

1 **§22-6-2. Secretary -- Powers and duties generally; department**
2 **records open to public; inspectors.**

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

7 (b) The Secretary is authorized to propose rules for legislative
8 approval in accordance with the provisions of article three, chapter
9 twenty-nine-a [29A-3-1, et seq.] of this code necessary to effectuate
10 the above stated purposes.

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

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

19 (2) ~~Employ a supervising oil and gas inspector and oil and gas~~
20 ~~inspectors~~ Determine the number of supervising oil and gas inspectors
21 and oil and gas inspectors needed to carry out the purposes of this
22 article and articles eight, nine, ten, and twenty-one of this chapter
23 and appoint them as such. All such appointees shall be qualified
24 civil service employees, but no person is eligible for such

1 appointment until he or she has served in a probationary status for
2 a period of six months to the satisfaction of the Secretary;

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

5 (4) ~~Suspend for good cause any oil and gas inspector or~~
6 ~~supervising inspector without compensation for a period not exceeding~~
7 ~~thirty days in any calendar year~~ Make investigations or inspections
8 necessary to ensure complete compliance with the provisions of this
9 Code and enforce the provisions of this article and articles eight,
10 nine, ten, and twenty-one of this chapter as provided in said
11 articles;

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

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

20 (7) Hear and determine applications made by owners, well
21 operators, and or coal operators for the annulment or revision of
22 orders made by oil and gas inspectors or ~~the~~ supervising inspectors,
23 ~~and to make inspections, in accordance with the provisions of this~~
24 ~~article and articles eight and nine of this chapter;~~

1 (8) Cause a properly indexed permanent and public record to be
2 kept of all inspections made by the Secretary or by oil and gas
3 inspectors or ~~the~~ supervising inspectors;

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

11 (10) Collect a permit fee of \$_____ for each permit application
12 filed other than an application for a deep well or a coalbed methane
13 well or a well that has horizontal legs and is associated with a well
14 site that involves three acres or more of surface disturbance; and
15 collect a permit fee of \$_____ for each permit application filed for
16 a deep well; and collect a permit fee of \$_____ for each permit
17 application filed for a well that has horizontal legs and is
18 associated with a well site that involves three acres or more of
19 surface disturbance: *Provided,* That no permit application fee shall
20 be required when an application is submitted solely for the plugging
21 or replugging of a well, ~~or to modify an existing application for~~
22 ~~which the operator previously has submitted a permit fee under this~~
23 ~~section.~~—All application fees required hereunder shall be in lieu
24 of and not in addition to any fees imposed under article eleven of

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

11 (11) Collect a fee of \$ _____ for each permit modification
12 application filed for a shallow well; and collect a fee of \$ _____ for
13 each permit modification application filed for a deep well; and
14 collect a fee of \$ _____ for each permit modification application filed
15 for a well that has horizontal legs and is associated with a well site
16 that involves five acres or more of surface disturbance.

17 ~~(11)~~ (12) Perform all other duties which are expressly imposed
18 upon the Secretary by the provisions of this chapter;

19 ~~(12)~~ (13) Perform all duties as the permit issuing authority for
20 the state in all matters pertaining to the exploration, development,
21 production, storage, and recovery of this state's oil and gas;

22 ~~(13)~~ (14) Adopt rules with respect to the issuance, denial,
23 retention, suspension or revocation of permits, authorizations, and
24 requirements of this chapter, which rules shall assure that the rules,

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

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

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

1 site and any other oil or gas facility in this state. They shall make
2 all necessary surveys and inspections of oil and gas operations
3 required by the provisions of this article and articles eight, nine,
4 ten, and twenty-one of this chapter; administer and enforce all oil
5 and gas laws and rules; and perform such other duties and services
6 as may be prescribed by the Secretary. Such inspectors shall give
7 particular attention to all conditions of each permit to ensure
8 complete compliance therewith. They shall note and describe all
9 violations of this article and articles eight, nine, ten, or
10 twenty-one of this chapter and immediately report such violations to
11 the Secretary in writing, furnishing at the same time a copy of such
12 report to the operator concerned. ~~Any well operator, coal operator~~
13 ~~operating coal seams beneath the tract of land, or the coal seam owner~~
14 ~~or lessee, if any, if said owner or lessee is not yet operating said~~
15 ~~coal seams beneath said tract of land may request the Secretary to~~
16 ~~have an immediate inspection made. The operator or owner of every~~
17 ~~well or well site or any other oil or gas facility shall cooperate~~
18 ~~with the Secretary, all oil and gas inspectors and the supervising~~
19 ~~inspector in making inspections or obtaining information.~~

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

1 coal operator operating coal seams beneath the tract of land, or the
2 coal seam owner or lessee, if any, if said owner or lessee is not yet
3 operating said coal seams beneath said tract of land, may request the
4 Secretary to have an immediate inspection made. The operator or
5 owner of every well or well site or any other oil or gas facility shall
6 cooperate with the Secretary, all oil and gas inspectors and
7 supervising inspectors in making inspections or obtaining
8 information.

9 (f) All records of the office shall be open to the public.

10 **§22-6-3. Permit required for well work; permit fee; application; soil erosion control plan.**

11 (a) It is unlawful for any person to commence any well work, including site preparation work
12 which involves any disturbance of land, without first securing from the ~~director~~Secretary a well
13 work permit. An application may propose and a permit may approve two or more activities
14 defined as well work or site preparation work.

15 (b) The application for a well work permit shall be accompanied by applicable bond as
16 prescribed by section ~~twelve~~ fourteen, ~~fourteen~~ sixteen or ~~twenty-three~~ twenty-five of this article,
17 and the applicable plat required by section ~~twelve~~ fourteen or ~~fourteen~~ sixteen of this article.

18 (c) Every permit application filed under this section shall be on such form as may be prescribed
19 by the Secretary, shall be verified, and shall contain the following:

20 (1) The names and addresses of ~~(i) the well operator, (ii) the agent required to be designated~~
21 ~~under subsection (e) of this section,~~ (A) The permit applicant; (B)The owner of record of the
22 property, both surface and mineral, proposed to be developed; (C) The holders of record of any
23 leasehold interest in the property; (D) The agent required to be designated by subsection (e) of

1 this section; (E) If any of these are business entities other than a single proprietor, the names and
2 addresses of the principals, officers, and resident agent; and (iii)(G) Every person whom the
3 applicant must notify under any section of this article, together with a certification and evidence
4 that a copy of the application and all other required documentation has been delivered to all such
5 persons;

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

10 (3) The number of the well or such other identification as the ~~director~~ Secretary may require;

11 (4) The type of well;

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

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

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

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

19 (9) If the proposed well work is to convert an oil well or a combination well or to drill a new
20 well for the purpose of introducing pressure for the recovery of oil as provided in section
21 ~~twenty-five~~ twenty-seven of this article, specifications in accordance with the data requirements
22 of section ~~fourteen~~ sixteen of this article;

1 (10) If the proposed well work is to plug or replug the well, ~~(i)(A)~~ Specifications in accordance
2 with the data requirements of section ~~twenty-three~~ twenty-five of this article; ~~(ii)(B)~~ A copy of all
3 logs in the operator's possession as the ~~director~~ Secretary may require; and ~~(iii)(C)~~ A work order
4 showing in detail the proposed manner of plugging or unplugging the well, in order that a
5 representative of the ~~director~~ Secretary and any interested persons may be present when the work
6 is done. In the event of an application to drill, redrill or deepen a well, if the well work is
7 unsuccessful so that the well must be plugged and abandoned, and if the well is one on which the
8 well work has been continuously progressing pursuant to a permit, the operator may proceed to
9 plug the well as soon as the operator has obtained the verbal permission of the ~~director~~ Secretary
10 or the ~~director's~~ Secretary's designated representative to plug and abandon the well, except that
11 the operator shall make reasonable effort to notify as soon as practicable the surface owner and
12 the coal owner, if any, of the land at the well location, and shall also timely file the plugging
13 affidavit required by section ~~twenty-three~~ twenty-five of this article;

14 (11) If the proposed well work is to stimulate an oil or gas well, specifications in accordance
15 with the data requirements of section ~~thirteen~~ fifteen of this article;

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

18 (13) A well site safety plan that shall include, at a minimum, _____.

19 (14) A statement of whether the applicant or any officer, partner, director, principal shareholder
20 of the applicant, any subsidiary, affiliate or persons controlled by or under common control with
21 the applicant, has ever been an officer, partner, director or principal shareholder in a company
22 that has ever held a well work permit in this or any other state that has been revoked or has had a

1 bond or similar security deposited in lieu of bond forfeited and, if so, a brief explanation of the
2 facts involved; and

3 (15) Any other relevant information which the ~~director~~ Secretary may require by rule.

4 (d)(1) An erosion and sediment control plan shall accompany each application for a well work
5 permit ~~except for a well work permit to plug or replug any well~~. Such plan shall contain
6 methods of stabilization and drainage, including a map of the project area indicating the amount
7 of acreage disturbed. The erosion and sediment control plan shall meet the minimum
8 requirements of the West Virginia Erosion and Sediment Control Manual as adopted and from
9 time to time amended by the ~~division~~ department, ~~in consultation with the several soil~~
10 ~~conservation districts pursuant to the control program established in this state through section~~
11 ~~208 of the federal Water Pollution Control Act Amendments of 1972 (33 U.S.C.1288)~~ The
12 erosion and sediment control plan shall become part of the terms and conditions of any well work
13 permit that is issued, ~~except for a well work permit to plug or replug any well, which is issued~~
14 and the provisions of the plan shall be carried out where applicable in the operation. The
15 erosion and sediment control plan shall set out the proposed method of reclamation which shall
16 comply with the requirements of section thirty-one of this article.

17 (2) For sites that disturb more than five acres of surface, a stormwater permit pursuant to section
18 seven of this article.

19 (e) The well operator named in such application shall designate the name and address of an agent
20 for such operator who shall be the attorney-in-fact for the operator and who shall be a resident of
21 the state of West Virginia upon whom notices, orders or other communications issued pursuant
22 to this article or article eleven, chapter twenty-two, may be served, and upon whom process may

1 be served. Every well operator required to designate an agent under this section shall, within
2 five days after the termination of such designation, notify the ~~director~~ Secretary of such
3 termination and designate a new agent.

4 (f) The well owner or operator shall install the permit number as issued by the ~~director~~ Secretary
5 in a legible and permanent manner to the well upon completion of any permitted work. The
6 dimensions, specifications, and manner of installation shall be in accordance with the rules of
7 the ~~director~~ Secretary.

8 (g) In addition to the other requirements of this article, an application for a well work permit for
9 a gas well that is drilled using horizontal drilling methods shall include, in addition to the
10 information listed above, a water management plan, which shall:

11 (1) Explain if the drilling, fracturing or stimulating of the horizontal well requires the use of
12 water obtained from withdrawals of water resources of the State in amounts that exceed two
13 hundred ten thousand gallons during any month; then

14 (2) Include the following information:

15 (A) The type of water source, such as surface or groundwater and the county of each source to be
16 used by the operation for water withdrawals and the latitude and longitude of each anticipated
17 withdrawal location;

18 (B) The anticipated volume of each water withdrawal;

19 (C) The anticipated months when water withdrawals will be made;

20 (D) The planned management and disposition of wastewater from fracturing, stimulation, and
21 production activities;

22 (E) A listing of the additives that are used in water used for fracturing or stimulating the well;

1 (F) For all surface water withdrawals, a water resources protection plan that includes the
2 information requested in paragraphs (A) through (E) of this subdivision and includes
3 documentation of measures that will be taken to allow the State to manage the quantity of its
4 waters for present and future use and enjoyment and for the protection of the environment. The
5 plan shall include the following:

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

8 (ii) For surface waters, a demonstration that a sufficient in-stream flow will be available
9 immediately downstream of the point of withdrawal. A sufficient in-stream flow is maintained
10 when a pass-by flow that is protective of the identified use of the stream as determined by the
11 Secretary is preserved immediately downstream of the point of withdrawal; and

12 (iii) Methods to be used for surface water withdrawal to minimize the impact of entrainment and
13 impingement of fish.

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

17 (h) The ~~director~~ Secretary may waive the requirements of this section and sections nine, ten and
18 eleven of this article in any emergency situation, if the ~~director~~ Secretary deems such action
19 necessary. In such case the ~~director~~ Secretary may issue an emergency permit which would be
20 effective for not more than thirty days, but which would be subject to reissuance by the ~~director~~
21 Secretary.

22 (h)(i) The ~~director~~ Secretary shall deny the issuance of a permit if the ~~director~~ Secretary

1 determines that the applicant has committed a substantial violation of a previously issued permit,
2 including the erosion and sediment control plan, or a substantial violation of one or more of the
3 rules promulgated hereunder, and has failed to abate or seek review of the violation within the
4 time prescribed by the ~~director~~ Secretary pursuant to the provisions of sections ~~three and four~~
5 eight, nine, and ten of this article and the rules promulgated hereunder, which time may not be
6 unreasonable: *Provided*, That in the event that the ~~director~~ Secretary does find that a substantial
7 violation has occurred and that the operator has failed to abate or seek review of the violation in
8 the time prescribed, the ~~director~~ Secretary may suspend the permit on which said violation exists,
9 after which suspension the operator shall forthwith cease all well work being conducted under
10 the permit: *Provided, however*, That the ~~director~~ Secretary may reinstate the permit without
11 further notice, at which time the well work may be continued. The ~~director~~ Secretary shall make
12 written findings of any such determination and may enforce the same in the circuit courts of this
13 state, and the operator may appeal such suspension pursuant to the provisions of section ~~forty~~
14 fifteen of this article. The ~~director~~ Secretary shall make a written finding of any such
15 determination.

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

19 **§22-6-4. Approval, denial or revision of permit.**

20 (a) Upon the receipt of an administratively complete well work permit
21 application or application for modification thereof, the Secretary
22 shall grant, require revision of, or deny the application for a permit

1 within a reasonable time and notify the applicant in writing of the
2 decision. The applicant for a permit or permit modification has the
3 burden of establishing that the application is in compliance with all
4 the requirements of this article and the rules promulgated hereunder.

5 (b) No permit or modification of a permit may be approved unless the
6 applicant affirmatively demonstrates and the Secretary finds in
7 writing on the basis of the information set forth in the application
8 or from information otherwise available, which shall be documented
9 in the approval and made available to the applicant that:

10 (1) The permit application is accurate and complete and that all the
11 requirements of this article and rules thereunder have been complied
12 with;

13 (2) The applicant has demonstrated that reclamation as required by
14 this article can be accomplished by following the erosion and sediment
15 control plan contained in the permit application;

16 (3) The applicant has demonstrated that erosion and sediment control
17 as required by this article can be accomplished pursuant to the
18 erosion and sediment control plan contained in the permit
19 application; and

20 (4) The area proposed to be drilled is not included within an area
21 designated unsuitable for mineral extraction or other development
22 pursuant to any other provision of this code or local zoning
23 ordinance.

24 (c) The permit shall not be issued or shall be conditioned, including

1 conditions with respect to the location of the well and access roads,
2 prior to issuance if the Secretary determines that:

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

5 (2) Damage would occur to publicly owned lands or resources; or

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

8 (d) Where information available to the department indicates that any
9 operation owned or controlled by the applicant is currently in
10 violation of this article or other environmental laws or rules, the
11 permit may not be issued until the applicant submits proof that such
12 violation has been corrected or is in the process of being corrected
13 to the satisfaction of the Secretary or the department or agency that
14 has jurisdiction over the violation, and no permit may be issued to
15 any applicant after a finding by the Secretary, after an opportunity
16 for hearing, that the applicant or the operator specified in the
17 application controls or has controlled operations with a demonstrated
18 pattern of willful violations of this article or articles eight, nine,
19 ten, eleven, or twenty-one of this chapter, of such nature and
20 duration with such irreparable damage to the environment as to
21 indicate an intent not to comply with the provisions of the
22 environmental laws of the State of West Virginia: *Provided*, That if
23 the Secretary finds that the applicant is or has been affiliated with,
24 or managed or controlled by, or is or has been under the common control

1 of, other than as an employee, a person who has had a well work permit
2 revoked or bond or other security forfeited for failure to comply with
3 any environmental laws of this state, he or she may not issue a permit
4 to the applicant: *Provided, however,* That subject to the discretion
5 of the Secretary and based upon a petition for reinstatement, permits
6 may be issued to any applicant if: (1) After the revocation or
7 forfeiture, the operator whose permit has been revoked or bond
8 forfeited has paid into the oil and gas reclamation fund any
9 additional sum of money determined by the Secretary to be adequate
10 to correct the non-compliance issue; (2) the violations which
11 resulted in the revocation or forfeiture have not caused irreparable
12 damage to the environment; and (3) the Secretary is satisfied that
13 the petitioner will comply with this article.

14 (e) The Secretary shall promptly review all comments filed. If after
15 review of the application and all comments received, the application
16 for a well work permit is approved, and no timely objection or comment
17 has been filed with the Secretary or made by the Secretary pursuant
18 to the provisions of sections seventeen, eighteen or nineteen of this
19 article, the permit shall be issued, with conditions, if any.
20 Nothing in this section shall be construed to supersede the provisions
21 of sections three or fourteen, fifteen, sixteen, seventeen, eighteen
22 or nineteen of this article.

23 (f) The Secretary shall mail a copy of the permit as issued or a copy
24 of the order denying the permit to any person who submitted comments

1 to the Secretary concerning said permit and requested such copy.

2 (g) Upon issuance of any permit pursuant to the provisions of this
3 article, the Secretary shall transmit a copy of such permit or plat
4 to the office of the assessor for the county in which the well is
5 located.

6 **** TOTAL RE-WRITE: NO STRIKE-THROUGHS OR UNDERLINES ****

7 **§22-6-5. Certificate of approval required for large pit or impoundment construction;**
8 **certificate of approval and annual registration fees; application required**
9 **to obtain certificate; revocation or suspension of certificates.**

10 (a) It is unlawful for any person to place, construct, enlarge, alter, repair, remove or abandon any
11 pit or impoundment with capacity of greater than five thousand barrels used in association with
12 an oil and gas operation until he or she has first secured from the Secretary a certificate of
13 approval for the same: *Provided*, That routine repairs that do not affect the safety of the pit or
14 impoundment are not subject to the application and approval requirements. A separate
15 application for a certificate of approval must be submitted by a person for each pit or
16 impoundment he or she desires to place, construct, enlarge, alter, repair, remove or abandon, but
17 one application may be valid for more than one pit or impoundment involved in a single project.

18 (b) The application fee for placement, construction, enlargement, alteration, repair or removal of
19 a pit or impoundment pursuant to this section is \$_____, and such fee shall accompany the
20 application for certificate of approval.

21 (c) Operators holding certificates of approval shall be assessed an annual registration fee of
22 \$_____, which may be valid for more than one pit or impoundment involved in a single project.

1 Existing certificates of approval shall be extended for one year upon receipt of the annual
2 registration fee, an inspection report, a monitoring and emergency action plan, and a maintenance
3 plan: *Provided*, That where an approved, up-to-date inspection report, monitoring and emergency
4 action plan, and maintenance plan are on file with the department, and where no outstanding
5 violation(s) exist, then the certificate of approval will be extended without resubmission of the
6 foregoing documents upon receipt of the annual registration fee.

7 (d) Every application for a certificate of approval shall be made in writing on a form prescribed
8 by the Secretary and shall be signed and verified by the applicant. The application shall contain
9 and provide information that may be reasonably required by the Secretary to administer the
10 provisions of this article.

11 (e) Plans and specifications for the placement, construction, enlargement, alteration, repair or
12 removal and reclamation of pits and impoundments shall be the charge of a registered
13 professional engineer licensed to practice in West Virginia. Any plans or specifications
14 submitted to the department shall bear the seal of a registered professional engineer.

15 (f) Each certificate of approval issued by the Secretary pursuant to the provisions of this article
16 may contain other terms and conditions as the Secretary may prescribe.

17 (g) The Secretary may revoke or suspend any certificate of approval whenever the Secretary
18 determines that the pit or impoundment for which the certificate was issued constitutes a danger
19 to life or property. If necessary to safeguard life or property, the Secretary may also amend the
20 terms and conditions of any certificate by issuing a new certificate containing the revised terms
21 and conditions.

22 (1) Before any certificate of approval is amended or revoked by the Secretary, the Secretary shall

1 hold a hearing in accordance with the provisions of article five [29A-5-1, et seq.], chapter
2 twenty-nine-a of this code.

3 (2) A decision of the Secretary to revoke or refusing to issue a certificate of approval shall be
4 subject to judicial review by an administrative law judge of the department upon the appeal of
5 the applicant for or holder of such certificate of approval, but in any such judicial review only the
6 legality of the decision of the Secretary under the Constitution and laws of this state and the
7 United States shall be determined.

8 (h) The Secretary is authorized to propose rules for legislative approval in accordance with the
9 provisions of article three [§ 29A-3-1, et seq.], chapter twenty-nine-a of this code necessary to
10 effectuate the provisions of this article.

11 **** TOTAL RE-WRITE: NO STRIKE-THROUGHS OR UNDERLINES ****

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§22-6-6. General environmental protection performance standards for oil and gas operations.

(a) The Secretary shall promulgate separate rules directed toward the surface effects of oil and gas operations, embodying the requirements in subsection (b) of this section.

(b) Each permit issued by the Secretary pursuant to this article and relating to oil and gas operations shall require the operation at a minimum to:

(1) Adopt measures consistent with known technology in order to maintain the value and reasonably foreseeable use of surface lands;

(2) Adopt measures consistent with known technology in order to control fugitive particulate matter;

(3) Plug all wells in accordance with the requirements of this article and the rules promulgated pursuant thereto when such wells become abandoned pursuant to section twenty-one of this article;

(4) With respect to surface disposal of [cuttings?], stabilize all waste pits, including the use of impervious materials, if necessary, to assure that any leachate therefrom will not degrade surface or groundwaters below water quality standards established pursuant to applicable federal and state law and that the site is stabilized and revegetated according to the provisions of this article and the rules promulgated thereunder;

(5) Establish on regraded areas and all other disturbed areas a diverse and permanent vegetative cover capable of self-regeneration and plant succession and at least equal in extent of cover to the natural vegetation of the area within the time period prescribed in the reclamation plan;

1 (6) Protect off-site areas from damages that may result from such oil and gas operations;

2 (7) Eliminate fire hazards and otherwise eliminate conditions which constitute a hazard to health
3 and safety of the public;

4 (8) Minimize the disturbance of the prevailing hydrologic balance at the well site and in
5 associated off-site areas and to the quantity and the quality of water in surface and groundwater
6 systems both during and after drilling operations and during reclamation by: (A) Withdrawing
7 water from surface waters of the state in a manner and at such volumes so as to maintain
8 sufficient in-stream flow immediately downstream of the withdrawal location, as determined
9 _____ and ascertained by the department's water use guidance tool. In no case shall an
10 operator withdraw water from ground or surface waters at volumes beyond which the waters can
11 sustain; (B) Casing, sealing or otherwise managing wells to keep returned fluids from entering
12 ground and surface waters; and (C) Conducting oil and gas operations so as to prevent, to the
13 extent possible using the best technology currently available, additional contributions of
14 suspended or dissolved solids to streamflow or runoff outside the permit area, but in no event
15 shall the contributions be in excess of requirements set by applicable state or federal law;

16 (9) With respect to other surface impacts of oil and gas operations not specified in this
17 subsection, including the construction of new roads or the improvement or use of existing roads
18 to gain access to the site of such activities and for haulage, repair areas, storage areas, processing
19 areas, shipping areas, and other areas upon which are sited structures, facilities or other property
20 or materials on the surface, resulting from or incident to such activities, operate in accordance
21 with the standards established pursuant to this article or the rules promulgated thereunder for
22 such effects which result from oil and gas operations; and

1 (10) To the extent possible using the best technology currently available, minimize disturbances
2 and adverse impacts of the operation on fish, aquatic life, wildlife, and related environmental
3 values and achieve enhancement of such resources where practicable.

4 (11) In addition to the other requirements of this article, an operator that drills any well using
5 horizontal drilling methods shall comply with the following requirements:

6 (A) Identification of water withdrawal locations. Forty-eight hours prior to the withdrawal of
7 water, the operator shall identify the location of withdrawal by latitude and longitude and verify
8 that sufficient flow exists to protect uses identify uses of the stream identified by the Secretary.
9 The operator shall use methods deemed appropriate by the Secretary to determine if sufficient
10 flow is available and must check flows on a daily basis for the duration of the withdrawal. Any
11 variation from the methods identified by the Secretary for determining if sufficient flow is
12 available must be requested in writing by the operator.

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
16 permit numbers for which the water withdrawn will be utilized.

17 (C) Record keeping and reporting. For all water used for hydraulic fracturing of horizontal wells
18 and for flowback water from hydraulic fracturing activities and produced water from production
19 activities from horizontal wells, gas well operators 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 well
22 operator:

- 1 (I) The quantity of flowback water from hydraulic fracturing the well;
- 2 (II) The quantity of produced water from the well; and
- 3 (III) The method of management or disposal of the flowback and produced well water.
- 4 (ii) For transportation activities, the following information shall be recorded and maintained by
- 5 the operator:
- 6 (I) The quantity of water transported;
- 7 (II) The collection and delivery or disposal locations of water; and
- 8 (III) the name of the water hauler.
- 9 (D) The information maintained pursuant to this subdivision shall be available for inspection by
- 10 the department along with other required permits and records and maintained for three years after
- 11 the water withdrawal activity.
- 12 (E) This subdivision is intended to be consistent with and does not supersede, revise, repeal or
- 13 otherwise modify articles eleven, twelve or twenty-six of this chapter and does not revise, repeal
- 14 or otherwise modify the common law doctrine of riparian rights in West Virginia law.

15 **** TOTAL RE-WRITE: NO STRIKE-THROUGHS OR UNDERLINES ****

16 **§22-6-7. Water pollution control permits; powers and duties of the ~~director~~ Secretary;**

17 **penalties.**

18 (a) In addition to a permit for well work, the ~~director~~ Secretary, after public notice and an

19 opportunity for public hearings, may either issue a separate permit, general permit or a permit

20 consolidated with the well work permit for the discharge or disposition of any pollutant or

21 combination of pollutants into waters of this state upon condition that such discharge or

22 disposition meets or will meet all applicable state and federal water quality standards and effluent

1 limitations and all other requirements of the ~~director~~ Secretary.

2 (b) It shall be unlawful for any person conducting activities which are subject to the requirements
3 of this article, unless that person holds a water pollution control permit therefor from the ~~director~~
4 Secretary, which is in full force and effect to:

5 (1) Allow pollutants or the effluent therefrom, produced by or emanating from any point source,
6 to flow into the water of this state;

7 (2) Make, cause or permit to be made any outlet, or substantially enlarge or add to the load of
8 any existing outlet, for the discharge of pollutants or the effluent therefrom, into the waters of
9 this state;

10 (3) Acquire, construct, install, modify or operate a disposal system or part thereof for the direct
11 or indirect discharge or deposit of treated or untreated pollutants or the effluent therefrom, into
12 the waters of this state, or any extension to or addition to such disposal system;

13 (4) Increase in volume or concentration any pollutants in excess of the discharges or disposition
14 specified or permitted under any existing permit;

15 (5) Extend, modify or add to any point source, the operation of which would cause an increase in
16 the volume or concentration of any pollutants discharging or flowing into the waters of the state;

17 (6) Operate any disposal well for the injection or reinjection underground of any pollutant,
18 including, but not limited to, liquids or gasses, or convert any well into such a disposal well or
19 plug or abandon any such disposal well.

20 (c) Notwithstanding any provision of this article or articles ~~seven~~, eight, nine, ~~or~~ ten or
21 twenty-one of this chapter to the contrary, the ~~director~~ Secretary shall have the same powers and
22 duties relating to inspection and enforcement as those granted under article eleven, chapter

1 twenty-two of this code in connection with the issuance of any water pollution control permit or
2 any person required to have such permit.

3 (d) Any person who violates any provision of this section, any order issued under this section or
4 any permit issued pursuant to this section or any rule of the ~~director~~ Secretary relating to water
5 pollution or who willfully or negligently violates any provision of this section or any permit
6 issued pursuant to this section or any rule or order of the ~~director~~ Secretary relating to water
7 pollution or who fails or refuses to apply for and obtain a permit or who intentionally
8 misrepresents any material fact in an application, record, report, plan or other document filed or
9 required to be maintained under this section shall be subject to the same penalties for such
10 violations as are provided for in sections twenty-two and twenty-four, article eleven, chapter
11 twenty-two of this code: *Provided*, That the provisions of section twenty-six, article eleven,
12 chapter twenty-two of this code relating to exceptions to criminal liability shall also apply.

13 All applications for injunction filed pursuant to section twenty-two, article eleven, chapter
14 twenty-two of the code shall take priority on the docket of the circuit court in which pending, and
15 shall take precedence over all other civil cases.

16 (e) Any water pollution control permit issued pursuant to this section or any order issued in
17 connection with such permit for the purpose of implementing the "national pollutant discharge
18 elimination system" established under the federal Clean Water Act shall be issued by the ~~chief of~~
19 ~~the office of water resources of the division in consultation with the chief of the office of oil and~~
20 ~~gas of the division~~ Secretary and shall be appealable to the environmental quality board pursuant
21 to the provisions of section twenty-five, article eleven, chapter twenty-two and section seven,
22 article one, chapter twenty-two-b of this code.

1 **§22-6-8. Inspections; monitoring; right of entry; inspection of records; identification**
2 **signs.**

3 (a) The Secretary shall cause to be made inspections of oil and gas
4 operations as are necessary to effectively enforce the requirements
5 of this article, and for such purposes the Secretary or his or her
6 authorized representative shall, without advance notice and upon
7 presentation of appropriate credentials: (A) Have the right of entry
8 to, upon or through oil and gas operations or any premises in which
9 any records required to be maintained pursuant to this chapter are
10 located; and (B) At reasonable times and without delay, have access
11 to and copy any records and inspect any monitoring equipment or method
12 of operation required by this chapter of the code.

13 (b) For the purpose of enforcement under this article, in the
14 administration and enforcement of any permit under this article, or
15 for determining whether any person is in violation of any requirement
16 of this article the Secretary shall, at a minimum, require any
17 operator to:

- 18 (1) Establish and maintain appropriate records;
19 (2) Make appropriate reports to the department; and
20 (3) Provide any other information relative to oil and gas operations
21 as the Secretary finds reasonable and necessary.

22 (c) Inspections of oil and gas operations shall be made on an
23 irregular basis without prior notice to the operator or the operator's
24 agents or employees, except for necessary on-site meetings with the

1 operator. The inspections shall include the filing of inspection
2 reports adequate to enforce the requirements, terms, and purposes of
3 this article.

4 (d) Each permittee shall maintain at the well site a clearly visible
5 monument which sets forth the name, business address and telephone
6 number of the permittee, and the API number of the well.

7 (e) Copies of any records, reports, inspection materials or
8 information obtained pursuant to this article by the Secretary shall
9 be made immediately available to the public so that they are
10 conveniently available to residents in the areas of oil and gas
11 operations, unless specifically exempted by this article.

12 (f) Whenever on the basis of available information, including
13 reliable information from any person, the Secretary has cause to
14 believe that any person is in violation of this article or article
15 eight, nine, ten, eleven or twenty-one of this chapter or any permit
16 condition or rule promulgated thereunder, the Secretary shall
17 immediately order state inspection of the operation at which the
18 alleged violation is occurring, unless the information is available
19 as a result of a prior state inspection.

20 (h) When requested by the permittee, the Secretary may provide for
21 a compliance conference with his or her authorized representative to
22 review the compliance status of any oil and gas operation. Any such
23 conference may not constitute an inspection as defined in this
24 section.

1 **** TOTAL RE-WRITE: NO STRIKE-THROUGHS OR UNDERLINES ****

2 **§22-6-9. Notice of violation; procedure and actions; enforcement; permit revocation and**
3 **bond forfeiture; civil and criminal penalties; appeals to the board;**
4 **prosecution; injunctive relief.**

5 (a) If an owner or operator has not complied with any of the requirements of this article or article
6 eleven of this chapter, rules promulgated pursuant thereto or permit conditions, the Secretary
7 shall cause a notice of violation to be served upon the operator or the operator's duly authorized
8 agent as notices are served pursuant to the provisions the West Virginia Rules of Civil Procedure
9 to the permanent address shown on the application for the permit. The notice shall
10 specify in what respects the operator has failed to comply with this
11 article or article eleven of this chapter, rules or permit conditions
12 and shall specify a reasonable time for abatement of the violation
13 not to exceed seven days. If the operator has not abated the
14 violation within the time specified in the notice, or any reasonable
15 extension thereof, not to exceed thirty days, the Secretary shall
16 order the cessation of the operation, unless the operator
17 affirmatively demonstrates that compliance is unattainable due to
18 conditions totally beyond the control of the operator. If a
19 violation is not abated within the time specified or any extension
20 thereof, or if any cessation order is issued, a mandatory civil
21 penalty of not less than \$_____ per day per violation shall be
22 assessed. A cessation order remains in effect until the Secretary
23 determines that the violation has been abated or until modified,

1 vacated or terminated by the Secretary or by a court. In any
2 cessation order issued pursuant to this subsection, the Secretary
3 shall determine the steps necessary to abate the violation in the most
4 expeditious manner possible and shall include the necessary measures
5 in the order.

6 (b) If the Secretary determines that a pattern of violations of any
7 requirement of this article or article eleven of this chapter or any
8 permit condition exists or has existed as a result of the operator's
9 lack of reasonable care and diligence, or that the violations are
10 willfully caused by the operator, the Secretary shall immediately
11 issue an order directing the operator to show cause why the permit
12 should not be suspended or revoked and giving the operator thirty days
13 in which to request a hearing. If a hearing is requested, the
14 Secretary shall inform all interested parties of the time and place
15 of the hearing. Any hearing conducted pursuant to this section shall
16 be recorded and is subject to the provisions of chapter twenty-nine-a
17 of this code. Within sixty days following the hearing, the Secretary
18 shall issue and furnish to the permittee and all other parties to the
19 hearing a written decision, and the reasons therefor, concerning
20 suspension or revocation of the permit. Upon the operator's failure
21 to show cause why the permit should not be suspended or revoked, the
22 Secretary shall immediately suspend or revoke the operator's permit.
23 If the permit is revoked, the Secretary shall initiate procedures in
24 accordance with rules promulgated by the Secretary to forfeit the

1 entire amount of the operator's bond or other security posted pursuant
2 to section ~~twenty-six~~ twenty-eight of this article, and collect the
3 forfeiture without delay: *Provided*, That the entire proceeds of such
4 forfeiture shall be deposited with the treasurer of the state of West
5 Virginia to the credit of the oil and gas reclamation fund; *Provided*,
6 however, That any excess therefrom shall remain in the oil and gas
7 reclamation fund.

8 (c) Any person engaged in oil and gas operations who violates any
9 permit condition or who violates any other provision of this article
10 or article eleven of this chapter or the rules promulgated pursuant
11 thereto may also be assessed a civil penalty. The penalty may not
12 exceed \$_____. Each day of continuing violation may be deemed a
13 separate violation for purposes of penalty assessments. In
14 determining the amount of the penalty, consideration shall be given
15 to the operator's history of previous violations; the seriousness of
16 the violation, including any irreparable or significant harm to the
17 environment and any hazard to the health or safety of the public;
18 whether the operator was negligent; and the demonstrated good faith
19 of the operator charged in attempting to achieve rapid compliance
20 after notification of the violation.

21 (d) (1) Upon the issuance of a notice or order pursuant to this
22 section, the assessment officer shall, within thirty days, set a
23 proposed penalty assessment and notify the operator in writing of such
24 proposed penalty assessment. The proposed penalty assessment must

1 be paid in full within thirty days of receipt or, if the operator
2 wishes to contest either the amount of the penalty or the fact of
3 violation, it may request an informal conference with the assessment
4 officer within fifteen days or a formal hearing before the Secretary
5 within thirty days. The notice of proposed penalty assessment shall
6 advise the operator of the right to an informal conference and a formal
7 hearing pursuant to this section. When the operator requests an
8 informal conference, it has fifteen days from receipt of the
9 assessment officer's decision to request a formal hearing before the
10 Secretary.

11 (A) When an informal conference is held, the assessment officer has
12 authority to affirm, modify or vacate the notice, order or proposed
13 penalty assessment.

14 (B) When a formal hearing is requested, the amount of the proposed
15 penalty assessment shall be forwarded to the Secretary for placement
16 in an escrow account. Formal hearings shall be of record and
17 subject to the provisions of article five, chapter
18 twenty-nine-a of this code. Following the hearing, the order or
19 proposed penalty assessment shall be affirmed, modified or vacated
20 and, when appropriate, shall incorporate an assessment order
21 requiring that the assessment be paid.

22 (2) Civil penalties owed pursuant to this section may be recovered
23 by the Secretary in the circuit court of Kanawha County. Civil
24 penalties collected pursuant to this article shall be deposited with

1 the treasurer of the state of West Virginia to the credit of the oil
2 and gas permit and processing fund established in section thirty of
3 this article. If, through the administrative or judicial review of
4 the proposed penalty, it is determined that no violation occurred or
5 that the amount of the penalty should be reduced, the Secretary shall,
6 within thirty days, remit the appropriate amount to the person, with
7 interest at the rate of six percent or at the prevailing United States
8 department of the treasury rate, whichever is greater. Failure to
9 forward the money to the Secretary within thirty days is a waiver of
10 all legal rights to contest the violation or the amount of the penalty.

11 (e) Any person having an interest which is or may be adversely
12 affected by any order of the Secretary may file an appeal in accordance
13 with the provisions of article five, chapter twenty-nine-a of this
14 code, within thirty days after receipt of the order.

15 (f) The filing of an appeal or a request for an informal conference
16 or formal hearing provided for in this section does not stay execution
17 of the order appealed from. Pending completion of the investigation
18 and conference or hearing required by this section, the applicant may
19 file with the Secretary a written request that the Secretary grant
20 temporary relief from any notice or order issued under this section
21 or sections eight, nine or ten of this article, together with a
22 detailed statement giving reasons for granting such relief. The
23 Secretary shall issue an order or decision granting or denying such
24 relief expeditiously: *Provided*, That where the applicant requests

1 relief from a cessation order, the decision on the request shall be
2 issued within five days of its receipt. The Secretary may grant such
3 relief under such conditions as he or she may prescribe if:

4 (1) All parties to the proceedings have been notified and given an
5 opportunity to be heard on a request for temporary relief;

6 (2) The person requesting the relief shows that there is a substantial
7 likelihood that he will prevail on the merits in the final
8 determination of the proceedings;

9 (3) The relief will not adversely affect the public health or safety
10 or cause significant imminent environmental harm to land, air or water
11 resources; and

12 (4) The relief sought is not the issuance of a permit where a permit
13 has been denied, in whole or in part, by the Secretary.

14 (g) Any person who willfully and knowingly violates a condition of
15 a permit issued pursuant to this article or article eleven of this
16 chapter or rules promulgated pursuant thereto, or fails or refuses
17 to comply with any order issued under said articles and rules or any
18 order incorporated in a final decision issued by the Secretary, is
19 guilty of a misdemeanor and, upon conviction thereof, shall be fined
20 not less than one hundred dollars nor more than ten thousand dollars,
21 or imprisoned in the county jail not more than one year, or both fined
22 and imprisoned.

23 (h) Whenever a corporate operator violates a condition of a permit
24 issued pursuant to this article, rules promulgated pursuant thereto,

1 or any order incorporated in a final decision issued by the Secretary,
2 any director, officer or agent of the corporation who willfully and
3 knowingly authorized, ordered or carried out the failure or refusal
4 is subject to the same civil penalties, fines and imprisonment that
5 may be imposed upon a person pursuant to subsections (c) and (g) of
6 this section.

7 (i) Any person who knowingly makes any false statement,
8 representation or certification, or knowingly fails to make any
9 statement, representation or certification in any application,
10 petition, record, report, plan or other document filed or required
11 to be maintained pursuant to this article or rules promulgated
12 pursuant thereto is guilty of a misdemeanor and, upon conviction
13 thereof, shall be fined not less than one hundred dollars nor more
14 than ten thousand dollars, or imprisoned in the county jail not more
15 than one year, or both fined and imprisoned.

16 (j) Whenever any person: (A) Violates or fails or refuses to comply
17 with any order or decision issued by the Secretary pursuant to this
18 article; or (B) interferes with, hinders or delays the Secretary in
19 carrying out the provisions of this article; or (C) refuses to admit
20 the Secretary to the property where the well or its associated
21 activities are located; or (D) refuses to permit inspection of the
22 operation by the Secretary; or (E) refuses to furnish any reasonable
23 information or report requested by the Secretary in furtherance of
24 the provisions of this article; or (F) refuses to permit access to,

1 and copying of, such records as the Secretary determines necessary
2 in carrying out the provisions of this article; or (G) violates any
3 other provisions of this article, the rules promulgated pursuant
4 thereto, or the terms and conditions of any permit, the Secretary or
5 the prosecuting attorney of the county in which the permit area is
6 located may institute a civil action for relief, including a permanent
7 or temporary injunction, restraining order or any other appropriate
8 order, in the circuit court of Kanawha County or any court of competent
9 jurisdiction to compel compliance with and enjoin such violations,
10 failures or refusals. The court or the judge thereof may issue a
11 preliminary injunction in any case pending a decision on the merits
12 of any application filed without requiring the filing of a bond or
13 other equivalent security.

14 (k) Any person who, except as permitted by law, willfully resists,
15 prevents, impedes or interferes with the Secretary or any of his or
16 her agents in the performance of duties pursuant to this article is
17 guilty of a misdemeanor and, upon conviction thereof, shall be
18 punished by a fine of not more than five thousand dollars or by
19 imprisonment for not more than one year, or both.

20 **** Total Re-Write: No Strike-Throughs or Underlines ****

21
22 **§22-6-10. Cessation of operation by order of inspector; informal conference; imposition of**
23 **affirmative obligations; appeal.**

24 (a) Notwithstanding any other provisions of this article, an oil and gas inspector has the authority

1 to issue a cessation order to an oil or gas operation when an inspector determines that any
2 condition or practice exists, or that any permittee is in violation of any requirements of this
3 article or any permit condition required by this article, which condition, practice or violation also
4 creates an imminent danger to the health or safety of the public, or is causing or can reasonably
5 be expected to cause significant, imminent environmental harm to land, air or water resources.
6 The cessation order takes effect immediately. Unless waived in writing, an informal conference
7 shall be held at or near the site relevant to the violation set forth in the cessation order within
8 twenty-four hours after the order becomes effective, or such order shall expire. The conference
9 shall be held before a supervising oil and gas inspector, who shall, immediately upon conclusion
10 of said conference, determine when and if the operation may resume. An operator who believes
11 it is aggrieved by the decision of the supervising oil and gas inspector may immediately appeal to
12 the Secretary, setting forth reasons why the operation should not be halted. The Secretary shall
13 determine forthwith when the operation may be resumed.

14 (b) The cessation order remains in effect until the Secretary determines that the condition,
15 practice or violation has been abated, or until modified, vacated or released by the Secretary.
16 Where the Secretary finds that the ordered cessation will not completely abate the imminent
17 danger to health or safety of the public or the significant imminent environmental harm to land,
18 air or water resources, the Secretary shall, in addition to the cessation order, impose affirmative
19 obligations on the operator requiring the operator to take whatever steps the Secretary determines
20 necessary to abate the imminent danger or the significant environmental harm.

21 (c) Any cessation order issued pursuant to this section or any other provision of this article may
22 be released by any inspector. An inspector shall be readily available to terminate a cessation

1 order upon abatement of the violation.

2 **** TOTAL RE-WRITE: NO STRIKE-THROUGHS OR UNDERLINES ****

3 **§22-6-~~811~~. Permits not to be on flat well royalty leases; legislative findings and**
4 **declarations; permit requirements.**

5 (a) The Legislature hereby finds and declares:

6 (1) That a significant portion of the oil and gas underlying this state is subject to development
7 pursuant to leases or other continuing contractual agreements wherein the owners of such oil and
8 gas are paid upon a royalty or rental basis known in the industry as the annual flat well royalty
9 basis, in which the royalty is based solely on the existence of a producing well, and thus is not
10 inherently related to the volume of the oil and gas produced or marketed;

11 (2) That continued exploitation of the natural resources of this state in exchange for such wholly
12 inadequate compensation is unfair, oppressive, works an unjust hardship on the owners of the oil
13 and gas in place, and unreasonably deprives the economy of the state of West Virginia of the just
14 benefit of the natural wealth of this state;

15 (3) That a great portion, if not all, of such leases or other continuing contracts based upon or
16 calling for an annual flat well royalty, have been in existence for a great many years and were
17 entered into at a time when the techniques by which oil and gas are currently extracted, produced
18 or marketed, were not known or contemplated by the parties, nor was it contemplated by the
19 parties that oil and gas would be recovered or extracted or produced or marketed from the depths
20 and horizons currently being developed by the well operators;

21 (4) That while being fully cognizant that the provisions of section 10, article I of the United
22 States Constitution and of section 4, article III of the Constitution of West Virginia, proscribe the

1 enactment of any law impairing the obligation of a contract, the Legislature further finds that it is
2 a valid exercise of the police powers of this state and in the interest of the state of West Virginia
3 and in furtherance of the welfare of its citizens, to discourage as far as constitutionally possible
4 the production and marketing of oil and gas located in this state under the type of leases or other
5 continuing contracts described above.

6 (b) In the light of the foregoing findings, the Legislature hereby declares that it is the policy of
7 this state, to the extent possible, to prevent the extraction, production or marketing of oil or gas
8 under a lease or leases or other continuing contract or contracts providing a flat well royalty or
9 any similar provisions for compensation to the owner of the oil and gas in place, which is not
10 inherently related to the volume of oil or gas produced or marketed, and toward these ends, the
11 Legislature further declares that it is the obligation of this state to prohibit the issuance of any
12 permit required by it for the development of oil or gas where the right to develop, extract,
13 produce or market the same is based upon such leases or other continuing contractual
14 agreements.

15 (c) In addition to any requirements contained in this article with respect to the issuance of any
16 permit required for the drilling, redrilling, deepening, fracturing, stimulating, pressuring,
17 converting, combining or physically changing to allow the migration of fluid from one formation
18 to another, no such permit shall be hereafter issued unless the lease or leases or other continuing
19 contract or contracts by which the right to extract, produce or market the oil or gas is filed with
20 the application for such permit. In lieu of filing the lease or leases or other continuing contract
21 or contracts, the applicant for a permit described herein may file the following:

22 (1) A brief description of the tract of land including the district and county wherein the tract is

1 located;

2 (2) The identification of all parties to all leases or other continuing contractual agreements by
3 which the right to extract, produce or market the oil or gas is claimed;

4 (3) The book and page number wherein each such lease or contract by which the right to extract,
5 produce or market the oil or gas is recorded; and

6 (4) A brief description of the royalty provisions of each such lease or contract.

7 (d) Unless the provisions of subsection (e) are met, no such permit shall be hereafter issued for
8 the drilling of a new oil or gas well, or for the redrilling, deepening, fracturing, stimulating,
9 pressuring, converting, combining or physically changing to allow the migration of fluid from
10 one formation to another, of an existing oil or gas production well, where or if the right to
11 extract, produce or market the oil or gas is based upon a lease or leases or other continuing
12 contract or contracts providing for flat well royalty or any similar provision for compensation to
13 the owner of the oil or gas in place which is not inherently related to the volume of oil and gas so
14 extracted, produced and marketed.

15 (e) To avoid the permit prohibition of subsection (d), the applicant may file with such application
16 an affidavit which certifies that the affiant is authorized by the owner of the working interest in
17 the well to state that it shall tender to the owner of the oil or gas in place not less than one eighth
18 of the total amount paid to or received by or allowed to the owner of the working interest at the
19 wellhead for the oil or gas so extracted, produced or marketed before deducting the amount to
20 be paid to or set aside for the owner of the oil or gas in place, on all such oil or gas to be
21 extracted, produced or marketed from the well. If such affidavit be filed with such application,
22 then such application for permit shall be treated as if such lease or leases or other continuing

1 contract or contracts comply with the provisions of this section.

2 (f) The owner of the oil or gas in place shall have a cause of action to enforce the owner's rights
3 established by this section.

4 (g) The provisions of this section shall not affect or apply to any lease or leases or other
5 continuing contract or contracts for the underground storage of gas or any well utilized in
6 connection therewith or otherwise subject to the provisions of article nine of this chapter.

7 (h) The ~~director~~ Secretary shall enforce this requirement ~~irrespective~~ regardless of when the lease
8 or other continuing contract was executed.

9 (i) The provisions of this section shall not adversely affect any rights to free gas.

10 **§22-6-912. Notice to be given to property owners and the Office of Miners' Health Safety**
11 **& Training.**

12 (a) The operator shall provide notice, either personally or by registered mail or by any method of
13 delivery that requires a receipt or signature confirmation, to the surface owner at least fifteen
14 days prior to entering the surface tract to conduct any surveys or like work.

15 ~~(a)~~(b) No later than the filing date of the application, the applicant for a permit for any well work
16 or for a certificate of approval for the construction of a pit or impoundment shall deliver, by
17 personal service or by ~~certified mail, return receipt requested~~ registered mail or by any method of
18 delivery that requires a receipt or signature confirmation, copies of the application, well plat, and
19 erosion and sediment control plan required by section ~~six~~ three of this article to each of the
20 following persons:

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

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

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

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

11 (5) The West Virginia Office of Miners' Health Safety and Training in accordance with chapter
12 twenty-two-a [§ 22A-1-1, et seq.] of this Code; and

13 (6) The operator of any storage field within which the proposed well work activity is to take
14 place.

15 ~~(b)~~(c) If more than three tenants in common or other co-owners of interests described in
16 subsection (a) of this section hold interests in such lands, the applicant may serve the documents
17 required upon the person described in the records of the sheriff required to be maintained
18 pursuant to section eight, article one, chapter eleven-a of this code, or publish in the county in
19 which the well is located or is proposed to be located a Class II legal advertisement as described
20 in section two, article three, chapter fifty-nine of this code, containing such notice and
21 information as the ~~director~~ Secretary shall prescribe by rule, with the first publication date being
22 at least ten days prior to the filing of the permit application: *Provided*, That all owners

1 occupying the tracts where the well work is or is proposed to be located ~~at~~ on the filing date of
2 the permit application shall receive actual service of the documents required by subsection (a) of
3 this section.

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

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

13 (f) The surface owner and the coal owner, operator or lessee shall also be entitled to receive
14 notice within seven days beforehand that well work or site preparation work that involves any
15 disturbance of land is expected to commence, if such person requests the receipt of such notice as
16 a part of the comments concerning said permit application.

17 ~~(e)~~(g) Persons entitled to notice may contact the ~~district office of the division~~ department to
18 ascertain the names and location of water testing laboratories in the subject area capable and
19 qualified to test water supplies in accordance with standard accepted methods. In compiling such
20 list of names the ~~division~~ department shall consult with the state Bureau of Public Health and
21 local health departments.

22 (h) The Office of Miners' Health Safety and Training may submit comments if it ascertains from

1 information available to it that workable coal seams exist beneath the surface tract(s) at issue that
2 may affect the parties' rights and responsibilities pursuant to this article or affect the safety of
3 mining operations.

4 **§22-6-1013. Procedure for filing comments; certification of notice.**

5 (a) All persons described in subsections ~~(a) and (b)~~, ~~section nine~~ (b) and (c), section twelve of
6 this article may file comments with the ~~director~~ Secretary as to the location or construction of the
7 applicant's proposed well work within ~~fifteen~~ thirty days after the administratively complete
8 application is filed with the ~~director~~ Secretary.

9 (b) Prior to the issuance of any permit for well work, the applicant shall certify to the ~~director~~
10 Secretary that the requirements of section ~~nine~~ twelve of this article have been completed by the
11 applicant. Such certification may be by affidavit of personal service or the return receipt card, or
12 other postal receipt ~~for certified mailing~~ indicating that the notice provided for in section twelve
13 of this article was conducted.

14 **§22-6-1214. Plats prerequisite to drilling or fracturing wells;**
15 **preparation and contents; notice and information**
16 **furnished to coal operators, owners or lessees;**
17 **issuance of permits; performance bonds or securities**
18 **in lieu thereof; bond forfeiture.**

19 (a) Before drilling for oil or gas, or before fracturing or
20 stimulating a well on any tract of land, the well operator shall have
21 a plat prepared by a ~~licensed land~~ professional surveyor or registered
22 professional engineer showing the district and county in which the
23 tract of land is located, the name and acreage of the same, the names

1 of the owners of adjacent tracts, the proposed or actual location of
2 the well determined by survey, the courses and distances of such
3 location from two permanent points or landmarks on said tract, the
4 mineral tract boundary, and the number to be given the well. In the
5 event the tract of land on which the said well proposed to be drilled
6 or fractured is located is known to be underlain by one or more coal
7 seams, copies of the plat shall be forwarded by registered ~~or~~
8 ~~certified-mail~~ or by any method of delivery that requires a receipt
9 or signature confirmation to each and every coal operator operating
10 said coal seams beneath said tract of land who has mapped the same
11 and filed such maps with the Office of Miners' Health, Safety and
12 Training in accordance with chapter twenty-two-a of this code and the
13 coal seam owner of record and lessee of record, if any, if said owner
14 or lessee has recorded the declaration provided in section thirty-six
15 of this article, and if said owner or lessee is not yet operating said
16 coal seams beneath said tract of land. With each of such plats there
17 shall be enclosed a notice (form for which shall be furnished on
18 request by the Secretary) addressed to the Secretary and to each such
19 coal operator, owner and lessee, if any, at their respective
20 addresses, informing them that such plat and notice are being mailed
21 to them respectively by registered ~~or certified-mail~~ or by any method
22 of delivery that requires a receipt or signature confirmation,
23 pursuant to the requirements of this article.

24 (b) If no objections are made or ~~are~~ found by the Secretary to such

1 proposed location or proposed fracturing within ~~fifteen~~ thirty days
2 from receipt of such plat and notice by the Secretary, the same shall
3 be filed and become a permanent record of such location or fracturing
4 subject to inspection at any time by any interested person, and the
5 Secretary may forthwith issue to the well operator a permit reciting
6 the filing of such plat, that no objections have been made by the coal
7 operators, owners, and lessees, if any, or found thereto by the
8 Secretary, and authorizing the well operator to drill at such
9 location, or to fracture the well. Unless the Secretary has
10 objections to such proposed location or proposed fracturing or
11 stimulating, such permit may be issued prior to the expiration of such
12 ~~fifteen~~ thirty-day period upon the ~~obtaining by the~~ well operator ~~of~~
13 obtaining the written consent ~~in writing~~ of the coal operator or
14 operators, owners, and lessees, if any, to whom copies of the plat
15 and notice shall have been mailed as herein required, and upon
16 presentation of such written consent to the Secretary. The notice
17 above provided for may be given to the coal operator by delivering
18 or mailing it ~~by registered or certified mail~~ as provided for above
19 to any agent or superintendent in actual charge of mines.

20 (c) A permit to drill, ~~or to~~ fracture or stimulate an oil or gas well
21 shall not be issued unless the application therefor is accompanied
22 by a bond as provided in section ~~twenty-six~~ twenty-eight of this
23 article.

24 **§22-6-1315. Notice to coal operators, owners or lessees and ~~director~~ secretary of intention**

1 to fracture certain ~~other~~ wells; contents of such notice; bond; permit
2 **required; appeal from order of issuance or refusal of permit to drill or**
3 **fracture; procedure.**

4 (a) Before fracturing any well the well operator shall, by registered ~~or certified~~ mail or by any
5 method of delivery that requires a receipt or signature confirmation, forward a notice of intention
6 to fracture such well to the ~~director~~ Secretary and to each and every coal operator operating coal
7 seams beneath said tract of land who has mapped the same and filed such maps with the Office
8 of Miners' Health, Safety and Training in accordance with chapter twenty-two-a of this code, and
9 the coal seam owner and lessee, if any, if said owner of record or lessee of record has recorded
10 the declaration provided in section thirty-six of this article, and if said owner or lessee is not yet
11 operating said coal seams beneath said tract of land.

12 (b) The notice shall be addressed to the ~~director~~ Secretary and to each such coal operator at their
13 respective addresses, shall contain the number of the drilling permit for such well and such other
14 information as may be required by the ~~director~~ Secretary to enable the ~~division~~ department and
15 the coal operators to locate and identify such well and shall inform them that such notice is being
16 mailed sent to them, respectively, by registered ~~or certified~~ mail or by any method of delivery that
17 requires a receipt or signature confirmation, pursuant to the requirements of this article. The
18 form for such notice of intention shall be furnished on request by the ~~director~~ Secretary.

19 (c) If no objections are made or ~~are~~ found by the ~~director~~ Secretary to such proposed fracturing
20 within ~~fifteen~~ thirty days from receipt of such notice by the ~~director~~ Secretary, the same shall be
21 filed and become a permanent record of such fracturing, subject to inspection at any time by any
22 interested person, and the ~~director~~ Secretary shall forthwith issue to the well operator a permit

1 reciting the filing of such notice, that no objections have been made by the coal operators or
2 found thereto by the ~~director~~ Secretary, and authorizing the well operator to fracture such well.
3 Unless the ~~director~~ Secretary has objections to such proposed fracturing, such permit ~~shall~~ may
4 be issued prior to the expiration of such ~~fifteen~~ thirty-day period upon the ~~obtaining by the~~ well
5 operator ~~of the~~ obtaining the written consent ~~in writing~~ of the coal operator or operators, owners
6 or lessees, if any, to whom notice of intention to fracture shall have been mailed as herein
7 required, and upon presentation of such written consent to the ~~director~~ Secretary. The notice
8 above provided for may be given to the coal operator by delivering or mailing it by registered ~~or~~
9 ~~certified-mail~~ or by any method of delivery that requires a receipt or signature confirmation as
10 above to any agent or superintendent in actual charge of mines.

11 (d) Any party to the proceeding provided for in this section or section seven, article eight,
12 chapter twenty-two-c of this code adversely affected by the issuance of a drilling permit or to the
13 issuance of a fracturing permit or the refusal of the Secretary to grant a drilling permit or
14 fracturing permit is entitled to judicial review thereof. All of the pertinent provisions of section
15 four, article five, chapter twenty-nine-a of this code shall apply to and govern such judicial
16 review with like effect as if the provisions of said section four were set forth *in extenso* in this
17 section.

18 (e) The judgment of the circuit court shall be final unless reversed, vacated or modified on
19 appeal to the Supreme Court of Appeals in accordance with the provisions of section one, article
20 six, chapter twenty-nine-a of this code.

21 **§22-6-1416. Plats prerequisite to introducing liquids or waste into wells; preparation and**
22 **contents; notice and information furnished to coal operators, owners or**

1 lessees and ~~director~~ secretary; issuance of permits; performance bonds
2 or security in lieu thereof; appeal from order of issuance or refusal of
3 permit for drilling location for introduction of liquids or waste or from
4 conditions of converting procedure.

5 (a) Before drilling a well for the introduction of liquids for the purposes provided for in section
6 ~~twenty-five~~ twenty-seven of this article or for the introduction of liquids for the disposal of
7 pollutants or the effluent therefrom on any tract of land, or before converting an existing well for
8 such purposes, the well operator shall have a plat prepared by a registered professional engineer
9 or ~~licensed land~~ professional surveyor showing the district and county in which the tract of land
10 is located, the name and acreage of the same, the names of the owners of all adjacent tracts, the
11 proposed or actual location of the well or wells determined by a survey, the courses and distances
12 of such location from two permanent points of land marked on said tract, the mineral tract
13 boundary, and the number to be given to the well, and shall forward by registered ~~or certified~~
14 mail or by any method of delivery that requires a receipt or signature confirmation the original
15 and one copy of the plat to the ~~director~~ Secretary. In addition, the well operator shall provide the
16 following information on the plat or by way of attachment thereto to the ~~director~~ Secretary in the
17 manner and form prescribed by ~~the director's~~ rules promulgated by the Secretary: (1) The
18 location of all wells, abandoned or otherwise located within the area to be affected; (2) Where
19 available, the casing records of all such wells; (3) Where available, the drilling log of all such
20 wells; (4) The maximum pressure to be introduced; (5) The geological formation into which such
21 liquid or pressure is to be introduced; (6) A general description of the liquids to be introduced;
22 (7) The location of all water-bearing horizons above and below the geological formation into

1 which such pressure, liquid or waste is to be introduced; and (8) Such other information as the
2 ~~director~~ Secretary ~~by rule~~ may require.

3 (b) In the event the tract of land on which said well proposed to be drilled or converted for the
4 purposes provided for in this section is located is known to be underlaid with coal seams, copies
5 of the plat and all information required by this section shall be forwarded by the well operator by
6 registered ~~or certified~~-mail or by any method of delivery that requires a receipt or signature
7 confirmation to each and every coal operator operating coal seams beneath said tract of land who
8 has mapped the same and filed such maps with the Office of Miners' Health, Safety and Training
9 in accordance with chapter twenty-two-a of this code, and the coal seam owner of record and
10 lessee of record, if any, if said owner or lessee has recorded the declaration provided in section
11 thirty-six of this article, and if said owner or lessee is not yet operating said seams beneath said
12 tract of land. With each of such plats, there shall be enclosed a notice (form for which shall be
13 furnished on request by the ~~director~~ Secretary) addressed to the ~~director~~ Secretary and to each
14 such coal operator, owner or lessee, if any, at their respective addresses, informing them that
15 such plat and notice are being mailed to them, respectively, by registered ~~or certified~~-mail or by
16 any method of delivery that requires a receipt or signature confirmation, pursuant to the
17 requirements of this section.

18 (c) If no objections are made by any such coal operator, owner or lessee or the ~~director~~ Secretary,
19 such proposed drilling or converting of the well or wells for the purposes provided for in this
20 section within thirty days from the receipt of such plat and notice by the ~~director~~ Secretary, the
21 same shall be filed and become a permanent record of such location or well, subject to inspection
22 at any time by any interested person, and the ~~director~~ Secretary may after public notice and

1 opportunity to comment, issue such permit authorizing the well operator to drill at such location
2 or convert such existing well or wells for the purposes provided for in this section. The notice
3 above provided for may be given to the coal operator by delivering or mailing it ~~by registered or~~
4 ~~certified mail~~ as provided for above to any agent or superintendent in actual charge of the mines.

5 (d) A permit to drill a well or wells or convert an existing well or wells for the purposes provided
6 for in this section shall not be issued until all of the bonding provisions required by the
7 provisions of section ~~twelve~~ fourteen of this article have been fully complied with and all such
8 bonding provisions shall apply to all wells drilled or converted for the purposes provided for in
9 this section as if such wells had been drilled for the purposes provided for in section ~~twelve~~
10 fourteen of this article, except that such bonds shall be conditioned upon full compliance with all
11 laws and rules relating to the drilling of a well or the converting of an existing well for the
12 purposes provided for in said section ~~twenty-five~~ twenty-seven, or introducing of liquids for the
13 disposal of pollutants including the redrilling, deepening, casing, plugging or abandonment of all
14 such wells.

15 (e) Any party to the proceeding provided for in this section adversely affected by the order of
16 issuance of a drilling permit or to the issuance of a fracturing permit or the refusal of the
17 Secretary to grant a drilling permit or fracturing permit is entitled to judicial review thereof. All
18 of the pertinent provisions of section four, article five, chapter twenty-nine-a of this code shall
19 apply to and govern such judicial review with like effect as if the provisions of said section four
20 were set forth *in extenso* in this section.

21 (f) The judgment of the circuit court shall be final unless reversed, vacated or modified on appeal
22 to the Supreme Court of Appeals in accordance with the provisions of section one, article six,

1 chapter twenty-nine-a of this code.

2 **§22-6-1517. Objections to proposed drilling of deep wells and oil wells; objections to**
3 **fracturing; notices and hearings; agreed locations or conditions;**
4 **indication of changes on plats, etc.; issuance of permits.**

5 (a) When a proposed deep well drilling site or oil well drilling site ~~or any site~~ is above a seam or
6 seams of coal, then the coal ~~operator operating said coal seams beneath the tract of land, or the~~
7 ~~coal seam owner or lessee, if any, if said owner or lessee is not yet operating said coal seams~~
8 owner, operator or lessee, whether or not such coal owner, operator or lessee is operating said
9 coal seams, may within ~~fifteen~~ thirty days ~~from the~~ of receipt by the ~~director~~ Secretary of the plat
10 and notice required by section ~~twelve~~ fourteen of this article, or within ~~fifteen~~ thirty days ~~from~~
11 ~~the~~ of receipt by the ~~director~~ Secretary of notice required by section ~~thirteen~~ fifteen of this article,
12 file objections in writing (~~forms for which will be furnished by the director on request~~) to such
13 proposed drilling or fracturing with the ~~director~~ Secretary, setting out therein as ~~definitely~~
14 specifically as is reasonably possible the ground or grounds on which such objections are based.

15 (b) If any objection to the proposed drilling is filed, or if any objection to the proposed drilling is
16 made by the ~~director~~ Secretary, the ~~director~~ Secretary shall notify the well operator of the
17 character of the objections and by whom made and fix a time and place, not less than ~~fifteen~~
18 thirty days from the end of said ~~fifteen~~ thirty-day period, at which such objections will be
19 considered of which time and place the well operator and all objecting coal operators, owners or
20 lessees, if any, shall be given at least ~~ten~~ fifteen days' written notice by the ~~director~~ Secretary, by
21 registered ~~or certified~~ mail or by any method of delivery that requires a receipt or signature
22 confirmation, and summoned to appear. At the time and place so fixed, the well operator and

1 the objecting coal operators, owners or lessees, if any, or such of them as are present or
2 represented, shall proceed to consider the objections. In the case of proposed drilling, such
3 parties present or represented may agree upon either the location as made or so moved as to
4 satisfy all objections and meet the approval of the ~~director~~ Secretary, and any change in the
5 original location so agreed upon and approved by the ~~director~~ Secretary shall be indicated on said
6 plat on file with the ~~director~~ Secretary, and the distance and direction of the new location from
7 the original location shall be shown, and as so altered, the plat shall be filed and become a
8 permanent record, and in the case of proposed fracturing, such parties present or represented may
9 agree upon conditions under which the well is to be fractured which will protect life and property
10 and which will satisfy all objections and meet the approval of the ~~director~~ Secretary, at which
11 time the plat and notice required by section ~~twelve~~ fourteen or the notice required by section
12 ~~thirteen~~ fifteen, as the case may be, shall be filed and become a permanent record. Whereupon
13 the ~~director~~ Secretary shall forthwith issue to the well operator a drilling or fracturing permit, as
14 the case may be, reciting the filing of the plat and notice required by said section ~~twelve~~ fourteen,
15 or the notice required by said section ~~thirteen~~ fifteen, as the case may be, that at a hearing duly
16 held a location as shown on the plat or the conditions under which the fracturing is to take place
17 for the protection of life and property were agreed upon and approved, and that the well operator
18 is authorized to drill at such location or to fracture at the site shown on such plat, or to fracture
19 the well identified in the notice required by section ~~thirteen~~ fifteen, as the case may be.

20 ~~(b)~~(c) In the event the well operator and the objecting coal operators, owners or lessees, if any, or
21 such as are present or represented at such hearing are unable to agree upon a drilling location, or
22 upon a drilling location that meets the approval of the ~~director~~ Secretary, then the ~~director~~

1 Secretary shall proceed to hear the evidence and testimony in accordance with sections one and
2 two, article five, chapter twenty-nine-a of this code, except where such provisions are
3 inconsistent with the article. The ~~director~~ Secretary shall take into consideration in arriving at
4 his or her decision:

5 (1) Whether the drilling location is above or in close proximity to any mine opening or shaft,
6 entry, travelway, airway, haulageway, drainageway or passageway, loadout, stockpile, pit,
7 highwall, active surface mining, or to any proposed extension thereof in any operated or
8 abandoned or operating coal mine or coal mines already surveyed and platted, but not yet being
9 operated;

10 (2) Whether the proposed drilling can reasonably be done through an existing or planned pillar of
11 coal, or in close proximity to an existing well or such pillar of coal, taking into consideration the
12 surface topography;

13 (3) Whether a well can be drilled safely, taking into consideration the dangers from creeps,
14 squeezes or other disturbances due to the extraction of coal; and

15 (4) The extent to which the proposed drilling location unreasonably interferes with the safe
16 recovery of coal, oil and gas.

17 At the close of the hearing or within ten days thereafter the ~~director~~ Secretary shall issue an
18 order:

19 (1) Refusing to issue a permit;

20 (2) Issuing a permit for the proposed drilling location; ~~or~~

21 (3) Issuing a permit for a drilling location different from that requested by the well operator; or

22 (4) Placing such other limitations on the drilling location or process as the Secretary finds

1 necessary to protect human health or safety or the environment.

2 The order shall state with particularity the reasons for the ~~director's~~ Secretary's order and shall be
3 mailed by registered ~~or certified~~ mail or by any method of delivery that requires receipt or
4 signature confirmation to the parties present or represented at such hearing. If the ~~director~~
5 Secretary has ruled that a permit will be issued, the ~~director~~ Secretary shall issue a permit
6 effective ten days after such order is mailed, except that for good cause shown, the ~~director~~
7 Secretary may stay the issuance of a permit for a period not to exceed thirty days.

8 If a permit is issued, the ~~director~~ Secretary shall indicate the new drilling location on the plat on
9 file and shall number and keep an index of and docket each plat and notice received by mail as
10 provided in section ~~twelve~~ fourteen of this article, and each notice mailed as provided in section
11 ~~thirteen~~ fifteen of this article, entering in such docket the name of the well operator, and the
12 names and addresses of all persons notified, the dates of hearings and all actions taken by the
13 ~~director~~ Secretary. The ~~director~~ Secretary shall also prepare a record of the proceedings, which
14 record shall include all applications, plats and other documents filed with the ~~director~~ Secretary,
15 all notices given and proof of service thereof, all orders issued, all permits issued and a transcript
16 of the hearing. The record prepared by the ~~director~~ Secretary shall be open to inspection by the
17 public.

18 (c) In the event the well operator and the objecting coal operators, owners or lessees, if any, or
19 such as are present or represented at such hearing, are unable to agree upon the conditions under
20 which the well is to be fractured as to protect life and property, or upon conditions of fracturing
21 that meet with the approval of the ~~director~~ Secretary, then the ~~director~~ Secretary shall proceed to
22 hear the evidence and testimony in accordance with sections one and two, article five, chapter

1 twenty-nine-a of this code, except where such provisions are inconsistent with this article.

2 The ~~director~~ Secretary shall take into consideration whether the well can be fractured safely,
3 taking into consideration the dangers from creeps, squeezes or other disturbances.

4 At the close of the hearing, or within ten days thereafter, the ~~director~~ Secretary shall issue an
5 order stating the conditions under which the well is to be fractured, provided the well can be
6 fractured safely, taking into consideration the dangers from creeps, squeezes or other
7 disturbances. If such fracturing cannot be done safely, the ~~director~~ Secretary shall issue an order
8 stating with particularity the reasons for refusing to issue a permit.

9 The order shall state with particularity the reasons for the ~~director's~~ Secretary's order and shall be
10 mailed by registered ~~or certified~~ mail or by any method of delivery that requires a receipt or
11 signature confirmation to the parties present or represented at such hearing. If the ~~director~~
12 Secretary has ruled that a permit will be issued, the ~~director~~ Secretary shall issue a permit
13 effective ten days after such order is mailed, except that for good cause shown, the ~~director~~
14 Secretary may stay the issuance of a permit for a period not to exceed thirty days.

15 If a permit is issued, the ~~director~~ Secretary shall indicate the well to be fractured on the plat on
16 file and shall number and keep an index of and docket each plat and notice received by mail as
17 provided in section ~~twelve~~ fourteen of this article, and each notice received by mail as provided
18 in section ~~thirteen~~ fifteen of this article, entering in such docket the name of the well operator, the
19 names and addresses of all persons notified, the dates of hearings and all actions taken by the
20 ~~director~~ Secretary. The ~~director~~ Secretary shall also prepare a record of the proceedings, which
21 record shall include all applications, plats and other documents filed with by the ~~director~~
22 Secretary, all notices given and proof of service thereof, all orders issued, all permits issued and a

1 transcript of the hearing. The record prepared by the ~~director~~ Secretary shall be open to
2 inspection by the public.

3 **§22-6-1618. Objections to proposed drilling or converting for introducing liquids or waste**
4 **into wells; notices and hearings; agreed location or conditions; indication**
5 **of changes on plats, etc.; issuance of permits; docket of proceeding.**

6 (a) When a well is proposed to be drilled or converted for the purposes provided for in section
7 ~~fourteen~~ sixteen of this article, and is above a seam or seams of coal, then the coal ~~operator~~
8 ~~operating said coal seams beneath the tract of land, or the coal seam owner or lessee, if any, if~~
9 ~~said owner or lessee is not yet operating said coal seams~~ owner, operator or lessee, whether or
10 not such coal owner, operator or lessee is operating said coal seams, may within ~~fifteen~~ thirty
11 days ~~from the~~ of receipt by the ~~director~~ Secretary of the plat and notice required by section
12 ~~fourteen~~ sixteen of this article, file objections in writing (~~forms for which will be furnished by~~
13 ~~the director on request~~) to such proposed drilling or conversion.

14 (b) In any case wherein a well proposed to be drilled or converted for the purposes provided for
15 in section ~~fourteen~~ sixteen of this article shall, in the opinion of the ~~chief of the office of water~~
16 ~~resources~~ Director of the Division of Water and Waste Management, affect detrimentally the
17 reasonable standards of purity and quality of the waters of the state, such ~~chief~~ Director shall,
18 within the time period established by the ~~director~~ Secretary for the receipt of public comment on
19 such proposed drilling conversion, file with the ~~director~~ Secretary such objections in writing to
20 such proposed drilling or conversion, setting out therein as ~~definitely~~ specifically as is reasonably
21 possible the ground or grounds upon which such objections are based and indicating the
22 conditions, consistent with the provisions of this article and the rules promulgated thereunder, as

1 may be necessary for the protection of the reasonable standards of the purity and quality of such
2 waters under which such proposed drilling or conversion may be completed to overcome such
3 objections, if any.

4 (c) If any objection or objections to the proposed drilling are ~~so~~ filed or ~~are~~ made by the ~~director~~
5 Secretary, the ~~director~~ Secretary shall notify the well operator of the character of the objections
6 and by whom made and fix a time and place, not less than thirty days from the end of said
7 thirty-day period, at which such objections will be considered, of which time and place the well
8 operator and all objecting coal operators, the owners or lessees, if any, or such ~~chief~~ Director,
9 shall be given at least ~~ten~~ fifteen days' written notice by the ~~director~~ Secretary by registered ~~or~~
10 ~~certified~~ mail or by any method of delivery that requires a receipt or signature confirmation, and
11 summoned to appear. At the time and place so fixed, the well operator and the objecting coal
12 operators, owners or lessees, if any, or such of them as are present or represented, or such ~~chief~~
13 Director, shall proceed to consider the objections. In the case of proposed drilling or converting
14 of a well for the purposes provided for in section ~~fourteen~~ sixteen of this article, such parties
15 present or represented may agree upon either the location as made or so moved as to satisfy all
16 objections and meet the approval of the ~~director~~ Secretary, and any change in the original
17 location so agreed upon and approved by the ~~director~~ Secretary shall be indicated on said plat on
18 file with the ~~director~~ Secretary, and the distance and direction of the new location from—the
19 original location shall be shown, and, as so altered, the plat shall be filed and become a
20 permanent record. In the case of proposed conversion, such parties present or represented may
21 agree upon conditions under which the conversion is to take place for the protection of life and
22 property or for protection of reasonable standards of purity and quality of the waters of the state.

1 At which time the plat and notice required by section ~~fourteen~~ sixteen shall be filed and become a
2 permanent record. Whereupon the ~~director~~ Secretary may issue to the well operator a permit to
3 drill or convert, as the case may be, reciting the filing of the plat and notice required by said
4 section ~~fourteen~~ sixteen that at a hearing duly held a location as shown on the plat or the
5 conditions under which the conversion is to take place for the protection of life and property and
6 reasonable standards of purity and quality of the waters of the state where agreed upon and
7 approved, and that the well operator is authorized to drill at such location or to convert at the site
8 shown on such plat, as the case may be.

9 (d) (1) In the case the well operator and the objecting coal operators, owners or lessees, if any,
10 and such ~~chief~~ Director, or such as are present or represented at such hearing are unable to agree
11 upon a drilling location, or upon a drilling location that meets the approval of the ~~director~~
12 Secretary, then the ~~director~~ Secretary shall proceed to hear the evidence and testimony in
13 accordance with sections one and two, article five, chapter twenty-nine-a of this code, except
14 where such provisions are inconsistent with this article. The ~~director~~ Secretary shall take into
15 consideration upon decision:

16 (A) Whether the drilling location is above or in close proximity to any mine opening or shaft,
17 entry, traveling, air haulage, drainage or passageway, loadout, stockpile, pit, highwall, active
18 surface mining, or to any proposed extension thereof, in any operated or abandoned or operating
19 coal mine, or coal mine already surveyed and platted, but not yet being operated;

20 (B) Whether the proposed drilling can reasonably be done through an existing or planned pillar
21 of coal, or in close proximity to an existing well or such pillar of coal, taking into consideration
22 the surface topography;

1 (C) Whether a well can be drilled safely, taking into consideration the dangers from creeps,
2 squeezes or other disturbances, due to the extraction of coal; and

3 (D) The extent to which the proposed drilling location unreasonably interferes with the safe
4 recovery of coal, oil and gas.

5 (2) At the close of the hearing or within ten days thereafter the ~~director~~ Secretary shall issue an
6 order:

7 (A) Refusing to issue a permit;

8 (B) Issuing a permit for the proposed drilling location; ~~or~~

9 (C) Issuing a permit for a drilling location different than that requested by the well operator; or

10 (D) Placing such other limitations on the drilling location or process as the Secretary finds
11 necessary to protect human health or safety or the environment.

12 The order shall state with particularity the reasons for the ~~director's~~ Secretary's order and shall be
13 mailed by registered ~~or certified~~ mail or by any method of delivery that requires a receipt or
14 signature confirmation to the parties present or represented at such hearing. If the ~~director~~
15 Secretary has ruled that a permit will be issued, the ~~director~~ Secretary shall issue a permit
16 effective ten days after such order is mailed: Except that for good cause shown, the ~~director~~
17 Secretary may stay the issuance of a permit for a period not to exceed thirty days.

18 (3) If a permit is issued, the ~~director~~ Secretary shall indicate the new drilling location on the plat
19 on file with the ~~director~~ Secretary and shall number and keep an index of and docket each plat
20 and notice mailed to the ~~director~~ Secretary as provided in section ~~twelve~~ fourteen of this article,
21 and each notice mailed to the ~~director~~ Secretary as provided in section ~~thirteen~~ fifteen of this
22 article, entering in such docket the name of the well operator and the names and addresses of all

1 persons notified, the dates of hearings and all actions taken by the ~~director~~ Secretary, permits
2 issued or refused, the papers filed, and a transcript of the hearing. This shall constitute a record
3 of the proceedings before the ~~director~~ Secretary and shall be open to inspection by the public.

4 (e) (1) In the case the well operator and the objecting coal operators, owners or lessees, if any,
5 and such ~~chief~~ Director, or such as are present or represented at such hearing, are unable to agree
6 upon the conditions under which the well is to be converted so as to protect life and property, and
7 the reasonable standards of purity and quality of the waters of the state, or upon conditions of
8 converting that meet with the approval of the ~~director~~ Secretary, then the ~~director~~ Secretary shall
9 proceed to hear the evidence and testimony in accordance with sections one and two, article five,
10 chapter twenty-nine-a of this code, except where such provisions are inconsistent with this
11 article. The ~~director~~ Secretary shall take into consideration upon decision:

12 (A) Whether the well can be converted safely, taking into consideration the dangers from creeps,
13 squeezes or other disturbances; and

14 (B) Whether the well can be converted, taking into consideration the reasonable standards of the
15 purity and quality of the waters of the state.

16 (2) At the close of the hearing, or within ten days thereafter, the ~~director~~ Secretary shall issue an
17 order stating the conditions under which the conversion is to take place, providing the well can
18 be converted safely, taking into consideration the dangers from creeps, squeezes or other
19 disturbances and the reasonable standards of purity and quality of the waters of this state. If
20 such converting cannot be done safely, or if the reasonable standards of purity and quality of
21 such waters will be endangered, the ~~director~~ Secretary shall issue an order stating with
22 particularity the reasons for refusing to issue a permit.

1 (3) The order shall state with particularity the reasons for the ~~director's~~ Secretary's order and
2 shall be mailed by registered ~~or certified~~ mail or by any method of delivery that requires a receipt
3 or signature confirmation to the parties present or represented at such hearing. If the ~~director~~
4 Secretary has ruled that a permit will be issued, such permit shall become effective ten days after
5 the ~~division~~ Department has mailed such order: Except for good cause shown, the ~~director~~
6 Secretary may stay the issuance of a permit for a period not to exceed thirty days.

7 (4) If a permit is issued, the ~~director~~ Secretary shall indicate the well to be converted on the plat
8 on file with the ~~director~~ Secretary, and shall number and keep an index of and docket each plat
9 and notice mailed to the ~~director~~ Secretary as provided in section ~~fourteen~~ sixteen of this article,
10 entering in such docket the name of the well operator, and the names and addresses of all persons
11 notified, the dates of hearings and all actions taken by the ~~director~~ Secretary, permits issued or
12 refused, the papers filed and a transcript of the hearings. This shall constitute a record of the
13 proceedings before the ~~director~~ Secretary and shall be open to inspection by the public.

14 **§22-6-1719. Objections to proposed drilling or deepening of shallow gas wells; notice to**
15 **chair of review board; indication of changes on plats; issuance of**
16 **permits.**

17 (a) When a proposed shallow well drilling site is above a seam or seams of coal, then the coal
18 owner of any such coal seam operator or lessee, whether or not such coal owner, operator or
19 lessee is operating said coal seams may, within ~~fifteen~~ thirty days ~~from the~~ of receipt by the
20 ~~director~~ Secretary of the plat and notice required by section ~~twelve~~ fourteen of this article, file
21 objections in writing (~~forms for which will be furnished by the director on request~~) to such
22 proposed drilling or deepening with the ~~director~~ Secretary, setting out therein as ~~definitely~~

1 specifically as is reasonably possible the ground or grounds on which such objections are based.

2 (b) If any such objection is filed or if any objection is made by the ~~director~~ Secretary, the ~~director~~
3 Secretary shall forthwith ~~mail, by registered or certified mail, to~~ serve upon the chair of the
4 review board, a notice that an objection to the proposed drilling or deepening of a shallow well
5 has been filed with or made by the ~~director~~ Secretary, and shall enclose in such notice a copy of
6 all objections and of the application and plat filed with the ~~director~~ Secretary in accordance with
7 the provisions of section ~~twelve~~ fourteen of this article.

8 (1) Thereafter, no further action shall be taken on such application by the ~~director~~ Secretary until
9 an order is received from the review board directing the ~~director~~ Secretary to:

10 ~~(a)~~(A) Refuse a drilling permit; or

11 ~~(b)~~(B) Issue a drilling permit for the proposed drilling location; or

12 ~~(c)~~(C) Issue a drilling permit for an alternate drilling location different from that requested by the
13 well operator; or

14 ~~(d)~~(D) Issue a drilling permit either for the proposed drilling location or for an alternate drilling
15 location different from that requested by the well operator, but not allow the drilling of the well
16 for a period of not more than one year from the date of issuance of such permit; or

17 (E) Place such other limitations on the drilling location or process as the review board finds
18 necessary to protect human health or safety or the environment.

19 (2) Upon receipt of such board order, the ~~director~~ Secretary shall promptly undertake the action
20 directed by the review board, except that the ~~director~~ Secretary shall not issue a drilling permit
21 unless the applicant has complied with all other provisions of this article (except section ~~fifteen~~
22 seventeen) pertaining to the application for and approval of a drilling permit ~~have been complied~~

1 ~~with.~~ All permits issued by the ~~director~~ Secretary pursuant to this section shall be effective ten
2 days after issuance unless the review board orders the ~~director~~ Secretary to stay the effectiveness
3 of a permit for a period not to exceed thirty days from the date of issuance.

4 (3) If a permit is issued, the ~~director~~ Secretary shall indicate the approved drilling location on the
5 plat filed with the ~~director~~ Secretary in accordance with the provisions of section ~~twelve~~ fourteen
6 of this article and shall number and keep an index of and docket each plat and notice mailed to
7 the ~~director~~ Secretary as provided in section ~~twelve~~ fourteen of this article, and each notice
8 mailed to the ~~director~~ Secretary as provided in section ~~thirteen~~ fifteen of this article, entering in
9 such docket the name of the well operator and the names and addresses of all persons notified,
10 the dates of conferences, hearings, and all other actions taken by the ~~director~~ Secretary and the
11 review board. The ~~director~~ Secretary shall also prepare a record of the proceedings, which
12 record shall include all applications, plats and other documents filed with the ~~director~~ Secretary,
13 all notices given and proof of service thereof, all orders issued, all permits issued and a transcript
14 of the hearing. The record prepared by the ~~director~~ Secretary shall be open to inspection by the
15 public.

16 **§22-6-1820. Protective devices -- When well penetrates workable coal bed; when gas is**
17 **found beneath or between workable coal beds.**

18 (a) When a well penetrates one or more workable coal beds, the well operator shall run and
19 cement a string of casing in the hole through the workable coal bed or beds in such a manner as
20 will exclude all oil, gas or gas pressure from the coal bed or beds, except such oil, gas or gas
21 pressure as may be found in such coal bed or beds. Such string of casing shall be run to a point
22 at least thirty feet below the lowest workable coal bed which the well penetrates and shall be

1 circulated and cemented from such point to the surface in such a manner as provided for in
2 reasonable rules promulgated by the ~~director~~ Secretary in accordance with the provisions of
3 chapter twenty-nine-a. After any such string of casing has been so run and cemented to the
4 surface, drilling may proceed to the permitted depth.

5 (b) In the event that gas is found beneath a workable coal bed before the hole has been reduced
6 from the size it had at the coal bed, a packer shall be placed below the coal bed, and above the
7 gas horizon, and the gas by this means diverted to the inside of the adjacent string of casing
8 through perforations made in such casing, and through it passed to the surface without contact
9 with the coal bed. Should gas be found between two workable beds of coal, in a hole, of the
10 same diameter from bed to bed, two packers shall be placed, with perforations in the casing
11 between them, permitting the gas to pass to the surface inside the adjacent casing. In either of
12 the cases here specified, the strings of casing shall extend from their seats to the top of the well.

13 (c) The Secretary shall promulgate rules in accordance with the provisions of article three,
14 chapter twenty-nine-a of this code to establish minimum standards for construction of oil or gas
15 wells to carry out the purposes of this section and sections twenty-one, twenty-two, and
16 twenty-three of this article.

17 **§22-6-1921. Same -- Continuance during life of well; dry or abandoned wells.**

18 In the event that a well becomes productive of natural gas or petroleum, or is drilled for or
19 converted for the introduction of pressure, whether liquid or gas, or for the introduction of liquid
20 for the purposes provided for in section ~~twenty-five~~ twenty-seven of this article or for the
21 disposal of pollutants or the effluent therefrom, all coal-protecting strings of casing and all
22 water-protecting strings of casing shall remain in place until the well is plugged or abandoned.

1 During the life of the well the annular spaces between the various strings of casing adjacent to
2 workable beds of coal shall be kept open, and the top ends of all such strings shall be provided
3 with casing heads, or such other suitable devices as will permit the free passage of gas and
4 prevent filling of such annular spaces with dirt or debris.

5 Any well which is completed as a dry hole or which is not in use for a period of twelve
6 consecutive months shall be presumed to have been abandoned and shall promptly be plugged by
7 the operator in accordance with the provisions of this article, unless the operator furnishes
8 satisfactory proof to the ~~director~~ Secretary that there is a bona fide future use for such well.

9 **§22-6-2022. Same -- When well is drilled through horizon of coalbed**
10 **from which coal has been removed.**

11 When a well is drilled through the horizon of a coalbed from which
12 the coal has been removed, the hole shall be drilled at least thirty
13 feet below the coalbed, of a size sufficient to permit the placing
14 of a liner which shall start not less than twenty feet beneath the
15 horizon of the coalbed and extend not less than twenty feet above it.
16 Within this liner, which may be welded to the casing to be used, shall
17 be centrally placed the largest-sized casing to be used in the well
18 and the space between the liner and casing shall be filled with cement
19 as they are lowered into the hole. Cement shall be placed in the
20 bottom of the hole to a depth of twenty feet to form a sealed seat
21 for both liner and casing: *Provided*, That the liner may extend back
22 to the surface and serve as the freshwater or coal protection casing,
23 if done in accordance with sections ~~eighteen~~ twenty and ~~twenty-one~~

1 twenty-three of this article, as applicable. If the liner is
2 constructed in this manner, the next string of casing to be run into
3 the well shall extend at least twenty feet below the coalbed. Cement
4 shall be placed between that string of casing and the liner from the
5 bottom of the casing to a point at least twenty feet above the coalbed.
6 Following the setting of the liner, drilling shall proceed in the
7 manner provided above. Should it be found necessary to drill through
8 the horizon of two or more workable coalbeds from which the coal has
9 been removed, the liner shall be started not less than twenty feet
10 below the lowest horizon penetrated and shall extend to a point not
11 less than twenty feet above the highest horizon.

12 **§22-6-2123. Same -- Installation of fresh water casings.**

13 (a) When a permit has been issued for the drilling of an oil or gas well or both, each well
14 operator shall run and permanently cement a string of casing in the hole through the fresh water
15 bearing strata in such a manner and to the extent provided for in rules promulgated by the
16 ~~director~~ Secretary in accordance with the provisions of this chapter.

17 (b) No oil or gas well shall be drilled nearer than two hundred feet from an existing water well or
18 dwelling without first obtaining the written consent of the owner of such water well or dwelling.

19 (c) No oil or gas well shall be fractured nearer than five hundred vertical feet from a groundwater
20 aquifer.

21 **§22-6-2224. Well report, logs, core samples and cuttings to be**
22 **filed; confidentiality and permitted use; authority to**
23 **promulgate rules.**

1 (a) Within a reasonable time after the completion of the drilling
2 of a shallow well or deep well, the well operator shall file with the
3 secretary and with the state Geological and Economic Survey a
4 completion report containing the following:

5 (1) The character, depth and thickness of geological formations
6 encountered, including fresh water, coal seams, mineral beds, brine
7 and oil and gas bearing formations; and

8 (2) Such other information as the secretary may require to effectuate
9 the purposes of this chapter.

10 The secretary may promulgate such reasonable rules in accordance with
11 article three, chapter twenty-nine-a of this code, as may be
12 considered necessary to ensure that the character, depth and
13 thickness of geological formations encountered are accurately
14 logged: *Provided*, That the secretary shall not require logging by the
15 use of an electrical logging device: *Provided, however*, That if
16 electrical or mechanical or geophysical logs are recorded in the well,
17 the secretary may request copies of these logs: *Provided further*, That
18 mechanical or geophysical logs may not include vertical seismic
19 profiles or two-dimensional or three-dimensional seismic
20 information.

21 (b) If a well operator takes core samples, that activity shall be
22 noted within the report, and, within sixty days after filing the
23 completion report, the operator shall, subject to the terms of this
24 article, provide the state Geological and Economic Survey with a

1 complete set of cores, consisting of at least quarter slabs, correctly
2 labeled and identified according to depth. The core samples
3 requested by and provided to the state Geological and Economic Survey
4 may not contain any materials or documents made with regard to
5 analyzing or interpreting the core samples.

6 (c) If a well operator catches cuttings during the drilling of any
7 deep or shallow well, that activity shall be noted within the report
8 and, within sixty days after filing the completion report, the
9 operator shall, subject to the terms of this article, provide the
10 state Geological and Economic Survey with a sample of the cuttings,
11 correctly labeled and identified according to depth.

12 (d) Any information, reports, cuttings and core samples requested
13 by and provided to the state Geological and Economic Survey by the
14 operator shall be kept confidential at the written request of the
15 operator for a specified amount of time as follows:

16 (1) Except for core samples, any logs, drill cuttings, reports and
17 other information or materials that reveal trade secrets or other
18 confidential business information relating to the competitive
19 interests of the operator or the operator's privy may not be disclosed
20 to the public for one year following delivery, unless the operator
21 consents in writing to a shorter time. At the operator's written
22 request, the period of confidentiality may be extended in annual
23 increments: *Provided*, That the total period of confidentiality may
24 not exceed three years.

1 (2) Any core samples may not be disclosed to the public for five years
2 following delivery to the state Geological and Economic Survey,
3 unless the operator consents in writing to a shorter time. At the
4 operator's written request, the period of confidentiality may be
5 extended for an additional five years: *Provided*, That the total period
6 of confidentiality may not exceed ten years.

7 (e) Notwithstanding the provisions of subsection (d) of this section,
8 the state Geological and Economic Survey may store and process
9 confidential information within its minerals mapping or geographic
10 information systems; however, that confidential information may not
11 be revealed to the public until the lapsing of the period of
12 confidentiality created pursuant to subsection (d) of this section.
13 After the period of confidentiality has lapsed, statistics or other
14 information generated as the result of storage and processing may be
15 disclosed in the aggregate through articles, reports, maps, or
16 lectures presented in accordance with generally accepted academic or
17 scientific practices and in a manner to preclude the identification
18 of a particular well or operator.

19 **§22-6-~~2325~~. Plugging, abandonment and reclamation of well; notice**
20 **of intention; bonds; affidavit showing time and manner.**

21 All dry or abandoned wells or wells presumed to be abandoned under
22 the provisions of section ~~nineteen~~ twenty-one of this article shall
23 be plugged and reclaimed in accordance with this section and the other
24 provisions of this article and in accordance with the rules

1 promulgated by the Secretary.

2 Prior to the commencement of plugging operations and the abandonment
3 of any well, the well operator shall either: (a) Notify, by
4 registered ~~or certified~~ mail or by any method of delivery that
5 requires a receipt or signature confirmation, the Secretary and the
6 coal operator operating coal seams, the coal seam owner of record or
7 lessee of record, if any, to whom notices are required to be given
8 by section ~~twelve~~ fourteen of this article, and the coal operators
9 to whom notices are required to be given by section ~~thirteen~~ fifteen
10 of this article, of its intention to plug and abandon any such well
11 (using such form of notice as the Secretary may provide), giving the
12 number of the well and its location and fixing the time at which the
13 work of plugging and filling will be commenced, which time shall be
14 not less than five days after the day on which such notice so mailed
15 is received ~~or in due course should be received~~ by the Secretary, in
16 order that a representative or representatives of the Secretary and
17 such coal operator, owner or lessee, if any, may be present at the
18 plugging and filling of the well: *Provided*, That whether such
19 representatives appear or do not appear, the well operator may proceed
20 at the time fixed to plug and fill the well in the manner hereinafter
21 described; or (b) First obtain the written approval of the Secretary
22 and such coal operator, owner or lessee, if any; or (c) In the event
23 the well to be plugged and abandoned is one on which drilling or
24 reworking operations have been continuously progressing pursuant to

1 authorization granted by the Secretary, first obtain the verbal
2 permission of the Secretary or the Secretary's designated
3 representative to plug and abandon the well, except that the well
4 operator shall, within a reasonable period not to exceed five days
5 after the commencement of the plugging operations, give the written
6 notices required by subdivision (a) above.

7 The well operator shall not be required to prepare or submit to the
8 ~~director~~ Secretary a plat prior to the commencement of plugging
9 operations as long as a plat pertaining to the particular well is on
10 file with the ~~director~~ Secretary and accurately identifies the
11 location of the well, or so long as there is also on file with the
12 ~~director~~ Secretary the coordinates of the well established by a global
13 positioning system. The coordinates established by a global
14 positioning system must be filed with the secretary in either a
15 written or electronic form prescribed by the secretary. The global
16 positioning system used to establish the coordinates shall be
17 accurate within the variance allowed by law for the distance between
18 the actual location of the well and location shown on the plat that
19 is required to be filed with a well permit application, or the
20 secretary may establish the accuracy of the global positioning system
21 by legislative rule promulgated pursuant to section two of this
22 article.

23 No well may be plugged or abandoned unless prior to the commencement
24 of plugging operations and the abandonment of any well the secretary

1 is furnished a bond as provided in section ~~twenty-six~~ twenty-eight
2 of this article. In no event prior to the commencement of plugging
3 operations shall a lessee under a lease covering a well be required
4 to give or sell the well to any person owning an interest in the well,
5 including, but not limited to, the respective lessor⁷ or agent of the
6 lessor, nor may the lessee be required to grant a person with an
7 interest in the well, including, but not limited to, the respective
8 lessor⁷ or agent of the lessor⁷ an opportunity to qualify under
9 section ~~twenty-six~~ twenty-eight of this article to continue operation
10 of the well.

11 When the plugging, filling and reclamation of a well have been
12 completed, an affidavit, in triplicate, shall be made (on a form to
13 be furnished by the secretary) by two experienced persons who
14 participated in the work, the secretary or the secretary's designated
15 representative, in which affidavit shall be set forth the time and
16 manner in which the well was plugged and filled and the land reclaimed.
17 One copy of this affidavit shall be retained by the well operator,
18 another (or true copies of same) shall be mailed to the coal operator
19 or operators, if any, and the third to the secretary.

20 **§22-6-2426. Methods of plugging well.**

21 Upon the abandonment or cessation of the operation of any well drilled for natural gas or
22 petroleum, or drilled or converted for the introduction of pressure, whether liquid or gas, or for
23 the introduction of liquid for the purposes provided for in section ~~twenty-five~~ twenty-seven of
24 this article or for the disposal of pollutants or the effluent therefrom the well operator, at the time

1 of such abandonment or cessation, shall fill and plug the well in the following manner:

2 (a) Where the well does not penetrate workable coal beds, it shall either be filled with mud, clay
3 or other nonporous material from the bottom of the well to a point twenty feet above the top of
4 its lowest oil, gas or water-bearing stratum; or a permanent bridge shall be anchored thirty feet
5 below its lowest oil, gas or water-bearing stratum, and from such bridge it shall be filled with
6 mud, clay or other nonporous material to a point twenty feet above such stratum; at this point
7 there shall be placed a plug of cement or other suitable material which will completely seal the
8 hole. Between this sealing plug and a point twenty feet above the next higher oil, gas or
9 water-bearing stratum, the hole shall be filled, in the manner just described; and at such point
10 there shall be placed another plug of cement or other suitable material which will completely seal
11 the hole. In like manner the hole shall be filled and plugged, with reference to each of its oil,
12 gas or water-bearing strata. However, whenever such strata are not widely separated and are
13 free from water, they may be grouped and treated as a single sand, gas or petroleum horizon, and
14 the aforesaid filling and plugging be performed as though there were but one horizon. After the
15 plugging of all oil, gas or water-bearing strata, as aforesaid, a final cement plug shall be placed
16 approximately ten feet below the bottom of the largest casing in the well; from this point to the
17 surface the well shall be filled with mud, clay or other nonporous material. In case any of the oil
18 or gas-bearing strata in a well shall have been shot, thereby creating cavities which cannot readily
19 be filled in the manner above described, the well operator shall follow either of the following
20 methods:

21 (1) Should the stratum which has been shot be the lowest one in the well, there shall be placed, at
22 the nearest suitable point, but not less than twenty feet above the stratum, a plug of cement or

1 other suitable material which will completely seal the hole. In the event, however, that the
2 shooting has been done above one or more oil or gas-bearing strata in the well, plugging in the
3 manner specified shall be done at the nearest suitable point, but not less than twenty feet below
4 and above the stratum shot; or

5 (2) When such cavity shall be in the lowest oil or gas-bearing stratum in the well, a liner shall be
6 placed which shall extend from below the stratum to a suitable point, but not less than twenty
7 feet above the stratum in which shooting has been done. In the event, however, that the shooting
8 has been done above one or more oil or gas-bearing strata in the well, the liner shall be so placed
9 that it will extend not less than twenty feet above, nor less than twenty feet below, the stratum in
10 which shooting has been done. Following the placing of the liner in the manner here specified it
11 shall be compactly filled with cement, mud, clay or other nonporous sealing material.

12 (b) Where the well penetrates one or more workable coal beds and a coal protection string of
13 casing has been circulated and cemented into the surface, the well shall be filled and securely
14 plugged in the manner provided in subsection (a) of this section, except that expanding cement
15 shall be used instead of regular hydraulic cement, to a point approximately one hundred feet
16 below the bottom of the coal protection string of casing. A one hundred foot plug of expanding
17 cement shall then be placed in the well so that the top of such plug is located at a point just below
18 the coal protection string of casing. After such plug has been securely placed in the well, the
19 coal protection string of casing shall be emptied of liquid from the surface to a point one hundred
20 feet below the lowest workable coal bed or to the bottom of the coal protection string of casing,
21 whichever is shallower. A vent or other device approved by the ~~director~~ Secretary shall then be
22 installed on the top of the coal protection string of casing in such a manner that will prevent

1 liquids and solids from entering the well but will permit ready access to the full internal diameter
2 of the coal protection string of casing when required. The coal protection string of casing and
3 the vent or other device approved by the ~~director~~ Secretary shall extend, when finally in place, a
4 distance of not less than thirty inches above ground level and shall be permanently marked with
5 the well number assigned by the director;

6 (c) Where the well penetrates one or more workable coal beds and a coal protection string of
7 casing has not been circulated and cemented in to the surface, the well shall be filled and securely
8 plugged in the manner provided in subsection (a) of this section to a point fifty feet below the
9 lowest workable coal bed. Thereafter, a plug of cement shall be placed in the well at a point not
10 less than forty feet below the lowest workable coal bed. After the cement plug has been securely
11 placed in the well, the well shall be filled with cement to a point twenty feet above the lowest
12 workable coal bed. From this point the well shall be filled with mud, clay or other nonporous
13 material to a point forty feet beneath the next overlying workable coal bed, if such there be, and
14 the well shall then be filled with cement from this point to a point twenty feet above such
15 workable coal bed, and similarly, in case there are more overlying workable coal beds. After the
16 filling and plugging of the well to a point above the highest workable coal bed, filling and
17 plugging of the well shall continue in the manner provided in subsection (a) of this section to a
18 point fifty feet below the surface, and a plug of cement shall be installed from the point fifty feet
19 below the surface to the surface with a monument installed therein extending thirty inches above
20 ground level;

21 (d) (1) Where the well penetrates one or more workable coal beds and a coal protection string of
22 casing has not been circulated and cemented in to the surface, a coal operator or coal seam owner

1 may request that the well be plugged in the manner provided in subdivision (3) of this subsection
2 rather than by the method provided in subsection (c) of this section. Such request (forms for
3 which shall be provided by the ~~director~~ Secretary) must be filed in writing with the ~~director~~
4 Secretary prior to the scheduled plugging of the well, and must include the number of the well to
5 be plugged and the name and address of the well operator. At the time such request is filed with
6 the ~~director~~ Secretary, a copy of such request must also be mailed by registered ~~or certified~~ mail
7 or any method of delivery that requires a receipt or signature confirmation to the well operator
8 named in the request.

9 (2) Upon receipt of such request, the ~~director~~ Secretary shall issue an order staying the plugging
10 of the well and shall promptly determine the cost of plugging the well in the manner provided in
11 subdivision (3) of this subsection and the cost of plugging the well in the manner provided in
12 subsection (c) of this section. In making such determination, the ~~director~~ Secretary shall take
13 into consideration any agreement previously made between the well operator and the coal
14 operator or coal seam owner making the request. If the ~~director~~ Secretary determines that the
15 cost of plugging the well in the manner provided in subsection (c) of this section exceeds the cost
16 of plugging the well in the manner provided in subdivision (3) of this subsection, the ~~director~~
17 Secretary shall grant the request of the coal operator or owner and shall issue an order requiring
18 the well operator to plug the well in the manner provided in subdivision (3) of this subsection.
19 If the ~~director~~ Secretary determines that the cost of plugging the well in the manner provided in
20 subsection (c) of this section is less than the cost of plugging the well in the manner provided in
21 subdivision (3) of this subsection, the ~~director~~ Secretary shall request payment into escrow of the
22 difference between the determined costs by the coal operator or coal seam owner making the

1 request. Upon receipt of satisfactory notice of such payment, or upon receipt of notice that the
2 well operator has waived such payment, the ~~director~~ Secretary shall grant the request of the coal
3 operator or coal seam owner and shall issue an order requiring the well operator to plug the well
4 in the manner provided in subdivision (3) of this subsection. If satisfactory notice of payment
5 into escrow, or notice that the well operator has waived such payment, is not received by the
6 ~~director~~ Secretary within fifteen days after the request for payment into escrow, the ~~director~~
7 Secretary shall issue an order permitting the plugging of the well in the manner provided in
8 subsection (c) of this section. Copies of all orders issued by the ~~director~~ Secretary shall be sent
9 by registered ~~or certified~~ mail or any method of delivery that requires a receipt or signature
10 confirmation to the coal operator or coal seam owner making the request and to the well operator.
11 When the escrow agent has received certification from the ~~director~~ Secretary of the satisfactory
12 completion of the plugging work and the reimbursable extra cost thereof (that is, the difference
13 between the ~~director's~~ Secretary's determination of plugging cost in the manner provided in
14 subsection (c) of this section and the well operator's actual plugging cost in the manner provided
15 in subdivision (3) of this subsection), the escrow agent shall pay the reimbursable sum to the well
16 operator or the well operator's nominee from the payment into escrow to the extent available.
17 The amount by which the payment into escrow exceeds the reimbursable sum plus the escrow
18 agent's fee, if any, shall be repaid to the coal owner. If the amount paid to the well operator or
19 the well operator's nominee is less than the actual reimbursable sum, the escrow agent shall
20 inform the coal owner, who shall pay the deficiency to the well operator or the well operator's
21 nominee within thirty days. If the coal operator breaches this duty to pay the deficiency, the well
22 operator shall have a right of action and be entitled to recover damages as if for wrongful

1 conversion of personalty, and reasonable attorney fees.

2 (3) Where a request of a coal operator or coal seam owner filed pursuant to subdivision (1) of
3 this subsection has been granted by the ~~director~~ Secretary, the well shall be plugged in the
4 manner provided in subsection (a) of this section, except that expanding cement shall be used
5 instead of regular hydraulic cement, to a point approximately two hundred feet below the lowest
6 workable coal bed. A one hundred foot plug of expanding cement shall then be placed in the
7 well beginning at the point approximately two hundred feet below the lowest workable coal bed
8 and extending to a point approximately one hundred feet below the lowest workable coal bed. A
9 string of casing with an outside diameter no less than four and one-half inches shall then be run
10 into the well to a point approximately one hundred feet below the lowest workable coal bed and
11 such string of casing shall be circulated and cemented in to the surface. The casing shall then be
12 emptied of liquid from a point approximately one hundred feet below the lowest workable coal
13 bed to the surface, and a vent or other device approved by the ~~director~~ Secretary shall be installed
14 on the top of the string of casing in such a manner that it will prevent liquids and solids from
15 entering the well but will permit ready access to the full internal diameter of the coal protection
16 string of casing when required. The string of casing and the vent or other device approved by
17 the ~~director~~ Secretary shall extend, when finally in place, a distance of no less than thirty inches
18 above ground level and shall be permanently marked with the well number assigned by the
19 ~~director~~ Secretary. Notwithstanding the foregoing provisions of this subdivision, if under
20 particular circumstances a different method of plugging is required to obtain the approval of
21 another governmental agency for the safe mining through of said well, the ~~director~~ Secretary may
22 approve such different method of plugging if the ~~director~~ Secretary finds the same to be as safe

1 for mining through and otherwise adequate to prevent gas or other fluid migration from the oil
2 and gas reservoirs as the method above specified.

3 (e) Any person may apply to the ~~director~~ Secretary for an order to clean out and replug a
4 previously plugged well in a manner which will permit the safe mining through of such well.
5 Such application shall be filed with the ~~director~~ Secretary and shall contain the well number, a
6 general description of the well location, the name and address of the owner of the surface land
7 upon which the well is located, a copy of or record reference to a deed, lease or other document
8 which entitles the applicant to enter upon the surface land, a description of the methods by which
9 the well was previously plugged, and a description of the method by which such applicant
10 proposes to clean out and replug the well. At the time an application is filed with the ~~director~~
11 Secretary, a copy shall be mailed by registered ~~or certified~~ mail or by any method of delivery that
12 requires a receipt or signature confirmation to the owner or owners of the land, and the oil and
13 gas lessee of record, if any, of the site upon which the well is located. If no objection to the
14 replugging of the well is filed by any such landowner or oil and gas lessee within thirty days after
15 the filing of the application, and if the ~~director~~ Secretary determines that the method proposed for
16 replugging the well will permit the safe mining through of such well, the ~~director~~ Secretary shall
17 grant the application by an order authorizing the replugging of the well. Such order shall specify
18 the method by which the well shall be replugged, and copies thereof shall be mailed by ~~certified~~
19 ~~or registered~~ mail or by any method of delivery that requires a receipt or signature confirmation
20 to the applicant and to the owner or owners of the land, and the oil and gas lessee, if any, of the
21 site upon which such well is located. If any such landowner or oil and gas lessee objects to the
22 replugging of the well, the ~~director~~ Secretary shall notify the applicant of such objection.

1 Thereafter, the ~~director~~ Secretary shall schedule a hearing to consider the objection, which
2 hearing shall be held after notice by registered ~~or certified~~ mail or by any method of delivery that
3 requires a receipt or signature confirmation to the objectors and the applicant. After
4 consideration of the evidence presented at the hearing, the ~~director~~ Secretary shall issue an order
5 authorizing the replugging of the well if the ~~director~~ Secretary determines that replugging of the
6 well will permit the safe mining through of such well. Such order shall specify the manner in
7 which the well shall be replugged and copies thereof shall be sent by registered ~~or certified~~ mail
8 or by any method of delivery that requires a receipt or signature confirmation to the applicant and
9 objectors. The ~~director~~ Secretary shall issue an order rejecting the application if the ~~director~~
10 Secretary determines that the proposed method for replugging the well will not permit the safe
11 mining through of such well;

12 (f) All persons adversely affected, by a determination or order of the ~~director~~ Secretary issued
13 pursuant to the provisions of this section shall be entitled to judicial review in accordance with
14 the provisions of articles five and six, chapter twenty-nine-a of this code.

15 **§22-6-2527. Introducing liquid pressure into producing strata to recover oil contained**
16 **therein.**

17 The owner or operator of any well or wells which produce oil or gas may allow such well or
18 wells to remain open for the purpose of introducing water or other liquid pressure into and upon
19 the producing strata for the purpose of recovering the oil contained therein, and may drill
20 additional wells for like purposes, provided that the introduction of such water or other liquid
21 pressure shall be controlled as to volume and pressure and shall be through casing or tubing
22 which shall be so anchored and packed that no water-bearing strata or other oil, or gas-bearing

1 sand or producing stratum, above or below the producing strata into and upon which such
2 pressure is introduced, shall be affected thereby, fulfilling requirements as set forth ~~under~~ in
3 section ~~fourteen~~ sixteen.

4 **§22-6-2628. Performance bonds; corporate surety or other security.**

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

9 (b) A separate bond as described in subsection (d) of this section
10 may be furnished for a particular oil or gas well, or for a particular
11 well for the introduction of liquids for the purposes provided in
12 section ~~twenty-five~~ twenty-seven of this article. A separate bond
13 as described in subsection (d) of this section shall be furnished for
14 each well drilled or converted for the introduction of liquids for
15 the disposal of pollutants or the effluent therefrom. Each of these
16 bonds shall be in the sum of \$_____, payable to the State of West
17 Virginia, conditioned on full compliance with all laws, rules
18 relating to the drilling, redrilling, deepening, casing, and
19 stimulating of oil and gas wells (or, if applicable, with all laws,
20 rules relating to drilling or converting wells for the introduction
21 of liquids for the purposes provided in section ~~twenty-five~~
22 twenty-seven of this article or for the introduction of liquids for
23 the disposal of pollutants or the effluent therefrom) and to the
24 plugging, abandonment, and reclamation of wells and for furnishing

1 such reports and information as may be required by the ~~director~~
2 Secretary.

3 (c) When an operator makes or has made application for permits to
4 drill or stimulate a number of oil and gas wells or to drill or convert
5 a number of wells for the introduction of liquids for the purposes
6 provided in section ~~twenty-five~~ twenty-seven of this article, the
7 operator may, in lieu of furnishing a separate bond, furnish a blanket
8 bond in the sum of \$_____, payable to the State of West Virginia, and
9 conditioned as aforesaid in subsection (b) of this section.

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

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

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

1 be entitled to all interest and income which may be earned on the cash
2 deposited so long as the operator is in full compliance with all laws,
3 and rules relating to the drilling, redrilling, deepening, casing,
4 plugging, abandonment, and reclamation of the well for which the cash
5 was deposited and so long as the operator has furnished all reports
6 and information as may be required by the ~~director~~ Secretary. If the
7 cash realized from the sale of oil or gas or both from the well is
8 not sufficient for the operator to deposit with the ~~director~~ Secretary
9 the sum of \$_____ within one year of the day the well started
10 producing, the corporate or surety company which issued the bond on
11 the well may notify the operator and the ~~director~~ Secretary of its
12 intent to terminate its liability under its bond. The operator then
13 shall have thirty days to furnish a new bond from a corporate bonding
14 or surety company or collateral securities or other forms of security,
15 as provided in the next preceding paragraph of this section with the
16 ~~director~~ Secretary. If a new bond or collateral securities or other
17 forms of security are furnished by the operator, the liability of the
18 corporate bonding or surety company under the original bond shall
19 terminate as to any acts and operations of the operator occurring
20 after the effective date of the new bond or the date the collateral
21 securities or other forms of security are accepted by the Treasurer
22 of the State of West Virginia. If the operator does not furnish a
23 new bond or collateral securities or other forms of security with the
24 Secretary, as provided in the ~~next preceding paragraph of this~~

1 section, ~~with the director,~~ the operator shall immediately plug, fill
2 and reclaim the well in accordance with all of the provisions of law
3 and rules applicable thereto. In such case, the corporate or surety
4 company which issued the original bond shall be liable for any
5 plugging, filling or reclamation not performed in accordance with
6 such laws and rules.

7 (f) Any separate bond furnished for a particular well prior to the
8 effective date of this chapter shall continue to be valid for all work
9 on the well permitting prior to the **eleventh day of July, one thousand**
10 **nine hundred eighty-five**; but no permit shall hereafter be issued on
11 such a particular well without a bond complying with the provisions
12 of this section. Any blanket bond furnished prior to the **eleventh**
13 **day of July, one thousand nine hundred eighty-five** shall be replaced
14 with a new blanket bond conforming to the requirements of this
15 section, at which time the prior bond shall be discharged by operation
16 of law; and if the ~~director~~ Secretary determines that any operator
17 has not furnished a new blanket bond, the ~~director~~ Secretary shall
18 notify the operator by ~~certified mail, return receipt requested~~
19 registered mail or by any method of delivery that requires a receipt
20 or signature confirmation, of the requirement for a new blanket bond~~7,~~
21 and failure to submit a new blanket bond within sixty days after
22 receipt of the notice from the ~~director~~ Secretary shall work a
23 forfeiture under subsection (i) of this section of the blanket bond
24 furnished prior to the **eleventh day of July, one thousand nine hundred**

1 eighty-five.

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

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

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

7 Upon compliance with the requirements of this section by assignor
8 or transferor and assignee or transferee, the ~~director~~ Secretary
9 shall release assignor or transferor from all duties and requirements
10 of this article, ~~and the deputy director shall give written notice~~
11 ~~of release unto assignor or transferor of any bond and return unto~~
12 ~~assignor or transferor any cash or collateral securities deposited~~
13 ~~pursuant to section twelve fourteen, fourteen sixteen, twenty-three~~
14 ~~twenty-five or twenty-six twenty-eight of this article.~~

15 (i) If any of the requirements of this article or rules promulgated
16 pursuant thereto or the orders of the ~~director~~ Secretary have not been
17 complied with within the time limit set by the violation notice as
18 defined in sections ~~three, four and five~~ eight, nine or ten of this
19 article, the performance bond shall then be forfeited.

20 (j) When any bond is forfeited pursuant to the provisions of this
21 article or rules promulgated pursuant thereto, the ~~director~~ Secretary
22 ~~shall give notice to the Attorney General who shall collect the~~
23 ~~forfeiture without delay.~~

24 (k) All forfeitures shall be deposited in the Treasury of the State

1 of West Virginia in the ~~special~~ oil and gas reclamation fund as defined
2 in section ~~twenty-nine~~ thirty of this article.

3 **§22-6-2729. Cause of action for damages caused by explosions.**

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

**§22-6-2930. Operating permit and processing fund; special reclamation
8 fund; fees.**

9 (a) There is hereby continued within the Treasury of the State of
10 West Virginia the special fund known as the oil and gas operating
11 permit and processing fund, and the Secretary shall deposit with the
12 State Treasurer to the credit of such special fund all fees collected
13 under the provisions of subdivision ten, subsection (c), section two
14 of this article.

15 The oil and gas operating permit and processing fund shall be
16 administered by the Secretary for the purposes of carrying out the
17 provisions of this chapter.

18 The Secretary shall make an annual report to the Governor and to
19 the Legislature on the use of the fund, and shall make a detailed
20 accounting of all expenditures from the oil and gas operating permit
21 and processing fund.

22 (b) In addition to any other fees required by the provisions of this
23 article, every applicant for a permit to drill a well shall, before
24 the permit is issued, pay to the Secretary a special reclamation fee

1 of \$_____ for each activity for which a well work application is
2 required to be filed: *Provided*, That a special reclamation fee shall
3 not be assessed for plugging activities. Such special reclamation
4 fee shall be paid at the time the application for a drilling permit
5 is filed with the Secretary and the payment of such reclamation fee
6 shall be a condition precedent to the issuance of said permit.

7 (c) There is hereby continued within the Treasury of the State of
8 West Virginia the special fund known as the oil and gas reclamation
9 fund, and the Secretary shall deposit with the State Treasurer to the
10 credit of such special fund all special reclamation fees collected.
11 The proceeds of any bond forfeited under the provisions of this
12 article shall inure to the benefit of and shall be deposited in such
13 oil and gas reclamation fund.

14 (d) The oil and gas reclamation fund shall be administered by the
15 Secretary. The Secretary shall cause to be prepared plans for the
16 reclaiming and plugging of abandoned wells which have not been
17 reclaimed or plugged or which have been improperly reclaimed or
18 plugged. The Secretary, as funds become available in the oil and gas
19 reclamation fund, shall reclaim and properly plug wells in accordance
20 with said plans and specifications and in accordance with the
21 provisions of this article relating to the reclaiming and plugging
22 of wells and all rules promulgated thereunder. Such funds may also
23 be utilized for the purchase of abandoned wells, where such purchase
24 is necessary, and for the reclamation of such abandoned wells, and

1 for any engineering, administrative, and research costs as may be
2 necessary to properly effectuate the reclaiming and plugging of all
3 wells, abandoned or otherwise.

4 (e) The Secretary may avail the ~~division~~ department of any federal
5 funds provided on a matching basis that may be made available for the
6 purpose of reclaiming or plugging any wells.

7 (f) The Secretary shall make an annual report to the Governor and
8 to the Legislature setting forth the number of wells reclaimed or
9 plugged through the use of the oil and gas reclamation fund provided
10 for herein. Such report shall identify each such reclamation and
11 plugging project, state the number of wells reclaimed or plugged
12 thereby, show the county wherein such wells are located and shall make
13 a detailed accounting of all expenditures from the oil and gas
14 reclamation fund.

15 (g) All wells shall be reclaimed or plugged by contract entered into
16 by the Secretary on a competitive bid basis as provided for under the
17 provisions of article three, chapter five-a of this code and the rules
18 promulgated thereunder.

19 **§22-6-3031. Reclamation requirements.**

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

22 (a) Within six months after the completion of the drilling process of an individual well or within
23 six months after the completion of the drilling process of the last well associated with a multiple
24 well pad, the operator shall fill all the pits for containing muds, cuttings, salt water, and oil that

1 are not needed for production purposes, or are not required or allowed by state or federal law or
2 rule and remove all concrete bases, drilling supplies, and drilling equipment. Within such
3 period, the operator shall grade or terrace and plant, seed or sod the area disturbed that is not
4 required in production of the well where necessary to bind the soil and prevent substantial
5 erosion and sedimentation. No pit may be used for the ultimate disposal of salt water. Salt
6 water and oil shall be periodically drained or removed, and properly disposed of, from any pit
7 that is retained, so the pit is kept reasonably free of salt water and oil.

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

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

16 ~~If the director refuses to approve a request for extension, the refusal shall be by order.~~

17 (c)(1) It shall be the duty of ~~an~~ the operator to commence the reclamation of the area of land
18 disturbed in siting, drilling, completing or producing the well in accordance with soil erosion and
19 sediment control plans approved by the ~~director~~ Secretary or the ~~director's designate~~ Secretary's
20 designee.

21 (2) The Secretary, upon written application by an operator showing reasonable cause, extend the
22 period within which reclamation shall be completed, but not to exceed a further six-month

1 period.

2 (3) If the Secretary refuses to approve a request for extension, the refusal shall be by order.

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

7 **§22-6-3132. Preventing waste of gas; plan of operation required for wasting gas in process**
8 **of producing oil; rejection thereof.**

9 Natural gas shall not be permitted to waste or escape from any well or pipeline, when it is
10 reasonably possible to prevent such waste, after the owner or operator of such gas, or well, or
11 pipeline, has had a reasonable length of time to shut in such gas in the well, or make the
12 necessary repairs to such well or pipeline to prevent such waste: *Provided, That* (a) if, in the
13 process of drilling a well for oil or gas, or both, gas is found in such well, and the owner or
14 operator thereof desires to continue to search for oil or gas, or both, by drilling deeper in search
15 of lower oil or gas-bearing strata, or (b) if it becomes necessary to make repairs to any well
16 producing gas, commonly known as "cleaning out," and if in either event it is necessary for the
17 gas in such well to escape therefrom during the process of drilling or making repairs, as the case
18 may be, then the owner or operator of such well shall prosecute such drilling or repairs with
19 reasonable diligence, so that the waste of gas from the well shall not continue longer than
20 reasonably necessary, and if, during the progress of such deeper drilling or repairs, any temporary
21 suspension thereof becomes necessary, the owner or operator of such well shall use all
22 reasonable means to shut in the gas and prevent its waste during such temporary suspension:

1 *Provided, however,* That in all cases where both oil and gas are found and produced from the
2 same oil and gas-bearing stratum, and where it is necessary for the gas therefrom to waste in the
3 process of producing the oil, the owner or operator shall use all reasonable diligence to conserve
4 and save from waste so much of such gas as it is reasonably possible to save, but in no case shall
5 such gas from any well be wasted in the process of producing oil therefrom until the owner or
6 operator of such well shall have filed with the ~~director~~ Secretary a plan of operation for said well
7 showing, among other things, the gas-oil production ratio involved in such operation, which plan
8 shall govern the operation of said well unless the ~~director~~ Secretary shall, within ten days from
9 the date on which such plan is submitted to the ~~director~~ Secretary, make a finding that such plan
10 fails, under all the facts and circumstances, to propose the exercise of all reasonable diligence to
11 conserve and save from waste so much of such gas as it is reasonably possible to save, in which
12 event production of oil at such well by the wasting of gas shall cease and desist until a plan of
13 operation is approved by the ~~director~~ Secretary. Successive plans of operation may be filed by
14 the owner or operator of any such well with the ~~director~~ Secretary.

15 **§22-6-3233. Right of adjacent owner or operator to prevent waste of gas; recovery of cost.**

16 (a) If the owner or operator of any such well shall neglect or refuse to drill, case and equip, ~~or~~
17 plug and abandon; or shut in and conserve from waste the gas produced therefrom, as required to
18 be done and performed by the preceding sections of this article, for a period of twenty days after
19 a written notice so to do, which notice may be served personally upon the owner or operator, or
20 may be posted in a conspicuous place at or near the well, it shall be lawful for the owner or
21 operator of any adjacent or neighboring lands or the ~~director~~ Secretary to enter upon the premises
22 where such well is situated and properly case and equip such well, or, in case the well is to be

1 abandoned, to properly plug and abandon it, or in case the well is wasting gas, to properly shut it
2 in and make such needed repairs to the well to prevent the waste of gas, in the manner required to
3 be done by the preceding sections of this article; and the reasonable cost and expense incurred by
4 an owner or operator or the ~~director~~ Secretary in so doing shall be paid by the owner or operator
5 of such well and may be recovered as debts of like amount are by law recoverable.

6 (b) The ~~director~~ Secretary may utilize funds and procedures established pursuant to section
7 ~~twenty-nine~~ thirty of this article for the purposes set out in the section. Amounts recovered by
8 the ~~director~~ Secretary pursuant to this section shall be deposited in the oil and gas reclamation
9 fund established pursuant to section ~~twenty-nine~~ thirty of this article.

10 **§22-6-~~33~~34. Restraining waste.**

11 Aside from and in addition to the imposition of any penalties under this article, it shall be the
12 duty of any circuit court in the exercise of its equity jurisdiction to hear and determine any action
13 which may be filed to restrain the waste of natural gas in violation of this article, and to grant
14 relief by injunction or by other decrees or orders, in accordance with the principles and practice
15 in equity. The plaintiff in such action shall have sufficient standing to maintain the same if the
16 plaintiff shall aver and prove that the plaintiff is interested in the lands situated within the
17 distance of one mile from such well, either as an owner of such land, or of the oil or gas, or both,
18 thereunder, in fee simple, or as an owner of leases thereof or of rights therein for the production
19 of oil and gas or either of them or as the ~~director~~ Secretary.

20 **§22-6-35. Civil action for contamination or deprivation of fresh water source or supply;
21 presumption.**

22 In any action for contamination or deprivation of a fresh water source or supply within one

1 thousand feet of the site of drilling for an oil or gas well, there shall be a rebuttable presumption
2 that such drilling, and such oil or gas well, or either, was the proximate cause of the
3 contamination or deprivation of such fresh water source or supply.

4 **** NO CHANGES ****

5 **§22-6-36. Declaration of oil and gas notice by owners and lessees of coal seams.**

6 (a) For purposes of notification under this article, any owner or lessee of coal seams shall file a
7 declaration of the owner's or lessee's interest in such coal seams with the clerk of the county
8 commission in the county where such coal seams are located. Said clerk shall file and index
9 such declaration in accordance with section two, article one, chapter thirty-nine of this code, and
10 shall index the name of the owner or lessee of such coal seams in the grantor index of the record
11 maintained for the indexing of leases.

12 (b) The declaration shall entitle such owner or lessee to the notices provided in sections ~~twelve~~
13 fourteen, ~~thirteen~~ fifteen, ~~fourteen~~ sixteen, and ~~twenty-three~~ twenty-five of this article:
14 *Provided, That* the declaring owner shall be the record owner of the coal seam, and the declaring
15 lessee shall be the record lessee with the owner's or lessee's source or sources of title recorded
16 prior to recording such lessee's declaration.

17 The declaration shall be acknowledged by such owner or lessee, and in the case of a lessee, may
18 be a part of the coal lease under which the lessee claims. Such declaration may be in the
19 following language:

20 "DECLARATION OF OIL AND GAS NOTICE"

21 "The undersigned hereby declares:

22 (1) The undersigned is the ('owner' or 'lessee') of one or more coal seams or workable coal beds

1 as those terms are defined in section one of this article.

2 (2) The coal seam(s) or workable coal bed(s) owned or leased partly or wholly by the
3 undersigned lie(s) under the surface of lands described as follows:

4 (Here insert a description legally adequate for a deed, whether by metes and bounds or other
5 locational description, or by title references such as a book and page legally sufficient to stand in
6 lieu of a locational description.)

7 (3) The undersigned desires to be given all notices of oil and gas operations provided by sections
8 ~~twelve~~ fourteen, ~~thirteen~~ fifteen, ~~fourteen~~ sixteen, and ~~twenty-three~~ twenty-five of this article,
9 addressed as follows:

10 (Here insert the name and mailing address of the undersigned owner or lessee.)

11 _____

12 (Signature)

13 (Here insert an acknowledgment legally adequate for a deed)."

14 The benefits of the foregoing declaration shall be personal to the declaring owner or lessee, and
15 not transferable or assignable in any way.

16 **§22-6-37. Rules, orders and permits remain in effect.**

17 The rules promulgated and all orders and permits in effect upon the effective date of this article
18 ~~pursuant to the provisions of former article one, chapter twenty-two b of this code~~, shall remain
19 in full force and effect as if such rules, orders, and permits were adopted by the ~~director~~
20 ~~established in this chapter~~ Secretary, but all such rules, orders, and permits shall be subject to
21 review by the ~~director~~ Secretary to ensure they are consistent with the purposes and policies set
22 forth in this chapter.

1 **§22-6-38. Application of article; exclusions.**

2 This article shall not apply to or affect any well work permitted prior to the effective date of this
3 article ~~under former article one, chapter twenty two b of this code~~, unless such well is, after
4 completion, whether such completion is prior to or subsequent to the effective date of this article,
5 deepened subsequent to the effective date of this article through another coal seam or to another
6 formation above the top of the uppermost member of the "Onondaga Group" or to a depth of less
7 than six thousand feet, whichever is shallower.

8 **§22-6-39. Injunctive relief.**

9 (a) In addition to other remedies, and aside from various penalties provided by law, whenever it
10 appears to the ~~director~~ Secretary that any person is violating or threatening to violate any
11 provision of this article, any order or final decision of the ~~director~~ Secretary, or any lawful rule
12 promulgated hereunder, the ~~director~~ Secretary may apply in the name of the state to the circuit
13 court of the county in which the violations or any part thereof has occurred, is occurring or is
14 about to occur, or the judge thereof in vacation, for an injunction against such persons and any
15 other persons who have been, are or are about to be involved in any practices, acts or admissions
16 so in violation, enjoining such person or persons from any violation or violations. Such
17 application may be made and prosecuted to conclusion, whether or not any violation or violations
18 have resulted or shall result, in prosecution or conviction under the provisions of this article.

19 (b) Upon application by the ~~director~~ Secretary, the circuit courts of this state may, by mandatory
20 or prohibitory injunction, compel compliance with the provisions of this article, and all orders
21 and final decisions of the ~~director~~ Secretary. The court may issue a temporary injunction in any
22 case pending a decision on the merits of any application filed. Any other section of this code to

1 the contrary notwithstanding, the state shall not be required to furnish bond or other undertaking
2 as a prerequisite to obtaining mandatory, prohibitory or temporary injunctive relief under the
3 provisions of this article.

4 (c) The judgment of the circuit court upon application permitted by the provisions of this section;
5 shall be final unless reversed, vacated or modified on appeal to the supreme court of appeals.
6 Any such appeal shall be sought in the manner and within the time provided by law for appeals
7 from circuit courts in other civil actions.

8 (d) The ~~director~~ Secretary shall be represented in all such proceedings by the Secretary's
9 in-house counsel as provided in section six, article one of this chapter, or the Secretary may be
10 represented by the attorney general or the attorney general's assistants or in such proceedings in
11 the circuit courts by the prosecuting attorney of the several counties as well, all without
12 additional compensation. The ~~director~~ Secretary, with the written approval of the attorney
13 general, may employ special counsel to represent the ~~director~~ Secretary in any such proceedings.

14 (e) If the ~~director~~ Secretary shall refuse or fail to apply for an injunction to enjoin a violation or
15 threatened violation of any provision of this article, any order or final decision of the ~~director~~
16 Secretary, or any rules promulgated hereunder, within ten days after receipt of a written request
17 to do so by any well operator, coal operator, operating coal seams beneath the tract of land, or the
18 coal seam owner or lessee, if any, if said owner or lessee is not yet operating said coal seams
19 beneath said tract of land, adversely affected by such violation or threatened violation, the person
20 making such request may apply on ~~their~~ his, her or its own behalf for an injunction to enjoin such
21 violation or threatened violation in any court in which the ~~director~~ Secretary might have brought
22 suit. The ~~director~~ Secretary shall be made party defendant in such application in addition to the

1 person or persons violating or threatening to violate any provisions of this article, any final order
2 or decision of the ~~director~~ Secretary, or any rule promulgated hereunder. The application shall
3 proceed and injunctive relief may be granted in the same manner as if the application had been
4 made by the ~~director~~: Secretary. ~~E~~except that the court may require a bond or other undertaking
5 from the plaintiff.

6 **§22-6-40. Water rights and replacement; waiver of replacement.**

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

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

16 (c) There is a rebuttable presumption that an oil or gas operation
17 caused damage to an owner's underground water supply if the inspector
18 determines the following: (1) Contamination, diminution or damage
19 to an owner's underground water supply exists; and (2) a pre-drilling
20 survey was performed, consistent with the provisions of section
21 twelve of this article, on the owner's property, including the
22 underground water supply, that indicated that contamination,
23 diminution or damage to the underground water supply did not exist
24 prior to the activity conducted at the oil or gas operation.

1 (d) The operator conducting the oil or gas operation shall: (1)
2 Provide an emergency drinking water supply within twenty-four hours;
3 (2) provide temporary water supply within seventy-two hours; (3)
4 within thirty days begin activities to establish a permanent water
5 supply or submit a proposal to the Secretary outlining the measures
6 and timetables to be utilized in establishing a permanent supply.
7 The total time for providing a permanent water supply may not exceed
8 two years. If the operator demonstrates that providing a permanent
9 replacement water supply cannot be completed within two years, the
10 Secretary may extend the time frame on case-by-case basis; and (4)
11 pay all reasonable costs incurred by the owner in securing a water
12 supply.

13 (e) A owner as described in subsection (b) above aggrieved under the
14 provisions of subsections (b), (c) or (d) of this section may seek
15 relief in court.

16 (f) Notwithstanding the denial of the operator of responsibility for
17 the damage of the owner's water supply or the status of any appeal
18 on determination of liability for the damage to the owner's water
19 supply, the operator may not discontinue providing the required water
20 service until authorized by the department.

21 **** NEW SECTION: NO STRIKE-THROUGHS OR UNDERLINES ****

22 **§22-6-41. Seismic activity.**

23 Prior to conducting any blasting activity for seismic exploration for oil or gas, the company or
24 person performing such activity must provide notice to any landowner on whose property the

1 blasting will occur. Such notice shall be provided at least thirty (30) days prior to the blasting
2 activity and include a seventy-two (72) hour period in which the blasting activity will occur.
3 Such notice shall also include a reclamation plan that provides for the reclamation of any areas
4 disturbed as a result of the blasting activity.

5 **** NEW SECTION: NO STRIKE-THROUGHS OR UNDERLINES ****

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