article, the information  
25 required by subsections (b) and ©, section sixteen of this article; (ii) that the requirement was  
26 deemed satisfied as a result of giving the surface owner notice of entry to survey pursuant to  
27 subsection (a), section ten of this article; or (iii) the notice requirements of subsection (b), section  
28 sixteen of this article were waived in writing by the surface owner; and

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

30           (c)(1) An erosion and sediment control plan shall accompany each application for a well  
31 work permit under this article. The plan shall contain methods of stabilization and drainage,

1 including a map of the project area indicating the amount of acreage disturbed. The erosion and  
2 sediment control plan shall meet the minimum requirements of the West Virginia Erosion and  
3 Sediment Control Manual as adopted and from time to time amended by the department. The  
4 erosion and sediment control plan shall become part of the terms and conditions of any well work  
5 permit that is issued pursuant to this article and the provisions of the plan shall be carried out where  
6 applicable in the operation. The erosion and sediment control plan shall set out the proposed method  
7 of reclamation which shall comply with the requirements of section fourteen of this article.

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

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

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

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

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

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

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

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

31 (6) For all surface water withdrawals, a water management plan that includes the information

1 requested in subdivisions (1) through (5) of this subsection and the following:

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

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

8 © Methods to be used for surface water withdrawal to minimize adverse impact to aquatic  
9 life; and

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

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

15 (g) The application for a permit under this section shall be accompanied by the applicable  
16 bond as required by section fifteen of this article, the applicable plat required by subdivision (6),  
17 subsection (a), section five of this article and a permit fee of \$10,000 for the initial horizontal well  
18 drilled at a location and a permit fee of \$5,000 for each additional horizontal well drilled on a single  
19 well pad at the same location.

20 (h) The well operator named in the application shall designate the name and address of an  
21 agent for the operator who is the attorney-in-fact for the operator and who is a resident of the State  
22 of West Virginia upon whom notices, orders or other communications issued pursuant to this article  
23 or article eleven of this chapter may be served, and upon whom process may be served. Every well  
24 operator required to designate an agent under this section shall, within five days after the termination  
25 of the designation, notify the secretary of the termination and designate a new agent.

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

30 (j) The secretary may waive the requirements of this section and sections eight, ten, eleven  
31 and twenty-four of this article in any emergency situation, if the secretary deems the action

1 necessary. In such case the secretary may issue an emergency permit which is effective for not more  
2 than thirty days, unless reissued by the secretary.

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

10 (l) In the event the secretary finds that a substantial violation has occurred and that the  
11 operator has failed to abate or seek review of the violation in the time prescribed, the secretary may  
12 suspend the permit on which said violation exists, after which suspension the operator shall forthwith  
13 cease all well work being conducted under the permit. However, the secretary may reinstate the  
14 permit without further notice, at which time the well work may be continued. The secretary shall  
15 make written findings of any such suspension and may enforce the same in the circuit courts of this  
16 state. The operator may appeal a suspension pursuant to the provisions of subdivision (23),  
17 subsection (a), section five of this article. The secretary shall make a written finding of any such  
18 determination.

19 **§22-6A-8. Review of application; issuance of permit; performance standards; copy of permits**  
20 **to county assessor.**

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

23 (b) No permit may be issued less than thirty days after the filing date of the application for  
24 any well work except plugging or replugging; and no permit for plugging or replugging may be  
25 issued less than five days after the filing date of the application except a permit for plugging or  
26 replugging a dry hole: *Provided*, That if the applicant certifies that all persons entitled to notice of  
27 the application under the provisions of subsection (b), section ten of this article have been served in  
28 person or by certified mail, return receipt requested, with a copy of the well work application,  
29 including the erosion and sediment control plan, if required, and the well plat, and further files  
30 written statements of no objection by all such persons, the secretary may issue the well work permit  
31 at any time.

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

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

- 19           (1) The proposed well work will constitute a hazard to the safety of persons;  
20           (2) The plan for soil erosion and sediment control is not adequate or effective;  
21           (3) Damage would occur to publicly owned lands or resources; or  
22           (4) The proposed well work fails to protect fresh water sources or supplies.

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

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

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

31           (f) The secretary shall promptly review all written comments filed by persons entitled to

1 notice pursuant to subsection (b), section ten of this article. If after review of the application and all  
2 written comments received from persons entitled to notice pursuant to subsection (b), section ten of  
3 this article, the application for a well work permit is approved, and no timely objection has been filed  
4 with the secretary by the coal operator operating coal seams beneath the tract of land, or the coal  
5 seam owner or lessee, if any, if said owner or lessee is not yet operating said coal seams, or made  
6 by the secretary under the provisions of section ten and eleven of this article, the permit shall be  
7 issued, with conditions, if any. This section does not supersede the provisions of section seven or  
8 subdivisions (6) through (9), subsection (a), section five of this article.

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

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

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

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

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

22 (5) Protect the quantity and the quality of water in surface and groundwater systems both  
23 during and after drilling operations and during reclamation by: (A) Withdrawing water from surface  
24 waters of the state by methods deemed appropriate by the secretary, so as to maintain sufficient in-  
25 steam flow immediately downstream of the withdrawal location. In no case shall an operator  
26 withdraw water from ground or surface waters at volumes beyond which the waters can sustain; (B)  
27 Casing, sealing or otherwise managing wells to keep returned fluids from entering ground and  
28 surface waters; © Conducting oil and gas operations so as to prevent, to the extent possible using  
29 the best management practices, additional contributions of suspended or dissolved solids to  
30 streamflow or runoff outside the permit area, but in no event shall the contributions be in excess of  
31 requirements set by applicable state or federal law; and (D) Registering all water supply wells drilled

1 and operated by the operator with the Office of Oil and Gas. All drinking water wells within one  
2 thousand five hundred feet of a water supply well shall be flow and quality tested by the operator  
3 upon request of the drinking well owner prior to operating the water supply well. The secretary shall  
4 propose legislative rules to identify appropriate methods for testing water flow and quality.

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

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

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

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

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

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

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

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

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

28 (I) The quantity of water transported;

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

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

31 (iii) The information maintained pursuant to this subdivision shall be available for inspection

1 by the department along with other required permits and records and maintained for three years after  
2 the water withdrawal activity.

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

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

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

12 **§22-6A-9. Certificate of approval required for large pits or impoundment construction;**  
13 **certificate of approval and annual registration fees; application required**  
14 **to obtain certificate; term of certificate; revocation or suspension of**  
15 **certificates; appeals; farm ponds.**

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

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

30 © The application fee for placement, construction, enlargement, alteration, repair or removal  
31 of an impoundment pursuant to this section is \$300, and the fee shall accompany the application for

1 certificate of approval. Operators holding certificates of approval shall be assessed an annual  
2 registration fee of \$100, which is valid for more than one impoundment that supports one or more  
3 well pads.

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

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

17 (f) Every application for a certificate of approval shall be made in writing on a form  
18 prescribed by the secretary and shall be signed and verified by the applicant. The application shall  
19 include a monitoring and emergency action plan and a maintenance plan, the required contents of  
20 which shall be established by the secretary by legislative rule. The application shall contain and  
21 provide information that may reasonably be required by the secretary to administer the provisions  
22 of this article.

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

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

29 (i) The secretary may revoke or suspend any certificate of approval whenever the secretary  
30 determines that the impoundment for which the certificate was issued constitutes an imminent danger  
31 to human life or property. If necessary to safeguard human life or property, the secretary may also

1 amend the terms and conditions of any certificate by issuing a new certificate containing the revised  
2 terms and conditions.

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

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

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

14 (k) This section does not apply to:

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

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

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

25 **§22-6A-10. Notice to property owners.**

26 (a) Prior to filing a permit application, the operator shall provide notice of planned entry on  
27 to the surface tract to conduct any plat surveys required pursuant to this article. Such notice shall be  
28 provided at least seven days but no more than forty-five days prior to such entry to: (1) The surface  
29 owner of such tract; (2) to any owner or lessee of coal seams beneath such tract that has filed a  
30 declaration pursuant to section thirty-six, article six, chapter twenty-two of this code; and (3) any  
31 owner of minerals underlying such tract in the county tax records. The notice shall include a

1 statement that copies of the state Erosion and Sediment Control Manual and the statutes and rules  
2 related to oil and gas exploration and production may be obtained from the Secretary, which  
3 statement shall include contact information, including the address for a web page on the Secretary's  
4 website, to enable the surface owner to obtain copies from the secretary.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

19 **§22-6A-10a. Method of Delivery of Notice.**

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

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

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

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

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

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

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

17 **§22-6A-12. Well location restrictions.**

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

1 variance, if granted, shall include terms and conditions the department requires to ensure the safety  
2 and protection of affected persons and property. The terms and conditions may include insurance,  
3 bonding and indemnification, as well as technical requirements.

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

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

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

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

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

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

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

1 dust and volatile organic compounds relating to drilling horizontal wells, including reasonable means  
2 of mitigating such factors, if necessary.

3 **§22-6A-13. Plugging of horizontal wells.**

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

7 **§22-6A-14. Reclamation requirements.**

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

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

24 (2) For well pads designed to contain multiple horizontal wells, partial reclamation shall  
25 begin upon completion of the construction of the well pad. For purposes of this section, the term  
26 partial reclamation means grading or terracing and planting, or seeding the area disturbed that is not  
27 required in drilling, completing or producing any of the horizontal wells on the well pad in  
28 accordance with the erosion and sediment control plan. This partial reclamation satisfies the  
29 reclamation requirements of this section for a maximum of twenty-four months between the drilling  
30 of horizontal wells on a well pad designed to contain multiple horizontal wells: *Provided, That the*  
31 maximum aggregate period in which partial reclamation satisfies the reclamation requirements of

1 this section is five years from completion of the construction of the well pad. Within six months  
2 after the completion of the final horizontal well on the pad or the expiration of the five-year  
3 maximum aggregate partial reclamation period, whichever occurs first, the operator shall complete  
4 final reclamation of the well pad as set forth in this subsection.

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

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

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

18 **§22-6A-15. Performance bonds; corporate surety or other security.**

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

22 (b) A separate bond as described in subsection (d) of this section may be furnished for each  
23 horizontal well drilled. Each of these bonds shall be in the sum of \$50,000 payable to the State of  
24 West Virginia, conditioned on full compliance with all laws, rules relating to the drilling, redrilling,  
25 deepening, casing and stimulating of horizontal wells and to the plugging, abandonment and  
26 reclamation of horizontal wells and for furnishing reports and information required by the secretary.

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

31 (d) The form of the bond required by this article shall be approved by the secretary and may

1 include, at the option of the operator, surety bonding, collateral bonding, including cash and  
2 securities, letters of credit, establishment of an escrow account, self-bonding or a combination of  
3 these methods. If collateral bonding is used, the operator may elect to deposit cash, or collateral  
4 securities or certificates as follows: Bonds of the United States or its possessions, of the federal land  
5 bank, or of the homeowners' loan corporation; full faith and credit general obligation bonds of the  
6 State of West Virginia or other states or of any county, district or municipality of the State of West  
7 Virginia or other states; or certificates of deposit in a bank in this state, which certificates shall be  
8 in favor of the department. The cash deposit or market value of the securities or certificates shall  
9 be equal to or greater than the amount of the bond. The secretary shall, upon receipt of any deposit  
10 of cash, securities or certificates, promptly place the same with the Treasurer of the State of West  
11 Virginia whose duty it is to receive and hold them in the name of the state in trust for the purpose  
12 of which the deposit is made when the permit is issued. The operator is entitled to all interest and  
13 income earned on the collateral securities filed by the operator. The operator making the deposit is  
14 entitled from time to time to receive from the State Treasurer, upon the written approval of the  
15 secretary, the whole or any portion of any cash, securities or certificates so deposited, upon  
16 depositing with the State Treasurer in lieu thereof, cash or other securities or certificates of the  
17 classes herein specified having value equal to or greater than the amount of the bond.

18 (e) When an operator has furnished a separate bond from a corporate bonding or surety  
19 company to drill, fracture or stimulate a horizontal well and the well produces oil or gas or both, its  
20 operator may deposit with the secretary cash from the sale of the oil or gas or both until the total  
21 deposited is \$50,000. When the sum of the cash deposited is \$50,000, the separate bond for the well  
22 shall be released by the secretary. Upon receipt of that cash, the secretary shall immediately deliver  
23 that amount to the State Treasurer, who shall hold the cash in the name of the state in trust for the  
24 purpose for which the bond was furnished and the deposit was made. The operator is entitled to all  
25 interest and income which may be earned on the cash deposited so long as the operator is in full  
26 compliance with all laws and rules relating to the drilling, redrilling, deepening, casing, plugging,  
27 abandonment and reclamation of the well for which the cash was deposited and so long as the  
28 operator has furnished all reports and information required by the secretary. The secretary may  
29 establish procedures under which an operator may substitute a new bond for an existing bond or  
30 provide a new bond under certain circumstances specified in a legislative rule promulgated in  
31 accordance with chapter twenty-nine-a of this code.

1           (f) Any separate bond furnished for a particular well prior to the effective date of this article  
2 continues to be valid for all work on the well permitted prior to the effective date of this article; but  
3 no permit may be issued on such a particular well without a bond complying with the provisions of  
4 this section. Any blanket bond furnished prior to the effective date of this article shall be replaced  
5 with a new blanket bond conforming to the requirements of this section, at which time the prior bond  
6 is discharged by operation of law; and if the secretary determines that any operator has not furnished  
7 a new blanket bond, the secretary shall notify the operator by registered mail or by any method of  
8 delivery that requires a receipt or signature confirmation of the requirement for a new blanket bond,  
9 and failure to submit a new blanket bond within sixty days after receipt of the notice from the  
10 secretary works a forfeiture under subsection (i) of this section of the blanket bond furnished prior  
11 to the effective date of this article.

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

16           (h) (1) Whenever the right to operate a well is assigned or otherwise transferred, the assignor  
17 or transferor shall notify the department of the name and address of the assignee or transferee by  
18 registered mail or by any method of delivery that requires a receipt or signature confirmation not  
19 later than thirty days after the date of the assignment or transfer. No assignment or transfer by the  
20 owner relieves the assignor or transferor of the obligations and liabilities unless and until the  
21 assignee or transferee files with the department the well name and the permit number of the subject  
22 well, the county and district in which the subject well is located, the names and addresses of the  
23 assignor or transferor, and assignee or transferee, a copy of the instrument of assignment or transfer  
24 accompanied by the applicable bond, cash, collateral security or other forms of security described  
25 in this section, and the name and address of the assignee's or transferee's designated agent if the  
26 assignee or transferee would be required to designate an agent under this article if the assignee or  
27 transferee were an applicant for a permit under this article. Every well operator required to designate  
28 an agent under this section shall, within five days after the termination of the designation, notify the  
29 department of the termination and designate a new agent.

30           (2) Upon compliance with the requirements of this section by the assignor or transferor and  
31 assignee or transferee, the secretary shall release the assignor or transferor from all duties and

1 requirements of this article and shall give written notice of release to the assignor or transferor of any  
2 bond and return to the assignor or transferor any cash or collateral securities deposited pursuant to  
3 this section.

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

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

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

11 **§22-6A-16. Compensation of surface owners for drilling operations.**

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

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

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

27 (1) A copy of this code section;

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

30 (3) A proposed surface use and compensation agreement containing an offer of compensation  
31 for damages to the surface affected by oil and gas operations to the extent the damages are

1 compensable under article six-b of this chapter.

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

4 **§22-6A-17. Reimbursement of property taxes of encumbered properties.**

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

11 **§22-6A-18. Civil action for contamination or deprivation of fresh water source or supply;**  
12 **presumption; water rights and replacement; waiver of replacement.**

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

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

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

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

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

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

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

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

31 (d) Any operator electing to preserve its defenses under subdivision (1), subsection © of this

1 section shall retain the services of an independent certified laboratory to conduct the predrilling or  
2 prealteration water well test. A copy of the results of the test shall be submitted to the department  
3 and the surface owner or water purveyor in a manner prescribed by the secretary.

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

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

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

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

12 (3) Within thirty days begin activities to establish a permanent water supply or submit a  
13 proposal to the secretary outlining the measures and timetables to be used in establishing a  
14 permanent supply. The total time in providing a permanent water supply may not exceed two years.

15 If the operator demonstrates that providing a permanent replacement water supply cannot be  
16 completed within two years, the secretary may extend the time frame on case-by-case basis; and

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

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

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

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

27 **§22-6A-19. Offenses; civil and criminal penalties.**

28 (a) Any person or persons, firm, partnership, partnership association or corporation who  
29 willfully violates any provision of this article or any rule or order promulgated under this article or  
30 any permit issued pursuant to this article is subject to a civil penalty not exceeding \$5,000. Each day  
31 a violation continues after notice by the department constitutes a separate offense. The penalty shall

1 be recovered by a civil action brought by the department, in the name of the state, before the circuit  
2 court of the county in which the subject well or facility is located. All the civil penalties collected  
3 shall be credited to the General Fund of the state.

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

14 © Notwithstanding the provisions of subsections (a) and (b) of this section, any person or  
15 persons, firm, partnership, partnership association or corporation willfully violating any of the  
16 provisions of this article which prescribe the manner of drilling and casing or plugging and filling  
17 any well or which prescribe the methods of conserving gas from waste, shall be guilty of a  
18 misdemeanor, and, upon conviction thereof shall be punished by a fine not exceeding five thousand  
19 dollars, or imprisonment in jail not exceeding twelve months, or both, in the discretion of the court,  
20 and prosecution under this section may be brought in the name of the State of West Virginia in the  
21 court exercising criminal jurisdiction in the county in which the violation of such provisions of the  
22 article or terms of such order was committed, and at the instance and upon the relation of any  
23 citizens of this state.

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

28 **§22-6A-20. Division of Highways certification.**

29 As part of the permit application for horizontal wells, the operator shall submit a letter of  
30 certification from the Division of Highways that the operator has, pursuant to the Division of  
31 Highways Oil and Gas Road Policy, entered into an agreement with the Division of Highways

1 pertaining to the state local service roads associated with the proposed well work set forth in the  
2 permit application or has certified that no such agreement is required by the Oil and Gas Road Policy  
3 and the reasons therefor.

4 **§22-6A-21. Establishment of public website information and electronic notification registry**  
5 **regarding horizontal well permit applications.**

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

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

18 **§22-6A-22. Air quality study and rulemaking.**

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

26 **§22-6A-23. Impoundment and pit safety study; rulemaking.**

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

1 rules establishing these new requirements.

2 **§22-6A-24. Casing and cement standards.**

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

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

11 © Rules promulgated by the secretary pursuant to this section shall include provisions to  
12 accomplish the following:

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

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

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

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

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

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

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

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

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

27 (B) The diameter of the borehole;

28 © The casing type, whether the casing to be utilized is new or used, and the depth, diameter,  
29 wall thickness, and burst pressure rating for the casing;

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

31 (E) The estimated location of centralizers;

1 (F) The proposed borehole conditioning procedures; and

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

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

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

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

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

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

18 (3) Installation of intermediate production casing;

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

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

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

24 (f) *Minimum casing standards.*

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

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

31 (3) Centralizers shall be used, with the proper spacing for such well, during the casing

1 installation to ensure that the casing is centered in the hole.

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

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

6 (g) *Minimum cement standards.*

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

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

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

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

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

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

23  
24 **EDITOR'S NOTE: Much of "new" Article 6B that is now applicable to**  
25 **most horizontal wells, is a rewrite of current Article 7 that now will only apply**  
26 **to all other wells. In new Article 6B we were able to show changes from current**  
27 **surface damage compensation article now applicable to only to other wells. In**  
28 **new article 6B, additions to existing Article 7 are double underlined and bolded,**  
29 **and deletions are ~~overstruck and bolded~~ All of the changes benefit industry and**  
30 **no problems with the previous act in legislation drafted by surface owners was**  
31 **addressed.**

32  
33 **§22-6B-1. Legislative findings and purpose; applicability.**

34 (a) The Legislature finds the following:

35 (1) Exploration for and development of oil and gas reserves in thisin this state must coexist

1 with the use, agricultural or otherwise, of the surface of certain land and that each constitutes a right  
2 equal to the other.

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

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

21 ~~—— (4) The Legislature further finds and creates a rebuttable presumption that even after~~  
22 ~~the thirty-first day of December, one thousand nine hundred fifty-nine, and prior to the ninth~~  
23 ~~day of June, one thousand nine hundred eighty-three, it was unlikely that any surface owner~~  
24 ~~knew or should have known of the rotary method of drilling oil or gas wells, but, that such~~  
25 ~~knowledge was possible and that the rotary method of drilling oil or gas wells could have, in~~  
26 ~~some instances, been reasonably contemplated by the parties during the negotiations of the~~  
27 ~~severance of the oil and gas from the surface. This presumption against knowledge of the~~  
28 ~~rotary drilling method may be rebutted by a clear preponderance of the evidence showing that~~  
29 ~~the surface owner or the surface owner's predecessor of record did in fact know of the rotary~~  
30 ~~drilling method at the time the owner or the owner's predecessor executed a severance deed~~  
31 ~~or lease of oil and gas and that the owner or owner's predecessor fairly contemplated the~~

1 ~~rotary drilling method and received compensation for the same~~

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

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

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

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

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

23 **§22-6B-2. Definitions.**

24 In this article:

25 (1) "Drilling operations" means the actual drilling or re-drilling of a horizontal well  
26 commenced subsequent to the effective date of this article, and the related preparation of the drilling  
27 site and access road, which requires entry, upon the surface estate;

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

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

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

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

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

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

15 **§22-6B-3. Compensation of surface owners for drilling operations.**

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

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

22           (2) The market value of crops, **including timber**, destroyed, damaged or prevented from  
23 reaching market;

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

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

27           (5) The diminution in value, if any, of the surface lands and other property after completion  
28 of the surface disturbance done pursuant to the activity for which the permit was issued determined  
29 according to the **market value of** the actual use made thereof by the surface owner immediately prior  
30 to the commencement of the permitted activity.

31           The amount of damages may be determined by any formula mutually agreeable between the

1 surface owner and the oil and gas developer.

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

4 © In the case of surface lands owned by more than one person as tenants in common, joint  
5 tenants or other co-ownership, any claim for compensation under this article shall be for the benefit  
6 of all co-owners. The resolution of a claim for compensation provided in this article operates as a  
7 bar to the assertion of additional claims under this section arising out of the same drilling operations.

8 **§22-6B-4. Common law right of action preserved; offsets.**

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

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

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

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

23 Any surface owner, to receive compensation under section three of this article, shall notify  
24 the oil and gas developer of the damages sustained by the person within two years after the date that  
25 the oil and gas developer files notice that final reclamation is commencing under section fourteen,  
26 article six-a of this chapter. The notice of reclamation shall be given to surface owners by registered  
27 or certified mail, return receipt requested, and is complete upon mailing. If more than three tenants  
28 in common or other co-owners hold interests in the lands, the oil and gas developer may give the  
29 notice to the person described in the records of the sheriff required to be maintained pursuant to  
30 section eight, article one, chapter eleven-a of this code or publish in the county in which the well is  
31 located or to be located a Class II legal advertisement as described in section two, article three,

1 chapter fifty-nine of this code, containing the notice and information the secretary prescribes by rule.

2 **§22-6B-6. Agreement; offer of settlement.**

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

9 **§22-6B-7. Rejection; legal action; arbitration; fees and costs.**

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

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

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

30 © The following persons are considered interested and may not be appointed as arbitrators:  
31 Any person who is personally interested in the land on which **rotary horizontal** drilling is being

1 performed or has been performed, or in any interest or right therein, or in the compensation and any  
2 damages to be awarded therefor, or who is related by blood or marriage to any person having such  
3 personal interest, or who stands in the relation of guardian and ward, master and servant, principal  
4 and agent, or partner, real estate broker, or surety to any person having such personal interest, or who  
5 has enmity against or bias in favor of any person who has such personal interest or who is the owner  
6 of, or interested in, the land or the oil and gas development of the land. A person is not considered  
7 interested or incompetent to act as arbitrator by reason of being an inhabitant of the county, district  
8 or municipal corporation in which the land is located, or holding an interest in any other land therein.

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

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

15 **§22-6B-8. Application of article.**

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

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

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

21 **§22C-8-2. Definitions.**

22 ~~Unless the context in which used clearly requires a different meaning,~~ As used in this article:

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

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

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

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

1 (5) “Commission” means the Oil and Gas Conservation Commission provided for in section  
2 four, article nine of this chapter;

3 (6) “Commissioner” means the Oil and Gas Conservation Commissioner provided for in  
4 section four, article nine of this chapter;

5 (7) “Correlative rights” means the reasonable opportunity of each person entitled thereto to  
6 recover and receive without waste the gas in and under a tract or tracts, or the equivalent thereof;

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

10 (9) “Division” means the state ~~Division~~ Department of Environmental Protection provided  
11 for in chapter twenty-two of this code;

12 (10) “Director” means the ~~Director of the Division~~ Secretary of the Department of  
13 Environmental Protection as established in article one, chapter twenty-two of this code or ~~such~~ other  
14 person to whom the ~~director~~ secretary delegates authority or duties pursuant to sections six or eight,  
15 article one, chapter twenty-two of this code;

16 (11) “Drilling unit” means the acreage on which the board decides one well may be drilled  
17 under section ten of this article;

18 (12) “Gas” means all natural gas and all other fluid hydrocarbons not defined as oil in  
19 subdivision (15) of this section;

20 (13) “Gas operator” means any person who owns or has the right to develop, operate and  
21 produce gas from a pool and to appropriate the gas produced therefrom either for ~~such~~ that person  
22 or for ~~such~~ that person and others. In the event that there is no gas lease in existence with respect to  
23 the tract in question, the person who owns or has the gas rights therein ~~shall be~~ is considered a “gas  
24 operator” to the extent of seven-eighths of the gas in that portion of the pool underlying the tract  
25 owned by such person, and a “royalty owner” to the extent of one-eighth of ~~such~~ the gas;

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

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

1 (16) "Owner" when used with reference to any coal seam, ~~shall include~~ includes any person  
2 or persons who own, lease or operate ~~such~~ the coal seam;

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

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

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

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

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

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

27 (23) "Well" means any shaft or hole sunk, drilled, bored or dug into the earth or into  
28 underground strata for the extraction, injection or placement of any liquid or gas, or any shaft or hole  
29 sunk or used in conjunction with ~~such~~ the extraction, injection or placement. The term "well" does  
30 not include any shaft or hole sunk, drilled, bored or dug into the earth for the sole purpose of core  
31 drilling or pumping or extracting therefrom potable, fresh or usable water for household, domestic,

1 industrial, agricultural or public use; and

2 (24) “Well operator” means any person who proposes to or does locate, drill, operate or  
3 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 different meaning,~~ As used in this  
7 article:

8 (1) “Commission” means the Oil and Gas Conservation Commission and “commissioner”  
9 means the Oil and Gas Conservation Commissioner as provided for in section four of this article;

10 (2) “Director” means the ~~Director~~ Secretary of the ~~Division~~ Department of Environmental  
11 Protection and “chief” means the Chief of the Office of Oil and Gas;

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

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

23 (5) “Royalty owner” means any owner of oil and gas in place, or oil and gas rights, to the  
24 extent that ~~such the~~ the owner is not an operator as defined in subdivision (4) of this section;

25 (6) “Independent producer” means a producer of crude oil or natural gas whose allowance  
26 for depletion is determined under Section 613A of the federal Internal Revenue Code in effect on  
27 July 1, 1997;

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

31 (8) “Gas” means all natural gas and all other fluid hydrocarbons not defined as oil in

1 subdivision (7) of this section;

2 (9) "Pool" means an underground accumulation of petroleum or gas in a single and separate  
3 reservoir (ordinarily a porous sandstone or limestone). It is characterized by a single natural-pressure  
4 system so that production of petroleum or gas from one part of the pool affects the reservoir pressure  
5 throughout its extent. A pool is bounded by geologic barriers in all directions, such as geologic  
6 structural conditions, impermeable strata, and water in the formations, so that it is effectively  
7 separated from any other pools that may be presented in the same district or on the same geologic  
8 structure;

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

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

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

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

22 (14) "Waste" means and includes:

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

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

28 © The drilling of more deep wells than are reasonably required to recover efficiently and  
29 economically the maximum amount of oil and gas from a pool. Waste does not include gas vented  
30 or released from any mine areas as defined in section two, article one, chapter twenty-two-a of this  
31 code or from adjacent coal seams which are the subject of a current permit issued under article two

1 of chapter twenty-two-a of this code: *Provided*, That ~~nothing in this exclusion is intended to~~ does  
2 not address ownership of the gas;

3 (15) “Correlative rights” means the reasonable opportunity of each person entitled thereto  
4 to recover and receive without waste the oil and gas in and under his tract or tracts, or the equivalent  
5 thereof; and

6 (16) “Just and equitable share of production” means, as to each person, an amount of oil or  
7 gas or both substantially equal to the amount of recoverable oil and gas in that part of a pool  
8 underlying ~~such~~ the person’s tract or tracts.

9 (b) Unless the context clearly indicates otherwise, the use of the word “and” and the word  
“or” ~~shall be~~ are interchangeable, as, for example, “oil and gas” ~~shall mean~~ means oil or gas or both.”

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