

From the Regulators' Chair: A Three State Perspective

Speakers:

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Appalachian Basin Oil & Gas Seminar

Issues Affecting Development of the Marcellus and Utica Shale Plays

K&L Gates LLP

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Ohio's Regulations: A Guide for Operators Drilling in the Marcellus and Utica Shales



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Cover photo from Ohio Department of Public Safety

Introduction

With almost half of Ohio sitting over shale deposits rich in natural gas, it is expected the state will soon see a significant increase in oil and natural gas drilling activity in the Marcellus and Utica shale.

This guidebook has been developed to help drilling companies better understand Ohio's regulatory requirements and the permits needed from the Ohio Department of Natural Resources, Division of Oil and Gas Resources Management (ODNR-DOGMR) and Ohio Environmental Protection Agency. This guide is only a starting point. It should not be your only source of information on the regulations or replace seeking assistance from experienced consultants and/or legal counsel to help you fully understand and achieve compliance with Ohio's laws and regulations.

Understanding the regulations and working early in the process with ODNR and Ohio EPA will help minimize permitting delays for you and ensure drilling activities are done in a manner that protects the public and environment.



Construction, Location, Design and Operation of an Oil or Gas Well

ODNR-DOGDM regulates the location, spacing, construction, design and operation of oil and gas wells in Ohio under Chapter 1509 of the Ohio Revised Code (ORC) and Chapter 1501 of the Ohio Administrative Code (OAC). A permit from ODNR is required if you plan to drill, deepen, reopen, plug back, convert or plug a natural gas, oil, Class II injection, or enhanced recovery well. ODNR's permitting requirements also apply if approved well locations or drilling units are revised.

Certain requirements (set back distances, fees, water sampling and best management practices) vary depending on whether a well is located in an urban vs. non-urban area. For details, see www.ohiodnr.com/mineral/urban/tabid/10379/Default.aspx.

For all wells, there are notification and reporting requirements to ODNR-DOGDM during cementing, well completion, stimulation and production. You are required to report information on the type and volume of produced and injected fluids. In addition, you must have procedures in place to prevent spill/releases and comply with other safety measures, including pipeline identification, construction specifications and pipeline burial.

Site restoration is required under ODNR's regulations for both urban and non-urban area well sites. Site grading, seeding or other measures are required to prevent erosion and sedimentation.

After drilling is completed, you are responsible for properly closing any on-site pits. Once a producing well is plugged, you must remove all associated production equipment and restore the well site (grading, seeding, terracing, etc.) to prevent erosion and sedimentation.

The regulations also require a surety bond to ensure financial resources are available to restore a site if a well owner fails in their responsibility to act in accordance with Ohio's site restoration laws and insurance to provide for claims of property damage or bodily injury.

The ORC provides ODNR-DOGDM with authority to implement any additional regulations and permit conditions for wells and associated facilities based on site-specific conditions necessary to protect the environment and public health and safety

For more information, visit www.ohiodnr.com/mineral/shale/tabid/23415/Default.aspx.



Ohio EPA File Photo

Water Withdrawal Notification and Use of Water from a Public Water System

Between four and six million gallons of water are typically needed to hydraulically fracture a single Marcellus or Utica shale well. This water usually comes from nearby lakes, rivers and public water systems.

Water Withdrawal Registration

ORC Section 1521.16 requires registration with ODNR's Division of Soil and Water Resources (ODNR-DSWR) for any owner of a facility, or combination of facilities, with the capacity to withdraw water at a quantity greater than 100,000 gallons per day (about 70 gallons per minute).

The law requires registration if a facility has the capacity to withdraw 100,000 gallons per day even if a lower volume is actually withdrawn.



Photo courtesy of the Ohio Department of Public Safety



Lake Erie-Ohio River Basin Drainage Divide

Diversion of Water from the Lake Erie Drainage Basin

The Great Lakes–St. Lawrence River Basin Water Resources Compact (Great Lakes Compact), a binding agreement among the eight states that border the Great Lakes, which has been enacted into Ohio law and carries the force of Federal law, specifically prohibits any new or increased diversions of any amount of water out of the Lake Erie Basin. Therefore, no permits will be issued for the transfer of water out of the Lake Erie Basin for oil and gas operations, or other types of operations. The Lake Erie Basin includes all or part of 33 counties in Ohio located north of the Lake Erie–Ohio River Basin drainage divide.

Depending on the location and type of withdrawal, other requirements may apply. For more information, see the ODNR-DSWR website at www.dnr.state.oh.us/tabid/4262/Default.aspx.

Obtaining Water from a Public Water Supply

If you intend to connect your drill site to an existing public water system, you are required to have proper containment devices at the point of connection to protect the public water system in accordance with Ohio EPA's requirements (OAC 3745-95). At a minimum, this includes a reduced-pressure principle backflow assembly at the service connection. An approved air gap separation should be maintained at the drill sight. If air gap isolation is not maintained at the drill pad, an air gap separation will be required at the service connection. For more information, see Ohio EPA's *Backflow Prevention and Cross-Connection Control* fact sheet at www.epa.ohio.gov/portals/28/documents/engineering/Cross-connection%20flier.pdf. If construction activities associated with running a pipe will have an impact on streams, wetlands or other waters, this may also require 401/404 authorization (see page 5).

Other Sources of Hydraulic Fracturing Fluids

If your company is exploring the use of other sources of fluids for hydraulic fracturing (e.g. wastewater treatment plant effluent), contact ODNR-DOGDM to discuss applicable requirements and authorizations.

Air Permits for Emission Sources

Ohio EPA's Division of Air Pollution Control (DAPC) requires a permit-to-install and operate (PTIO) for units or activities that emit air pollutants. A drill site may have several air emission sources, including:

- dehydration systems;
- natural gas-fired and diesel engines;
- unpaved roadways;
- petroleum liquids and recovered-water storage tanks;
- natural gas-fired turbine generator sets;
- combustion devices/flares; and
- equipment/pipeline leaks.



Ohio EPA File Photo

A PTIO is required for all emission sources, unless specifically exempt under the Ohio Administrative Code (OAC). Current exemptions include:

- 1) **"De minimis" exemption (OAC rule 3745-15-05):** This applies to sources that emit less than 10 pounds per day of any air contaminant and less than one ton per year of any hazardous air pollutant (or combination of hazardous air pollutants). If you are claiming a de minimis exemption for any air emission source, you are not required to notify Ohio EPA, however must keep records demonstrating that the source meets the exemption. You contact your local Ohio EPA district office or Local Air Agency (LAA) about the source. They can review your de minimis calculations and put information in the file about your exemption to assist future/new inspectors that may be reviewing your site information.
- 2) **Permanent rule exemption (OAC rule 3745-31-03(A)(1)):** This rule includes a list of over 45 emission sources that are exempt from permitting, including small boilers, detergent-based parts washers, small storage tanks and other sources that meet certain size criteria or have minimal air emissions. You are not required to provide notification to Ohio EPA for sources that fall under this exemption.
- 3) **Permit-by-rule (OAC rule 3745-31-03(A)(4)):** The permit-by-rule (PBR) covers several categories of small emission sources. You are not required to get a permit for a PBR source, but must comply with the emission limits, operational restrictions and recordkeeping specified in the rule. For sources covered under the PBR, you must file a one-page notification with Ohio EPA.

For sources that require an air permit, you must receive an approved permit before constructing these sources.

To improve its efficiency in processing permit applications, Ohio EPA has developed air general permits for a wide variety of business sectors, including a general permit for production operations at shale gas well sites. This general permit covers a variety of emission sources found at most well sites, including internal combustion engines, generators, dehydration systems, storage tanks and flares. It contains emissions limits, operating restrictions, monitoring and reporting requirements. Applicants meeting the qualifying criteria can apply for the general permit. Ohio EPA's review and approval process for the general permit is completed within weeks.

The first step to obtaining an air permit is to discuss the equipment you plan to install with the air permit writer located at the Ohio EPA district office or Local Air Agency (LAA) having jurisdiction over the area where your drill site will be located. Your local office can help you determine if you qualify for a general permit, or if you need an individual permit, and explain the procedures in applying for a permit.

For more information on Ohio EPA's air permitting process, exemptions and electronic copies of application forms, visit the DAPC website at www.epa.ohio.gov/dapc/permits/permits.aspx.

Construction Activities that Impact Waters of the State

If constructing a drill site will impact wetlands, streams or other waters of the state, you must obtain approval from the U.S. Corps of Engineers under Section 401 of the Federal Clean Water Act and Ohio EPA under Section 401 Water Quality Certification (WQC). Examples of activities that require a 404/401 approval, include:

- excavating or placing fill material in a wetland, stream or lake in order to construct your pad site, access road, water lines, or production lines;
- stream piping, rerouting or straightening to construct the pad;
- dredging a wetland to create a pond; or
- culverting streams or filling wetlands to construct roadways, water or wastewater piping.

Depending on the extent of the impacts, your project may be authorized under Nationwide Permit (a general permit) or an individual permit. In February 2012, the United States Army Corps of Engineers (USACE) reissued 48 existing nationwide 404 permits (NWPs). Included in this group is NWP 39 for "Commercial and Institutional Development" activities. The previous NWP 39 excluded coverage for the construction of oil and gas wells. The recently reissued NWP 39 now authorizes impacts to streams and wetlands associated oil and gas well construction up to 0.5 acres of Category 1 and 2 wetlands and 300 linear feet of streams.

If impacts exceed 0.5 acres of Category 1 or 2 wetlands, impact any Category 3 wetlands, or impact greater than 300 linear feet of stream, you will be required to apply for and receive authorization under an individual 401 certification and 404 permit. Obtaining an individual 401 WQC can take 3-6 months.

In addition, isolated wetlands not covered under the jurisdiction of the federal Clean Water Act are still regulated under Ohio's isolated wetlands law. If you will impact these areas, you must also get an isolated wetland permit from Ohio EPA.

Although Ohio EPA coordinates with the Corps in the 401/404 permit application processes as much as possible, the agencies each have different authority and jurisdictions. This is why you need to work closely with both agencies. We strongly urge you to contact the Corps as early in the process as possible to determine the extent of waters of the U.S. on your site and what permits may be required.

For more about 401 WQC requirements, visit www.epa.ohio.gov/dsw/401/index.aspx. For information about 404 permits, visit www.usace.army.mil/CECW/Pages/reg_permit.aspx.



Ohio EPA File Photo

Best Management Practices to Control Storm Water Run-off and Erosion

Oil and gas exploration and production sites are not required to obtain a permit from EPA for storm water management under the federal Clean Water Act (CWA).¹ The CWA provisions, do, however, remain enforceable if there is a discharge of any reportable quantity of material, or if a discharge from the site contributes to a violation of a water quality standard.

Although a separate storm water permit is not required, ODNR requires oil and gas well operators implement best management practices (BMPs) for sediment/erosion control as part of their drilling authorization permit in urban areas and recommends the use of this BMP in all areas. Examples of BMPs include:

- installing perimeter controls, sediment basins/traps and a stabilized construction entrance;
- isolating drainage from the site to eliminate storm water run-on;
- using a stabilized entrance or wheel wash station to reduce mud on streets/roads from vehicle drag out;
- containing and properly disposing of all drilling fluids, including fluids associated with setting the casing and plugging operations; and
- inspecting the site on a regular basis (especially after wet weather events) to determine if additional stone, seed, mulch, or other measures are needed to stabilize the site.



A sediment basin/trap can be an effective method to control runoff. Ohio EPA file photo.

For more information, see ODNR's *Best Management Practices for Oil and Gas Well Site Construction* at: www.dnr.state.oh.us/Portals/11/oil/pdf/BMP_OIL_GAS_WELL_SITE_CONST.pdf.

Managing Fluids from Oil and Gas Drilling Operations

Total Dissolved Solids (TDS)

Total dissolved solids include minerals, metals and soluble salts such as sodium, chlorides and sulfates.

TDS in the form of soluble salts in brine can reach concentrations as high as 200,000 mg/l. In comparison, the salinity of seawater from concentrated salts is about 35,000 mg/l.

ODNR has the exclusive authority for regulating the disposal of brine² and fluids from oil and gas drilling.

The primary method of disposal is by Class II injection wells.

Brine (including flowback water) picks up minerals from the shale formation, including iron, calcium, magnesium, barium and sulfur. It may contain low levels of naturally occurring radioactive elements such as radium. It also contains high concentrations of total dissolved solids (TDS).

¹ For more information on the federal storm water exemption, go to <http://cfpub.epa.gov/npdes/stormwater/oilgas.cfm>.

² "Brine" includes all saline geological formation water resulting from, obtained from, or produced in connection with the exploration, drilling, or production of oil or gas, including saline water resulting from, obtained from, or produced in connection with well stimulation or plugging of a well. (R.C. 1509.01(U)) The definition of brine includes flowback water from hydraulic fracturing.



Use of steel tanks for temporary storage of drilling-related fluids is recommended over use of temporary on-site pits, and is required in some areas near sensitive water resources. Ohio EPA file photo.

If certain conditions are met under ODNR's laws, brine collected during the production of a well may be approved for road surface dust and ice control. Flowback water cannot be applied to roadways or the land surface. For more information on road surface application, contact ODNR-DOGRM.

Companies transporting drilling-related fluids in Ohio must register with ODNR-DOGRM. Transporters are required to receive an identification number, maintain a daily log and submit an annual report to ODNR. Transporters are required to have insurance and a surety bond.

Information and forms are available at <http://ohiodnr.com/mineral/forms/tabid/10372/Default.aspx>.

Managing Drill Cuttings

Oil and gas exploration and production wastes, including drill cuttings and drilling muds, are not classified as hazardous waste under state or federal law.³ However, when drill cuttings come into contact with sources of contamination (e.g. drilling muds, oils or other contaminants) and are shipped off-site for disposal, Ohio EPA regulates these cuttings as solid waste. Solid waste must be sent to a licensed solid waste landfill for disposal.

If you want to dispose of drill cuttings at the drill site, this activity must be approved by ODNR. For more information about managing drill cuttings on the drill site, contact ODNR-DOGRM.

Ohio EPA will consider proposals to beneficially reuse drill cuttings off-site. However, anyone interested in beneficially reusing drill cuttings off-site must get prior authorization for this activity from Ohio EPA's Division of Materials and Waste Management (DMWM). For more information on the solid waste requirements or beneficial reuse options, contact Ohio EPA, DMWM.

ODNR has regulatory authority over the design and operation of lagoons/pits and tanks used at the drill site to temporarily store fluids that are either being recycled or collected prior to off-site shipment and disposal. Ohio does not authorize long-term storage of fluids in on-site pits.

ODNR recommends the use of tanks as an alternative and requires the use of steel tanks for storage at drilling sites in close proximity to drinking water resources, floodplain areas, or where shallow ground water is susceptible to contamination.

The direct discharge of brine into waters of the state is prohibited. Ohio is not authorizing the disposal of brine at municipal wastewater sewage plants (also called publicly owned treatment works or POTWs). Brine disposed of in Ohio must be sent to an ODNR-permitted Class II injection well, unless granted an exemption by ODNR. Where feasible, recycling flowback water is strongly encouraged.



Photo reprinted with permission of www.marcellus-shale.us.

³ For more information, see U.S. EPA's Publication "Exemption of Oil and Gas Exploration and Production Wastes from Federal Hazardous Waste Regulations," available at www.epa.gov/osw/nonhaz/industrial/special/oil/oil-gas.pdf.

Certain geologic formations contain low levels of naturally occurring radioactive materials (NORM) which can be carried up in drill cuttings. The Ohio Department of Health, Bureau of Radiation Protection, is the regulatory authority for the disposal of waste containing sources of radiation. Drill cuttings are not regulated by the Ohio Department of Health as radioactive material unless the NORM content is elevated to a level greater than is found in its natural state. For more information, see the ODH, Bureau of Radiation Protection website at www.odh.ohio.gov/odhPrograms/rp/nm_saf/nm_saf1.aspx.

Spill Containment, Control and Release Reporting Requirements

Spill Prevention Control and Countermeasure (SPCC) Plan

If you store oil or oil products at the drill site, you could be subject to the Spill Prevention Control and Countermeasure (SPCC) regulations under 40 CFR Part 112. If you have a total aboveground storage capacity of 1,320 gallons or more, you are subject to SPCC requirements, including:

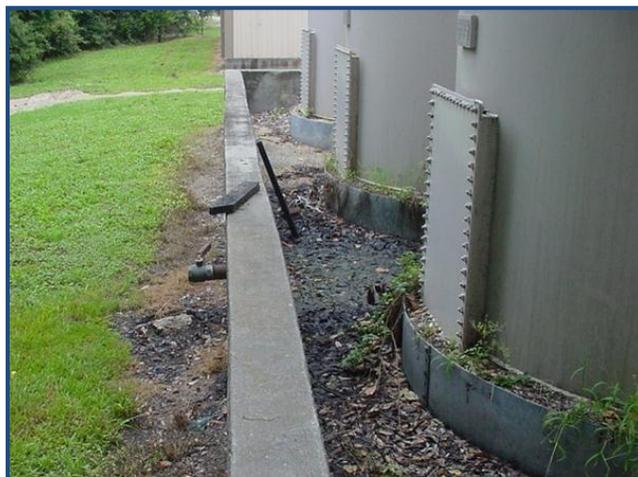
- providing adequate secondary containment for storage and transfer areas to contain any releases; and
- preparing a written SPCC plan.

When determining if you are subject to the rules, the total capacity of your tanks or containers must be considered, not the actual amount of oil/oil products stored. Containers less than 55 gallons in size do not need to be included in calculating your SPCC storage capacity.

Under SPCC regulations, the definition of oil and oil products is very broad and includes soluble oils, heating oil, crude oil, mineral oil, gasoline and diesel fuel.

SPCC requirements are federal regulations, administered by U.S. EPA. Ohio EPA does provide limited support to U.S. EPA for the program, however, there are no state regulations administered specifically by Ohio EPA for this program.

For more information, see Ohio EPA's *Understanding the Spill Prevention, Control and Countermeasure (SPCC) Requirements* fact sheet at www.epa.ohio.gov/portals/41/sb/publications/spcc.pdf or U.S. EPA's website at www.epa.gov/emergencies/content/spcc/index.htm.



Example of secondary containment around oil product storage tanks. Ohio EPA file photo.

Spill/Release Reporting

Ohio Revised Code 3745.50 requires that companies report spills or releases involving a petroleum product (diesel fuel, gasoline, hydraulic fluid, etc.) to local, state and/or federal emergency authorities, if the spill/release exceeds reportable quantities. The reportable quantities are:

- any amount of petroleum that causes a film or sheen on a waterway; or
- any spill or release to the environment (not contained on the spiller's property) of 25 gallons or more.

**Ohio EPA's spill hotline
800-282-9378**

If you are uncertain how much was released, reporting is encouraged. Petroleum product spills of 25 gallons or more on or adjacent to a public roadway must be reported. Ohio EPA encourages reporting a spill of any amount if it directly threatens a waterway, or, if left unaddressed, can enter a waterway or storm sewer during a rain or snowmelt.

For more information, see www.epa.ohio.gov/portals/30/ersis/er/docs/Guide%20to%20ER.pdf.

Emergency Planning and Community Right-to-Know (EPCRA) Requirements

EPCRA requires facilities report hazardous chemicals being stored on-site. Facilities are subject to EPCRA if all of the following conditions are met:

- the facility is subject to the Occupational Safety and Health Administration (OSHA) Hazard Communication Standard;
- the facility uses, produces, and/or stores hazardous chemicals and/or extremely hazardous substances (EHS); and
- the quantity of hazardous chemicals or extremely hazardous substances stored is in excess of the threshold quantity (TQ).

The definition of hazardous chemicals and the list of extremely hazardous substances, along with the reporting thresholds for each are available at www.epa.ohio.gov/portals/27/serc/SERC_manual2012.pdf.



Ohio EPA File Photo

For oil and gas operations subject to EPCRA, ORC Chapter 1509 provides ODNR-DOGRM, in consultation with the emergency response commission, the authority to establish the reporting format (including an electronic database) and information necessary for purposes of responding to an emergency situation. This reporting will include, at a minimum, information required under EPCRA. The statute also sets the parameters under which ODNR will make information submitted and contained in the database accessible to the emergency response commission, emergency response authorities and to the public. For more information, contact ODNR-DOGRM.

Summary of ODNR and Ohio EPA Regulatory Authority Over Oil and Gas Activities

	Ohio Department of Natural Resources	Ohio Environmental Protection Agency
Horizontal oil and gas drilling in shale formations	<ul style="list-style-type: none"> ✓ Issues permits for drilling oil and gas wells in Ohio. ✓ Sets requirements for proper location, design and construction requirements for oil and gas wells. ✓ Inspects and oversees drilling, stimulation, and production activities. ✓ Requires controls and procedures to prevent discharges and releases. ✓ Requires that oil and gas wells no longer capable of production are properly plugged and abandoned. ✓ Requires registration and/or permitting for operators with the capacity to withdraw water at a quantity greater than 100,000 gallons per day. ✓ Establish the reporting format and information necessary for purposes of responding to an emergency situation. 	<ul style="list-style-type: none"> ✓ Requires drillers obtain authorization for construction activity where there is an impact to a wetland, stream, river or other water of the state. ✓ Requires drillers obtain an air permit-to-install and operate (PTIO) for units or activities that have emissions of air pollutants. ✓ May be involved in emergency response activities related to spills and releases, in coordination with ODNR and other emergency response authorities.
Fluids and drill cuttings management at drilling sites	<ul style="list-style-type: none"> ✓ Sets design requirements for on-site drilling pits used to store drill cuttings and fluids. ✓ Requires proper closure of on-site drilling pits after drilling operations are completed. ✓ Sets standards for managing drill cuttings and derived sediments left on-site. 	<ul style="list-style-type: none"> ✓ Requires contaminated drill cuttings shipped off-site be taken to a licensed solid waste facility for disposal. ✓ Reviews and approves proposals for beneficial reuse of cuttings off-site.
Fluids disposal	<ul style="list-style-type: none"> ✓ Regulates the disposal of brine and other fluids. ✓ Oversees permitting and operation of Class II injection wells used to dispose of waste fluids from oil and gas drilling. ✓ Reviews specifications and issues permits for Class II injection wells. ✓ Reviews well construction and surface facility construction requirements for Class II injection wells. 	
Transporting fluids	<ul style="list-style-type: none"> ✓ Registers transporters hauling brine and other oil and gas waste fluids in Ohio. 	<ul style="list-style-type: none"> ✓ May be involved in emergency response activities related to spills and releases, in coordination with ODNR and other emergency response authorities.
Connecting the drill site to a public water supply system		<ul style="list-style-type: none"> ✓ Requires proper containment devices at the point of connection to protect the public water system.

ODNR Division of Oil and Gas Resources Management Regional Offices

Contact information for inspectors in oil and gas in each county.

- ▶ NORTH REGION
- ▶ SOUTH REGION
- ▶ WEST REGION



West Region Offices

2045 Morse Road, Bldg. H-3
Columbus, OH 43229-6693
 614-265-6633
 (FAX on H3) 614-265-7998
 (FAX on H2) 614-265-7999

952 Lima Avenue
Findlay, OH 45840
 419-429-8304
 (FAX) 419-424-5008

505 South State Route 741
Lebanon, OH 45036-9518

South Region



South Region Offices

280 East State Street
Athens, OH 45701-1827
 740-592-3748
 (FAX) 740-593-7086

2050 E. Wheeling Avenue
Cambridge, OH 43725-2159
 740-439-9213 or 740-439-9079
 (FAX) 740-432-7711

North Region



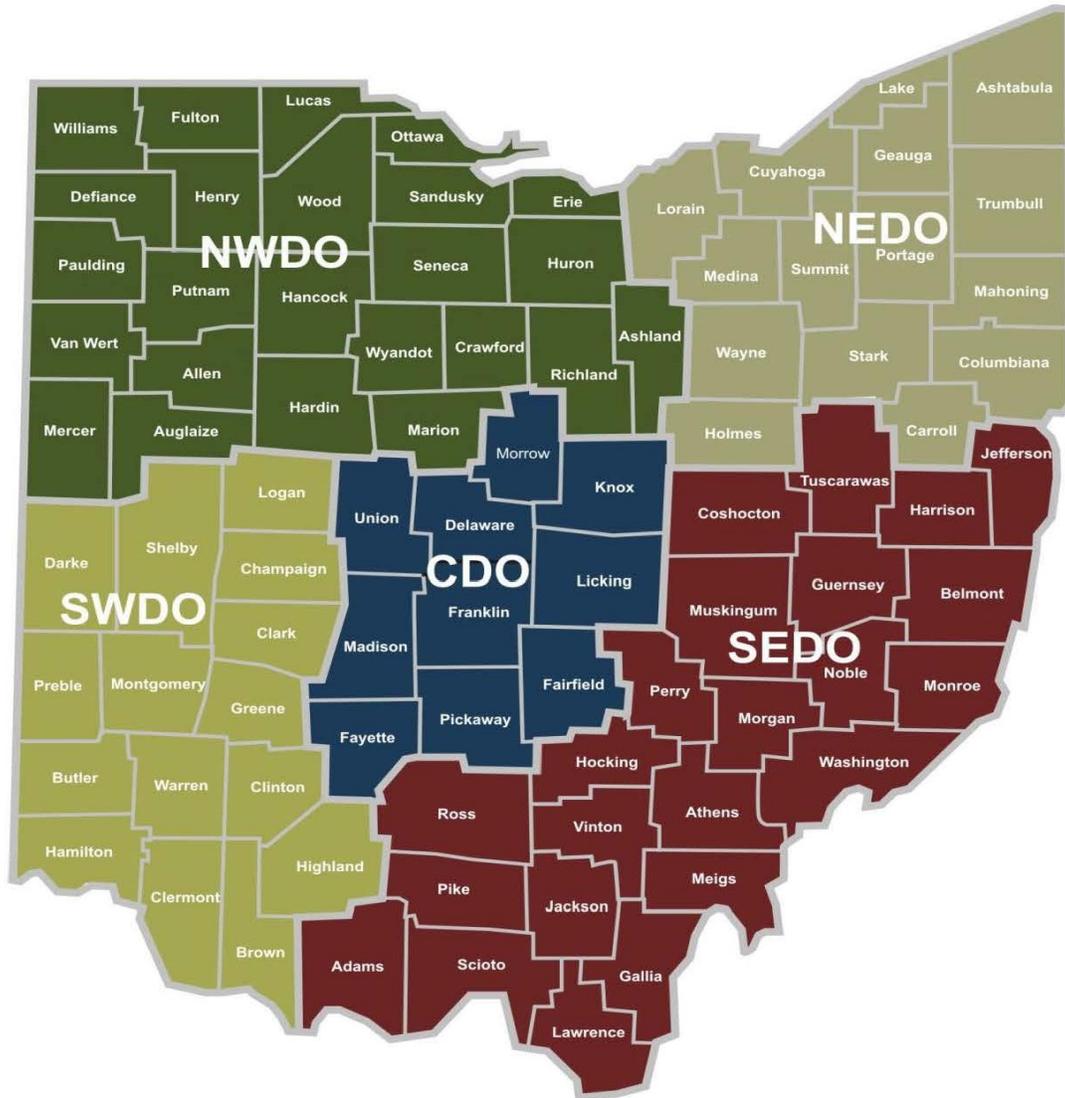
North Region Offices

2207 Reiser Avenue SE
New Philadelphia, OH 44663-3333
 330-339-2207
 (FAX) 330-339-4688

3601 Newgarden Road
Salem, OH 44460-9571
 330-222-1527
 (FAX) 330-222-2137

3575 Forest Lake Drive,
 Suite 150
Uniontown, OH 44685
 330-896-0616
 (FAX) 330-896-1849

Ohio EPA District Offices



Central Office
P.O. Box 1049
Columbus, Ohio 43216-1049
(614) 644-3020

Central District Office
P.O. Box 1049
Columbus, Ohio 43216-1049
(614) 728-3778

Northeast District Office
2110 East Aurora Road
Twinsburg, Ohio 44087-1924
(330) 963-1200

Northwest District Office
347 North Dunbridge Road
Bowling Green, Ohio 43402-9398
(419) 352-8461

Southeast District Office
2195 Front Street
Logan, Ohio 43138-8637
(740) 385-8501

Southwest District Office
401 East Fifth Street
Dayton, Ohio 45402-2911
(937) 285-6357

Additional Contacts

Ohio Department of Natural Resources—Division of Oil and Gas Resources Management

2045 Morse Rd., Building F-2
Columbus, OH 43229-6693
Phone (614) 265-6922
Fax (614) 265-6910
<http://ohiodnr.com/mineral/oil/tabid/10371/default.aspx>

Ohio Department of Natural Resources—Division of Soil and Water Resources

2045 Morse Road, Bldg. B
Columbus, Ohio 43229-6693
Water Planning Information: (614) 265-6739
Water Inventory Information: (614) 265-6742
water@dnr.state.oh.us

Ohio Department of Health—Bureau of Radiation Protection

246 North High Street
Columbus, Ohio 43215
Telephone: (614) 644-2727
Fax: (614) 466-0381
BRadiation@odh.ohio.gov
www.odh.ohio.gov/odhPrograms/rp/nm_saf/nm_saf1.aspx

U.S. Army Corps of Engineers Offices

Huntington District	www.lrh.usace.army.mil/or/permits/
Buffalo District	www.lrb.usace.army.mil/orgs/reg/index.htm
Louisville District	www.lrl.usace.army.mil/
Pittsburgh District	www.lrp.usace.army.mil/or/or-f/permits.htm



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AREAS OF PRACTICE

Mr. Wilson concentrates his practice in the areas of energy, environment and natural resources. Mr. Wilson has counseled clients who are exploring for, producing and transporting natural gas, clients who are developing and operating energy projects and other commercial and industrial projects, clients who are seeking environmental permits and zoning and land development approvals from government agencies, and clients who are parties to business transactions or litigation involving potential environmental liabilities.

PROFESSIONAL BACKGROUND

Mr. Wilson has been associated with K&L Gates since 1992 and a partner with the firm since 2001.

PRESENTATIONS

- Hydraulic Fracturing, presented at Great Lakes Water Conference, November 2011.
- New Permitting Challenges – Pennsylvania State Programmatic General Permit (PASPGP-4), panel moderator, Shale Gas Insight, September 2011.
- Water & Wetland Crossings – The Role of the State vs. U.S. Army Corps in Permitting Linear Projects, presented at Fourth Annual Appalachian Basin Oil & Gas Seminar, May 2011.
- Environmental Impact of Marcellus Shale Drilling on Groundwater and Drinking Water, presented at Pennsylvania Bar Institute’s Environmental Law Forum, April 2011.
- Water & Wastewater Issues in Shale Development, presented in connection with Short Course on the Law of Shale Gas Plays, sponsored by The Institute for Energy Law, The Center for American and International Law, June 2010.
- Priorities for Permitting & Compliance in PA, WV and NY, panel moderator at K&L Gates Third Annual Appalachian Basin Oil & Gas Seminar, April 2010.
- Understanding Water Management Regulations, presented at Key Environmental Issues Compliance Conference, Pennsylvania Chamber of Business and Industry, October 2009.
- Infrastructure Development – Navigating the Regulatory Maze, presented at K&L Gates Second Annual Appalachian Basin Oil & Gas Seminar, April 2009.
- Marcellus Shale – Water Resources Challenges, presented at Pennsylvania Oil & Gas Association Annual Meeting, September 2008.
- Legal/Regulatory Update of Matters Impacting Water Industry, presented at Water Finance & Investment Summit, 2007.
- Case Studies Involving Special Protection Waters, presented at Water Resources Association of the Delaware River Basin Fall Conference, November 2007.
- New Post-Rapanos Federal Wetlands Guidance, telebriefing by Law Seminars International, June 2007.
- Complying with New and Changing Water Regulations, presented at Key Environmental Issues Compliance Conference, Pennsylvania Chamber of Business and Industry, October 2006.

Craig P. Wilson

PUBLICATIONS

- “Municipal Mischief in the Marcellus: Challenging Restrictive Local Ordinances,” *Oil & Gas Alert*, by Walter A. Bunt, Jr., Kenneth S. Komoroski, Pierce Richardson, Craig P. Wilson, and Heather L. Lamparter. March 2010.
- *Entergy Corp. v. Riverkeeper: What Impact on the Future of Cost-Benefit in Rulemaking?*, *Legal Backgrounder*, by Craig P. Wilson, Robert A. Lawton. June 2009
- “U.S. Supreme Court Upholds Use of Cost-Benefit Analysis in Clean Water Act Rulemaking,” *Environmental Alert*, by Craig P. Wilson and Robert A. Lawson. April 2009.
- “Water Resources,” Chapter 7 in *Pennsylvania Environmental Law and Practice*, (5th edition 2008).
- EPA and Army Corps Respond to *Rapanos* Decision, *Environmental Alert*, by Craig P. Wilson, Christopher R. Nestor. June 2007.
- “U.S. Supreme Court Opens Door to EPA Regulation of Greenhouse Gas Emissions,” *Environmental Alert*, by Craig P. Wilson, Sandra Y. Snyder. April 2007.
- “Coping with Carbon Dioxide,” *Energy Magazine*, by John F. Spinello, Craig P. Wilson, Sandra Y. Snyder. Winter 2007.
- “EPA Revises National Ambient Air Quality Standards for Particulate Matter,” *Environmental Alert*, by Christopher R. Nestor, John F. Spinello, Craig P. Wilson. October 2006.
- “Structuring the Brownfields Transaction - Negotiating Transactional Agreements,” Chapter 7 in *Brownfields Law and Practice: The Cleanup and Redevelopment of Contaminated Land*, by Craig P. Wilson, R. T. Weston. 1998, revised 2006.
- “Structuring the Brownfields Transaction - Overall Structure of the Transaction,” Chapter 6 in *Brownfields Law and Practice: The Cleanup and Redevelopment of Contaminated Land*, by Craig P. Wilson, R. T. Weston. 1998, revised 2006.

PROFESSIONAL/CIVIC ACTIVITIES

- American Bar Association (Vice Chair, Water Resources Committee)
- Federal Bar Association (Member)
- Pennsylvania Bar Association (Member)

COURT ADMISSIONS

- Supreme Court of Pennsylvania
- United States Courts of Appeals for the Third Circuit
- United States Courts of Appeals for the Fourth Circuit
- United States Court of Appeals for the Sixth Circuit
- United States Courts of Appeals for the Ninth Circuit
- United States District Courts for the Eastern District of Pennsylvania
- United States District Courts for the Middle District of Pennsylvania
- United States District Court for the Western District of Pennsylvania
- United States Supreme Court

Craig P. Wilson

BAR MEMBERSHIP

Ohio
Pennsylvania
New York

EDUCATION

J.D., Vermont Law School, 1992 (*summa cum laude*; Managing Editor, *Vermont Law Review*)
M.S.E.L., Vermont Law School, 1992 (*summa cum laude*)
A.B., Dartmouth College, 1987

ACHIEVEMENTS

Martindale-Hubbell “AV” rating (very high to preeminent legal ability)
Selected by Chambers USA as one of Pennsylvania's leading Environmental lawyers



Honorable Michael Krancer

Secretary

Pennsylvania Department of Environmental Protection

Michael Krancer was nominated by Governor Tom Corbett to be the Secretary of Environment Protection (DEP) on January 18, 2011. The nomination was confirmed by the Pennsylvania State Senate on April 26, 2011.

Until he was nominated by Governor Tom Corbett to be Pennsylvania's Acting Secretary of the Department of Environmental Protection (DEP), Mike Krancer was a Judge on the Pennsylvania Environmental Hearing Board (EHB). The EHB is the state-wide trial/appellate court for environmental cases which tries appeals from actions of the DEP. He was first nominated to serve as a Judge on the EHB by Pennsylvania Governor Tom Ridge in October 1999. The Senate of Pennsylvania confirmed the nomination and Mr. Krancer took the oath of office in November 1999. In February 2003, Judge Krancer was named by Pennsylvania Governor Edward G. Rendell as Chief Judge and Chairman. Before becoming a Judge, Mr. Krancer was a litigation partner at the Dilworth and Blank Rome law firms in Philadelphia. His practice involved complex commercial, white collar criminal, and environmental litigation. Judge Krancer stepped down from the EHB in April 2007 to devote full time to his candidacy for Justice of the Pennsylvania Supreme Court. Acting Secretary Krancer became an Assistant General Counsel for the Exelon Corporation in June 2008. While with Exelon he provided legal counsel in the areas of environmental, health and safety compliance and litigation. He also worked on energy policy matters and with the company's government relations team. He was asked by Governor Rendell to return to the EHB as a Judge in 2009.

Secretary Krancer serves on the Board of Directors of Inn Dwelling, a non-profit faith-based initiative corporation associated with St. Vincent de Paul Roman Catholic Church located in the Germantown section of Philadelphia, whose mission is capacity-building among disadvantaged families in the Germantown and Northeast sections of Philadelphia. Judge Krancer worked with Inn Dwelling high school students as a volunteer writing skills coach. Judge Krancer also currently serves on the Board of Trustees of Neumann University, a private, Catholic, co-educational University in the Franciscan tradition, located in Aston, Delaware County and is emeritus on the Boards of Albert Einstein Healthcare Network, the Brodsky Institute for Blood Diseases and Cancer, the Jewish Federation of Greater Philadelphia, the Jewish Publication Group, the Jewish Publication Society and Riverbend Environmental Education Center. At Riverbend he served as Vice President. He and his wife, Barbara, served as Chairs of the Harvest Ball for the Albert Einstein Medical Center.

Secretary Krancer is an active member of the Montgomery Bar Association (MBA) and he has been elected to serve on the Board of Directors and the Executive Committee of the MBA commencing in 2005. He is a former Chairman of the Environmental Law Committee and is an active member of the Municipal Law and Government Relations Committees. He also served on the MBA Judiciary Committee and is a mentor in the MBA mentoring program. He is a frequent faculty lecturer for various Continuing Legal Education programs on various topics including the Pennsylvania Judges' and Attorneys' Code of Civility and lobbying law and practice.

K&L GATES

Secretary Krancer is an avid student of Hebrew and Christian Biblical Canon and he has pursued undergraduate and graduate level coursework in theology and biblical studies and exegesis at Villanova University. He is also a student of naval history, especially naval aviation from its dawning through its heyday, the World War II Pacific Campaign. He is a member of the United States Naval Institute and the Navy League of the United States. He is also a Civil War Re-enactor. He is proud to be a Private of the 20th Maine Volunteers, Company E (Army of the Potomac, Fifth Corps, First Division, Vincent's Brigade). He has seen "action" at Gettysburg, Stanardsville and Cedar Creek among other engagements.



Honorable Scott J. Nally

Director

Ohio Environmental Protection Agency

Ohio EPA Director Scott J. Nally was sworn into office by Governor John R. Kasich on January 10, 2011, and brings more than 20 years of public and private environmental management experience to the position.

Director Nally leads the cabinet-level agency that is responsible for implementing federal and state regulations to protect human health and the environment while ensuring the environmentally sound operations of business and government activities imperative to economic growth.

Director Nally comes to Ohio EPA after most recently spending the last six years at Ohio's sister agency in Indiana.

Director Nally has an undergraduate degree in biological sciences from North Carolina State University and a master's degree in science from the University of Wyoming.



Honorable Randy C. Huffman

Cabinet Secretary

State of West Virginia Department of Environmental Protection

Randy C. Huffman, Cabinet Secretary for the West Virginia Department of Environmental Protection, brings a wide variety of experience to the top regulatory post.

After having served over three years as the DEP's Deputy Cabinet Secretary and Mining Director, Governor Manchin appointed Huffman as Cabinet Secretary May 1, 2008.

Huffman brings more than 20 years of experience with the agency to the job. He has worked in the Abandoned Mine Lands Program, the Division of Water and Waste Management, the Office of Administration, and the Mining Division. For most of the past 13 years, he has also served in various capacities on the Executive Staff.

Huffman graduated from West Virginia Institute of Technology with a Bachelor of Science degree in Mining Engineering Technology and received a Master of Business Administration degree from West Virginia Graduate College.

He is a Colonel and serves as the Support Group Commander in the 130th Airlift Wing, Charleston, West Virginia.

He is married to Sheila and they have three sons.

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 1950 Session
of
2011

Report of the Committee of Conference

To the Members of the House of Representatives and Senate:

We, the undersigned, Committee of Conference on the part of the Senate and House of Representatives for the purpose of considering House Bill No. 1950, entitled:

~~"An act amending Titles 27 (Environmental Resources) and 58 (Oil and Gas) of the Pennsylvania Consolidated Statutes, * * *.~~
AMENDING TITLE 58 (OIL AND GAS) OF THE PENNSYLVANIA CONSOLIDATED STATUTES, * * * AND MAKING A RELATED REPEAL,"

respectfully submit the following bill as our report:

BRIAN L. ELLIS

DAVID L. REED

(Committee on the part of the House of Representatives.)

JOSEPH B. SCARNATI

MARY JO WHITE

(Committee on the part of the Senate.)

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AN ACT

1 Amending Title 58 (Oil and Gas) of the Pennsylvania Consolidated
2 Statutes, providing for an unconventional gas well fee and
3 for transfers from the Oil and Gas Lease Fund; providing for
4 distribution of fees and transfers; establishing the Natural
5 Gas Energy Development Program; consolidating the Oil and Gas
6 Act with modifications and additions relating to definitions,
7 well permits, permit objections, comments by municipalities
8 and storage operators, well location restrictions, well site
9 restoration, protection of water supplies, notification to
10 public drinking water systems, containment for unconventional
11 wells, transportation records regarding wastewater fluids,
12 corrosion control requirements, gathering lines, well control
13 emergency response, hydraulic fracturing chemical discharge
14 requirements, bonding, air containment emissions, public
15 nuisances, enforcement orders, well control emergency cost
16 recovery, penalties, civil penalties, inspection and
17 production of materials, witnesses, depositions and rights of
18 entry, third party liability and inspection reports;
19 providing for local ordinances relating to oil and gas
20 operations and for responsibility for fee; making an
21 appropriation; and making a related repeal.

22 The General Assembly of the Commonwealth of Pennsylvania
23 hereby enacts as follows:

24 Section 1. Title 58 of the Pennsylvania Consolidated
25 Statutes is amended by adding parts to read:

26 PART I

27 (RESERVED)

28 PART II

29 OVERSIGHT AND DEVELOPMENT

30 Chapter

31 23. Unconventional Gas Well Fee

32 25. Oil and Gas Lease Fund

33 27. Natural Gas Energy Development Program

34 CHAPTER 23

35 UNCONVENTIONAL GAS WELL FEE

36 Sec.

37 2301. Definitions.

38 2302. Unconventional gas well fee.

39 2303. Administration.

- 1 2304. Well information.
- 2 2305. Duties of department.
- 3 2306. (Reserved).
- 4 2307. Commission.
- 5 2308. Enforcement.
- 6 2309. Enforcement orders.
- 7 2310. Administrative penalties.
- 8 2311. (Reserved).
- 9 2312. Recordkeeping.
- 10 2313. Examinations.
- 11 2314. Distribution of fee.
- 12 2315. Statewide initiatives.
- 13 2316. Small business participation.
- 14 2317. Applicability.
- 15 2318. Expiration.
- 16 § 2301. Definitions.

17 The following words and phrases when used in this chapter
18 shall have the meanings given to them in this section unless the
19 context clearly indicates otherwise:

20 "Average annual price of natural gas." The arithmetic mean
21 of the New York Mercantile Exchange (NYMEX) settled price for
22 the near-month contract, as reported by the Wall Street Journal
23 for the last trading day of each month of a calendar year for
24 the 12-month period ending December 31.

25 "Company." An entity doing business within this Commonwealth
26 and subject to tax under Article III, IV or VI of the act of
27 March 4, 1971 (P.L.6, No.2), known as the Tax Reform Code of
28 1971.

29 "Commission." The Pennsylvania Public Utility Commission.

30 "Department." The Department of Environmental Protection of

1 the Commonwealth.

2 "Eligible applicant." Any of the following:

3 (1) A county, municipality, council of governments,
4 watershed organization, institution of higher education or
5 nonprofit organization.

6 (2) An authorized organization as defined in 27 Pa.C.S.
7 § 6103 (relating to definitions).

8 (3) A company, other than a producer.

9 "Fee." The unconventional gas well fee imposed under section
10 2302 (relating to unconventional gas well fee).

11 "Fund." The Unconventional Gas Well Fund.

12 "Highway mileage." The number of miles of public roads and
13 streets most recently certified by the Department of
14 Transportation as eligible for distribution of liquid fuels
15 funds under the act of June 1, 1956 (1955 P.L.1944, No.655),
16 referred to as the Liquid Fuels Tax Municipal Allocation Law.

17 "Municipality." A borough, city, town or township.

18 "Natural gas." A fossil fuel consisting of a mixture of
19 hydrocarbon gases, primarily methane, and possibly including
20 ethane, propane, butane, pentane, carbon dioxide, oxygen,
21 nitrogen and hydrogen sulfide and other gas species. The term
22 includes natural gas from oil fields known as associated gas or
23 casing head gas, natural gas fields known as nonassociated gas,
24 coal beds, shale beds and other formations. The term does not
25 include coal bed methane.

26 "Number of spud unconventional gas wells." The most recent
27 numerical count of spud unconventional gas wells on the
28 inventory maintained and provided to the commission by the
29 department as of the last day of each month.

30 "Population." As follows:

1 (1) Population of the Commonwealth and population of a
2 county shall be determined using the United States Census
3 Bureau's most recently released Annual Estimates of the
4 Resident Population for Counties of Pennsylvania.

5 (2) Population of a municipality shall be determined
6 using the United States Census Bureau's most recently
7 released Annual Estimates for the Resident Population for
8 Incorporated Places in Pennsylvania.

9 (3) Population of municipalities not included in the
10 report referenced under paragraph (2) shall be determined
11 using the United States Census Bureau's most recently
12 released Annual Estimates of the Resident Population for
13 Minor Civil Divisions in Pennsylvania.

14 "Producer." A person or its subsidiary, affiliate or holding
15 company that holds a permit or other authorization to engage in
16 the business of severing natural gas for sale, profit or
17 commercial use from an unconventional gas well in this
18 Commonwealth. The term shall not include a producer that severs
19 natural gas from a site used to store natural gas that did not
20 originate from the site.

21 "Spud." The actual start of drilling of an unconventional
22 gas well.

23 "Stripper well." An unconventional gas well incapable of
24 producing more than 90,000 cubic feet of gas per day during any
25 calendar month, including production from all zones and
26 multilateral well bores at a single well, without regard to
27 whether the production is separately metered.

28 "Unconventional formation." A geological shale formation
29 existing below the base of the Elk Sandstone or its geologic
30 equivalent stratigraphic interval where natural gas generally

1 cannot be produced at economic flow rates or in economic volumes
2 except by vertical or horizontal well bores stimulated by
3 hydraulic fracture treatments or by using multilateral well
4 bores or other techniques to expose more of the formation to the
5 well bore.

6 "Unconventional gas well." A bore hole drilled or being
7 drilled for the purpose of or to be used for the production of
8 natural gas from an unconventional formation.

9 "Vertical gas well." An unconventional gas well which
10 utilizes hydraulic fracture treatment through a single vertical
11 well bore and produces natural gas in quantities greater than
12 that of a stripper well.

13 § 2302. Unconventional gas well fee.

14 (a) General rule.--The governing body of a county that has a
15 spud unconventional gas well located within its borders may
16 elect whether to impose a fee on unconventional gas wells that
17 have been spud in the county.

18 (a.1) Passage of ordinance.--Within 60 days after the
19 effective date of this section, the governing body of a county
20 under subsection (a) may adopt an ordinance to impose an
21 unconventional gas well fee. The governing body of a county must
22 notify the commission and give public notice of its intent to
23 adopt the ordinance.

24 (a.2) County ordinance.--The ordinance imposing a fee under
25 subsection (a.1) shall be clear and in language that is readily
26 understandable by a layperson and shall be in the following
27 form:

28 The county of (insert name) hereby imposes an unconventional
29 gas well fee on each unconventional gas well spud in this
30 county.

1 (a.3) Prohibition.--

2 (1) A county subject to this section, in which the
3 governing body does not adopt an ordinance imposing an
4 unconventional gas well fee within 60 days of the effective
5 date of this section shall be prohibited from receiving funds
6 under sections 2314(d)(1) (relating to distribution of fee)
7 and 2315(a.1)(3) and (5) (relating to Statewide initiatives).

8 (2) The prohibition on receiving funds shall remain in
9 effect until the county adopts an ordinance imposing an
10 unconventional gas well fee. The prohibition shall expire and
11 funds may be received for the calendar year following the
12 adoption of an ordinance imposing the fee under this section.

13 (a.4) Alternate imposition.--

14 (1) If the governing body of a county does not impose an
15 unconventional gas well fee under subsection (a), the
16 municipalities in the county may compel the imposition of an
17 unconventional gas well fee on each unconventional gas well
18 spud in the county by adopting resolutions under paragraphs
19 (2), (3) and (4).

20 (2) Following 60 days but not more than 120 days after
21 the effective date of this section, if the governing bodies
22 of at least half of the municipalities located in a county or
23 municipalities representing at least 50% of the population of
24 the county adopt resolutions to impose unconventional gas
25 well fees on all unconventional gas wells spud in the county,
26 the fee shall take effect. If a resolution is adopted, a copy
27 of the resolution shall be transmitted to the governing body
28 of the county and the commission. The governing body of a
29 municipality that is located in more than one county shall
30 transmit a copy of a resolution adopted under this paragraph

1 to the governing body of each county in which the
2 municipality is located.

3 (3) The transmittal of resolutions by governing bodies
4 under paragraph (2) shall constitute an imposition of the fee
5 in that county. The population of a municipality that is
6 located in more than one county shall be determined
7 separately for each county on the basis of the municipality's
8 population within each county.

9 (4) Resolutions adopted under this subsection must be
10 framed in the following form:

11 The (insert name) in the county of (insert name) hereby
12 resolves to have the county impose an unconventional gas
13 well fee on each unconventional gas well spud in the
14 county.

15 (5) A municipality which is located in a county that
16 does not adopt an ordinance imposing an unconventional gas
17 well fee and which does not adopt a resolution under
18 paragraphs (2), (3) and (4) shall be prohibited from
19 receiving funds under section 2314(d).

20 (b) Components.--The fee adopted under subsection (a), (a.1)
21 or (a.4) is imposed on every producer and shall apply to
22 unconventional gas wells spud in this Commonwealth regardless of
23 when spudding occurred. Unconventional gas wells spud before
24 the fee is imposed shall be considered to be spud in the
25 calendar year prior to the imposition of the fee for purposes of
26 determining the fee under this subsection. Prior to adjustment
27 under subsection (c), the fee for each unconventional gas well
28 shall be determined as follows:

29 (1) Year one:

30 (i) If the average annual price of natural gas is

1 not more than \$2.25, the fee shall be \$40,000 for the
2 calendar year in which the unconventional gas well is
3 spud.

4 (ii) If the average annual price of natural gas is
5 greater than \$2.25 and less than \$3.00, the fee shall be
6 \$45,000 for the calendar year in which the unconventional
7 gas well is spud.

8 (iii) If the average annual price of natural gas is
9 greater than \$2.99 and less than \$5.00, the fee shall be
10 \$50,000 for the calendar year in which the unconventional
11 gas well is spud.

12 (iv) If the average annual price of natural gas is
13 greater than \$4.99 and less than \$6.00, the fee shall be
14 \$55,000 for the calendar year in which the unconventional
15 gas well is spud.

16 (v) If the average annual price of natural gas is
17 more than \$5.99, the fee shall be \$60,000 for the
18 calendar year in which the unconventional gas well is
19 spud.

20 (2) Year two:

21 (i) If the average annual price of natural gas is
22 not more than \$2.25, the fee shall be \$30,000 for the
23 calendar year following the year in which the
24 unconventional gas well is spud.

25 (ii) If the average annual price of natural gas is
26 greater than \$2.25 and less than \$3.00, the fee shall be
27 \$35,000 for the calendar year following the year in which
28 the unconventional gas well is spud.

29 (iii) If the average annual price of natural gas is
30 greater than \$2.99 and less than \$5.00, the fee shall be

1 \$40,000 for the calendar year following the year in which
2 the unconventional gas well is spud.

3 (iv) If the average annual price of natural gas is
4 greater than \$4.99 and less than \$6.00, the fee shall be
5 \$45,000 for the calendar year following the year in which
6 the unconventional gas well is spud.

7 (v) If the average annual price of natural gas is
8 more than \$5.99, the fee shall be \$55,000 for the
9 calendar year following the year in which the
10 unconventional gas well is spud.

11 (3) Year three:

12 (i) If the average annual price of natural gas is
13 not more than \$2.25, the fee shall be \$25,000 for the
14 second calendar year following the year in which the
15 unconventional gas well is spud.

16 (ii) If the average annual price of natural gas is
17 greater than \$2.25 and less than \$3.00, the fee shall be
18 \$30,000 for the second calendar year following the year
19 in which the unconventional gas well is spud.

20 (iii) If the average annual price of natural gas is
21 greater than \$2.99 and less than \$5.00, the fee shall be
22 \$30,000 for the second calendar year following the year
23 in which the unconventional gas well is spud.

24 (iv) If the average annual price of natural gas is
25 greater than \$4.99 and less than \$6.00, the fee shall be
26 \$40,000 for the second calendar year following the year
27 in which the unconventional gas well is spud.

28 (v) If the average annual price of natural gas is
29 more than \$5.99, the fee shall be \$50,000 for the second
30 calendar year following the year in which the

1 unconventional gas well is spud.

2 (4) Years 4, 5, 6, 7, 8, 9 and 10:

3 (i) If the average annual price of natural gas is
4 not more than \$2.25, the fee shall be \$10,000 for the
5 third through ninth calendar years following the year in
6 which the unconventional gas well is spud.

7 (ii) If the average annual price of natural gas is
8 greater than \$2.25 and less than \$3.00, the fee shall be
9 \$15,000 for the third through ninth calendar years
10 following the year in which the unconventional gas well
11 is spud.

12 (iii) If the average annual price of natural gas is
13 greater than \$2.99, the fee shall be \$20,000 for the
14 third through ninth calendar years following the year in
15 which the unconventional gas well is spud.

16 (5) Years 11, 12, 13, 14 and 15:

17 (i) If the average annual price of natural gas is
18 less than \$3.00, the fee shall be \$5,000 for the 10th
19 through 14th calendar years following the year in which
20 the unconventional well is spud.

21 (ii) If the average annual price of natural gas is
22 greater than \$2.99, the fee shall be \$10,000 for the 10th
23 through 14th calendar years following the year in which
24 the unconventional well is spud.

25 (6) For purposes of this subsection, the fee shall be
26 determined using the average annual price of natural gas for
27 the calendar year in which the fee is imposed.

28 (b.1) Nonproducing unconventional gas wells.--If a spud
29 unconventional gas well begins paying the fee imposed under this
30 section and is subsequently capped or does not produce natural

1 gas in quantities greater than that of a stripper well within
2 two years after paying the initial fee, then the fee shall be
3 suspended:

4 (1) The fee shall be reinstated for a calendar year
5 during which the unconventional gas well produces natural gas
6 in quantities greater than that of a stripper well.

7 (2) Each calendar year during which a fee is suspended
8 shall not be considered a calendar year following spud for
9 purposes of determining the amount of the fee under
10 subsection (b).

11 (c) Annual adjustment.--Beginning January 1, 2013, the
12 commission shall annually adjust the fee amounts under
13 subsection (b) to reflect any upward changes in the Consumer
14 Price Index for all Urban Consumers for the Pennsylvania, New
15 Jersey, Delaware and Maryland area in the preceding 12 months
16 and shall immediately submit the adjusted fee amount to the
17 Legislative Reference Bureau for publication as a notice in the
18 Pennsylvania Bulletin. The fee shall be adjusted by multiplying
19 the annual fee amount by any percentage increase to the Consumer
20 Price Index for all Urban Consumers for the Pennsylvania, New
21 Jersey, Delaware and Maryland area, rounded to the nearest \$100.
22 The resultant product shall be added to the fee amount and the
23 sum shall become the new annual fee amount under subsection (b).
24 The annual adjustment under this subsection shall take effect if
25 the total number of unconventional gas wells spud in the
26 adjustment year exceeds the total number of unconventional gas
27 wells spud in the prior year.

28 (d) Restimulated unconventional gas wells.--

29 (1) An unconventional gas well which after restimulation
30 qualifies as a stripper well shall not be subject to this

1 subsection.

2 (2) The year in which the restimulation occurs shall be
3 considered the first year of spudding for purposes of
4 imposing the fee under this section if:

5 (i) a producer restimulates a previously stimulated
6 unconventional gas well following the tenth year after
7 being spud by:

8 (A) hydraulic fracture treatments;

9 (B) using additional multilateral well bores;

10 (C) drilling deeper into an unconventional
11 formation; or

12 (D) other techniques to expose more of the
13 formation to the well bore; and

14 (ii) the restimulation results in a substantial
15 increase in production.

16 (3) As used in this subsection, the term "substantial
17 increase in production" means an increase in production
18 amounting to more than 90,000 cubic feet of gas per day
19 during a calendar month.

20 (e) Cessation.--Payments of the fee shall cease upon
21 certification to the department by the producer that the
22 unconventional gas well has ceased production and has been
23 plugged according to the regulations established by the
24 department.

25 (f) Vertical unconventional gas well fee.--The fee for a
26 vertical unconventional gas well shall be 20% of the fee
27 established in subsections (b) and (c), except that the fee
28 under subsection (b) (5) shall not apply.

29 § 2303. Administration.

30 (a) Fee due date.--

1 (1) Except as provided under paragraph (2), the fee
2 imposed under this chapter shall be due by April 1, 2013, and
3 each April 1 thereafter. The fee shall become delinquent if
4 not remitted to the commission on the reporting date.

5 (2) For wells spud before January 1, 2012, a fee imposed
6 under this chapter shall be due by September 1, 2012.

7 (b) Report.--By September 1, 2012, and April 1 of each year
8 thereafter, each producer shall submit payment of the fee to the
9 commission and a report on a form prescribed by the commission
10 for the previous calendar year. The report shall include the
11 following:

12 (1) The number of spud unconventional gas wells of a
13 producer in each municipality within each county that has
14 imposed a fee under this chapter.

15 (2) The date that each unconventional gas well
16 identified under paragraph (1) was spud or ceased the
17 production of natural gas.

18 (c) Costs of commission.--

19 (1) The commission may impose an annual administrative
20 charge not to exceed \$50 per spud unconventional gas well on
21 each producer, to be paid with the submission under
22 subsection (a), to pay for the actual costs of the commission
23 to administer and enforce this chapter.

24 (2) Within 30 days of the effective date of this
25 subsection the commission shall estimate its expenditures
26 through June 30, 2012, that will be directly attributable to
27 the administration and enforcement of this chapter. The
28 commission shall subtract the amount of the administrative
29 charges imposed under paragraph (1) and assess any remaining
30 balance on all producers subject to the administrative charge

1 in proportion to the number of wells owned by each producer.
2 Producers shall pay the assessments within 30 days of receipt
3 of notice from the commission. The amount of the assessment
4 may be challenged by a producer consistent with 66 Pa.C.S. §
5 510(c), (d) and (e) (relating to assessment for regulatory
6 expenses upon public utilities). Any collections that exceed
7 any of the following shall be used to offset the
8 administrative charges or other funds received for fiscal
9 year 2012-2013:

10 (i) The budget amount approved by the General
11 Assembly and the Governor for administration and
12 enforcement of this chapter and Chapter 33 (relating to
13 local ordinances relating to oil and gas operations).

14 (ii) The actual expenditures directly attributable
15 to the administration and enforcement of this chapter and
16 Chapter 33.

17 (3) By June 30, 2012, and each June 30 thereafter, the
18 commission shall estimate its expenditures for the next
19 fiscal year that will be directly attributable to the
20 administration and enforcement of this chapter. After
21 subtracting any annual administrative charges imposed under
22 paragraph (1), amounts received by the commission under
23 section 2314(c.1)(2) (relating to distribution of fee) and
24 any amounts collected during the prior fiscal year that
25 exceeded actual expenditures directly attributable to the
26 administration and enforcement of this chapter, the
27 commission shall assess the remaining balance on all
28 producers subject to the unconventional gas well fee in
29 proportion to the number of wells owned by each producer.
30 Producers shall pay the assessments within 30 days of the

1 receipt of notice from the commission. The amount of the
2 assessment may be challenged by a producer consistent with 66
3 Pa.C.S. § 510(c), (d) and (e). Any collections that exceed
4 any of the following shall be used to offset administrative
5 charges or assessments for the next fiscal year:

6 (i) The budget amount approved by the General
7 Assembly and the Governor for administration and
8 enforcement of this chapter and Chapter 33.

9 (ii) Actual expenditures directly attributable to
10 the administration and enforcement of this chapter and
11 Chapter 33.

12 § 2304. Well information.

13 (a) List.--Within 14 days of the effective date of this
14 section, the department shall provide the commission and, upon
15 request, a county, with a list of all spud unconventional gas
16 wells from the department. The department shall update the list
17 and provide it to the commission on a monthly basis.

18 (b) Updates.--A producer subject to the fee shall notify the
19 commission of the following within 30 days after a calendar
20 month in which the change occurs:

21 (1) The spudding of an unconventional gas well.

22 (1.1) The initiation of production at an unconventional
23 gas well.

24 (2) The removal of an unconventional gas well from
25 production.

26 § 2305. Duties of department.

27 (a) Confirmation of payment.--Prior to issuing a permit to
28 drill an unconventional gas well in this Commonwealth, the
29 department shall determine whether the producer has paid all
30 fees owed for an existing unconventional gas well under section

1 2302 (relating to unconventional gas well fee).

2 (b) Prohibition.--The department shall not issue a permit to
3 drill an unconventional gas well until all unconventional gas
4 well fees owed under section 2302 that are not in dispute have
5 been paid to the commission.

6 (c) Payment of fees.--The commission shall provide the
7 department with information necessary to determine that the
8 producer has paid all unconventional gas well fees owed for an
9 unconventional gas well under section 2302.

10 § 2306. (Reserved).

11 § 2307. Commission.

12 (a) Powers.--The commission shall have the authority to make
13 all inquiries and determinations necessary to calculate and
14 collect the fee, administrative charges or assessments imposed
15 under this chapter, including, if applicable, interest and
16 penalties.

17 (b) Notice.--If the commission determines that the
18 unconventional gas well fee has not been paid in full, it may
19 issue a notice of the amount due and demand for payment and
20 shall set forth the basis for the determination.

21 (c) Address.--Notice of failure to pay the correct fee shall
22 be sent to the producer via certified mail.

23 (d) Time period.--Except as set forth in subsection (e), the
24 commission may challenge the amount of a fee paid within three
25 years after the date the report under section 2303(b) (relating
26 to administration) is filed.

27 (e) Intent.--If no report is filed or a producer files a
28 false or fraudulent report with the intent to evade the fee, an
29 assessment of the amount owed may be made at any time.

30 § 2308. Enforcement.

1 (a) Assessment.--The commission shall assess interest on any
2 delinquent fee at the rate determined under section 2307(a)
3 (relating to commission).

4 (b) Penalty.--In addition to the assessed interest under
5 subsection (a), if a producer fails to make timely payment of
6 the fee, there shall be added to the amount of the fee due a
7 penalty of 5% of the amount of the fee if failure to file a
8 timely payment is for not more than one month, with an
9 additional 5% penalty for each additional month, or fraction of
10 a month, during which the failure continues, not to exceed 25%
11 in the aggregate.

12 (c) Timely payment.--If the commission determines that a
13 producer has not made a timely payment of the fee, the
14 commission shall send written notice of the amount of the
15 deficiency to the producer within 30 days from the date of
16 determining the deficiency. The commission shall notify the
17 department of a producer that has failed to pay the fee for any
18 unconventional gas well under section 2302 (relating to
19 unconventional gas well fee). If the producer does not have a
20 pending appeal related to payment of the fee in process, the
21 department shall suspend the permit for that well until the fee
22 has been paid.

23 (d) Remedies.--The remedies provided under this chapter are
24 in addition to any other remedies provided by law or in equity.

25 (e) Lien.--Fines, fees, interest and penalties shall be
26 collectible as authorized by law for the collection of debts. If
27 the producer liable to pay an amount neglects or refuses to pay
28 the amount after demand, the amount, together with costs, shall
29 be a judgment in favor of the Commonwealth upon the property of
30 the producer, but only after the judgment has been entered,

1 docketed and recorded by the prothonotary of the county where
2 the property is situated. The Commonwealth shall transmit to the
3 prothonotaries of the respective counties certified copies of
4 the judgments. Each prothonotary shall enter, docket and record
5 the record in the prothonotary's office and index each judgment,
6 without requiring the payment of costs as a condition precedent
7 to the entry of the judgment.

8 § 2309. Enforcement orders.

9 (a) Issuance.--The commission may issue an order as
10 necessary to enforce this chapter. An order issued under this
11 section shall take effect upon notice, unless the order
12 specifies otherwise. A person aggrieved by an order under this
13 section may appeal to the Commonwealth Court under 42 Pa.C.S. §
14 763 (relating to direct appeals from government agencies).

15 (b) Compliance.--A producer has the duty to comply with an
16 order issued under subsection (a). If a producer fails to
17 proceed diligently to comply with an order within the time
18 required, the producer shall be guilty of contempt and shall be
19 punished by the court in an appropriate manner. The commission
20 shall apply to the Commonwealth Court, which shall have
21 jurisdiction over matters relating to contempt.

22 § 2310. Administrative penalties.

23 (a) Civil penalties.--In addition to any other proceeding
24 authorized by law, the commission may assess a civil penalty not
25 to exceed \$2,500 per violation upon a producer for the violation
26 of this chapter. In determining the amount of the penalty, the
27 commission shall consider the willfulness of the violation and
28 other relevant factors.

29 (b) Separate offense.--Each violation for each separate day
30 and each violation of this chapter shall constitute a separate

1 offense.

2 (c) Limitation of actions.--Notwithstanding any limitation
3 in 42 Pa.C.S. Ch. 55 Subch. B (relating to civil actions and
4 proceedings) an action under this section must be brought within
5 three years of the violation.

6 (d) Procedure.--A penalty under this chapter is subject to
7 66 Pa.C.S. Ch. 3 Subch. B (relating to investigations and
8 hearings).

9 § 2311. (Reserved).

10 § 2312. Recordkeeping.

11 A producer liable for the fee under this chapter shall keep
12 records, make reports and comply with regulations of the
13 commission. The commission may require a producer to make
14 reports, render statements or keep records as the commission
15 deems sufficient to determine liability for the fee.

16 § 2313. Examinations.

17 (a) Access.--The commission or its authorized agents or
18 representatives shall:

19 (1) Have access to the relevant books, papers and
20 records of any producer in order to verify the accuracy and
21 completeness of a report filed or fee paid under this
22 chapter.

23 (2) Require the preservation of all relevant books,
24 papers and records for an appropriate period not to exceed
25 three years from the end of the calendar year to which the
26 records relate.

27 (3) Examine any employee of a producer under oath
28 concerning the severing of natural gas subject to a fee or
29 any matter relating to the enforcement of this chapter.

30 (4) Compel the production of relevant books, papers and

1 records and the attendance of all individuals who the
2 commission believes to have knowledge of relevant matters in
3 accordance with 66 Pa.C.S. (relating to public utilities).

4 (b) Unauthorized disclosure.--Any information obtained by
5 the commission as a result of any report, examination,
6 investigation or hearing under this chapter shall be
7 confidential and shall not be disclosed, except for official
8 purposes, in accordance with judicial order or as otherwise
9 provided by law. A commissioner or an employee of the commission
10 who without authorization divulges confidential information
11 shall be subject to disciplinary action by the commission.

12 § 2314. Distribution of fee.

13 (a) Establishment.--There is established a fund in the State
14 Treasury to be known as the Unconventional Gas Well Fund to be
15 administered by the commission.

16 (b) Deposit.--All fees imposed and collected under this
17 chapter shall be deposited into the fund and are hereby
18 appropriated for the purpose set forth in this section.

19 (c) Conservation districts.--

20 (1) From fees collected for 2011, \$2,500,000 from the
21 fund shall be distributed to county conservation districts.

22 (2) From fees collected for 2012, \$5,000,000 from the
23 fund shall be distributed to county conservation districts.

24 (3) From fees collected for 2013, and each year
25 thereafter, \$7,500,000 from the fund shall be distributed to
26 county conservation districts.

27 (4) Beginning July 1, 2014, each July 1 thereafter, the
28 amount distributed under paragraph (3) shall be increased by
29 any percentage increase in the Consumer Price Index for All
30 Urban Consumers for the most recent 12-month period for which

1 figures have been officially reported by the Bureau of Labor
2 Statistics immediately prior to July 1.

3 (5) Funds under paragraphs (1), (2) and (3) shall be
4 distributed in accordance with the following:

5 (i) One-half shall be distributed by dividing the
6 amount equally among conservation districts for any use
7 consistent with the act of May 15, 1945 (P.L.547,
8 No.217), known as the Conservation District Law.

9 (ii) One-half shall be distributed by the State
10 Conservation Commission in a manner consistent with the
11 Conservation District Law and the provisions of the State
12 Conservation Commission's Conservation District Fund
13 Allocation Program--Statement of Policy under 25 Pa. Code
14 Ch. 83 Subch. B (relating to Conservation District Fund
15 Allocation Program--Statement of Policy).

16 (c.1) Additional distributions.--From fees collected under
17 this chapter and deposited in the fund for 2011 and each year
18 thereafter:

19 (1) \$1,000,000 shall be distributed to the Pennsylvania
20 Fish and Boat Commission for costs relating to the review of
21 applications for permits to drill unconventional gas wells.

22 (2) \$1,000,000 shall be distributed to the Public
23 Utility Commission for costs to administer this chapter and
24 Chapter 33 (relating to local ordinances relating to oil and
25 gas operations).

26 (3) \$6,000,000 to the department for the administration
27 of this act and the enforcement of acts relating to clean air
28 and clean water.

29 (4) \$750,000 to the Pennsylvania Emergency Management
30 Agency for emergency response planning, training and

1 coordination related to natural gas production from
2 unconventional gas wells.

3 (5) \$750,000 to the Office of State Fire Commissioner
4 for the development, delivery and sustainment of training and
5 grant programs for first responders and the acquisition of
6 specialized equipment for response to emergencies relating to
7 natural gas production from unconventional gas wells.

8 (6) \$1,000,000 to the Department of Transportation for
9 rail freight assistance.

10 (c.2) Natural gas energy development.--Following
11 distributions from the fund under subsections (c) and (c.1), the
12 following amounts shall be deposited into the Marcellus Legacy
13 Fund for distribution to the department for the Natural Gas
14 Energy Development Program under Chapter 27 (relating to Natural
15 Gas Energy Development Program):

16 (1) For 2011, \$10,000,000.

17 (2) For 2012, \$7,500,000.

18 (3) For 2013, \$2,500,000.

19 (c.3) Report.--All agencies or organizations receiving funds
20 under subsections (c), (c.1) and (c.2) shall submit a report by
21 December 31, 2012, and December 31 of each year thereafter to
22 the Secretary of the Budget and the Appropriations Committee of
23 the Senate and the Appropriations Committee of the House of
24 Representatives. The report shall include an itemization and
25 explanation of the use of all funds received under subsections
26 (c), (c.1) and (c.2).

27 (d) Distribution.--Except as provided in section 2302(a.3)
28 and (a.4) (relating to unconventional gas well fee), following
29 fee distribution under subsections (c), (c.1) and (c.2), from
30 fees collected for 2011 and each year thereafter, 60% of the

1 revenue remaining in the fund from fees collected for the prior
2 year are hereby appropriated to counties and municipalities for
3 purposes authorized under subsection (g). Counties and
4 municipalities are encouraged, where appropriate, to jointly
5 fund projects that cross jurisdictional lines. The commission,
6 after making a disbursement under subsection (f), shall
7 distribute the remaining funds appropriated as follows within
8 three months after the date the fee is due:

9 (1) Except as provided in section 2302(a.3), 36% shall
10 be distributed to counties in which spud unconventional gas
11 wells are located. The amount for each county to which funds
12 will be distributed shall be determined using a formula that
13 divides the number of spud unconventional gas wells in the
14 county by the number of spud unconventional gas wells in this
15 Commonwealth and multiplies the resulting percentage by the
16 amount available for distribution under this paragraph.

17 (2) Except as provided in section 2302(a.4), 37% shall
18 be distributed to municipalities in which spud unconventional
19 gas wells are located. The amount for each municipality to
20 which funds will be distributed shall be determined using a
21 formula that divides the number of spud unconventional gas
22 wells in the municipality by the number of spud
23 unconventional gas wells in this Commonwealth and multiplies
24 the resulting percentage by the amount available for
25 distribution under this paragraph.

26 (3) Except as provided in section 2302(a.4), 27% shall
27 be distributed to municipalities located in a county in which
28 spud unconventional gas wells are located. The amount
29 available for distribution in each county shall be determined
30 by dividing the number of spud unconventional gas wells in

1 the county by the number of spud unconventional gas wells in
2 this Commonwealth and multiplying the resulting percentage by
3 the amount available for distribution under this paragraph.
4 The resulting amount available for distribution in each
5 county in which spud unconventional gas wells are located
6 shall be distributed to each municipality in the county to
7 which funds will be distributed as follows:

8 (i) Except as provided in section 2302(a.4), 50% of
9 the amount available under this paragraph shall be
10 distributed to municipalities in which spud
11 unconventional gas wells are located and to
12 municipalities that are either contiguous with a
13 municipality in which spud unconventional gas wells are
14 located or are located within five linear miles of a spud
15 unconventional gas well. The distribution shall be made
16 as follows:

17 (A) One-half shall be distributed to each
18 municipality using a formula that divides the
19 population of the eligible municipality within the
20 county by the total population of all eligible
21 municipalities within the county and multiplies the
22 resulting percentage by the amount allocated to the
23 county under this subparagraph.

24 (B) One-half shall be distributed to each
25 municipality using a formula that divides the highway
26 mileage of the eligible municipality within the
27 county by the total highway mileage of all eligible
28 municipalities within the county and multiplies the
29 resulting percentage by the amount allocated to the
30 county under this subparagraph.

1 (ii) Except as provided in section 2302(a.4), 50% of
2 the amount available under this paragraph shall be
3 distributed to each municipality in the county regardless
4 of whether an unconventional gas well is located in the
5 municipality as follows:

6 (A) One-half shall be distributed to each
7 municipality using a formula that divides the
8 population of the municipality within the county by
9 the total population of the county and multiplies the
10 resulting percentage by the amount allocated to the
11 county under this subparagraph.

12 (B) One-half shall be distributed to each
13 municipality using a formula that divides the highway
14 mileage of the municipality within the county by the
15 total highway mileage of the county and multiplies
16 the resulting percentage by the amount allocated to
17 the county under this subparagraph.

18 (e) Restriction.--The amount allocated to each municipality
19 under subsection (d) shall not exceed the greater of \$500,000 or
20 50% of the total budget for the prior fiscal year beginning with
21 the 2010 budget year and continuing every year thereafter,
22 adjusted to reflect any upward changes in the Consumer Price
23 Index for all Urban Consumers for the Pennsylvania, New Jersey,
24 Delaware and Maryland area in the preceding 12 months. Any
25 remaining money shall be retained by the commission and
26 deposited in the Housing Affordability and Rehabilitation
27 Enhancement Fund for the uses specified under subsection (f).

28 (f) Housing Affordability and Rehabilitation Enhancement
29 Fund.--

30 (1) From fees collected for 2011, \$2,500,000 from the

1 fund shall be distributed to the Housing Affordability and
2 Rehabilitation Enhancement Fund under the act of November 23,
3 2010 (P.L.1035, No.105), entitled "An act amending the act of
4 December 3, 1959 (P.L.1688, No.621), entitled, as amended,
5 'An act to promote the health, safety and welfare of the
6 people of the Commonwealth by broadening the market for
7 housing for persons and families of low and moderate income
8 and alleviating shortages thereof, and by assisting in the
9 provision of housing for elderly persons through the creation
10 of the Pennsylvania Housing Finance Agency as a public
11 corporation and government instrumentality; providing for the
12 organization, membership and administration of the agency,
13 prescribing its general powers and duties and the manner in
14 which its funds are kept and audited, empowering the agency
15 to make housing loans to qualified mortgagors upon the
16 security of insured and uninsured mortgages, defining
17 qualified mortgagors and providing for priorities among
18 tenants in certain instances, prescribing interest rates and
19 other terms of housing loans, permitting the agency to
20 acquire real or personal property, permitting the agency to
21 make agreements with financial institutions and Federal
22 agencies, providing for the purchase by persons of low and
23 moderate income of housing units, and approving the sale of
24 housing units, permitting the agency to sell housing loans,
25 providing for the promulgation of regulations and forms by
26 the agency, prescribing penalties for furnishing false
27 information, empowering the agency to borrow money upon its
28 own credit by the issuance and sale of bonds and notes and by
29 giving security therefor, permitting the refunding,
30 redemption and purchase of such obligations by the agency,

1 prescribing remedies of holders of such bonds and notes,
2 exempting bonds and notes of the agency, the income
3 therefrom, and the income and revenues of the agency from
4 taxation, except transfer, death and gift taxes; making such
5 bonds and notes legal investments for certain purposes; and
6 indicating how the act shall become effective,' providing for
7 the Pennsylvania Housing Affordability and Rehabilitation
8 Enhancement Program; and establishing the Housing
9 Affordability and Rehabilitation Enhancement Fund." From fees
10 collected for 2012, and each year thereafter, \$5,000,000
11 shall be annually distributed to the Housing Affordability
12 and Rehabilitation Enhancement Fund.

13 (2) Funds under paragraph (1) shall be used for the
14 following purposes:

15 (i) To provide support to projects in a county in
16 which producing unconventional gas wells are located that
17 increase availability of quality, safe, affordable
18 housing for low-income and moderate-income individuals or
19 families, persons with disabilities or elderly persons.

20 (ii) To provide rental assistance in a county in
21 which producing unconventional gas wells are located to
22 persons or families whose household income does not
23 exceed the area median income.

24 (3) No less than 50% of the funds available under this
25 subsection shall be used in fifth, sixth, seventh and eighth
26 class counties.

27 (g) Use of funds.--A county or municipality receiving funds
28 under subsection (d) shall use the funds received only for the
29 following purposes associated with natural gas production from
30 unconventional gas wells within the county or municipality:

1 (1) Construction, reconstruction, maintenance and repair
2 of roadways, bridges and public infrastructure.

3 (2) Water, storm water and sewer systems, including
4 construction, reconstruction, maintenance and repair.

5 (3) Emergency preparedness and public safety, including
6 law enforcement and fire services, hazardous material
7 response, 911, equipment acquisition and other services.

8 (4) Environmental programs, including trails, parks and
9 recreation, open space, flood plain management, conservation
10 districts and agricultural preservation.

11 (5) Preservation and reclamation of surface and
12 subsurface waters and water supplies.

13 (6) Tax reductions, including homestead exclusions.

14 (7) Projects to increase the availability of safe and
15 affordable housing to residents.

16 (8) Records management, geographic information systems
17 and information technology.

18 (9) The delivery of social services.

19 (10) Judicial services.

20 (11) For deposit into the county or municipality's
21 capital reserve fund if the funds are used solely for a
22 purpose set forth in this subsection.

23 (12) Career and technical centers for training of
24 workers in the oil and gas industry.

25 (13) Local or regional planning initiatives under the
26 act of July 31, 1968 (P.L.805, No.247), known as the
27 Pennsylvania Municipalities Planning Code.

28 (h) Reporting.--

29 (1) The commission shall submit an annual report on all
30 funds in the fund. The report shall include a detailed

1 listing of all deposits and expenditures of the fund and be
2 submitted to the chairman and the minority chairman of the
3 Appropriations Committee of the Senate, the chairman and the
4 minority chairman of the Environmental Resources and Energy
5 Committee of the Senate, the chairman and the minority
6 chairman of the Appropriations Committee of the House of
7 Representatives and the chairman and the minority chairman of
8 the Environmental Resources and Energy Committee of the House
9 of Representatives. The report shall be submitted by December
10 30, 2012, and by September 30 of each year thereafter.

11 (2) All counties and municipalities receiving funds from
12 the fund under this section shall submit information to the
13 commission on a form prepared by the commission that sets
14 forth the amount and use of the funds received in the prior
15 calendar year. The form shall set forth that the funds
16 received were committed to a specific project or use as
17 authorized in this section. The reports shall be published
18 annually on the county or municipality's publicly accessible
19 Internet website.

20 (i) Availability of funds.--Distribution of funds under this
21 section and section 2315 (relating to Statewide initiatives) are
22 contingent on availability of funds in the fund. If sufficient
23 funds are not available, the commission shall disburse funds on
24 a pro rata basis.

25 § 2315. Statewide initiatives.

26 (a) Establishment.--There is established in the State
27 Treasury a fund to be known as the Marcellus Legacy Fund.

28 (a.1) Deposit and distribution.--Following distribution
29 under section 2314(c), (c.1) and (c.2) (relating to distribution
30 of fee) from fees collected for 2011 and each year thereafter,

1 40% of the remaining revenue in the fund shall be deposited into
2 the Marcellus Legacy Fund and appropriated to the commission and
3 distributed within three months after the date the fee is due as
4 follows:

5 (1) Twenty percent to the Commonwealth Financing
6 Authority for grants to eligible applicants for the
7 following:

8 (i) Acid mines: damage, abatement and cleanup and
9 mine reclamation, with priority given to projects which
10 recycle and treat water for use in drilling operations.

11 (ii) Orphan or abandoned oil and gas well plugging.

12 (iii) Complying with the act of January 24, 1966
13 (1965 P.L.1535, No.537), known as the Pennsylvania Sewage
14 Facilities Act.

15 (iv) Planning acquisition, development,
16 rehabilitation and repair of greenways, recreational
17 trails, open space, parks and beautification projects.

18 (v) Programs to establish baseline water quality
19 data on private water supplies.

20 (vi) Watershed programs and related projects.

21 (vii) Up to 25% of funds distributed to the
22 Commonwealth Financing Authority under this paragraph may
23 be utilized for flood-control projects.

24 (2) Ten percent to the Environmental Stewardship Fund.

25 (3) Twenty-five percent to the Highway Bridge
26 Improvement Restricted Account in the Motor License Fund to
27 counties to be distributed to fund the cost of the
28 replacement or repair of locally owned at-risk deteriorated
29 bridges. Funds shall be distributed to counties
30 proportionately based on the population of the county as

1 follows:

2 (i) In each county, the distribution shall be
3 according to the following formula:

4 (A) Divide:

5 (I) the total population of the county; by

6 (II) the total population of the

7 Commonwealth;

8 (B) Express the quotient under clause (A) as a
9 percentage.

10 (C) Multiply:

11 (I) the percentage under clause (B); by

12 (II) the amount of money to be distributed
13 under this paragraph.

14 (ii) Each county shall receive a minimum of \$40,000
15 to the extent funds are available.

16 (iii) The Department of Transportation shall release
17 money under this paragraph upon approval of a plan
18 submitted by a county or municipality to repair an at-
19 risk deteriorated bridge. The plan must include funding
20 for replacement or repair.

21 (iv) A county of the first or second class may
22 submit a plan to use its funds under this paragraph for
23 at-risk deteriorated bridges owned by a public
24 transportation authority.

25 (4) Twenty-five percent for water and sewer projects.
26 Fifty percent of the amount distributed under this paragraph
27 shall be transmitted to the Pennsylvania Infrastructure
28 Investment Authority to be used in accordance with the act of
29 March 1, 1988 (P.L.82, No.16), known as the Pennsylvania
30 Infrastructure Investment Authority Act. Fifty percent of the

1 amount distributed under this paragraph shall be distributed
2 to the H2O PA program to be used by the Commonwealth
3 Financing Authority in accordance with section 301 of the act
4 of July 9, 2008 (P.L.908, No.63), known as the H2O PA Act.
5 The prohibition on grants for projects located in a city or
6 county of the first or second class under section 301 of the
7 H2O PA Act shall not apply to funds distributed to the H2O PA
8 Program under this paragraph.

9 (5) Fifteen percent for the planning, acquisition,
10 development, rehabilitation and repair of greenways,
11 recreational trails, open space, natural areas, community
12 conservation and beautification projects, community and
13 heritage parks and water resource management. Funds may be
14 used to acquire lands for recreational or conservation
15 purposes and land damaged or prone to drainage by storms or
16 flooding. Funds shall be distributed to counties
17 proportionately based on the population of the county as
18 follows:

19 (i) In each county, the distribution shall be
20 according to the following formula:

21 (A) Divide:

22 (I) the total population of the county; by

23 (II) the total population of the

24 Commonwealth.

25 (B) Express the quotient under clause (A) as a
26 percentage.

27 (C) Multiply:

28 (I) the percentage under clause (B); by

29 (II) the amount of funds available under

30 this paragraph.

1 (ii) Each county shall receive a minimum of \$25,000
2 to the extent funds are available.

3 (6) Five percent for distribution as follows:

4 (i) From fees collected in 2011, 2012 and 2013, to
5 the Department of Community and Economic Development for
6 projects to provide for the planning, development,
7 remodeling, remediation and construction of projects
8 relating to oil, natural gas or other chemical
9 substances. Projects under this subparagraph may include
10 blending facilities to liquefy or refine natural gas or
11 to convert natural gas to ethane, propane or other
12 substances; facilities to refine oil; or facilities to
13 refine or process oil, heating oil, jet fuel or any other
14 chemical substance. Following 2014, funds not utilized by
15 the Department of Community and Economic Development
16 under this subparagraph shall be deposited in the
17 Hazardous Sites Cleanup Fund.

18 (ii) After 2013, to the Hazardous Sites Cleanup
19 Fund.

20 (b) Restriction on use of proceeds.--

21 (1) Funds distributed under subsection (a.1) shall not
22 be used for the purpose of public relations, outreach not
23 directly related to project implementation, communications,
24 lobbying or litigation.

25 (2) Funds distributed under subsection (a.1) may not be
26 used by an authorized organization as defined in 27 Pa.C.S. §
27 6103 (relating to definitions) for land acquisition unless
28 the authorized organization has obtained the written consent
29 of the county and municipality in which the land is situated.

30 (c) Coordination.--The department and the Department of

1 Conservation and Natural Resources shall review applications for
2 funding as requested by the Commonwealth Financing Authority and
3 provide recommendations on priority of projects and project
4 approval.

5 § 2316. Small business participation.

6 (a) Requirement.--Producers shall provide maximum
7 practicable contracting opportunities for diverse small
8 businesses, including minority-owned business enterprises,
9 women-owned business enterprises and veteran-owned businesses.

10 (b) Duties.--Producers shall do all of the following:

11 (1) Maintain a policy prohibiting discrimination in
12 employment and contracting based on gender, race, creed or
13 color.

14 (2) Use the database available on the Internet website
15 of the Department of General Services to identify certified
16 diverse small businesses, including minority-owned business
17 enterprises, women-owned business enterprises and veteran-
18 owned businesses, as potential contractors, subcontractors
19 and suppliers for opportunities related to unconventional
20 natural gas extraction.

21 (3) Respond to the survey under subsection (c) within 90
22 days.

23 (c) Survey.--Within one year of the effective date of this
24 section, the Department of General Services shall send all
25 producers a survey to report the producers' efforts to provide
26 maximum practicable contracting opportunities related to
27 unconventional natural gas extraction for diverse, small
28 business participation.

29 (d) Reports.--The Department of General Services shall
30 compile the results and submit an annual report to the State

1 Government Committee of the Senate and the State Government
2 Committee of the House of Representatives on the utilization of
3 diverse small business participation related to unconventional
4 natural gas extraction. The report shall be submitted no later
5 than 150 days after the Department of General Services
6 disseminated the survey to producers.

7 (e) Definition.--As used in this section, the term "diverse
8 small business" means minority-owned business, women-owned
9 business and veteran-owned business as determined by the
10 Department of General Services.

11 § 2317. Applicability.

12 The provisions of this chapter shall not negate or limit the
13 responsibilities of any producer under this title, 74 Pa.C.S
14 (relating to transportation) or 75 Pa.C.S. (relating to
15 vehicles).

16 § 2318. Expiration.

17 (a) Notice.--The Secretary of the Commonwealth shall, upon
18 the imposition of a severance tax on unconventional gas wells in
19 this Commonwealth, submit for publication in the Pennsylvania
20 Bulletin notice of the imposition.

21 (b) Date.--This chapter shall expire on the date of the
22 publication of the notice under subsection (a).

23 CHAPTER 25

24 OIL AND GAS LEASE FUND

25 Sec.

26 2501. Definitions.

27 2502. (Reserved).

28 2503. (Reserved).

29 2504. Appropriation of money.

30 2505. Funds.

1 § 2501. Definitions.

2 The following words and phrases when used in this chapter
3 shall have the meanings given to them in this section unless the
4 context clearly indicates otherwise:

5 "Department." The Department of Conservation and Natural
6 Resources of the Commonwealth.

7 § 2502. (Reserved).

8 § 2503. (Reserved).

9 § 2504. Appropriation of money.

10 Money in the Oil and Gas Lease Fund is specifically
11 appropriated as provided in this chapter.

12 § 2505. Funds.

13 (a) Priority.--Funds appropriated from the Oil and Gas Lease
14 Fund to the department under the act of April 9, 1929 (P.L.343,
15 No.176), known as The Fiscal Code, or other appropriation act
16 shall be distributed prior to allocations under subsection (b).

17 (b) Allocations.--Money in the Oil and Gas Lease Fund shall
18 be allocated on an annual basis as follows:

19 (1) The following amounts shall be transferred from the
20 Oil and Gas Lease Fund to the Marcellus Legacy Fund for
21 distribution to the Environmental Stewardship Fund:

22 (i) For 2013, \$20,000,000.

23 (ii) For 2014 and each year thereafter, \$35,000,000.

24 (2) The following amounts shall be transferred from the
25 Oil and Gas Lease Fund to the Marcellus Legacy Fund for
26 distribution to the Hazardous Sites Cleanup Fund:

27 (i) For 2015, \$5,000,000.

28 (ii) For 2016 and each year thereafter, \$15,000,000.

29 CHAPTER 27

30 NATURAL GAS ENERGY

- 1 (4) A local transportation organization.
- 2 (5) A nonprofit entity.
- 3 (6) A State-owned or State-related university.
- 4 (7) A company.

5 "Eligible vehicles." The following shall constitute an
6 eligible vehicle under this chapter:

7 (1) Dedicated compressed natural gas vehicles that are
8 fleet vehicles and have a gross vehicle weight rating of at
9 least 14,000 pounds.

10 (2) Dedicated liquefied natural gas vehicles that are
11 fleet vehicles and have a gross vehicle weight rating of at
12 least 14,000 pounds.

13 (3) Bi-fuel vehicles that are fleet vehicles.

14 "Fleet vehicle." A vehicle registered to an eligible
15 applicant.

16 "Incremental purchase cost." The excess cost of a dedicated
17 compressed natural gas vehicle, a dedicated liquefied natural
18 gas vehicle or a bi-fuel vehicle over the price for a gasoline
19 or diesel fuel motor vehicle of a similar model. The term
20 includes the cost to retrofit a vehicle to operate as a
21 dedicated compressed natural gas vehicle, a dedicated liquefied
22 natural gas vehicle or a bi-fuel vehicle.

23 "Local transportation organization." Any of the following:

24 (1) A political subdivision.

25 (2) A public transportation authority, port authority or
26 redevelopment authority, which is:

27 (i) organized under:

28 (A) the laws of this Commonwealth; or

29 (B) an interstate compact; or

30 (ii) empowered to render, contract to render or

1 assist in rendering transportation services in a limited
2 area in this Commonwealth even though it may also render
3 or assist in rendering transportation service in adjacent
4 states.

5 (3) A nonprofit entity which directly or indirectly
6 provides public transportation service.

7 (4) A nonprofit entity of public transportation
8 providers operating within this Commonwealth.

9 "Original equipment manufacturer" or "OEM." The entity which
10 originally manufactures the natural gas engine or the vehicle
11 for sale.

12 "Start date." The date on which an eligible applicant first
13 places in service, through purchase or contract, a new or
14 retrofitted new natural gas vehicle.

15 § 2702. Assistance.

16 (a) Funding.--Grants under this chapter shall be made from
17 amounts deposited in the Marcellus Legacy Fund under section
18 2314(c.2) (relating to distribution of fee).

19 (b) Grants.--

20 (1) For fiscal year 2012-2013, the total amount of
21 grants approved under this chapter may not exceed
22 \$10,000,000. Of that amount, \$5,000,000 shall be allocated
23 exclusively for local transportation organizations. If the
24 total amount allocated to either the group of applications
25 exclusive of local transportation organizations or the group
26 of local transportation organization applicants is not
27 approved in fiscal year 2012-2013, the unused portion shall
28 be made available under paragraph (2).

29 (2) For fiscal year 2013-2014:

30 (i) The total amount of grants approved under this

1 chapter may not exceed the sum of:

2 (A) \$7,500,000; and

3 (B) any unused portion available under paragraph

4 (1).

5 (ii) Of the amount under subparagraph (i), 50% shall
6 be allocated exclusively for local transportation
7 organizations.

8 (iii) If the total amount allocated to either the
9 group of applications exclusive of local transportation
10 organizations or the group of local transportation
11 organization applicants is not approved in fiscal year
12 2013-2014, the unused portion shall be made available
13 under paragraph (3).

14 (3) For fiscal year 2014-2015, the total amount of
15 grants approved under this chapter may not exceed the sum of:

16 (i) \$2,500,000; and

17 (ii) any unused portion available under paragraph

18 (2).

19 § 2703. Program.

20 (a) Establishment and purpose.--The Natural Gas Energy
21 Development Program is established. The purpose of the program
22 is to fund projects under this chapter.

23 (b) Eligible projects.--Funds transferred to the department
24 under Chapter 23 (relating to unconventional gas well fee) shall
25 be utilized for competitive grants to eligible applicants for
26 eligible projects as provided in this subsection. In order to be
27 eligible to receive a grant, an eligible applicant must provide
28 or demonstrate all of the following to the department:

29 (1) A plan to convert five or more fleet vehicles into
30 eligible vehicles or purchase five or more eligible vehicles.

1 The plan must be financially viable within four years of the
2 start date and must include the construction and utilization
3 of a natural gas fueling station in this Commonwealth or the
4 utilization of an existing natural gas fueling station.

5 (2) A statement of the projected usage of natural gas
6 stated in gasoline or diesel gallon equivalents accompanied
7 by the methodology utilized and how the project will increase
8 use of domestic natural gas in this Commonwealth.

9 (3) The cost of the project.

10 (4) The source and amount of any funds to be contributed
11 by the eligible applicant.

12 (5) The intent to maintain operations in this
13 Commonwealth for a period of not less than six years from the
14 start date.

15 (6) That all of the eligible vehicles purchased with the
16 grant will be registered in this Commonwealth.

17 (7) The utilization of Federal funds on the project to
18 the extent that Federal funds are available.

19 (8) Whether or not the project includes the utilization
20 of a natural gas fueling facility that is accessible to the
21 public.

22 (c) Guidelines.--Funds under this section shall be used in
23 accordance with guidelines adopted by the department. The
24 guidelines shall do all of the following:

25 (1) Restrict each grant for an eligible vehicle to cover
26 no more than 50% of the incremental purchase cost.

27 (2) Limit the amount of the grant so that it shall not
28 exceed \$25,000 for each fleet vehicle.

29 (3) In the case of grants awarded for eligible vehicles
30 which are bi-fuel vehicles, provide for annual reporting to

1 the department by the eligible applicant demonstrating the
2 usage of compressed natural gas for a period not to exceed
3 four years after the start date.

4 (4) Require each eligible vehicle for which a grant is
5 awarded to comply with all Federal and State safety
6 requirements, including rules and regulations promulgated by
7 the Environmental Protection Agency.

8 (d) Application.--An applicant shall submit an application
9 including supporting information as required by the department.

10 (e) Project review.--The department shall review and prepare
11 an assessment of each application and determine which projects
12 will best utilize and promote the use of domestically produced
13 natural gas in this Commonwealth.

14 (f) Administrative costs.--No more than 1% of the funds
15 appropriated to the department shall be used for administrative
16 costs.

17 (g) Report.--The department shall provide a report to the
18 chairman and minority chairman of the Appropriations Committee
19 of the Senate and the chairman and minority chairman of the
20 Appropriations Committee of the House of Representatives by
21 October 1, 2013, and each October 1 thereafter. The report shall
22 be maintained on the department's official Internet website and
23 shall include:

24 (1) A list of all grants approved during the previous
25 fiscal year, including the amount of the grant and a
26 description of each approved project.

27 (2) The estimated domestic energy benefits to date for
28 all projects receiving funding during the fiscal year and the
29 method used to determine estimated benefits.

30 Section 2704. Expiration.

1 This chapter shall expire December 31, 2016.

2 PART III

3 UTILIZATION

4 Chapter

5 31. (Reserved)

6 32. Development

7 33. Local Ordinances Relating to Oil and Gas Operation

8 35. Responsibility for Fee

9 CHAPTER 31

10 (RESERVED)

11 CHAPTER 32

12 DEVELOPMENT

13 Subchapter

14 A. Preliminary Provisions

15 B. General Requirements

16 C. Underground Gas Storage

17 D. Eminent Domain

18 E. Enforcement and Remedies

19 F. Miscellaneous Provisions

20 SUBCHAPTER A

21 PRELIMINARY PROVISIONS

22 Sec.

23 3201. Scope of chapter.

24 3202. Declaration of purpose.

25 3203. Definitions.

26 § 3201. Scope of chapter.

27 This chapter relates to oil and gas.

28 § 3202. Declaration of purpose.

29 The purposes of this chapter are to:

30 (1) Permit optimal development of oil and gas resources

1 of this Commonwealth consistent with protection of the
2 health, safety, environment and property of Pennsylvania
3 citizens.

4 (2) Protect the safety of personnel and facilities
5 employed in coal mining or exploration, development, storage
6 and production of natural gas or oil.

7 (3) Protect the safety and property rights of persons
8 residing in areas where mining, exploration, development,
9 storage or production occurs.

10 (4) Protect the natural resources, environmental rights
11 and values secured by the Constitution of Pennsylvania.

12 § 3203. Definitions.

13 The following words and phrases when used in this chapter
14 shall have the meanings given to them in this section unless the
15 context clearly indicates otherwise:

16 "Abandoned well." Any of the following:

17 (1) A well:

18 (i) that has not been used to produce, extract or
19 inject any gas, petroleum or other liquid within the
20 preceding 12 months;

21 (ii) for which equipment necessary for production,
22 extraction or injection has been removed; or

23 (iii) considered dry and not equipped for production
24 within 60 days after drilling, redrilling or deepening.

25 (2) The term does not include wells granted inactive
26 status.

27 "Additive." A hydraulic fracturing chemical.

28 "Alteration." An operation which changes the physical
29 characteristics of a well bore, including stimulation or
30 removing, repairing or changing the casing. For the purpose of

1 this chapter only, the term does not include:

2 (1) Repairing or replacing of the casing if the activity
3 does not affect the depth or diameter of the well bore, the
4 use or purpose of the well does not change and the activity
5 complies with regulations promulgated under this chapter,
6 except that this exclusion does not apply:

7 (i) to production casings in coal areas when the
8 production casings are also the coal protection casings;
9 or

10 (ii) when the method of repairing or replacing the
11 casing would affect the coal protection casing.

12 (2) Stimulation of a well.

13 "Board." The Oil and Gas Technical Advisory Board.

14 "Bridge." An obstruction placed in a well at any depth.

15 "Building." An occupied structure with walls and roof within
16 which persons live or customarily work.

17 "Casing." A string or strings of pipe commonly placed in
18 wells drilled for natural gas or petroleum.

19 "Cement" or "cement grout." Any of the following:

20 (1) Hydraulic cement properly mixed with water only.

21 (2) A mixture of materials adequate for bonding or
22 sealing of well bores as approved by regulations promulgated
23 under this chapter.

24 "Chemical." Any element, chemical compound or mixture of
25 elements or compounds that has its own specific name or
26 identity, such as a chemical abstract service number.

27 "Chemical Disclosure Registry." The chemical registry
28 website developed by the Ground Water Protection Council and the
29 Interstate Oil and Gas Compact Commission or their successor
30 organizations.

1 "Chemical family." A group of chemicals that share similar
2 chemical properties and have a common general name.

3 "Coal mine." Any of the following:

4 (1) Operations in a coal seam, including excavated
5 portions, abandoned portions and places actually being
6 worked.

7 (2) Underground workings and shafts, slopes, tunnels and
8 other ways and openings, including those which are in the
9 course of being sunk or driven, along with all roads and
10 facilities connected with them below the surface.

11 "Coal operator." A person that operates or proposes to
12 operate a coal mine as an owner or lessee.

13 "Completion of a well." The date after treatment, if any,
14 that the well is properly equipped for production of oil or gas,
15 or, if the well is dry, the date that the well is abandoned.

16 "Department." The Department of Environmental Protection of
17 the Commonwealth.

18 "Drilling." The drilling or redrilling of a well or the
19 deepening of an existing well.

20 "Fresh groundwater." Water in that portion of the generally
21 recognized hydrologic cycle which occupies the pore spaces and
22 fractures of saturated subsurface materials.

23 "Gas." Any of the following:

24 (1) A fluid, combustible or noncombustible, which is
25 produced in a natural state from the earth and maintains a
26 gaseous or rarified state at standard temperature of 60
27 degrees Fahrenheit and pressure 14.7 PSIA.

28 (2) Any manufactured gas, by-product gas or mixture of
29 gases or natural gas liquids.

30 "Health professional." A physician, physician assistant,

1 nurse practitioner, registered nurse or emergency medical
2 technician licensed by the Commonwealth.

3 "Hydraulic fracturing chemical." Any chemical substance or
4 combination of substances, including any chemicals and
5 proppants, that is intentionally added to a base fluid for
6 purposes of preparing a stimulation fluid for use in hydraulic
7 fracturing.

8 "Inactivate." To shut off the vertical movement of gas in a
9 gas storage well by means of a temporary plug or other suitable
10 device or by injecting bentonitic mud or other equally nonporous
11 material into the well.

12 "Linear foot." A unit of measurement in a straight line on a
13 horizontal plane.

14 "Natural gas liquids." Hydrocarbons in natural gas which are
15 separated from the gas as liquids through the process of
16 absorption, condensation, adsorption or other methods in gas
17 processing of cycling plants.

18 "Oil." Hydrocarbons in liquid form at standard temperature
19 of 60 degrees Fahrenheit and pressure 14.7 PSIA, also referred
20 to as petroleum.

21 "Operating coal mine." Any of the following:

22 (1) An underground coal mine which is producing coal or
23 has been in production of coal at any time during the 12
24 months immediately preceding the date its status is put in
25 question, including contiguous worked-out or abandoned coal
26 mines to which it is connected underground.

27 (2) An underground coal mine to be established or
28 reestablished under paragraph (1).

29 "Operating well." A well that is not plugged and abandoned.

30 "Operator." A well operator.

1 "Orphan well." A well abandoned prior to April 18, 1985,
2 that has not been affected or operated by the present owner or
3 operator and from which the present owner, operator or lessee
4 has received no economic benefit other than as a landowner or
5 recipient of a royalty interest from the well.

6 "Outside coal boundaries." When used in conjunction with the
7 term "operating coal mine," the boundaries of the coal acreage
8 assigned to the coal mine under an underground mine permit
9 issued by the Department of Environmental Protection.

10 "Owner." A person who owns, manages, leases, controls or
11 possesses a well or coal property. The term does not apply to
12 orphan wells, except where the Department of Environmental
13 Protection determines a prior owner or operator benefited from
14 the well as provided in section 3220(a) (relating to plugging
15 requirements).

16 "Person." An individual, association, partnership,
17 corporation, political subdivision or agency of the Federal
18 Government, State government or other legal entity.

19 "Petroleum." Hydrocarbons in liquid form at standard
20 temperature of 60 degrees Fahrenheit and pressure 14.7 PSIA,
21 also referred to as oil.

22 "Pillar." A solid block of coal surrounded by either active
23 mine workings or a mined-out area.

24 "Plat." A map, drawing or print accurately drawn to scale
25 showing the proposed or existing location of a well or wells.

26 "Reservoir protective area." The area surrounding a storage
27 reservoir boundary, but within 2,000 linear feet of the storage
28 reservoir boundary, unless an alternate area has been designated
29 by the Department of Environmental Protection, which is deemed
30 reasonably necessary to afford protection to the reservoir,

1 under a conference held in accordance with section 3251
2 (relating to conferences).

3 "Retreat mining." Removal of coal pillars, ribs and stumps
4 remaining after development mining has been completed in that
5 section of a coal mine.

6 "Secretary." The Secretary of Environmental Protection of
7 the Commonwealth.

8 "Storage operator." A person who operates or proposes to
9 operate a storage reservoir as an owner or lessee.

10 "Storage reservoir." That portion of a subsurface geological
11 stratum into which gas is or may be injected for storage
12 purposes or to test suitability of the stratum for storage.

13 "Unconventional formation." A geological shale formation
14 existing below the base of the Elk Sandstone or its geologic
15 equivalent stratigraphic interval where natural gas generally
16 cannot be produced at economic flow rates or in economic volumes
17 except by vertical or horizontal well bores stimulated by
18 hydraulic fracture treatments or by using multilateral well
19 bores or other techniques to expose more of the formation to the
20 well bore.

21 "Unconventional well." A bore hole drilled or being drilled
22 for the purpose of or to be used for the production of natural
23 gas from an unconventional formation.

24 "Water management plan." A plan associated with drilling or
25 completing a well in an unconventional formation that
26 demonstrates that the withdrawal and use of water sources
27 protects those sources as required by law and protects public
28 health, safety and welfare.

29 "Water purveyor." Any of the following:

30 (1) The owner or operator of a public water system as

1 defined in section 3 of the act of May 1, 1984 (P.L.206,
2 No.43), known as the Pennsylvania Safe Drinking Water Act.

3 (2) Any person subject to the act of June 24, 1939
4 (P.L.842, No.365), referred to as the Water Rights Law.

5 "Water source."

6 (1) Any of the following:

7 (i) Waters of this Commonwealth.

8 (ii) A source of water supply used by a water
9 purveyor.

10 (iii) Mine pools and discharges.

11 (iv) Any other waters that are used for drilling or
12 completing a well in an unconventional formation.

13 (2) The term does not include flowback or production
14 waters or other fluids:

15 (i) which are used for drilling or completing a well
16 in an unconventional formation; and

17 (ii) which do not discharge into waters of this
18 Commonwealth.

19 "Well." A bore hole drilled or being drilled for the purpose
20 of, or to be used for, producing, extracting or injecting gas,
21 petroleum or another liquid related to oil or gas production or
22 storage, including brine disposal, but excluding a bore hole
23 drilled to produce potable water. The term does not include a
24 bore hole drilled or being drilled for the purpose of, or to be
25 used for:

26 (1) Systems of monitoring, producing or extracting gas
27 from solid waste disposal facilities, if the bore hole is a
28 well subject to the act of July 7, 1980 (P.L.380, No.97),
29 known as the Solid Waste Management Act, which does not
30 penetrate a workable coal seam.

1 (2) Degasifying coal seams, if the bore hole is:

2 (i) used to vent methane to the outside atmosphere
3 from an operating coal mine; regulated as part of the
4 mining permit under the act of June 22, 1937 (P.L.1987,
5 No.394), known as The Clean Streams Law, and the act of
6 May 31, 1945 (P.L.1198, No.418), known as the Surface
7 Mining Conservation and Reclamation Act; and drilled by
8 the operator of the operating coal mine for the purpose
9 of increased safety; or

10 (ii) used to vent methane to the outside atmosphere
11 under a federally funded or State-funded abandoned mine
12 reclamation project.

13 "Well control emergency." An incident during drilling,
14 operation, workover or completion that, as determined by the
15 department, poses a threat to public health, welfare or safety,
16 including a loss of circulation fluids, kick, casing failure,
17 blowout, fire and explosion.

18 "Well control specialist." Any person trained to respond to
19 a well control emergency with a current certification from a
20 well control course accredited by the International Association
21 of Drilling Contractors or other organization approved by the
22 department.

23 "Well operator." Any of the following:

24 (1) The person designated as operator or well operator
25 on the permit application or well registration.

26 (2) If a permit or well registration was not issued, a
27 person who locates, drills, operates, alters or plugs a well
28 or reconditions a well with the purpose of production from
29 the well.

30 (3) If a well is used in connection with underground

1 storage of gas, a storage operator.
2 "Wetland." Areas inundated or saturated by surface or
3 groundwater at a frequency and duration sufficient to support,
4 and which normally support, a prevalence of vegetation typically
5 adapted for life in saturated soil conditions, including swamps,
6 marshes, bogs and similar areas.

7 "Workable coal seams." A coal seam which:

8 (1) is actually being mined in the area in question
9 under this chapter by underground methods; or

10 (2) in the judgment of the Department of Environmental
11 Protection, can reasonably be expected to be mined by
12 underground methods.

13 SUBCHAPTER B

14 GENERAL REQUIREMENTS

15 Sec.

16 3211. Well permits.

17 3212. Permit objections.

18 3212.1. Comments by municipalities and storage operators.

19 3213. Well registration and identification.

20 3214. Inactive status.

21 3215. Well location restrictions.

22 3216. Well site restoration.

23 3217. Protection of fresh groundwater and casing requirements.

24 3218. Protection of water supplies.

25 3218.1. Notification to public drinking water systems.

26 3218.2. Containment for unconventional wells.

27 3218.3. Transportation records regarding wastewater fluids.

28 3218.4. Corrosion control requirements.

29 3218.5. Gathering lines.

30 3219. Use of safety devices.

1 3219.1. Well control emergency response.

2 3220. Plugging requirements.

3 3221. Alternative methods.

4 3222. Well reporting requirements.

5 3222.1. Hydraulic fracturing chemical disclosure requirements.

6 3223. Notification and effect of well transfer.

7 3224. Coal operator responsibilities.

8 3225. Bonding.

9 3226. Oil and Gas Technical Advisory Board.

10 3227. Air containment emissions.

11 § 3211. Well permits.

12 (a) Permit required.--No person shall drill or alter a well,
13 except for alterations which satisfy the requirements of
14 subsection (j), without having first obtained a well permit
15 under subsections (b), (c), (d) and (e), or operate an abandoned
16 or orphan well unless in compliance with subsection (l). A copy
17 of the permit shall be kept at the well site during preparation
18 and construction of the well site or access road during drilling
19 or alteration of the well. No person shall be required to obtain
20 a permit to redrill a nonproducing well if the redrilling:

21 (1) has been evaluated and approved as part of an order
22 from the department authorizing cleaning out and plugging or
23 replugging a nonproducing well under section 13(c) of the act
24 of December 18, 1984 (P.L.1069, No.214), known as the Coal
25 and Gas Resource Coordination Act; and

26 (2) is incidental to a plugging or replugging operation
27 and the well is plugged within 15 days of redrilling.

28 (b) Plat.--

29 (1) The permit application shall be accompanied by a
30 plat prepared by a competent engineer or a competent

1 surveyor, on forms furnished by the department, showing the
2 political subdivision and county in which the tract of land
3 upon which the well to be drilled, operated or altered is
4 located; a list of municipalities adjacent to the well site;
5 the name of the surface landowner of record and lessor; the
6 name of all surface landowners and water purveyors whose
7 water supplies are within 1,000 feet of the proposed well
8 location or, in the case of an unconventional well, within
9 3,000 feet from the vertical well bore; the name of the owner
10 of record or operator of all known underlying workable coal
11 seams; the acreage in the tract to be drilled; the proposed
12 location of the well determined by survey, courses and
13 distances of the location from two or more permanent
14 identifiable points or landmarks on the tract boundary
15 corners; the proposed angle and direction of the well if the
16 well is to be deviated substantially from a vertical course;
17 the number or other identification to be given the well; the
18 workable coal seams underlying the tract of land upon which
19 the well is to be drilled or altered and which shall be cased
20 off under section 3217 (relating to protection of fresh
21 groundwater and casing requirements); and any other
22 information needed by the department to administer this
23 chapter.

24 (2) The applicant shall forward by certified mail a copy
25 of the plat to the surface landowner; the municipality in
26 which the tract of land upon which the well to be drilled is
27 located; each municipality within 3,000 feet of the proposed
28 unconventional vertical well bore; the municipalities
29 adjacent to the well; all surface landowners and water
30 purveyors, whose water supplies are within 1,000 feet of the

1 proposed well location or, in the case of an unconventional
2 well, within 3,000 feet of the proposed unconventional
3 vertical well bore; storage operators within 3,000 feet of
4 the proposed unconventional vertical well bore; the owner and
5 lessee of any coal seams; and each coal operator required to
6 be identified on the well permit application.

7 (b.1) Notification.--The applicant shall submit proof of
8 notification with the well permit application. Notification of
9 surface owners shall be performed by sending notice to those
10 persons to whom the tax notices for the surface property are
11 sent, as indicated in the assessment books in the county in
12 which the property is located. Notification of surface
13 landowners or water purveyors shall be on forms, and in a manner
14 prescribed by the department, sufficient to identify the rights
15 afforded those persons under section 3218 (relating to
16 protection of water supplies) and to advise them of the
17 advantages of taking their own predrilling or prealteration
18 survey.

19 (b.2) Approval.--If the applicant submits to the department
20 written approval of the proposed well location by the surface
21 landowner and the coal operator, lessee or owner of any coal
22 underlying the proposed well location and no objections are
23 raised by the department within 15 days of filing, or if no
24 approval has been submitted and no objections are made to the
25 proposed well location within 15 days from receipt of notice by
26 the department, the surface landowner or any coal operator,
27 lessee or owner, the written approval shall be filed and become
28 a permanent record of the well location, subject to inspection
29 at any time by any interested person. The application form to
30 operate an abandoned or orphan well shall provide notification

1 to the applicant of its responsibilities to plug the well upon
2 abandonment.

3 (c) Applicants.--If the applicant for a well permit is a
4 corporation, partnership or person that is not a resident of
5 this Commonwealth, the applicant shall designate the name and
6 address of an agent for the operator who shall be the attorney-
7 in-fact for the operator and who shall be a resident of this
8 Commonwealth upon whom notices, orders or other communications
9 issued under this chapter may be served and upon whom process
10 may be served. Each well operator required to designate an agent
11 under this section shall, within five days after termination of
12 the designation, notify the department of the termination and
13 designate a new agent.

14 (d) Permit fee.--Each application for a well permit shall be
15 accompanied by a permit fee, established by the Environmental
16 Quality Board, which bears a reasonable relationship to the cost
17 of administering this chapter.

18 (e) Issuance of permit.--The department shall issue a permit
19 within 45 days of submission of a permit application unless the
20 department denies the permit application for one or more of the
21 reasons set forth in subsection (e.1), except that the
22 department shall have the right to extend the period for 15 days
23 for cause shown upon notification to the applicant of the
24 reasons for the extension. The department may impose permit
25 terms and conditions necessary to assure compliance with this
26 chapter or other laws administered by the department.

27 (e.1) Denial of permit.--The department may deny a permit
28 for any of the following reasons:

29 (1) The well site for which a permit is requested is in
30 violation of any of this chapter or issuance of the permit

1 would result in a violation of this chapter or other
2 applicable law.

3 (2) The permit application is incomplete.

4 (3) Unresolved objections to the well location by coal
5 mine owner or operator remain.

6 (4) The requirements of section 3225 (relating to
7 bonding) have not been met.

8 (5) The department finds that the applicant, or any
9 parent or subsidiary corporation of the applicant, is in
10 continuing violation of this chapter, any other statute
11 administered by the department, any regulation promulgated
12 under this chapter or a statute administered by the
13 department or any plan approval, permit or order of the
14 department, unless the violation is being corrected to the
15 satisfaction of the department. The right of the department
16 to deny a permit under this paragraph shall not take effect
17 until the department has taken a final action on the
18 violations and:

19 (i) the applicant has not appealed the final action
20 in accordance with the act of July 13, 1988 (P.L.530,
21 No.94), known as the Environmental Hearing Board Act; or

22 (ii) if an appeal has been filed, no supersedeas has
23 been issued.

24 (6) The applicant failed to pay the fee or file a report
25 under section 2303(c) (relating to administration), unless an
26 appeal is pending. The commission shall notify the department
27 of any applicant who has failed to pay the fee or file a
28 report and who does not have an appeal pending.

29 (f) Drilling.--

30 (1) Upon issuance of a permit, the well operator may

1 drill, operate or alter at the exact location shown on the
2 plat after providing the department, the surface landowner
3 and the local political subdivision in which the well is to
4 be located 24 hours' notice of the date that drilling will
5 commence. Notification to the department must be provided
6 electronically. If there is a break in drilling of 30 days or
7 more, the well operator shall notify the department at least
8 24 hours prior to the resumption of drilling.

9 (2) The unconventional well operator shall provide the
10 department 24 hours' notice prior to cementing all casing
11 strings, conducting pressure tests of the production casing,
12 stimulation and abandoning or plugging an unconventional
13 well.

14 (3) In noncoal areas where more than one well is to be
15 drilled as part of the same development project, only the
16 first well of the project need be located by survey.
17 Remaining wells of the project shall be shown on the plat in
18 a manner prescribed by regulation.

19 (4) Prior to drilling each additional project well, the
20 well operator shall notify the department and provide
21 reasonable notice of the date on which drilling will
22 commence.

23 (5) Whenever, before or during the drilling of a well
24 not within the boundaries of an operating coal mine, the well
25 operator encounters conditions of a nature which renders
26 drilling of the bore hole or a portion thereof impossible, or
27 more hazardous than usual, the well operator, upon verbal
28 notice to the department, may immediately plug all or part of
29 the bore hole, if drilling has occurred, and commence a new
30 bore hole not more than 50 feet from the old bore hole if the

1 location of the new bore hole does not violate section 3215
2 (relating to well location restrictions) and, in the case of
3 a well subject to act of July 25, 1961 (P.L.825, No.359),
4 known as the Oil and Gas Conservation Law, if the new
5 location complies with existing laws, regulations and spacing
6 orders and the new bore hole is at least 330 feet from the
7 nearest lease boundary.

8 (6) Within ten days of commencement of the new bore
9 hole, the well operator shall file with the department a
10 written notice of intention to plug, a well record, a
11 completion report, a plugging certificate for the original
12 bore hole and an amended plat for the new bore hole.

13 (7) The well operator shall forward a copy of the
14 amended plat to the surface landowner identified on the well
15 permit application within ten days of commencement of the new
16 well bore.

17 (g) Posting.--The well permit number and operator's name,
18 address and telephone number shall be conspicuously posted at
19 the drilling site during site preparation, including the
20 construction of access roads, construction of the well site and
21 during drilling, operating or alteration of the well.

22 (h) Labeling.--The well operator shall install the permit
23 number issued by the department in a legible, visible and
24 permanent manner on the well upon completion.

25 (i) Expiration.--Well permits issued for drilling wells
26 under this chapter shall expire one year after issuance unless
27 operations for drilling the well are commenced within the period
28 and pursued with due diligence or unless the permit is renewed
29 in accordance with regulations of the department. If drilling is
30 commenced during the one-year period, the well permit shall

1 remain in force until the well is plugged in accordance with
2 section 3220 (relating to plugging requirements) or the permit
3 is revoked. A drilling permit issued prior to April 18, 1985,
4 for a well which is an operating well on April 18, 1985, shall
5 remain in force as a well permit until the well is plugged in
6 accordance with section 3220.

7 (j) Exceptions.--The Environmental Quality Board may
8 establish by regulation certain categories of alterations of
9 permitted or registered wells for which permitting requirements
10 of this section shall not apply. A well operator or owner who
11 proposes to conduct the alteration activity shall first obtain a
12 permit or registration modification from the department. The
13 Environmental Quality Board shall promulgate regulations as to
14 the requirements for modifications.

15 (k) No transfer permitted.--No permit issued under this
16 section or registration issued under section 3213 (relating to
17 well registration and identification) may be transferred without
18 prior approval of the department. A request for approval of a
19 transfer shall be on the forms, and in the manner, prescribed by
20 the department. The department shall approve or deny a transfer
21 request within 45 days of receipt of a complete and accurate
22 application. The department may deny a request only for reasons
23 set forth in subsection (e.1)(4) and (5). Approval of a transfer
24 request shall permanently transfer responsibility to plug the
25 well under section 3220 to the recipient of the transferred
26 permit or registration.

27 (l) Regulations.--The Environmental Quality Board may
28 establish by regulation requirements for the permitting and
29 operation of abandoned or orphan wells. A person who proposes to
30 conduct abandoned or orphan well operations shall first obtain a

1 permit to operate an abandoned or orphan well.

2 (m) Water management.--The following shall apply to water
3 management:

4 (1) No person may withdraw or use water from water
5 sources within this Commonwealth for the drilling or
6 hydraulic fracture stimulation of any natural gas well
7 completed in an unconventional gas formation, whether on or
8 off of the land where the gas well is located, except in
9 accordance with a water management plan approved by the
10 department.

11 (2) The department shall review and approve water
12 management plans based upon a determination that the proposed
13 withdrawal, when operated in accordance with the proposed
14 withdrawal operating conditions set forth in the plan,
15 including conditions relating to quantity, withdrawal rate
16 and timing and any passby flow conditions, will:

17 (i) not adversely affect the quantity or quality of
18 water available to other users of the same water sources;

19 (ii) protect and maintain the designated and
20 existing uses of water sources;

21 (iii) not cause adverse impact to water quality in
22 the watershed considered as a whole; and

23 (iv) include a reuse plan for fluids that will be
24 used to hydraulically fracture wells.

25 (3) As to criteria:

26 (i) The criteria under paragraph (2) shall be
27 presumed to be achieved if the proposed water withdrawal
28 has been approved by and is operated in accordance with
29 conditions established by the Susquehanna River Basin
30 Commission, the Delaware River Basin Commission or the

1 Great Lakes Commission, as applicable.

2 (ii) Notwithstanding subparagraph (i), the
3 department may establish additional requirements as
4 necessary to comply with the laws of this Commonwealth.

5 (4) In addition to the requirements under paragraphs
6 (1), (2) and (3), compliance with a department-approved water
7 management plan shall be a condition of any permit issued
8 under this chapter for the drilling or hydraulic fracture
9 stimulation of any natural gas well completed in an
10 unconventional formation and shall be deemed to satisfy the
11 laws of this Commonwealth.

12 § 3212. Permit objections.

13 (a) General rule.--If a well referred to in section 3211(b)
14 (relating to well permits) will be located on a tract whose
15 surface is owned by a person other than the well operator, the
16 surface landowner affected shall be notified of the intent to
17 drill and may file objections, in accordance with section 3251
18 (relating to conferences), based on the assertion that the well
19 location violates section 3215 (relating to well location
20 restrictions) or that information in the application is untrue
21 in any material respect, within 15 days of the receipt by the
22 surface owner of the plat under section 3211(b). Receipt of
23 notice by the surface owner shall be presumed to have occurred
24 15 days from the date of the certified mailing when the well
25 operator submits a copy of the certified mail receipt sent to
26 the surface owner and an affidavit certifying that the address
27 of the surface owner to which notice was sent is the same as the
28 address listed in the assessment books in the county where the
29 property is located. If no objection is filed or none is raised
30 by the department within 15 days after receipt of the plat by

1 the surface landowner, or, if written approval by the surface
2 landowner is filed with the department and no objection is
3 raised by the department within 15 days of filing, the
4 department shall proceed to issue or deny the permit.

5 (b) Special circumstances.--If a well referred to in section
6 3211(b) will penetrate within the outside coal boundaries of an
7 operating coal mine or a coal mine already projected and platted
8 but not yet being operated, or within 1,000 linear feet beyond
9 those boundaries, and, in the opinion of the coal owner or
10 operator, the well or a pillar of coal about the well will
11 unduly interfere with or endanger the mine, the coal owner or
12 operator affected may file objections under section 3251 to the
13 proposed location within 15 days of the receipt by the coal
14 operator of the plat under section 3211(b). If possible, an
15 alternative location at which the proposed well could be drilled
16 to overcome the objections shall be indicated. If no objection
17 to the proposed location is filed or if none is raised by the
18 department within 15 days after receipt of the plat by the coal
19 operator or owner, or, if written approval by the coal operator
20 or owner of the location is filed with the department and no
21 objection is raised by the department within 15 days of filing,
22 the department shall proceed to issue or deny the permit.

23 (c) Procedure upon objection.--If an objection is filed by a
24 coal operator or owner or made by the department, the department
25 shall fix a time and place for a conference under section 3251
26 not more than ten days from the date of service of the objection
27 to allow the parties to consider the objection and attempt to
28 agree on a location. If they fail to agree, the department, by
29 an appropriate order, shall determine a location on the tract of
30 land as near to the original location as possible where, in the

1 judgment of the department, the well can be safely drilled
2 without unduly interfering with or endangering the mine as
3 defined in subsection (b). The new location agreed upon by the
4 parties or determined by the department shall be indicated on
5 the plat on file with the department and become a permanent
6 record upon which the department shall proceed to issue or deny
7 the permit.

8 (d) Survey.--Within 120 days after commencement of drilling
9 operations, the coal operator shall accurately locate the well
10 by a closed survey on the same datum as the mine workings or
11 coal boundaries are mapped, file the results of the survey with
12 the department and forward a copy by certified mail to the well
13 operator.

14 § 3212.1. Comments by municipalities and storage operators.

15 (a) Municipalities.--The municipality where the tract of
16 land upon which the unconventional well to be drilled is located
17 may submit written comments to the department describing local
18 conditions or circumstances which the municipality has
19 determined should be considered by the department in rendering
20 its determination on the unconventional well permit. A comment
21 under this subsection must be submitted to the department within
22 15 days of the receipt of the plat under section 3211(b)
23 (relating to well permits). The municipality shall
24 simultaneously forward a copy of its comments to the permit
25 applicant and all other parties entitled to a copy of the plat
26 under section 3211(b), who may submit a written response. A
27 written response must be submitted to the department within ten
28 days of receipt of the comments of the municipality.

29 (a.1) Storage operators.--A storage operator located within
30 3,000 feet of a proposed unconventional vertical well bore may

1 submit written comments to the department describing
2 circumstances which the storage operator has determined should
3 be considered by the department in rendering its determination
4 on the unconventional well permit. A comment under this
5 subsection must be submitted to the department within 15 days of
6 the receipt of the plat under section 3211(b). The storage
7 operator shall simultaneously forward a copy of its comments to
8 the permit applicant and all other parties entitled to a copy of
9 the plat under section 3211(b), who may submit a written
10 response. A written response must be submitted to the department
11 within ten days of receipt of the comments of the storage
12 operator.

13 (b) Consideration by department.--Comments and responses
14 under subsections (a) and (a.1) may be considered by the
15 department in accordance with section 3215(d) (relating to well
16 location restrictions).

17 (c) No extension of time period.--The process outlined in
18 this section shall not extend the time period for the issuance
19 or denial of a permit beyond the time period set forth in this
20 chapter.

21 § 3213. Well registration and identification.

22 (a) General rule.--On or before July 5, 1996, each person
23 who owned or operated a well in existence prior to April 18,
24 1985, which has not been registered with the department and for
25 which no drilling permit has been issued by the department,
26 shall register the well with the department. A well owner or
27 operator who registers under this subsection and a well owner or
28 operator who has previously registered a well under this chapter
29 shall, on or before July 5, 1996, identify any abandoned well on
30 property which the well owner or operator owns or leases and

1 request approval from the department for classification of the
2 well as an orphan well. Information regarding wells to be
3 registered or identified shall be provided on a form, or in a
4 manner prescribed by the department, and shall include:

5 (1) The name and address of the well operator and, if
6 the well operator is a corporation, partnership or person
7 nonresident of this Commonwealth, the name and address of an
8 agent for the operator upon whom notices, orders, process or
9 other communications issued under this chapter may be served.

10 (2) The well name and the location of the well indicated
11 by a point on a 7 1/2 minute United States Geological Survey
12 topographic map or any other location description sufficient
13 to enable the department to locate the well on the ground.

14 (3) The approximate date of drilling and completing the
15 well, its approximate depth and producing horizons, well
16 construction information and, if available, driller's logs.

17 (4) An indemnity bond, an alternative fee in lieu of
18 bonding or other evidence of financial security submitted by
19 the well operator and deemed appropriate by the department
20 and satisfying the requirements of section 3225 (relating to
21 bonding). No bond, alternative fee or other evidence of
22 financial security shall be required for identification of an
23 orphan well. For wells drilled prior to January 30, 1956,
24 which have not been bonded, the well operator shall have five
25 years to comply with the provisions of this paragraph.

26 (5) A registration fee of \$15 per well or blanket
27 registration fee of \$250 for multiple well registration
28 applications submitted simultaneously. The registration fee
29 shall be waived until July 5, 1996, and no fee shall be
30 charged for identification of an orphan well.

1 (a.1) Orphan wells.--After July 5, 1996, a well owner, well
2 operator or other person discovering an abandoned well on
3 property purchased or leased by the well owner, well operator or
4 other person shall identify it to the department within 60 days
5 of discovery and advise the department that he is seeking
6 classification of the well as an orphan well. No fee shall be
7 required for identification.

8 (b) Extension.--The department may extend the one-year time
9 period under subsection (a) for good cause shown. The extension
10 may not exceed a period ending two years from April 18, 1985.
11 The department may adopt and promulgate guidelines designed to
12 ensure a fair implementation of this section, recognizing the
13 practical difficulties of locating unpermitted wells and
14 complying with the reporting requirements of this chapter.

15 (c) Installation of registration number.--The well operator
16 shall install the registration number issued by the department
17 in a legible, conspicuous and permanent manner on the well
18 within 60 days of issuance.

19 (d) Definition.--For purposes of subsection (a) (4) and (5),
20 the term "owner" does not include an owner or possessor of
21 surface real property, on which an abandoned well is located,
22 who did not participate or incur costs in, and had no right of
23 control over, the drilling or extraction operation of the
24 abandoned well.

25 § 3214. Inactive status.

26 (a) General rule.--Upon application, the department shall
27 grant inactive status for a period of five years for a permitted
28 or registered well, if the following requirements are met:

29 (1) the condition of the well is sufficient to prevent
30 damage to the producing zone or contamination of fresh water

1 or other natural resources or surface leakage of any
2 substance;

3 (2) the condition of the well is sufficient to stop the
4 vertical flow of fluids or gas within the well bore and is
5 adequate to protect freshwater aquifers, unless the
6 department determines the well poses a threat to the health
7 and safety of persons or property or to the environment;

8 (3) the operator anticipates construction of a pipeline
9 or future use of the well for primary or enhanced recovery,
10 gas storage, approved disposal or other appropriate uses
11 related to oil and gas well production; and

12 (4) the applicant satisfies the bonding requirements of
13 sections 3213 (relating to well registration and
14 identification) and 3225 (relating to bonding), except that
15 the department may require additional financial security for
16 a well on which an alternative fee is being paid in lieu of
17 bonding under section 3225(d).

18 (b) Monitoring.--The owner or operator of a well granted
19 inactive status shall be responsible for monitoring the
20 mechanical integrity of the well to ensure that the requirements
21 of subsection (a) (1) and (2) are met and shall report the same
22 on an annual basis to the department in the manner and form
23 prescribed by departmental regulations.

24 (c) (Reserved).

25 (d) Return to active status.--A well granted inactive status
26 under subsection (a) shall be plugged in accordance with section
27 3220 (relating to plugging requirements) or returned to active
28 status within five years of the date inactive status was
29 granted, unless the owner or operator applies for an extension
30 of inactive status which may be granted on a year-to-year basis

1 if the department determines that the owner or operator has
2 demonstrated ability to continue meeting the requirements of
3 this section and the owner or operator certifies that the well
4 will be of future use within a reasonable period of time. An
5 owner or operator who has been granted inactive status for a
6 well which is returned to active status prior to expiration of
7 the five-year period set forth in subsection (a) shall notify
8 the department that the well has been returned to active status
9 and shall not be permitted to apply for another automatic five-
10 year period of inactive status for the well. The owner or
11 operator may make application to return the well to inactive
12 status, and the application may be approved on a year-to-year
13 basis if the department determines that the owner or operator
14 has demonstrated an ability to continue meeting the requirements
15 of this section and the owner or operator certifies that the
16 well will be of future use within a reasonable period of time.
17 The department shall approve or deny an application to extend a
18 period of inactive status or to return a well to inactive status
19 within 60 days of receipt of the application, and the
20 application shall not be unreasonably denied. If the department
21 has not completed its review of the application within 60 days,
22 the inactive status shall continue until the department has made
23 a determination on the request. If the department denies an
24 application to extend the period of inactive status or to return
25 a well to inactive status, a well owner or operator aggrieved by
26 the denial shall have the right to appeal the denial to the
27 Environmental Hearing Board within 30 days of receipt of the
28 denial. Upon cause shown by a well owner or operator, the board
29 may grant a supersedeas under section 4 of the act of July 13,
30 1988 (P.L.530, No.94), known as the Environmental Hearing Board

1 Act, so that the well in question may retain inactive status
2 during the period of the appeal.

3 (e) Revocation of inactive status.--The department may
4 revoke inactive status and order immediate plugging of a well if
5 the well is in violation of this chapter or rules or regulations
6 promulgated under this chapter or if the owner or operator
7 demonstrates inability to perform obligations under this chapter
8 or becomes financially insolvent, or upon receipt by the
9 department of notice of bankruptcy proceedings by the permittee.
10 § 3215. Well location restrictions.

11 (a) General rule.--Wells may not be drilled within 200 feet,
12 or, in the case of an unconventional gas well, 500 feet measured
13 horizontally from the vertical well bore to a building or water
14 well, existing when the copy of the plat is mailed as required
15 by section 3211(b) (relating to well permits) without written
16 consent of the owner of the building or water well.
17 Unconventional gas wells may not be drilled within 1,000 feet
18 measured horizontally from the vertical well bore to any
19 existing water well, surface water intake, reservoir or other
20 water supply extraction point used by a water purveyor without
21 the written consent of the water purveyor. If consent is not
22 obtained and the distance restriction would deprive the owner of
23 the oil and gas rights of the right to produce or share in the
24 oil or gas underlying the surface tract, the well operator shall
25 be granted a variance from the distance restriction upon
26 submission of a plan identifying the additional measures,
27 facilities or practices as prescribed by the department to be
28 employed during well site construction, drilling and operations.
29 The variance shall include additional terms and conditions
30 required by the department to ensure safety and protection of

1 affected persons and property, including insurance, bonding,
2 indemnification and technical requirements. Notwithstanding
3 section 3211(e), if a variance request has been submitted, the
4 department may extend its permit review period for up to 15 days
5 upon notification to the applicant of the reasons for the
6 extension.

7 (b) Limitation.--

8 (1) No well site may be prepared or well drilled within
9 100 feet or, in the case of an unconventional well, 300 feet
10 from the vertical well bore or 100 feet from the edge of the
11 well site, whichever is greater, measured horizontally from
12 any solid blue lined stream, spring or body of water as
13 identified on the most current 7 1/2 minute topographic
14 quadrangle map of the United States Geological Survey.

15 (2) The edge of the disturbed area associated with any
16 unconventional well site must maintain a 100-foot setback
17 from the edge of any solid blue lined stream, spring or body
18 of water as identified on the most current 7 1/2 minute
19 topographic quadrangle map of the United States Geological
20 Survey.

21 (3) No unconventional well may be drilled within 300
22 feet of any wetlands greater than one acre in size, and the
23 edge of the disturbed area of any well site must maintain a
24 100-foot setback from the boundary of the wetlands.

25 (4) The department shall waive the distance restrictions
26 upon submission of a plan identifying additional measures,
27 facilities or practices to be employed during well site
28 construction, drilling and operations necessary to protect
29 the waters of this Commonwealth. The waiver, if granted,
30 shall include additional terms and conditions required by the

1 department necessary to protect the waters of this
2 Commonwealth. Notwithstanding section 3211(e), if a waiver
3 request has been submitted, the department may extend its
4 permit review period for up to 15 days upon notification to
5 the applicant of the reasons for the extension.

6 (c) Impact.--On making a determination on a well permit, the
7 department shall consider the impact of the proposed well on
8 public resources, including, but not limited to:

9 (1) Publicly owned parks, forests, game lands and
10 wildlife areas.

11 (2) National or State scenic rivers.

12 (3) National natural landmarks.

13 (4) Habitats of rare and endangered flora and fauna and
14 other critical communities.

15 (5) Historical and archaeological sites listed on the
16 Federal or State list of historic places.

17 (6) Sources used for public drinking supplies in
18 accordance with subsection (b).

19 (d) Consideration of municipality and storage operator
20 comments.--The department may consider the comments submitted
21 under section 3212.1 (relating to comments by municipalities and
22 storage operators) in making a determination on a well permit.
23 Notwithstanding any other law, no municipality or storage
24 operator shall have a right of appeal or other form of review
25 from the department's decision.

26 (d.1) Additional protective measures.--The department may
27 establish additional protective measures for storage of
28 hazardous chemicals and materials intended to be used, or that
29 have been used, on an unconventional well drilling site within
30 750 feet of a solid blue lined stream, spring or body of water

1 identified on the most current 7 1/2 minute topographic
2 quadrangle map of the United States Geological Survey.

3 (e) Regulation criteria.--The Environmental Quality Board
4 shall develop by regulation criteria:

5 (1) For the department to utilize for conditioning a
6 well permit based on its impact to the public resources
7 identified under subsection (c) and for ensuring optimal
8 development of oil and gas resources and respecting property
9 rights of oil and gas owners.

10 (2) For appeal to the Environmental Hearing Board of a
11 permit containing conditions imposed by the department. The
12 regulations shall also provide that the department has the
13 burden of proving that the conditions were necessary to
14 protect against a probable harmful impact of the public
15 resources.

16 (f) Floodplains.--

17 (1) No well site may be prepared or well drilled within
18 any floodplain if the well site will have:

19 (i) a pit or impoundment containing drilling
20 cuttings, flowback water, produced water or hazardous
21 materials, chemicals or wastes within the floodplain; or

22 (ii) a tank containing hazardous materials,
23 chemicals, condensate, wastes, flowback or produced water
24 within the floodway.

25 (2) A well site shall not be eligible for a floodplain
26 restriction waiver if the well site will have a tank
27 containing condensate, flowback or produced water within the
28 flood fringe unless all the tanks have adequate floodproofing
29 in accordance with the National Flood Insurance Program
30 standards and accepted engineering practices.

1 (3) The department may waive restrictions upon
2 submission of a plan that shall identify the additional
3 measures, facilities or practices to be employed during well
4 site construction, drilling and operations. The waiver, if
5 granted, shall impose permit conditions necessary to protect
6 the waters of this Commonwealth.

7 (4) Best practices as determined by the department to
8 ensure the protection of the waters of this Commonwealth must
9 be utilized for the storage and handling of all water,
10 chemicals, fuels, hazardous materials or solid waste on a
11 well site located in a floodplain. The department may request
12 that the well site operator submit a plan for the storage and
13 handling of the materials for approval by the department and
14 may impose conditions or amend permits to include permit
15 conditions as are necessary to protect the environment,
16 public health and safety.

17 (5) Unless otherwise specified by the department, the
18 boundary of the floodplain shall be as indicated on maps and
19 flood insurance studies provided by the Federal Emergency
20 Management Agency. In an area where no Federal Emergency
21 Management Agency maps or studies have defined the boundary
22 of the 100-year frequency floodplain, absent evidence to the
23 contrary, the floodplain shall extend from:

24 (i) any perennial stream up to 100 feet horizontally
25 from the top of the bank of the perennial stream; or

26 (ii) from any intermittent stream up to 50 feet
27 horizontally from the top of the bank of the intermittent
28 stream.

29 (g) Applicability.--

30 (1) This section shall not apply to a well proposed to

1 be drilled on an existing well site for which at least one
2 well permit has been issued prior to the effective date of
3 this section.

4 (2) Nothing in this section shall alter or abridge the
5 terms of any contract, mortgage or other agreement entered
6 into prior to the effective date of this section.

7 § 3216. Well site restoration.

8 (a) General rule.--Each oil or gas well owner or operator
9 shall restore the land surface within the area disturbed in
10 siting, drilling, completing and producing the well.

11 (b) Plan.--During and after earthmoving or soil disturbing
12 activities, including, but not limited to, activities related to
13 siting, drilling, completing, producing and plugging the well,
14 erosion and sedimentation control measures shall be implemented
15 in accordance with an erosion and sedimentation control plan
16 prepared in accordance with the act of June 22, 1937 (P.L.1987,
17 No.394), known as The Clean Streams Law.

18 (c) Pits, drilling supplies and equipment.--Within nine
19 months after completion of drilling of a well, the owner or
20 operator shall restore the well site, remove or fill all pits
21 used to contain produced fluids or industrial wastes and remove
22 all drilling supplies and equipment not needed for production.
23 Drilling supplies and equipment not needed for production may be
24 stored on the well site if express written consent of the
25 surface landowner is obtained.

26 (d) Items related to production or storage.--Within nine
27 months after plugging a well, the owner or operator shall remove
28 all production or storage facilities, supplies and equipment and
29 restore the well site.

30 (e) Clean Streams Law.--Restoration activities required by

1 this chapter or in regulations promulgated under this chapter
2 shall also comply with all applicable provisions of The Clean
3 Streams Law.

4 (f) Violation of chapter.--Failure to restore the well site
5 as required in this chapter or regulations promulgated under
6 this chapter constitutes a violation of this chapter.

7 (g) Extension.--

8 (1) The restoration period may be extended by the
9 department for an additional period of time not to exceed two
10 years upon demonstration by the well owner or operator that:

11 (i) the extension will result in less earth
12 disturbance, increased water reuse or more efficient
13 development of the resources; or

14 (ii) site restoration cannot be achieved due to
15 adverse weather conditions or a lack of essential fuel,
16 equipment or labor.

17 (2) The demonstration under paragraph (1) shall do all
18 of the following:

19 (i) Include a site restoration plan that shall
20 provide for:

21 (A) the timely removal or fill of all pits used
22 to contain produced fluids or industrial wastes;

23 (B) the removal of all drilling supplies and
24 equipment not needed for production;

25 (C) the stabilization of the well site that
26 shall include interim postconstruction storm water
27 management best management practices; or

28 (D) other measures to be employed to minimize
29 accelerated erosion and sedimentation in accordance
30 with The Clean Streams Law.

1 (ii) Provide for returning the portions of the site
2 not occupied by production facilities or equipment to
3 approximate original contours and making them capable of
4 supporting the uses that existed prior to drilling the
5 well.

6 (3) The department may condition an extension under this
7 subsection as is necessary in accordance with The Clean
8 Streams Law.

9 (h) Definition.--As used in this section, the term "well
10 site" means areas occupied by all equipment or facilities
11 necessary for or incidental to drilling, production or plugging
12 a well.

13 § 3217. Protection of fresh groundwater and casing
14 requirements.

15 (a) General rule.--To aid in protection of fresh
16 groundwater, well operators shall control and dispose of brines
17 produced from the drilling, alteration or operation of an oil or
18 gas well in a manner consistent with the act of June 22, 1937
19 (P.L.1987, No.394), known as The Clean Streams Law, or any
20 regulation promulgated under The Clean Streams Law.

21 (b) Casing.--To prevent migration of gas or fluids into
22 sources of fresh groundwater and pollution or diminution of
23 fresh groundwater, a string or strings of casing shall be run
24 and permanently cemented in each well drilled through the fresh
25 water-bearing strata to a depth and in a manner prescribed by
26 regulation by the department.

27 (c) Procedure when coal has been removed.--If a well is
28 drilled at a location where coal has been removed from one or
29 more coal seams, the well shall be drilled and cased to prevent
30 migration of gas or fluids into the seam from which coal has

1 been removed in a manner prescribed by regulation of the
2 department. The department and the coal operator, owner or
3 lessee shall be given at least 72 hours' notice prior to
4 commencement of work protecting the mine.

5 (d) Procedure when coal has not been removed.--If a well is
6 drilled at a location where the coal seam has not been removed,
7 the well shall be drilled to a depth and of a size sufficient to
8 permit placement of casing, packers in and vents on the hole at
9 the points and in the manner prescribed by regulation to exclude
10 gas or fluids from the coal seam, except gas or fluids found
11 naturally in the seam itself, and to enable monitoring the
12 integrity of the production casing.

13 § 3218. Protection of water supplies.

14 (a) General rule.--In addition to the requirements of
15 subsection (c.1), a well operator who affects a public or
16 private water supply by pollution or diminution shall restore or
17 replace the affected supply with an alternate source of water
18 adequate in quantity or quality for the purposes served by the
19 supply. The department shall ensure that the quality of a
20 restored or replaced water supply meets the standards
21 established under the act of May 1, 1984 (P.L.206, No.43), known
22 as the Pennsylvania Safe Drinking Water Act, or is comparable to
23 the quality of the water supply before it was affected by the
24 operator if that water supply exceeded those standards. The
25 Environmental Quality Board shall promulgate regulations
26 necessary to meet the requirements of this subsection.

27 (b) Pollution or diminution of water supply.--A landowner or
28 water purveyor suffering pollution or diminution of a water
29 supply as a result of the drilling, alteration or operation of
30 an oil or gas well may so notify the department and request that

1 an investigation be conducted. Within ten days of notification,
2 the department shall investigate the claim and make a
3 determination within 45 days following notification. If the
4 department finds that the pollution or diminution was caused by
5 drilling, alteration or operation activities or if it presumes
6 the well operator responsible for pollution under subsection
7 (c), the department shall issue orders to the well operator
8 necessary to assure compliance with subsection (a), including
9 orders requiring temporary replacement of a water supply where
10 it is determined that pollution or diminution may be of limited
11 duration.

12 (b.1) (Reserved).

13 (b.2) Telephone number.--The department shall establish a
14 single Statewide toll-free telephone number that persons may use
15 to report cases of water contamination which may be associated
16 with the development of oil and gas resources. The Statewide
17 toll-free telephone number shall be provided in a conspicuous
18 manner in the notification required under section 3211(b)
19 (relating to well permits) and on the department's Internet
20 website.

21 (b.3) Responses.--The department shall develop appropriate
22 administrative responses to calls received on the Statewide
23 toll-free number for water contamination.

24 (b.4) Website.--The department shall publish, on its
25 Internet website, lists of confirmed cases of subterranean water
26 supply contamination that result from hydraulic fracturing.

27 (b.5) Facility operation qualifications.--The department
28 shall ensure that a facility which seeks a National Pollutant
29 Discharge Elimination System permit for the purposes of treating
30 and discharging wastewater originating from oil and gas

1 activities into waters of this Commonwealth is operated by a
2 competent and qualified individual.

3 (c) Presumption.--Unless rebutted by a defense established
4 in subsection (d), it shall be presumed that a well operator is
5 responsible for pollution of a water supply if:

6 (1) except as set forth in paragraph (2):

7 (i) the water supply is within 1,000 feet of an oil
8 or gas well; and

9 (ii) the pollution occurred within six months after
10 completion of drilling or alteration of the oil or gas
11 well; or

12 (2) in the case of an unconventional well:

13 (i) the water supply is within 2,500 feet of the
14 unconventional vertical well bore; and

15 (ii) the pollution occurred within 12 months of the
16 later of completion, drilling, stimulation or alteration
17 of the unconventional well.

18 (c.1) Requirement.--If the affected water supply is within
19 the rebuttable presumption area as provided in subsection (c)
20 and the rebuttable presumption applies, the operator shall
21 provide a temporary water supply if the water user is without a
22 readily available alternative source of water. The temporary
23 water supply provided under this subsection shall be adequate in
24 quantity and quality for the purposes served by the supply.

25 (d) Defenses.--To rebut the presumption established under
26 subsection (c), a well operator must affirmatively prove any of
27 the following:

28 (1) except as set forth in paragraph (2):

29 (i) the pollution existed prior to the drilling or
30 alteration activity as determined by a predrilling or

1 prealteration survey;

2 (ii) the landowner or water purveyor refused to
3 allow the operator access to conduct a predrilling or
4 prealteration survey;

5 (iii) the water supply is not within 1,000 feet of
6 the well;

7 (iv) the pollution occurred more than six months
8 after completion of drilling or alteration activities;
9 and

10 (v) the pollution occurred as the result of a cause
11 other than the drilling or alteration activity; or
12 (2) in the case of an unconventional well:

13 (i) the pollution existed prior to the drilling,
14 stimulation or alteration activity as determined by a
15 predrilling or prealteration survey;

16 (ii) the landowner or water purveyor refused to
17 allow the operator access to conduct a predrilling or
18 prealteration survey;

19 (iii) the water supply is not within 2,500 feet of
20 the unconventional vertical well bore;

21 (iv) the pollution occurred more than 12 months
22 after completion of drilling or alteration activities; or

23 (v) the pollution occurred as the result of a cause
24 other than the drilling or alteration activity.

25 (e) Independent certified laboratory.--An operator electing
26 to preserve a defense under subsection (d) (1) or (2) shall
27 retain an independent certified laboratory to conduct a
28 predrilling or prealteration survey of the water supply. A copy
29 of survey results shall be submitted to the department and the
30 landowner or water purveyor in the manner prescribed by the

1 department.

2 (e.1) Notice.--An operator of an unconventional well must
3 provide written notice to the landowner or water purveyor
4 indicating that the presumption established under subsection (c)
5 may be void if the landowner or water purveyor refused to allow
6 the operator access to conduct a predrilling or prealteration
7 survey. Proof of written notice to the landowner or water
8 purveyor shall be provided to the department for the operator to
9 retain the protections under subsection (d)(2)(ii). Proof of
10 written notice shall be presumed if provided in accordance with
11 section 3212(a) (relating to permit objections).

12 (f) Other remedies preserved.--Nothing in this section shall
13 prevent a landowner or water purveyor claiming pollution or
14 diminution of a water supply from seeking any other remedy at
15 law or in equity.

16 § 3218.1. Notification to public drinking water systems.

17 Upon receiving notification of a spill, the department shall,
18 after investigating the incident, notify any public drinking
19 water facility that could be affected by the event that the
20 event occurred. The notification shall contain a brief
21 description of the event and any expected impact on water
22 quality.

23 § 3218.2. Containment for unconventional wells.

24 (a) Sites.--Unconventional well sites shall be designed and
25 constructed to prevent spills to the ground surface or spills
26 off the well site. Containment practices shall meet all of the
27 following:

28 (1) Be instituted on the well site during both drilling
29 and hydraulic fracturing operations.

30 (2) Be sufficiently impervious and able to contain

1 spilled material or waste until it can be removed or treated.

2 (3) Be compatible with the waste material or waste
3 stored or used within the containment.

4 (4) Additional practices as promulgated in regulation by
5 the Environmental Quality Board.

6 (b) Plan.--The applicant shall submit a plan to the
7 department describing the containment practices to be utilized
8 and the area of the well site where containment systems will be
9 employed. The plan shall include a description of the equipment
10 to be kept onsite during drilling and hydraulic fracturing
11 operations to prevent a spill from leaving the well site.

12 (c) Materials stored.--Containment systems shall be used
13 wherever any of the following are stored:

14 (1) Drilling mud.

15 (2) Hydraulic oil.

16 (3) Diesel fuel.

17 (4) Drilling mud additives.

18 (5) Hydraulic fracturing additives.

19 (6) Hydraulic fracturing flowback.

20 (d) Capacity.--Areas where any additives, chemicals, oils or
21 fuels are to be stored must have sufficient containment capacity
22 to hold the volume of the largest container stored in the area
23 plus 10% to allow for precipitation, unless the container is
24 equipped with individual secondary containment.

25 (e) Definition.--As used in this section, the term "well
26 site" means areas occupied by all equipment or facilities
27 necessary for or incidental to drilling, production or plugging
28 a well.

29 § 3218.3. Transportation records regarding wastewater fluids.

30 (a) Requirements.--A well operator of an unconventional well

1 that transports wastewater fluids shall do all of the following:

2 (1) Maintain records for five years, in accordance with
3 regulations under subsection (b) and on a form approved by
4 the department, of the amount and destination of the fluids
5 transported.

6 (2) Make the records under paragraph (1) available to
7 the department upon request.

8 (b) Recordkeeping.--Recordkeeping requirements shall be
9 determined by the department and shall include the following:

10 (1) The number of gallons of wastewater fluids produced
11 in the drilling, stimulation or alteration of a well.

12 (2) Upon completion of the well, the name of the person
13 of or company that transported the wastewater fluids to a
14 disposal site or to a location other than the well site.

15 (3) Each location where wastewater fluids were disposed
16 of or transported and the volumes that were disposed of at
17 the location other than the well site.

18 (4) The method of disposal.

19 § 3218.4. Corrosion control requirements.

20 (a) Pipelines.--All buried metallic pipelines shall be
21 installed and placed in operation in accordance with 49 CFR Pt.
22 192 Subpt. I (relating to requirements for corrosion control).

23 (b) Tanks.--Permanent aboveground and underground tanks must
24 comply with the applicable corrosion control requirements in the
25 department's storage tank regulations.

26 (c) Other structures.--For all other buried metallic
27 structures, including well casings, the Environmental Quality
28 Board shall promulgate regulations setting forth methods of
29 determining the need for corrosion protection and installing
30 necessary corrosion protection.

1 (d) Procedures.--The corrosion control procedures under
2 subsections (a) and (b) must be carried out by or under the
3 direction of a person qualified in corrosion methods.

4 (e) Compliance.--An operator of a new, replaced, relocated
5 or otherwise changed pipeline must be in compliance with the
6 applicable requirements of this section by the date the pipeline
7 goes into service.

8 § 3218.5. Gathering lines.

9 (a) Requirement.--Owners and operators of gathering lines
10 shall comply with section 2(5)(i.1) of the act of December 10,
11 1974 (P.L.852, No.287), referred to as the Underground Utility
12 Line Protection Law.

13 (b) Definition.--As used in this section, the term
14 "gathering line" means a pipeline used to transport natural gas
15 from a production facility to a transmission line.

16 § 3219. Use of safety devices.

17 Any person engaged in drilling an oil or gas well shall equip
18 it with casings of sufficient strength, and other safety devices
19 as are necessary, in the manner prescribed by regulation of the
20 department, and shall use every effort and endeavor effectively
21 to prevent blowouts, explosions and fires.

22 § 3219.1. Well control emergency response.

23 (a) Contracts.--The department may enter into contracts with
24 well control specialists in order to provide adequate emergency
25 response services in the event of a well control emergency. The
26 department shall make available upon request by a county
27 information relating to contracts with well control specialists.

28 (b) Civil immunity.--Except as set forth in subsection (c),
29 a well control specialist with which the department has entered
30 into a contract under subsection (a) shall be immune from civil

1 liability for actions taken in good faith to carry out its
2 contractual obligations.

3 (c) Nonapplicability.--Subsection (b) shall not apply to
4 damage arising from any of the following:

5 (1) Breach of the contract under subsection (a).

6 (2) An intentional tort.

7 (3) Gross negligence.

8 § 3220. Plugging requirements.

9 (a) General rule.--Upon abandoning a well, the owner or
10 operator shall plug it in the manner prescribed by regulation of
11 the department to stop vertical flow of fluids or gas within the
12 well bore, unless the department has granted inactive status for
13 the well or it has been approved by the department as an orphan
14 well. If the department determines that a prior owner or
15 operator received economic benefit, other than economic benefit
16 derived only as a landowner or from a royalty interest, after
17 April 18, 1979, from an orphan well or an unregistered well, the
18 owner or operator shall be responsible for plugging the well. In
19 the case of a gas well penetrating a workable coal seam which
20 was drilled prior to January 30, 1956, or which was permitted
21 after that date but not plugged in accordance with this chapter,
22 if the owner or operator or a coal operator or an agent proposes
23 to plug the well to allow mining through it, the gas well shall
24 be cleaned to a depth of at least 200 feet below the coal seam
25 through which mining is proposed and, unless impracticable, to a
26 point 200 feet below the deepest mineable coal seam. The gas
27 well shall be plugged from that depth in accordance with section
28 13 of the act of December 18, 1984 (P.L.1069, No.214), known as
29 the Coal and Gas Resource Coordination Act, and the regulations
30 of the department.

1 (b) Areas underlain by coal.--Prior to the plugging and
2 abandonment of a well in an area underlain by a workable coal
3 seam, the well operator or owner shall notify the department and
4 the coal operator, lessee or owner and submit a plat, on a form
5 to be furnished by the department, showing the location of the
6 well and fixing the date and time plugging will commence, which
7 shall be not less than three working days, nor more than 30
8 days, after the notice is received, to permit representatives of
9 the persons notified to be present at the plugging. Notice and
10 the right to be present may be waived by the department and the
11 coal operator, lessee or owner, but waiver by the coal operator,
12 lessee or owner shall be in writing and a copy shall be attached
13 to the notice of abandonment filed with the department under
14 this section. Whether or not representatives attend, if the well
15 operator has fully complied with this section, the well operator
16 may proceed, at the time fixed, to plug the well in the manner
17 prescribed by regulation of the department. When plugging has
18 been completed, a certificate shall be prepared and signed, on a
19 form to be furnished by the department, by two experienced and
20 qualified people who participated in the work setting forth the
21 time and manner in which the well was plugged. One copy of the
22 certificate shall be mailed to each coal operator, lessee or
23 owner to whom notice was given by certified mail and another
24 shall be mailed to the department.

25 (c) Abandoned wells.--Prior to abandonment of a well, except
26 an uncompleted bore hole plugged immediately upon suspension of
27 drilling in an area not underlain by a workable coal seam, the
28 well operator shall notify the department of the intention to
29 plug and abandon the well and submit a plat, on a form to be
30 furnished by the department, showing the location of the well

1 and fixing the date and time at which plugging will commence,
2 which shall be not less than three working days, nor more than
3 30 days, after the notice is received, to permit a department
4 representative to be present at the plugging. The notice or
5 waiting period may be verbally waived by the department. In
6 noncoal areas where more than one well has been drilled as part
7 of the same development project and the wells are now to be
8 plugged, the department shall be given three working days'
9 notice prior to plugging the first well of the project, subject
10 to waiver of notice described in subsection (b). In the plugging
11 of subsequent wells, no additional notice shall be required if
12 plugging on the project is continuous. If plugging of subsequent
13 wells is delayed for any reason, notice shall be given to the
14 department of continuation of the project. Whether or not a
15 representative attends, if the well operator has fully complied
16 with this section, the well operator may proceed, at the time
17 fixed, to plug the well in the manner prescribed by regulation
18 of the department. When plugging has been completed, a
19 certificate shall be prepared, on a form to be furnished by the
20 department, by two experienced and qualified people who
21 participated in the work setting forth the time and manner in
22 which the well was plugged. A copy of the certificate shall be
23 mailed to the department.

24 (d) Wells abandoned upon completion of drilling.--If a well
25 is to be abandoned immediately after completion of drilling, the
26 well operator shall give at least 24 hours' notice by telephone,
27 confirmed by certified mail, to the department and to the coal
28 operator, lessee or owner, if any, fixing the date and time when
29 plugging will commence. Notice and the right to be present may
30 be waived by the department and the coal operator, lessee or

1 owner, if any. Whether or not representatives of the department
2 or coal operator, lessee or owner, if any, attend, if the well
3 operator has fully complied with the requirements of this
4 section, the well operator may proceed, at the time fixed, to
5 plug the well in the manner provided by regulation of the
6 department. The well operator shall prepare the certificate of
7 plugging and mail copies of the same as provided in subsection
8 (b).

9 (e) Orphan wells.--If a well is an orphan well or abandoned
10 without plugging, or if a well is in operation but not
11 registered under section 3213 (relating to well registration and
12 identification), the department may enter upon the well site and
13 plug the well and to sell equipment, casing and pipe at the site
14 which may have been used in production of the well in order to
15 recover the costs of plugging. The department shall make an
16 effort to determine ownership of a well which is in operation
17 but has not been registered and provide written notice to the
18 owner of pending action under this subsection. If the department
19 cannot determine ownership within 30 days, it may proceed under
20 this subsection. Costs of plugging shall have priority over all
21 liens on equipment, casing and pipe, and the sale shall be free
22 and clear of those liens to the extent that the cost of plugging
23 exceeds the sale price. If the amount obtained for casing and
24 pipe salvaged at the site is inadequate to pay for plugging, the
25 owner or operator of the abandoned or unregistered well shall be
26 liable for the additional costs.

27 (f) Definition.--For purposes of this section, the term
28 "owner" does not include the owner or possessor of surface real
29 property, on which an abandoned well is located, who did not
30 participate or incur costs in and had no right of control over

1 the drilling or extraction operation of the abandoned well.

2 § 3221. Alternative methods.

3 A well operator may request permission to use a method or
4 material other than those required by this chapter and
5 applicable regulations for casing, plugging or equipping a well
6 in an application to the department which describes the proposed
7 alternative in reasonable detail and indicates the manner in
8 which it will accomplish the goals of this chapter. Notice of
9 filing of the application shall be given by the well operator by
10 certified mail to any affected coal operators, who may, within
11 15 days after the notice, file objections to the proposed
12 alternative method or material. If no timely objections are
13 filed or raised by the department, the department shall
14 determine whether to allow use of the proposed alternative
15 method or material.

16 § 3222. Well reporting requirements.

17 (a) General rule.--Except as provided in subsection (a.1),
18 each well operator shall file with the department, on a form
19 provided by the department, an annual report specifying the
20 amount of production, on the most well-specific basis available,
21 along with the status of each well, except that in subsequent
22 years only changes in status must be reported. The Commonwealth
23 may utilize reported information in enforcement proceedings, in
24 making designations or determinations under section 1927-A of
25 the act of April 9, 1929 (P.L.177, No.175), known as The
26 Administrative Code of 1929, or in aggregate form for
27 statistical purposes.

28 (a.1) Unconventional wells.--Each operator of an
29 unconventional well shall file with the department, on a form
30 provided by the department, a semiannual report specifying the

1 amount of production on the most well-specific basis available.
2 The initial report under this subsection shall be filed by
3 August 15 and shall include production data from the preceding
4 calendar year and specify the status of each well. In subsequent
5 reports, only changes in status must be reported. Subsequent
6 semiannual reports shall be filed with the department on or
7 before February 15 and August 15 of each year and shall include
8 production data from the preceding reporting period. The
9 Commonwealth may utilize reported information in enforcement
10 proceedings, in making designations or determinations under
11 section 1927-A of The Administrative Code of 1929 or in
12 aggregate form for statistical purposes. Beginning November 1,
13 2010, the department shall make the reports available on its
14 publicly accessible Internet website. Costs incurred by the
15 department to comply with the requirements of this subsection
16 shall be paid out of the fees collected under section 3211(d)
17 (relating to well permits).

18 (b) Collection of data.--

19 (1) Well operators shall maintain a record of each well
20 drilled or altered.

21 (2) A record containing the information required by the
22 department shall be filed within 30 days after drilling of a
23 well.

24 (3) Within 30 days after completion of the well, when
25 the well is capable of production, a completion report
26 containing any additional required information shall be filed
27 and shall be maintained by the department.

28 (4) Upon request of the department, the well operator
29 shall, within 90 days of completion or recompletion of
30 drilling, submit a copy of any electrical, radioactive or

1 other standard industry logs which have been run.

2 (5) Upon request by the department within one year, the
3 well operator shall file a copy of drill stem test charts,
4 formation water analysis, porosity, permeability or fluid
5 saturation measurements, core analysis and lithologic log or
6 sample description or other similar data as compiled. No
7 information shall be required unless the well operator had it
8 compiled in the ordinary course of business, and
9 interpretation of data under this paragraph is not required
10 to be filed.

11 (b.1) Report contents.--

12 (1) The completion report shall contain the operator's
13 stimulation record. The stimulation record shall include all
14 of the following:

15 (i) A descriptive list of the chemical additives in
16 the stimulation fluids, including any acid, biocide,
17 breaker, brine, corrosion inhibitor, crosslinker,
18 demulsifier, friction reducer, gel, iron control, oxygen
19 scavenger, Ph adjusting agent, proppant, scale inhibitor
20 and surfactant.

21 (ii) The trade name, vendor and a brief descriptor
22 of the intended use or function of each chemical additive
23 in the stimulation fluid.

24 (iii) A list of the chemicals intentionally added to
25 the stimulation fluid, by name and chemical abstract
26 service number.

27 (iv) The maximum concentration, in percent by mass,
28 of each chemical intentionally added to the stimulation
29 fluid.

30 (v) The total volume of the base fluid.

1 (vi) A list of water sources used under the approved
2 water management plan and the volume of water used.

3 (vii) The pump rates and pressure used in the well.

4 (viii) The total volume of recycled water used.

5 (2) The well record shall identify all of the following:

6 (i) Whether methane was encountered in other than a
7 target formation.

8 (ii) The country of origin and manufacture of
9 tubular steel products used in the construction of the
10 well.

11 (b.2) Trade secret or confidential proprietary
12 information.--When an operator submits its stimulation record
13 under subsection (b.1), the operator may designate specific
14 portions of the stimulation record as containing a trade secret
15 or confidential proprietary information. The department shall
16 prevent disclosure of a designated trade secret or confidential
17 proprietary information to the extent permitted by the act of
18 February 14, 2008 (P.L.6, No.3), known as the Right-to-Know Law
19 or other applicable State law.

20 (c) Drill cuttings and core samples.--Upon notification by
21 the department prior to commencement of drilling, the well
22 operator shall collect any additional data specified by the
23 department, including representative drill cuttings and samples
24 from cores taken and any other geological information that the
25 operator reasonably can compile. Interpretation of the data is
26 not required to be filed.

27 (d) Retention and filing.--Data required under subsection
28 (b) (5) and drill cuttings required under subsection (c) shall be
29 retained by the well operator and filed with the department no
30 more than three years after completion of the well. Upon

1 request, the department shall extend the deadline up to five
2 years from the date of completion of the well. The department
3 shall be entitled to utilize information collected under this
4 subsection in enforcement proceedings, in making designations or
5 determinations under section 1927-A of The Administrative Code
6 of 1929 and in aggregate form for statistical purposes.

7 § 3222.1. Hydraulic fracturing chemical disclosure
8 requirements.

9 (a) Applicability.--This section applies to hydraulic
10 fracturing of unconventional wells performed on or after the
11 effective date of this section.

12 (b) Required disclosures.--

13 (1) Except as provided under subsection (d), a service
14 provider who performs any part of a hydraulic fracturing
15 treatment and a vendor who provides hydraulic fracturing
16 additives directly to the operator for a hydraulic fracturing
17 treatment shall furnish the operator with the information
18 required under paragraph (2) not later than 60 days after the
19 commencement of the hydraulic fracturing.

20 (2) Within 60 days following the conclusion of hydraulic
21 fracturing, the operator of the well shall complete the
22 chemical disclosure registry form and post the form on the
23 chemical disclosure registry in accordance with regulations
24 promulgated under this chapter in a format that does not link
25 chemicals to their respective hydraulic fracturing additive.

26 (3) If the vendor, service provider or operator claims
27 that the specific identity of a chemical or the concentration
28 of a chemical, or both, are a trade secret or confidential
29 proprietary information, the operator of the well must
30 indicate that on the chemical disclosure registry form, and

1 the vendor, service provider or operator shall submit a
2 signed written statement that the record contains a trade
3 secret or confidential proprietary information. If a chemical
4 is a trade secret, the operator shall include in the chemical
5 registry disclosure form the chemical family or similar
6 description associated with the chemical.

7 (4) At the time of claiming that any of the following
8 are entitled to protection under paragraph (3), a vendor,
9 service provider or operator shall file a signed written
10 statement that the record contains a trade secret or
11 confidential proprietary information:

12 (i) A hydraulic fracturing additive.

13 (ii) A chemical.

14 (iii) A concentration.

15 (iv) Any combination of subparagraphs (i), (ii) and
16 (iii).

17 (5) Unless the information is entitled to protection as
18 a trade secret or confidential proprietary information,
19 information submitted to the department or posted to the
20 chemical disclosure registry shall be a public record.

21 (6) By January 1, 2013, the department shall determine
22 whether the chemical disclosure registry allows the
23 department and the public to search and sort Pennsylvania
24 chemical disclosure information by geographic area, chemical
25 ingredient, chemical abstract service number, time period and
26 operator. If the department determines that there is no
27 reasonable assurance that the registry will allow for
28 searches by geographic area, chemical ingredient, chemical
29 abstract service number, time period and operator, at a date
30 acceptable to the department, the department shall

1 investigate the feasibility of making the information under
2 paragraph (2) available on the department's Internet website
3 in a manner that will allow the department and the public to
4 search and sort the information by geographic area, chemical
5 ingredient, chemical abstract service number, time period and
6 operator, and shall report to the General Assembly whether
7 additional resources may be needed to implement the searches
8 and sorting.

9 (7) A vendor shall not be responsible for any inaccuracy
10 in information that is provided to the vendor by a third-
11 party manufacturer.

12 (8) A service provider shall not be responsible for any
13 inaccuracy in information that is provided to the service
14 provider by the vendor.

15 (9) An operator shall not be responsible for any
16 inaccuracy in information provided to the operator by the
17 vendor or service provider or manufacturer.

18 (10) A vendor, service company or operator shall
19 identify the specific identity and amount of any chemicals
20 claimed to be a trade secret or confidential proprietary
21 information to any health professional who requests the
22 information in writing if the health professional executes a
23 confidentiality agreement and provides a written statement of
24 need for the information indicating all of the following:

25 (i) The information is needed for the purpose of
26 diagnosis or treatment of an individual.

27 (ii) The individual being diagnosed or treated may
28 have been exposed to a hazardous chemical.

29 (iii) Knowledge of information will assist in the
30 diagnosis or treatment of an individual.

1 (11) If a health professional determines that a medical
2 emergency exists and the specific identity and amount of any
3 chemicals claimed to be a trade secret or confidential
4 proprietary information are necessary for emergency
5 treatment, the vendor, service provider or operator shall
6 immediately disclose the information to the health
7 professional upon a verbal acknowledgment by the health
8 professional that the information may not be used for
9 purposes other than the health needs asserted and that the
10 health professional shall maintain the information as
11 confidential. The vendor, service provider or operator may
12 request, and the health professional shall provide upon
13 request, a written statement of need and a confidentiality
14 agreement from the health professional as soon as
15 circumstances permit, in conformance with regulations
16 promulgated under this chapter.

17 (c) Disclosures not required.--Notwithstanding any other
18 provision of this chapter, a vendor, service provider or
19 operator shall not be required to do any of the following:

20 (1) Disclose chemicals that are not disclosed to it by
21 the manufacturer, vendor or service provider.

22 (2) Disclose chemicals that were not intentionally added
23 to the stimulation fluid.

24 (3) Disclose chemicals that occur incidentally or are
25 otherwise unintentionally present in trace amounts, may be
26 the incidental result of a chemical reaction or chemical
27 process or may be constituents of naturally occurring
28 materials that become part of a stimulation fluid.

29 (d) Trade secrets and confidential proprietary
30 information.--

1 (1) Notwithstanding any other provision of this chapter,
2 a vendor, service company or operator shall not be required
3 to disclose trade secrets or confidential proprietary
4 information to the chemical disclosure registry.

5 (2) The following shall apply:

6 (i) If the specific identity of a chemical, the
7 concentration of a chemical or both the specific identity
8 and concentration of a chemical are claimed to be a trade
9 secret or confidential proprietary information, the
10 vendor, service provider or operator may withhold the
11 specific identity, the concentration, or both the
12 specific identity and concentration, of the chemical from
13 the information provided to the chemical disclosure
14 registry.

15 (ii) Nothing under this paragraph shall prohibit any
16 of the following from obtaining from a vendor, service
17 provider or operator information that may be needed to
18 respond to a spill or release:

19 (A) The department.

20 (B) A public health official.

21 (C) An emergency manager.

22 (D) A responder to a spill, release or a
23 complaint from a person who may have been directly
24 and adversely affected or aggrieved by the spill or
25 release.

26 (iii) Upon receipt of a written statement of need
27 for the information under subparagraph (ii), the
28 information shall be disclosed by the vendor, service
29 provider or operator to the requesting official or entity
30 authorized under subparagraph (ii) and shall not be a

1 public record.

2 (e) Disclosure prevented.--The department shall prevent
3 disclosure of trade secrets or confidential proprietary
4 information under this section pursuant to the requirements of
5 the Right-to-Know Law or other applicable State law.

6 (f) Well reporting.--Notwithstanding any other provision of
7 law, nothing in this section shall be construed to reduce or
8 modify the disclosure requirements for conventional well
9 operators contained in 25 Pa. Code Ch. 78 Subch. E (relating to
10 well reporting).

11 § 3223. Notification and effect of well transfer.

12 The owner or operator of a well shall notify the department
13 in writing within 30 days, in a form directed by regulation, of
14 sale, assignment, transfer, conveyance or exchange by or to the
15 owner of the well. A transfer shall not relieve the well owner
16 or operator of an obligation accrued under this chapter, nor
17 shall it relieve the owner or operator of an obligation to plug
18 the well until the requirements of section 3225 (relating to
19 bonding) have been met, at which time the transferring owner or
20 operator shall be relieved from all obligations under this
21 chapter, including the obligation to plug the well.

22 § 3224. Coal operator responsibilities.

23 (a) General rule.--At any time prior to removing coal or
24 other underground materials from, or extending the workings in,
25 a coal mine within 500 feet of an oil or gas well of which the
26 coal operator has knowledge, or within 500 feet of an approved
27 well location of which the coal operator has knowledge, the coal
28 operator, by certified mail, shall forward to or file with the
29 well operator and the department a copy of the relevant part of
30 all maps and plans which it is presently required by law to

1 prepare and file with the department, showing the pillar which
2 the coal operator proposes to leave in place around each oil or
3 gas well in the projected workings. Thereafter, the coal
4 operator may proceed with mining operations in the manner
5 projected on the maps and plans, but the operator may not remove
6 coal or cut a passageway within 150 feet of the well or approved
7 well location without written approval under this section. If,
8 in the opinion of the well operator or the department, the plan
9 indicates that the proposed pillar is inadequate to protect
10 either the integrity of the well or public health and safety,
11 the affected well operator shall attempt to reach an agreement
12 with the coal operator on a suitable pillar, subject to approval
13 of the department. Upon failure to agree, the well operator may,
14 within ten days after receipt of the proposed plan under this
15 section, file objections under section 3251 (relating to
16 conferences), indicating the size of the pillar to be left as to
17 each well. If objections are not timely filed and the department
18 has none, the department shall grant approval, reciting that
19 maps and plans have been filed, no objections have been made
20 thereto and the pillar proposed to be left for each well is
21 approved in the manner as projected.

22 (b) Objections.--If an objection is filed by the well
23 operator or raised by the department, the department shall order
24 that a conference be held under section 3251 within ten days of
25 the filing of objections. At the conference, the coal operator
26 and the person who has objected shall attempt to agree on a
27 proposed plan, showing the pillar to be left around each well,
28 which will satisfy the objections and receive department
29 approval. If an agreement is reached, the department shall grant
30 approval to the coal operator, reciting that a plan has been

1 filed and the pillar to be left for each well is approved
2 pursuant to the agreement. If an agreement is not reached on a
3 plan showing the pillar to be left with respect to a well, the
4 department, by appropriate order, shall determine the pillar to
5 be left with respect to the well. In a proceeding under this
6 section, the department shall follow as nearly as is possible
7 the original plan filed by the coal operator. The department
8 shall not require the coal operator to leave a pillar in excess
9 of 100 feet in radius, except that the department may require a
10 pillar of up to 150 feet in radius if the existence of unusual
11 conditions is established. Pillars determined by the department
12 shall be shown on maps or plans on file with the department as
13 provided in subsection (a), and the department shall approve the
14 pillar to be left for each well.

15 (c) Pillars of reduced size.--Application may be made at any
16 time to the department by the coal operator to leave a pillar of
17 a size smaller than shown on the plan approved or determined by
18 the department under this section. If an application is filed,
19 the department shall:

20 (1) follow the appropriate procedure under subsection
21 (a) or (b);

22 (2) by appropriate order, determine a plan involving a
23 pillar of a smaller size as to any well covered by the
24 application; and

25 (3) have the discretion to grant approval for the pillar
26 to be left with respect to each well.

27 (d) Violation.--No coal operator, without written approval
28 of the department after notice and opportunity for a hearing
29 under this section, shall remove coal or cut a passageway so as
30 to leave a pillar of smaller size, with respect to an oil or gas

1 well, than that approved by the department under this chapter.

2 (e) Limitation.--With regard to a coal pillar required by
3 law to be left around a well drilled prior to April 18, 1985,
4 nothing in this chapter shall be construed to:

5 (1) require a well operator to pay for the coal pillar;

6 (2) affect a right which a coal operator may have had
7 prior to April 18, 1985, to obtain payment for the coal
8 pillar; or

9 (3) affect a duty or right which a storage operator or
10 landowner may have had prior to April 18, 1985, to pay or not
11 pay for the coal pillar.

12 (f) Mining through plugged wells.--A coal operator who
13 intends to mine through a plugged oil or gas well or otherwise
14 completely remove any pillar from around that well shall file a
15 plan under subsection (a) which shall be subject to all of the
16 provisions of this section. No coal operator may mine through a
17 plugged oil or gas well of which he has knowledge until written
18 approval has been granted by the department in accordance with
19 this section. The Bureau of Deep Mine Safety in the department
20 shall have the authority to establish conditions under which the
21 department may approve a coal operator's plan to mine through a
22 plugged oil or gas well.

23 § 3225. Bonding.

24 (a) General rule.--The following shall apply:

25 (1) Except as provided in subsection (d), upon filing an
26 application for a well permit, and before continuing to
27 operate an oil or gas well, the owner or operator of the well
28 shall file with the department a bond covering the well and
29 well site on a form to be prescribed and furnished by the
30 department. A bond filed with an application for a well

1 permit shall be payable to the Commonwealth and conditioned
2 upon the operator's faithful performance of all drilling,
3 water supply replacement, restoration and plugging
4 requirements of this chapter. A bond for a well in existence
5 on April 18, 1985, shall be payable to the Commonwealth and
6 conditioned upon the operator's faithful performance of all
7 water supply replacement, restoration and plugging
8 requirements of this chapter. The amount of the bond required
9 shall be in the following amounts and may be adjusted by the
10 Environmental Quality Board every two years to reflect the
11 projected costs to the Commonwealth of plugging the well:

12 (i) For wells with a total well bore length less
13 than 6,000 feet:

14 (A) For operating up to 50 wells, \$4,000 per
15 well; but no bond may be required under this clause
16 in excess of \$35,000.

17 (B) For operating 51 to 150 wells, \$35,000 plus
18 \$4,000 per well for each well in excess of 50 wells;
19 but no bond may be required under this clause in
20 excess of \$60,000.

21 (C) For operating 151 to 250 wells, \$60,000 plus
22 \$4,000 per well for each well in excess of 150 wells;
23 but no bond may be required under this clause in
24 excess of \$100,000.

25 (D) For operating more than 250 wells, \$100,000
26 plus \$4,000 per well for each well in excess of 250
27 wells; but no bond may be required under this clause
28 in excess of \$250,000.

29 (ii) For wells with a total well bore length of at
30 least 6,000 feet:

1 (A) For operating up to 25 wells, \$10,000 per
2 well; but no bond may be required under this clause
3 in excess of \$140,000.

4 (B) For operating 26 to 50 wells, \$140,000 plus
5 \$10,000 per well for each well in excess of 25 wells;
6 but no bond may be required under this clause in
7 excess of \$290,000.

8 (C) For operating 51 to 150 wells, \$290,000 plus
9 \$10,000 per well for each well in excess of 50 wells;
10 but no bond may be required under this clause in
11 excess of \$430,000.

12 (D) For operating more than 150 wells, \$430,000
13 plus \$10,000 per well for each well in excess of 150
14 wells; but no bond may be required under this clause
15 in excess of \$600,000.

16 (2) In lieu of individual bonds for each well, an owner
17 or operator may file a blanket bond for the applicable amount
18 under paragraph (1), on a form prepared by the department,
19 covering all of its wells in this Commonwealth, as enumerated
20 on the bond form.

21 (3) Liability under the bond shall continue until the
22 well has been properly plugged in accordance with this
23 chapter and for a period of one year after filing of the
24 certificate of plugging with the department. Each bond shall
25 be executed by the operator and a corporate surety licensed
26 to do business in this Commonwealth and approved by the
27 secretary. In lieu of a corporate surety, the operator may
28 deposit with the department:

29 (i) cash;

30 (ii) certificates of deposit or automatically

1 renewable irrevocable letters of credit, from financial
2 institutions chartered or authorized to do business in
3 this Commonwealth and regulated and examined by the
4 Commonwealth or a Federal agency, which may be terminated
5 at the end of a term only upon 90 days' prior written
6 notice by the financial institution to the permittee and
7 the department;

8 (iii) negotiable bonds of the United States
9 Government or the Commonwealth, the Pennsylvania Turnpike
10 Commission, the General State Authority, the State Public
11 School Building Authority or any municipality within the
12 Commonwealth; or

13 (iv) United States Treasury Bonds issued at a
14 discount without a regular schedule of interest payments
15 to maturity, otherwise known as Zero Coupon Bonds, having
16 a maturity date of not more than ten years after the date
17 of purchase and at the maturity date having a value of
18 not less than the applicable amount under paragraph (1).
19 The cash deposit, certificate of deposit, amount of the
20 irrevocable letter of credit or market value of the
21 securities shall be equal at least to the sum of the
22 bond.

23 (4) The secretary shall, upon receipt of a deposit of
24 cash, letters of credit or negotiable bonds, immediately
25 place the same with the State Treasurer, whose duty it shall
26 be to receive and hold the same in the name of the
27 Commonwealth, in trust, for the purpose for which the deposit
28 is made.

29 (5) The State Treasurer shall at all times be
30 responsible for custody and safekeeping of deposits. The

1 operator making the deposit shall be entitled from time to
2 time to demand and receive from the State Treasurer, on the
3 written order of the secretary, the whole or any portion of
4 collateral deposited, upon depositing with the State
5 Treasurer, in lieu of that collateral, other collateral of
6 classes specified in this section having a market value at
7 least equal to the sum of the bond, and also to demand,
8 receive and recover the interest and income from the
9 negotiable bonds as they become due and payable.

10 (6) If negotiable bonds on deposit under this subsection
11 mature or are called, the State Treasurer, at the request of
12 the owner of the bonds, shall convert them into other
13 negotiable bonds, of classes specified in this section,
14 designated by the owner.

15 (7) If notice of intent to terminate a letter of credit
16 is given, the department shall give the operator 30 days'
17 written notice to replace the letter of credit with other
18 acceptable bond guarantees as provided in this section. If
19 the owner or operator fails to timely replace the letter of
20 credit, the department shall draw upon and convert the letter
21 of credit into cash and hold it as a collateral bond
22 guarantee.

23 (b) Release.--No bond shall be fully released until the
24 requirements of subsection (a) and section 3223 (relating to
25 notification and effect of well transfer) have been fully met.
26 Upon release of bonds and collateral under this section, the
27 State Treasurer shall immediately return to the owner the
28 specified amount of cash or securities.

29 (c) Noncompliance.--If a well owner or operator fails or
30 refuses to comply with subsection (a), regulations promulgated

1 under this chapter or conditions of a permit relating to this
2 chapter, the department may declare the bond forfeited and shall
3 certify the same to the Attorney General, who shall proceed to
4 enforce and collect the full amount of the bond and, if the well
5 owner or operator has deposited cash or securities as collateral
6 in lieu of a corporate surety, the department shall declare the
7 collateral forfeited and direct the State Treasurer to pay the
8 full amount of the funds into the Well Plugging Restricted
9 Revenue Account or to sell the security to the extent forfeited
10 and pay the proceeds into the Well Plugging Restricted Revenue
11 Account. If a corporate surety or financial institution fails to
12 pay a forfeited bond promptly and in full, the corporate surety
13 or financial institution shall be disqualified from writing
14 further bonds under this chapter or any other environmental law
15 administered by the department. A person aggrieved by reason of
16 forfeiting the bond or converting collateral, as provided in
17 this section, shall have a right to appeal to the Environmental
18 Hearing Board in the manner provided by law. Upon forfeiture of
19 a blanket bond for a violation occurring at one or more well
20 sites, the person whose bond is forfeited shall, within ten days
21 of the forfeiture, submit a replacement bond to cover all other
22 wells of which the person is an owner or operator. Failure to
23 submit the replacement bond constitutes a violation of this
24 section as to each of the wells owned or operated by the person.

25 (d) Alternatives to certain bonds.--The following shall
26 apply:

27 (1) An operator of not more than 200 wells who cannot
28 obtain a bond for a well drilled prior to April 18, 1985, as
29 required under subsection (a), due to inability to
30 demonstrate sufficient financial resources may, in lieu of

1 the bond:

2 (i) Submit to the department a fee in the amount of
3 \$50 per well, a blanket fee of \$500 for ten to 20 wells
4 or a blanket fee of \$1,000 for more than 20 wells, which
5 shall be a nonrefundable fee paid each year that the
6 operator has not filed a bond with the department. All
7 fees collected in lieu of a bond under this subsection
8 shall be used for the purposes authorized by this
9 chapter. The Environmental Quality Board shall have the
10 power, by regulation, to increase the amount of the fees
11 established under this subsection.

12 (ii) Make phased deposits of collateral to fully
13 collateralize the bond, subject to the following:

14 (A) Payment shall be based on the number of
15 wells owned or operated. The operator shall make an
16 initial deposit and make annual deposits in
17 accordance with the schedule in clause (B). Interest
18 accumulated by the collateral shall become a part of
19 the bond until the collateral plus accumulated
20 interest equals the amount of the required bond. The
21 collateral shall be deposited, in trust, with the
22 State Treasurer as provided in this subsection or
23 with a bank selected by the department which shall
24 act as trustee for the benefit of the Commonwealth to
25 guarantee the operator's compliance with the
26 drilling, water supply replacement, restoration and
27 plugging requirements of this chapter. The operator
28 shall be required to pay all costs of the trust.

29 (B) An operator of up to ten existing wells who
30 does not intend to operate additional wells shall

1 deposit \$250 per well and shall, thereafter, annually
2 deposit \$50 per well until the obligations of this
3 section are fully met. An operator of 11 to 25 wells
4 or an operator of up to ten wells who applies for one
5 or more permits for additional wells shall deposit
6 \$2,000 and shall, thereafter, annually deposit \$1,150
7 plus \$150 for each additional well to be permitted
8 that year until the obligations of this section are
9 fully met. An operator of 26 to 50 wells shall
10 deposit \$3,000 and shall, thereafter, annually
11 deposit \$1,300 plus \$400 for each additional well to
12 be permitted that year until the obligations of this
13 section are fully met. An operator of 51 to 100 wells
14 shall deposit \$4,000 and shall, thereafter, annually
15 deposit \$1,500 plus \$400 for each additional well to
16 be permitted that year until the obligations of this
17 section are fully met. Operators of 101 to 200 wells
18 shall deposit \$8,000 and shall, thereafter, annually
19 deposit \$1,600 plus \$1,000 for each additional well
20 to be permitted that year until the obligations of
21 this section are fully met. Operators of more than
22 200 wells shall fully bond their wells immediately.

23 (C) The department shall reduce the amount of
24 phased collateral payments or the period of time over
25 which phased collateral payments shall be made on
26 behalf of owners or operators who, prior to August 1,
27 1992, have paid a fee in lieu of bond under
28 subparagraph (i), and who, by August 1, 1993, choose
29 to enter the phased collateral program under this
30 subparagraph rather than continue to make payments in

1 lieu of bond. Payments made prior to August 1, 1992,
2 in lieu of bond shall not be credited in any other
3 manner, and the department shall not be required to
4 refund the fees. The Environmental Quality Board, by
5 regulation, may change the annual deposits
6 established under clause (B) if necessary to
7 accommodate a change in the amount of the bond
8 required under this section.

9 (2) An operator may continue to pay a fee in lieu of
10 bond or make phased deposits of collateral to fully
11 collateralize the bond so long as the operator does not miss
12 a payment under this subsection and remains in compliance
13 with this chapter. If an operator misses a payment under this
14 subsection, the operator shall:

15 (i) immediately submit the appropriate bond amount
16 in full; or

17 (ii) cease all operations and plug all wells.

18 (d.1) Individuals.--The following shall apply:

19 (1) An individual who is unable to obtain a bond to
20 drill new wells due to inability to demonstrate financial
21 resources may meet the collateral bond requirements of
22 subsection (a) by making phased deposits of collateral to
23 fully collateralize the bond. The individual shall be limited
24 to drilling ten new wells per calendar year and, for each
25 well to be drilled, deposit \$500 and make an annual deposit
26 of 10% of the remaining bond amount for a period of ten
27 years. Interest accumulated shall become a part of the bond
28 until the collateral plus accumulated interest equals the
29 amount of the required bond. The collateral shall be
30 deposited in trust with the State Treasurer under subsection

1 (a) or with a bank selected by the department which shall act
2 as trustee for the benefit of the Commonwealth to guarantee
3 the individual's compliance with the drilling, water supply
4 replacement, restoration and plugging requirements of this
5 chapter. The individual shall pay all costs of the trust.

6 (2) Individuals may continue to use phased collateral to
7 obtain permits if they have not missed a payment for a well
8 drilled under this provision and remain in compliance with
9 this chapter. If an individual misses a payment, the
10 individual shall:

11 (i) immediately submit the appropriate bond amount
12 in full; or

13 (ii) cease all operations and plug all wells.

14 (3) For purposes of this subsection, an "individual"
15 means a natural person doing business under his own name.

16 (e) Reservation of remedies.--All remedies for violations of
17 this chapter, regulations adopted under this chapter and
18 conditions of permits are expressly preserved. Nothing in this
19 section shall be construed as an exclusive penalty or remedy for
20 violations of law. No action taken under this section shall
21 waive or impair any other remedy or penalty provided in law.

22 (f) Change of law.--Owners or operators who have failed to
23 meet the requirements of this section prior to August 1, 1992,
24 shall not be required to make payments under this section on a
25 retroactive basis as a condition of obtaining a permit under
26 this chapter, nor shall the failure be deemed a violation of
27 this chapter.

28 (g) Definition.--As used in this section, the term "well
29 site" means areas occupied by all equipment or facilities
30 necessary for or incidental to drilling, production or plugging

1 a well.

2 § 3226. Oil and Gas Technical Advisory Board.

3 (a) Creation of board.--The Oil and Gas Technical Advisory
4 Board is created, consisting of the following members, all of
5 whom shall be chosen by the Governor and shall be residents of
6 this Commonwealth:

7 (1) Three individuals, each of whom shall be:

8 (i) a petroleum engineer;

9 (ii) a petroleum geologist; or

10 (iii) an experienced driller representative of the
11 oil and gas industry with three years of experience in
12 this Commonwealth.

13 (2) One mining engineer from the coal industry with
14 three years of experience in this Commonwealth.

15 (3) One geologist or petroleum engineer with three years
16 of experience in this Commonwealth, who shall be chosen from
17 a list of three names submitted by the Citizens Advisory
18 Council to the Governor and who shall sit as a representative
19 of the public interest.

20 (b) Reimbursement.--Board members shall not receive a salary
21 but shall be reimbursed for all necessary expenses incurred in
22 the performance of their duties.

23 (c) Majority vote.--All actions of the board shall be by
24 majority vote. The board shall meet as called by the secretary,
25 but not less than semiannually, to carry out its duties under
26 this chapter. The board shall select a chairman and other
27 officers deemed appropriate.

28 (d) Consultation.--The department shall consult with the
29 board in the formulation, drafting and presentation stages of
30 all regulations of a technical nature promulgated under this

1 chapter. The board shall be given a reasonable opportunity to
2 review and comment on all regulations of a technical nature
3 prior to submission to the Environmental Quality Board for
4 initial consideration. The written report of the board shall be
5 presented to the Environmental Quality Board with any regulatory
6 proposal. The chairman of the board shall be invited to
7 participate in the presentation of all regulations of a
8 technical nature before the Environmental Quality Board to the
9 extent allowed by procedures of the Environmental Quality Board.
10 Nothing herein shall preclude any member of the board from
11 filing a petition for rulemaking with the Environmental Quality
12 Board in accordance with procedures established by the
13 Environmental Quality Board.

14 § 3227. Air contaminant emissions.

15 (a) Natural gas operations.--An owner or operator of a
16 facility conducting natural gas operations in unconventional
17 formations including development, production, transmission and
18 processing shall submit to the department a source report
19 identifying and quantifying actual air contaminant emissions
20 from any air contamination source. The report shall include a
21 description of the methods used to calculate annual emissions.

22 (b) Air contamination sources.--An owner or operator of a
23 stationary air contamination source shall complete the reports
24 required under this section using forms and procedures specified
25 by the department.

26 (c) Nitrogen oxides and volatile organic compounds.--A
27 statement under 25 Pa. Code Ch. 135 (relating to reporting of
28 sources) for nitrogen oxides and volatile organic compounds
29 shall be submitted to the department according to the schedule
30 specified in subsection (d).

1 (d) Time.--The report for 2011 actual emissions shall be
2 submitted to the department on a schedule established by the
3 department. Each year after 2011, the report shall be submitted
4 to the department by March 1 for air contaminant emissions
5 during the preceding calendar year unless a different reporting
6 schedule is required by the Clean Air Act (69 Stat. 322, 42
7 U.S.C. § 7401 et seq.) or regulations adopted under that act.

8 SUBCHAPTER C

9 UNDERGROUND GAS STORAGE

10 Sec.

11 3231. Reporting requirements for gas storage operations.

12 3232. Reporting requirements for coal mining operations.

13 3233. General gas storage reservoir operations.

14 3234. Gas storage reservoir operations in coal areas.

15 3235. Inspection of facilities and records.

16 3236. Reliance on maps and burden of proof.

17 3237. Exemptions and prohibitions.

18 § 3231. Reporting requirements for gas storage operations.

19 (a) General duties.--The following shall apply:

20 (1) A person injecting into or storing gas in a storage
21 reservoir underlying or within 3,000 linear feet of an
22 operating coal mine in a coal seam that extends over the
23 storage reservoir or reservoir protective area shall, within
24 60 days, file with the department a copy of a map and certain
25 data in the form and manner provided in this subsection or as
26 otherwise prescribed by regulation of the department.

27 (2) A person injecting gas into or storing gas in a
28 storage reservoir which is not under or within 3,000 linear
29 feet of, but less than 10,000 linear feet from, an operating
30 coal mine in a coal seam that extends over the storage

1 reservoir or reservoir protective area shall file the map and
2 data within 60 days or a longer period set by departmental
3 regulation.

4 (3) A person proposing to inject or store gas in a
5 storage reservoir located as defined in paragraph (1) or (2)
6 shall file the appropriate required map and data with the
7 department not less than six months prior to starting the
8 actual injection or storage.

9 (4) A map required by this subsection shall be prepared
10 by a competent engineer or geologist, showing:

11 (i) the stratum in which the existing or proposed
12 storage reservoir is or is proposed to be located;

13 (ii) the geographic location of the outside
14 boundaries of the storage reservoir and reservoir
15 protective area;

16 (iii) the location of all known oil or gas wells in
17 the reservoir or within 3,000 linear feet thereof which
18 have been drilled into or through the storage stratum,
19 indicating which have been or are to be cleaned out and
20 plugged or reconditioned for storage along with the
21 proposed location of all additional wells which are to be
22 drilled within the storage reservoir or within 3,000
23 linear feet thereof.

24 (5) The following, if available, shall be furnished for
25 all known oil or gas wells which have been drilled into or
26 through the storage stratum within the storage reservoir or
27 within 3,000 linear feet thereof: name of the operator, date
28 drilled, total depth, depth of production if the well was
29 productive of oil or gas, the initial rock pressure and
30 volume, the depths at which all coal seams were encountered

1 and a copy of the driller's log or other similar information.

2 At the time of the filing of the maps and data, a statement
3 shall be filed:

4 (i) detailing efforts made to determine that the
5 wells shown are accurately located on the map;

6 (ii) affirming that the wells shown represent, to
7 the best of the operator's knowledge, all oil or gas
8 wells which have ever been drilled into or below the
9 storage stratum within the proposed storage reservoir or
10 within the reservoir protective area;

11 (iii) stating whether the initial injection is for
12 testing purposes;

13 (iv) stating the maximum pressure at which injection
14 and storage of gas is contemplated; and

15 (v) providing a detailed explanation of the methods
16 to be used or which previously have been used in
17 drilling, cleaning out, reconditioning and plugging wells
18 in the storage reservoir or within the reservoir
19 protective area.

20 (6) The map and data required to be filed under
21 paragraph (5) shall be amended or supplemented semiannually
22 if material changes occur. The department may require a
23 storage operator to amend or supplement the map or data at
24 more frequent intervals if material changes have occurred
25 justifying the earlier filing.

26 (b) Other reporting requirements.--A person who is injecting
27 gas into or storing gas in a storage reservoir not at the time
28 subject to subsection (a), by a process other than that of
29 secondary recovery or gas recycling, shall, within 60 days, or a
30 longer period set by departmental regulations, file maps and

1 data required by departmental regulation and as follows:

2 (1) A person who, after April 18, 1985, proposes to
3 inject or store gas in a storage reservoir in an area not
4 covered by subsection (a) by a process other than that of
5 secondary recovery or gas recycling shall file the required
6 map and data with the department not less than six months
7 prior to the starting of actual injection or storage.

8 (2) The map shall be prepared by a competent engineer or
9 competent geologist and show:

10 (i) the stratum in which the existing or proposed
11 storage reservoir is or is to be located;

12 (ii) the geographic location of the outside
13 boundaries of the storage reservoir; and

14 (iii) the location of all known oil or gas wells
15 within the reservoir, or within 3,000 linear feet
16 thereof, which have been drilled into or through the
17 storage stratum, indicating which have been or are to be
18 cleaned out and plugged or reconditioned for storage and
19 the proposed location of all additional wells which are
20 to be drilled within the storage reservoir or within
21 3,000 linear feet thereof.

22 (3) The following, if available, shall be furnished for
23 all known oil or gas wells which have been drilled into or
24 through the storage stratum within the storage reservoir or
25 within 3,000 linear feet thereof: name of the operator, date
26 drilled, total depth, depth of production if the well was
27 productive of oil or gas, the initial rock pressure and
28 volume and a copy of the driller's log or other similar
29 information. At the time of the filing of the maps and data,
30 a statement shall be filed:

1 (i) detailing efforts made to determine that the
2 wells shown are accurately located on the map;

3 (ii) affirming that the wells shown represent, to
4 the best of the operator's knowledge, all oil or gas
5 wells which have ever been drilled into or below the
6 storage stratum within the proposed storage reservoir;

7 (iii) stating whether the initial injection is for
8 testing purposes;

9 (iv) stating the maximum pressure at which injection
10 and storage of gas is contemplated; and

11 (v) providing a detailed explanation of the methods
12 to be used or which previously have been used in
13 drilling, cleaning out, reconditioning and plugging wells
14 in the storage reservoir.

15 (4) The map and data required to be filed under
16 paragraph (3) shall be amended or supplemented semiannually
17 if material changes occur. The department may require a
18 storage operator to amend or supplement the map or data at
19 more frequent intervals if material changes have occurred
20 justifying the earlier filing.

21 (c) Political subdivisions.--Storage operators shall give
22 notice to the department of the name of each political
23 subdivision and county in which the operator maintains and
24 operates a gas storage reservoir.

25 (d) Notice to affected persons.--At the time of the filing
26 of maps and data and the filing of amended or supplemental maps
27 or data required by this section, the person filing the
28 information shall give written notice of the filing to all
29 persons who may be affected under the provisions of this chapter
30 by the storage reservoir described in the maps or data. Notices

1 shall contain a description of the boundaries of the storage
2 reservoir. When a person operating a coal mine or owning an
3 interest in coal properties which are or may be affected by the
4 storage reservoir requests, in writing, a copy of any map or
5 data filed with the department, the copy shall be furnished by
6 the storage operator.

7 (e) Outside boundaries.--For purposes of this chapter, the
8 outside boundaries of a storage reservoir shall be defined by
9 the location of those wells around the periphery of the storage
10 reservoir which had no gas production when drilled in the
11 storage stratum. The boundaries shall be originally fixed or
12 subsequently changed if, based on the number and nature of the
13 wells and the geological and production knowledge of the storage
14 stratum, its character, permeability, distribution and operating
15 experience, it is determined in a conference under section 3251
16 (relating to conferences) that modifications should be made.

17 (f) Inapplicability of section.--The requirements of this
18 section shall not apply to the operator of an underground gas
19 storage reservoir so long as the reservoir is located more than
20 10,000 linear feet from an operating coal mine, except that the
21 storage operator shall give notice to the department of the name
22 of each political subdivision and county in which the operator
23 maintains and operates a gas storage reservoir. In political
24 subdivisions and counties where both gas storage reservoirs and
25 coal mines are being operated, the department may request the
26 storage operator to furnish maps showing geographical locations
27 and outside boundaries of the storage reservoirs. The department
28 shall keep a record of the information and promptly notify the
29 coal operator and the storage operator when notified by them
30 that the coal mine and storage reservoir are within 10,000

1 linear feet of each other.

2 § 3232. Reporting requirements for coal mining operations.

3 (a) General rule.--A person owning or operating a coal mine
4 shall file with the department a map prepared and sealed by a
5 competent individual licensed as a professional engineer or
6 professional land surveyor under the provisions of the act of
7 May 23, 1945 (P.L.913, No.367), known as the Engineer, Land
8 Surveyor and Geologist Registration Law, showing the outside
9 coal boundaries of the operating coal mine, the existing
10 workings and exhausted areas and the relationship of the
11 boundaries to identifiable surface properties and landmarks. A
12 person owning or operating an operating coal mine which has been
13 penetrated by a well shall furnish a mine map to the department
14 each year indicating the excavations for the preceding year and
15 the projections for the ensuing year. The map required by this
16 subsection shall be furnished to a person storing or
17 contemplating the storage of gas in the vicinity of operating
18 coal mines, upon written request, by the coal operator, and the
19 person and the department shall thereafter be informed of any
20 boundary changes at the time the changes occur. The department
21 shall keep a record of the information and promptly notify the
22 coal operator and storage operator when notified by them that
23 the coal mine and the storage reservoir are within 10,000 linear
24 feet of each other.

25 (b) Mines near certain reservoirs.--A person owning or
26 operating any coal mine which is or which comes within 10,000
27 linear feet of a storage reservoir and where the coal seam being
28 operated extends over the storage reservoir or reservoir
29 protective area shall, within 45 days after receiving notice
30 from the storage operator of that fact, file with the department

1 and furnish to the person operating the storage reservoir a map
2 in the form required by subsection (a) showing, in addition to
3 the requirements of subsection (a), existing and projected
4 excavations and workings of the operating coal mine for the
5 ensuing 18-month period and the location of oil or gas wells of
6 which the coal operator has knowledge. The person owning or
7 operating the coal mine shall, each six months thereafter, file
8 with the department and furnish to the person operating the
9 storage reservoir a revised map showing any additional
10 excavations and workings, together with the projected
11 excavations and workings for the then ensuing 18-month period,
12 which may be within 10,000 linear feet of the storage reservoir.
13 The department may require a coal operator to file revised maps
14 at more frequent intervals if material changes have occurred
15 justifying earlier filing. The person owning or operating the
16 coal mine shall also file with the department and furnish the
17 person operating the reservoir prompt notice of any wells which
18 have been cut into, together with all available pertinent
19 information.

20 (c) Mines near gas storage reservoirs.--A person owning or
21 operating a coal mine who has knowledge that it overlies or is
22 within 2,000 linear feet of a gas storage reservoir shall,
23 within 30 days, notify the department and the storage operator
24 of that fact.

25 (d) Mines projected to be near storage reservoirs.--When a
26 person owning or operating a coal mine expects that, within the
27 ensuing nine-month period, the coal mine will be extended to a
28 point which will be within 2,000 linear feet of any storage
29 reservoir, the person shall notify the department and storage
30 operator in writing of that fact.

1 (e) New mines.--A person intending to establish or
2 reestablish an operating coal mine which will be over a storage
3 reservoir or within 2,000 linear feet of a storage reservoir or
4 may, within nine months thereafter, be expected to be within
5 2,000 linear feet of a storage reservoir shall immediately
6 notify the department and storage operator in writing. Notice
7 shall include the date on which the person intends to establish
8 or reestablish the operating coal mine.

9 (f) Misdemeanor.--A person who serves notice as required by
10 this subsection of an intention to establish or reestablish an
11 operating coal mine, without intending in good faith to
12 establish or reestablish the mine, is liable for continuing
13 damages to a storage operator injured by the improper notice and
14 commits a misdemeanor subject to the penalties of section 3255
15 (relating to penalties).

16 § 3233. General gas storage reservoir operations.

17 (a) General rule.--A person who operates or proposes to
18 operate a storage reservoir, except one filled by the secondary
19 recovery or gas recycling process, shall:

20 (1) Use every known method which is reasonable under the
21 circumstances for discovering and locating all wells which
22 have or may have been drilled into or through the storage
23 reservoir.

24 (2) Plug or recondition, as provided in departmental
25 regulations, all known wells drilled into or through the
26 storage reservoir, except to the extent otherwise provided in
27 subsections (b) and (c).

28 (b) Wells to be plugged.--To comply with subsection (a),
29 wells which are to be plugged shall be plugged in the manner
30 specified in section 3220 (relating to plugging requirements).

1 (b.1) Wells plugged prior to enactment of section.--If a
2 well located in the storage reservoir area has been plugged
3 prior to April 18, 1985, and on the basis of data, information
4 and other evidence submitted to the department, it is determined
5 that the plugging was done in the manner required by section
6 3220 or approved as an alternative method under section 3221
7 (relating to alternative methods) and the plugging is still
8 sufficiently effective to meet the requirements of this chapter,
9 the obligations under subsection (a) with regard to plugging the
10 well shall be considered to have been fully satisfied.

11 (c) Wells to be reconditioned.--The following shall apply:

12 (1) To comply with subsection (a), wells which are to be
13 reconditioned shall, unless the department by regulation
14 specifies a different procedure, be cleaned out from the
15 surface through the storage horizon, and the producing casing
16 and casing strings determined not to be in good physical
17 condition shall be replaced with new casing, using the same
18 procedure as is applicable to drilling a new well under this
19 chapter. In the case of wells to be used for gas storage, the
20 annular space between each string of casing and the annular
21 space behind the largest diameter casing to the extent
22 possible shall be filled to the surface with cement or
23 bentonitic mud or a nonporous material approved by the
24 department under section 3221. At least 15 days prior to
25 reconditioning, the storage operator shall give notice to the
26 department, setting forth in the notice the manner in which
27 it is planned to recondition the well and any pertinent data
28 known to the storage operator which will indicate the
29 condition of the well existing at that time. In addition, the
30 storage operator shall give the department at least 72 hours'

1 notice of the time when reconditioning is to begin. If no
2 objections are raised by the department within ten days, the
3 storage operator may proceed with reconditioning in
4 accordance with the plan as submitted. If objections are made
5 by the department, the department may fix a time and place
6 for a conference under section 3251 (relating to conferences)
7 at which the storage operator and department shall endeavor
8 to agree on a plan to satisfy the objections and meet the
9 requirements of this section. If no agreement is reached, the
10 department may, by an appropriate order, determine whether
11 the plan as submitted meets the requirements of this section
12 or what changes, if any, are required. If, in reconditioning
13 a well in accordance with the plan, physical conditions are
14 encountered which justify or necessitate a change in the
15 plan, the storage operator may request that the plan be
16 changed. If the request is denied, the department shall fix a
17 conference under section 3251 and proceed in the same manner
18 as with original objections. An application may be made in
19 the manner prescribed by section 3221 for approval of an
20 alternative method of reconditioning a well. If a well
21 located within the storage reservoir was reconditioned, or
22 drilled and equipped, prior to April 18, 1985, the
23 obligations imposed by subsection (a), as to reconditioning
24 the well, shall be considered fully satisfied if, on the
25 basis of the data, information and other evidence submitted
26 to the department, it is determined that:

27 (i) The conditioning or previous drilling and
28 equipping was done in the manner required in this
29 subsection, in regulations promulgated under this chapter
30 or in a manner approved as an alternative method in

1 accordance with section 3221.

2 (ii) The reconditioning or previous drilling and
3 equipping is still sufficiently effective to meet the
4 requirements of this chapter.

5 (2) If a well requires emergency repairs, this chapter
6 shall not be construed to require the storage operator to
7 give any notice required by this subsection before making the
8 repairs.

9 (d) Exception.--The requirements of subsection (a) shall not
10 apply to injection of gas into a stratum when the sole purpose
11 of injection, referred to in this subsection as testing, is to
12 determine whether the stratum is suitable for storage purposes.
13 Testing shall be conducted only in compliance with the following
14 requirements:

15 (1) The person testing or proposing to test shall comply
16 with section 3231 (relating to reporting requirements for gas
17 storage operations) and verify the statement required to be
18 filed by that section.

19 (2) The storage operator shall give at least six months'
20 written notice to the department of the fact that injection
21 of gas for testing purposes is proposed.

22 (3) If the department has objections, the department
23 shall fix a time and place for a conference under section
24 3251, not more than ten days from the date of notice to the
25 storage operator, at which time the storage operator and
26 department shall attempt to resolve the issues presented. If
27 an agreement cannot be reached, the department may issue an
28 appropriate order.

29 (e) Failure to execute lawful order.--In a proceeding under
30 this chapter, if the department determines that an operator of a

1 storage reservoir has failed to carry out a lawful order issued
2 under this chapter, the department may require the operator to
3 suspend operation of the reservoir and withdraw the gas until
4 the violation is remedied, in which case the storage operator,
5 limited by due diligence insofar as existing facilities utilized
6 to remove gas from the reservoir will permit, shall:

7 (1) if possible, remove the amount required by the
8 department to be removed; or

9 (2) in any event, remove the maximum amount which can be
10 withdrawn in accordance with recognized engineering and
11 operating procedures.

12 (f) Duty of storage reservoir operator.--The following shall
13 apply:

14 (1) A person owning or operating a storage reservoir
15 subject to this chapter shall have a duty to:

16 (i) Maintain all wells drilled into or through the
17 reservoir in a condition, and operate them in a manner,
18 sufficient to prevent the escape of gas.

19 (ii) Operate and maintain the reservoir and its
20 facilities as prescribed by departmental regulations and
21 at a pressure which will prevent gas from escaping, but
22 the pressure shall not exceed the highest rock pressure
23 found to have existed during the production history of
24 the reservoir or another high pressure limit approved by
25 the department after holding a conference under section
26 3251 based on geological and production knowledge of the
27 reservoir, its character, permeability distribution and
28 operating experience.

29 (2) The duty under paragraph (1) shall not be construed
30 to include inability to prevent the escape of gas when gas

1 escapes as a result of an act of God or a person not under
2 the control of the storage operator. In that instance, the
3 storage operator shall have a duty to take action reasonably
4 necessary to prevent further escape of gas. This paragraph
5 does not apply to a well which the storage operator failed to
6 locate and make known to the department.

7 § 3234. Gas storage reservoir operations in coal areas.

8 (a) General rule.--A person operating a storage reservoir
9 which underlies or is within 2,000 linear feet of a coal mine
10 operating in a coal seam that extends over the storage reservoir
11 or the reservoir protective area shall:

12 (1) Use every known reasonable method for discovering
13 and locating all wells which have or may have been drilled
14 into or through the storage stratum in the acreage lying
15 within the outside coal boundaries of the operating coal mine
16 overlying the storage reservoir or the reservoir protective
17 area.

18 (2) Plug or recondition, as provided by section 3220
19 (relating to plugging requirements) and subsection (e), all
20 known wells, except to the extent provided in subsections
21 (e), (f), (g) and (h), drilled into or through the storage
22 stratum and located within the portion of the acreage of the
23 operating coal mine overlying the storage reservoir or the
24 reservoir protective area. If an objection is raised as to
25 use of a well as a storage well and after a conference under
26 section 3251 (relating to conferences), it is determined by
27 the department, taking into account all circumstances and
28 conditions, that the well should not be used as a storage
29 well, the well shall be plugged unless, in the opinion of the
30 storage operator, the well may be used as a storage well in

1 the future, in which case, upon approval of the department
2 after taking into account all circumstances and conditions,
3 the storage operator may recondition and inactivate the well
4 rather than plug it.

5 (3) The requirements of paragraph (2) shall be deemed to
6 have been fully complied with if, as the operating coal mine
7 is extended, all wells which from time to time come within
8 the acreage described in paragraph (2) are reconditioned or
9 plugged as provided in section 3220 and subsection (e) or (f)
10 so that, by the time the coal mine has reached a point within
11 2,000 linear feet of the wells, they will have been
12 reconditioned or plugged in accordance with section 3220 and
13 subsection (e) or (f).

14 (b) Verified statement.--A person operating a storage
15 reservoir referred to in subsection (a) shall file with the
16 department and furnish a copy to the person operating the
17 affected operating coal mine a verified statement setting forth:

18 (1) That the map and any supplemental maps required by
19 section 3231(a) (relating to reporting requirements for gas
20 storage operations) have been prepared and filed in
21 accordance with section 3231.

22 (2) A detailed explanation of what the storage operator
23 has done to comply with the requirements of subsection (a)(1)
24 and (2) and the results of those actions.

25 (3) Such additional efforts, if any, as the storage
26 operator is making and intends to make to locate all wells.

27 (4) Any additional wells that are to be plugged or
28 reconditioned to meet the requirements of subsection (a)(2).

29 (b.1) Order of department.--If the statement required under
30 subsection (b) is not filed by the storage reservoir operator

1 within the time specified by this chapter or the regulations of
2 the department, the department may order the operator to file
3 the statement.

4 (c) Procedure.--Within 120 days after receipt of a statement
5 required by this section, the department may direct that a
6 conference be held in accordance with section 3251 to determine
7 whether the requirements of section 3231 and subsection (a) have
8 been fully met. At the conference, if any person believes the
9 requirements have not been fully met, the parties shall attempt
10 to agree on additional actions to be taken and the time for
11 completion, subject to approval of the department. If an
12 agreement cannot be reached, the department shall make a
13 determination and, if the department determines any requirements
14 have not been met, the department shall issue an order
15 specifying in detail the extent to which the requirements have
16 not been met and the actions which the storage operator must
17 complete to meet the requirements. The order shall grant as much
18 time as is reasonably necessary to fully comply. If the storage
19 operator encounters conditions not known to exist at the time of
20 issuance of the order and which materially affect the validity
21 of the order or the ability of the storage operator to comply
22 with it, the storage operator may apply for a rehearing or
23 modification of the order.

24 (d) Notification.--If, in complying with subsection (a), a
25 storage operator, after filing the statement provided for in
26 subsection (b), plugs or reconditions a well, the storage
27 operator shall notify the department and the coal operator
28 affected, in writing, setting forth facts indicating the manner
29 in which the plugging or reconditioning was done. Upon receipt
30 of the notification, the coal operator or department may request

1 a conference under section 3251.

2 (e) Plugging wells.--In order to meet the requirements of
3 subsection (a), wells which are to be plugged shall be plugged
4 in the manner specified in regulations promulgated under section
5 3211 (relating to well permits). When a well located within the
6 storage reservoir or the reservoir protective area has been
7 plugged prior to April 18, 1985, and, on the basis of the data
8 information and other evidence submitted to the department, it
9 is determined that the plugging was done in the manner required
10 by section 3220, or in a manner approved as an alternative
11 method in accordance with section 3221 (relating to alternative
12 methods), and the plugging is still sufficiently effective to
13 meet the requirements of this chapter, the requirements of
14 subsection (a) as to plugging the well shall be considered to
15 have been fully satisfied.

16 (f) Reconditioned wells.--The following shall apply:

17 (1) In order to comply with subsection (a), unless the
18 department by regulation specifies a different procedure,
19 wells which are to be reconditioned shall be cleaned out from
20 the surface through the storage horizon, and the following
21 casing strings shall be pulled and replaced with new casing,
22 using the procedure applicable to drilling a new well under
23 this chapter:

24 (i) the producing casing;

25 (ii) the largest diameter casing passing through the
26 lowest workable coal seam unless it extends at least 25
27 feet below the bottom of the coal seam and is determined
28 to be in good physical condition, but the storage
29 operator may, instead of replacing the largest diameter
30 casing, replace the next largest casing string if the

1 casing string extends at least 25 feet below the lowest
2 workable coal seam; and

3 (iii) casing strings determined not to be in good
4 physical condition.

5 (2) In the case of a well to be used for gas storage,
6 the annular space between each string of casing and the
7 annular space behind the largest diameter casing, to the
8 extent possible, shall be filled to the surface with cement
9 or bentonitic mud or an equally nonporous material approved
10 by the department under section 3221.

11 (3) At least 15 days before a well is to be
12 reconditioned, the storage operator shall give notice to the
13 department and the coal operator, lessee or owner, setting
14 forth the manner in which reconditioning is planned and
15 pertinent data known to the storage operator which will
16 indicate the current condition of the well, along with at
17 least 72 hours' notice of the date and time when
18 reconditioning will begin. The coal operator, lessee or owner
19 shall have the right to file, within ten days after receipt
20 of the notice, objections to the plan of reconditioning as
21 submitted by the storage operator. If no objections are filed
22 and none are raised by the department within ten days, the
23 storage operator may proceed with reconditioning in
24 accordance with the plan as submitted. If an objection is
25 filed or made by the department, the department shall fix a
26 time and place for a conference under section 3251, at which
27 conference the storage operator and the person having
28 objections shall attempt to agree on a plan of reconditioning
29 that meets the requirements of this section. If no agreement
30 is reached, the department shall, by an appropriate order,

1 determine whether the plan as submitted meets the
2 requirements of this section or what changes should be made
3 to meet the requirements. If, in reconditioning the well in
4 accordance with the plan, physical conditions are encountered
5 which justify or necessitate a change in the plan, the
6 storage operator or coal operator may request that the plan
7 be changed. If the parties cannot agree on a change, the
8 department shall arrange for a conference to determine the
9 matter in the same manner as set forth in connection with
10 original objections to the plan.

11 (4) Application may be made to the department in the
12 manner prescribed in section 3221 for approval of an
13 alternative method of reconditioning a well. When a well
14 located within the storage reservoir or the reservoir
15 protective area has been reconditioned or drilled and
16 equipped prior to April 18, 1985, and, on the basis of the
17 data, information and other evidence submitted to the
18 department, the obligations imposed by subsection (a) as to
19 reconditioning the well shall be considered to be fully
20 satisfied if it is determined that reconditioning or previous
21 drilling and equipping:

22 (i) was done in the manner required in this
23 subsection, or in regulations promulgated hereunder, or
24 in a manner approved as an alternative method in
25 accordance with section 3221; or

26 (ii) is still sufficiently effective to meet the
27 requirements of this chapter.

28 (5) If a well requires emergency repairs, this
29 subsection shall not be construed to require the storage
30 operator to give the notices specified herein before making

1 the repairs.

2 (g) Producing wells.--If a well located within the reservoir
3 protective area is a producing well in a stratum below the
4 storage stratum, the obligations imposed by subsection (a) shall
5 not begin until the well ceases to be a producing well.

6 (h) Certain other wells.--If a well within a storage
7 reservoir or reservoir protective area penetrates the storage
8 stratum but does not penetrate the coal seam being mined by an
9 operating coal mine, the department may, upon application of the
10 operator of the storage reservoir, exempt the well from the
11 requirements of this section. Either party affected may request
12 a conference under section 3251 with respect to exemption of a
13 well covered by this subsection.

14 (i) Plugging limitation.--In fulfilling the requirements of
15 subsection (a) (2) with respect to a well within the reservoir
16 protective area, the storage operator shall not be required to
17 plug or recondition the well until the storage operator has
18 received from the coal operator written notice that the mine
19 workings will, within the period stated in the notice, be within
20 2,000 linear feet of the well. Upon the receipt of the notice,
21 the storage operator shall use due diligence to complete the
22 plugging or reconditioning of the well in accordance with the
23 requirements of this section and section 3220. If the mine
24 workings do not, within a period of three years after the well
25 has been plugged, come within 2,000 linear feet of the well, the
26 coal operator shall reimburse the storage operator for the cost
27 of plugging, provided that the well is still within the
28 reservoir protective area as of that time.

29 (j) Retreat mining.--If retreat mining approaches a point
30 where, within 90 days, it is expected that the retreat work will

1 be at the location of the pillar surrounding an active storage
2 well, the coal operator shall give written notice to the storage
3 operator, and by agreement, the parties shall determine whether
4 it is necessary or advisable to effectively and temporarily
5 inactivate the well. The well shall not be reactivated until a
6 reasonable period, determined by the parties, has elapsed. If
7 the parties cannot agree as required by this subsection, the
8 matter shall be submitted to the department for resolution. The
9 number of wells required to be temporarily inactivated during
10 the retreat period shall not be of a number that materially
11 affects efficient operation of the storage pool, except that
12 this provision shall not preclude temporary inactivation of a
13 particular well if the practical effect of inactivating it is to
14 render the pool temporarily inoperative.

15 (k) Exceptions.--The requirements of subsections (a), (l)
16 and (m) shall not apply to injection of gas into a stratum when
17 the whole purpose of injection, referred to in this subsection
18 as testing, is to determine whether the stratum is suitable for
19 storage purposes. Testing shall be conducted only in compliance
20 with the following requirements:

21 (1) The person testing or proposing to test shall comply
22 with all provisions and requirements of section 3231 and
23 verify the statement required to be filed by that section.

24 (2) If any part of the proposed storage reservoir is
25 under or within 2,000 linear feet of an operating coal mine
26 which is operating in a coal seam that extends over the
27 proposed storage reservoir or the reservoir protective area,
28 the storage operator shall give at least six months' written
29 notice to the department and coal operator of the fact that
30 injection of gas for testing purposes is proposed.

1 (3) The coal operator affected may at any time file
2 objections with the department, whereupon the department
3 shall fix a time and place for a conference under section
4 3251, not more than ten days from the date of the notice to
5 the storage operator. At the conference, the storage operator
6 and the objecting party shall attempt to agree, subject to
7 approval of the department, on the questions involved. If an
8 agreement cannot be reached, the department may issue an
9 appropriate order.

10 (4) If at any time a proposed storage reservoir being
11 tested comes under or within 2,000 linear feet of an
12 operating coal mine because of extension of the storage
13 reservoir being tested or because of extension or
14 establishment or reestablishment of the operating coal mine,
15 the requirements of this subsection shall immediately become
16 applicable to the testing.

17 (l) Storage reservoirs near operating coal mines.--A person
18 who proposes to establish a storage reservoir under or within
19 2,000 linear feet of a coal mine operating in a coal seam that
20 extends over the storage reservoir or the reservoir protective
21 area shall, prior to establishing the reservoir, and in addition
22 to complying with section 3231 and subsection (a), file the
23 verified statement required by subsection (b) and fully comply
24 with any order of the department in the manner provided under
25 subsection (b) or (c) before commencing operation of the storage
26 reservoir. After the person proposing to operate the storage
27 reservoir complies with the requirements of this subsection and
28 commences operations, the person shall continue to be subject to
29 all provisions of this chapter.

30 (m) Gas storage reservoirs.--If a gas storage reservoir is

1 in operation on April 18, 1985, and at any time thereafter it is
2 under or within 2,000 linear feet of an operating coal mine, or
3 if a gas storage reservoir is put in operation after April 18,
4 1985, and at any time after storage operations begin it is under
5 or within 2,000 linear feet of an operating coal mine, the
6 storage operator shall comply with all of the provisions of this
7 section, except that:

8 (1) the time for filing the verified statement under
9 subsection (b) shall be 60 days after the date stated in the
10 notice filed by the coal operator under section 3232(d) and
11 (e) (relating to reporting requirements for coal mining
12 operations);

13 (2) the coal operator shall give notice of the delay to
14 the department;

15 (3) the department shall, upon the request of the
16 storage operator, extend the time for filing the statement by
17 the additional time which will be required to extend or
18 establish or reestablish the operating coal mine to a point
19 within 2,000 linear feet of the reservoir;

20 (4) the verified statement shall also indicate that the
21 map referred to in section 3231(a) has been currently amended
22 as of the time of the filing of the statement; and

23 (5) the person operating the storage reservoir shall
24 continue to be subject to all of the provisions of this
25 chapter.

26 (n) Failure to comply with order.--If, in any proceeding
27 under this chapter, the department determines that an operator
28 of a storage reservoir has failed to comply with a lawful order
29 issued under this chapter, the department may require the
30 storage operator to suspend operation of the reservoir and

1 withdraw the gas from it until the violation is remedied, in
2 which case the storage operator, limited by due diligence
3 insofar as existing facilities utilized to remove gas from the
4 reservoir will permit, shall:

5 (1) if possible, remove the amount required by the
6 department to be removed; or

7 (2) in any event, remove the maximum amount which can be
8 withdrawn in accordance with recognized engineering and
9 operating procedures.

10 (o) Prevention of escape of gas.--In addition to initial
11 compliance with other provisions of this chapter and lawful
12 orders issued under this chapter, it shall be the duty, at all
13 times, of a person owning or operating a storage reservoir
14 subject to this chapter to keep all wells drilled into or
15 through the storage stratum in a condition, and operate the
16 wells in a manner, which is designed to prevent the escape of
17 gas out of the storage reservoir and its facilities, and to
18 operate and maintain the storage reservoir and its facilities in
19 the manner prescribed by regulation of the department and at a
20 pressure that will prevent gas from escaping from the reservoir
21 or its facilities. This duty shall not be construed to include
22 inability to prevent the escape of gas when escape results from
23 an act of God or a person not under the control of the storage
24 operator, except that this exception does not apply to a well
25 which the storage operator has failed to locate and make known
26 to the department. If an escape of gas results from an act of
27 God or a person not under the control of the storage operator,
28 the storage operator shall be under the duty to take any action
29 reasonably necessary to prevent further escape of gas out of the
30 storage reservoir and its facilities.

1 § 3235. Inspection of facilities and records.

2 (a) General rule.--The person operating a storage reservoir
3 affected by this chapter shall, at all reasonable times, be
4 permitted to inspect applicable records and facilities of a coal
5 mine overlying the storage reservoir or reservoir protective
6 area. The person operating a coal mine affected by this chapter
7 shall, at all reasonable times, be permitted to inspect
8 applicable records and facilities of a storage reservoir
9 underlying the coal mine.

10 (b) Order.--If a storage operator or coal operator subject
11 to subsection (a) refuses to permit inspection of records or
12 facilities, the department may, on its own motion or on
13 application of the party seeking inspection, after reasonable
14 written notice and a hearing if requested by an affected party,
15 order inspection.

16 § 3236. Reliance on maps and burden of proof.

17 (a) General rule.--In determining whether a coal mine or
18 operating coal mine is or will be within a particular distance
19 from a storage reservoir which is material under this chapter,
20 the owner or operator of the coal mine and the storage operator
21 may rely on the most recent map of the storage reservoir or coal
22 mine filed by the other party with the department.

23 (b) Accuracy.--Where accuracy of a map or data filed under
24 this chapter is in issue, the person that filed the map or data
25 shall:

26 (1) at the request of an objecting party, disclose the
27 information and method used to compile the map or data, along
28 with any information available to the person that might
29 affect current validity of the map or data; and

30 (2) have the burden of proving accuracy of the map or

1 data.

2 § 3237. Exemptions and prohibitions.

3 (a) Inapplicability of chapter to certain coal mines.--This
4 chapter shall not apply to the following types of coal mines:

5 (1) Strip mines and auger mines operating from the
6 surface.

7 (2) Mines to which the former act of June 9, 1911
8 (P.L.756, No.319), entitled "An act to provide for the health
9 and safety of persons employed in and about the bituminous
10 coal-mines of Pennsylvania, and for the protection and
11 preservation of property connected therewith," did not apply
12 in accordance with section 3 of that act.

13 (3) Mines to which the former act of June 2, 1891
14 (P.L.176, No.177), entitled "An act to provide for the health
15 and safety of persons employed in and about the anthracite
16 coal mines of Pennsylvania and for the protection and
17 preservation of property connected therewith," did not apply
18 in accordance with section 32 of that act.

19 (b) Workable coal seams.--Injection of gas for storage
20 purposes in a workable coal seam, whether or not it is being or
21 has been mined, is prohibited.

22 (b.1) Original extraction.--Nothing in this chapter
23 prohibits original extraction of natural gas, crude oil or coal.

24 (c) Certain rock formations.--Nothing in this chapter
25 applies to storage of gas or liquids in storage reservoirs
26 excavated in rock formations specifically for storage purposes.

27 SUBCHAPTER D

28 EMINENT DOMAIN

29 Sec.

30 3241. Appropriation of interest in real property.

1 § 3241. Appropriation of interest in real property.

2 (a) General rule.--Except as provided in this subsection, a
3 corporation empowered to transport, sell or store natural gas or
4 manufactured gas in this Commonwealth may appropriate an
5 interest in real property located in a storage reservoir or
6 reservoir protective area for injection, storage and removal
7 from storage of natural gas or manufactured gas in a stratum
8 which is or previously has been commercially productive of
9 natural gas. The right granted by this subsection shall not be
10 exercised to acquire any of the following for the purpose of gas
11 storage:

12 (1) An interest in a geological stratum within the area
13 of a proposed storage reservoir or reservoir protective area:

14 (i) unless the original recoverable oil or gas
15 reserves in the proposed storage reservoir have been
16 depleted or exhausted by at least 80%; and

17 (ii) until the condemnor has acquired the right, by
18 grant, lease or other agreement, to store gas in the
19 geological stratum underlying at least 75% of the area of
20 the proposed storage reservoir.

21 (2) An interest in a geological stratum within the area
22 of a proposed storage reservoir or reservoir protective area
23 owned directly or indirectly by a gas company or other person
24 engaged in local distribution of natural gas, if the interest
25 to be acquired is presently being used by the gas company or
26 other person for storage of gas in performance of service to
27 customers in its service area.

28 (b) Construction.--The following shall apply:

29 (1) This chapter authorizes appropriation within a
30 storage reservoir or reservoir protective area of the

1 following:

2 (i) a stratum to be used for storage;

3 (ii) any gas reserve remaining a stratum to be used
4 for storage;

5 (iii) an active or abandoned well or wells drilled
6 into a stratum to be used for storage; and

7 (iv) the right to enter upon and use the surface of
8 lands to:

9 (A) locate, recondition, maintain, plug or
10 replug an active or abandoned well; or

11 (B) operate a well drilled into or through a
12 stratum to be used for storage.

13 (2) This chapter does not preclude the owner of
14 nonstorage strata from drilling wells to produce oil or gas
15 from a stratum above or below the storage stratum
16 appropriated by another person, but a person appropriating or
17 holding storage rights may access, inspect and examine the
18 drilling, the completed well, drilling logs and other records
19 relating to drilling, equipping or operating the well in
20 order to determine whether the storage stratum is being
21 adequately protected to prevent escape of gas stored therein.

22 (3) This chapter does not authorize appropriation of a
23 coal or coal measure, regardless of whether it is being
24 mined, or an interest in the coal mine or coal measure.

25 (c) Activities through appropriated strata.--A person
26 drilling, operating, using or plugging a well through a stratum
27 appropriated under this chapter shall drill, case, equip,
28 operate or plug it in a manner designed to prevent avoidable
29 escape of gas that may be stored in the storage stratum. Upon
30 violation of this subsection, the court of common pleas of the

1 county where the land in question is situated may compel
2 compliance by injunction or grant other appropriate relief in an
3 action brought by the person storing gas in the storage stratum.

4 (d) Prerequisites to appropriation.--Before appropriating
5 under this chapter, a person shall attempt to agree with owners
6 of interests in the real property involved as to damages payable
7 for rights and interests to be appropriated, if the owners can
8 be found and are sui juris. If the parties fail to agree, the
9 person shall tender a surety bond to the owners to secure them
10 in the payment of damages. If the owners refuse to accept the
11 bond, cannot be found or are not sui juris, and after reasonable
12 notice to the owners by advertisement or otherwise, the bond
13 shall be presented for approval to the court of common pleas of
14 the county in which the tract of land is situated. Upon the
15 approval of the bond by the court, the right of the person to
16 appropriate in accordance with the provisions of this chapter
17 shall be complete.

18 (e) Appointment of viewers.--Upon petition of a property
19 owner or a person appropriating under this chapter, the court
20 shall:

21 (1) appoint three disinterested freeholders of the
22 county to serve as viewers to assess damages to be paid to
23 the property owner for the rights appropriated;

24 (2) fix a time for the parties to meet;

25 (3) provide notice to the parties; and

26 (4) after the viewers have filed their report, fix
27 reasonable compensation for the service of the viewers.

28 (f) Appeal.--Within 20 days after the filing of a report by
29 viewers appointed under subsection (e), a party may appeal and
30 proceed to a jury trial as in ordinary cases.

1 (g) Requirements.--Nothing in this section shall relieve a
2 person operating a storage reservoir from the requirements of
3 this chapter.

4 SUBCHAPTER E

5 ENFORCEMENT AND REMEDIES

6 Sec.

7 3251. Conferences.

8 3252. Public nuisances.

9 3253. Enforcement orders.

10 3254. Restraining violations.

11 3254.1. Well control emergency response cost recovery.

12 3255. Penalties.

13 3256. Civil penalties.

14 3257. Existing rights and remedies preserved and cumulative
15 remedies authorized.

16 3258. Inspection and production of materials, witnesses,
17 depositions and rights of entry.

18 3259. Unlawful conduct.

19 3260. Collection of fines and penalties.

20 3261. Third party liability.

21 3262. Inspection reports.

22 § 3251. Conferences.

23 (a) General rule.--The department or any person having a
24 direct interest in a matter subject to this chapter may, at any
25 time, request that a conference be held to discuss and attempt
26 to resolve by mutual agreement a matter arising under this
27 chapter. Unless otherwise provided, conferences shall be held
28 within 90 days after a request is received by the department,
29 and notice shall be given by the department to all interested
30 parties. A representative of the department shall attend the

1 conference and the department may make recommendations. An
2 agreement reached at a conference shall be consistent with this
3 chapter and, if approved by the department, it shall be reduced
4 to writing and shall be effective, unless reviewed and rejected
5 by the department within ten days after the conference. The
6 record of an agreement approved by the department shall be kept
7 on file by the department and copies shall be furnished to the
8 parties. The scheduling of a conference shall have no effect on
9 the department's authority to issue orders to compel compliance
10 with this chapter.

11 (b) Notification.--When a coal operator is to be notified of
12 a proceeding under this section, the department simultaneously
13 shall send a copy of the notice to the collective bargaining
14 representative of employees of the coal operator.

15 § 3252. Public nuisances.

16 A violation of section 3217 (relating to protection of fresh
17 groundwater and casing requirements), 3218 (relating to
18 protection of water supplies), 3219 (relating to use of safety
19 devices) or 3220 (relating to plugging requirements), or a
20 regulation, order, term or condition of a permit relating to any
21 of those sections constitutes a public nuisance.

22 § 3253. Enforcement orders.

23 (a) General rule.--Except as modified by subsections (b),
24 (c) and (d), the department may issue orders necessary to aid in
25 enforcement of this chapter. An order issued under this chapter
26 shall take effect upon notice, unless the order specifies
27 otherwise. The power of the department to issue an order under
28 this chapter is in addition to any other remedy available to the
29 department under this chapter or under any other law.

30 (b) Suspension and revocation.--

1 (1) The department may suspend or revoke a well permit
2 or well registration for any well:

3 (i) in continuing violation of any of the following:

4 (A) This chapter.

5 (B) The act of June 22, 1937 (P.L.1987, No.394),
6 known as The Clean Streams Law.

7 (C) The act of July 7, 1980 (P.L.380, No.97),
8 known as the Solid Waste Management Act.

9 (D) Any other statute administered by the
10 department;

11 and

12 (ii) the likely result of a violation is an unsafe
13 operation or environmental damage.

14 (2) A suspension order of the department shall
15 automatically terminate if the violation upon which it is
16 based is corrected by the operator to the satisfaction of the
17 department in order to bring the well into compliance with
18 this chapter.

19 (c) Written notice.--Prior to suspension or revocation of a
20 well permit or registration, the department shall serve written
21 notice on the well operator or its agent, stating specifically
22 the statutory provision, regulation or other reason relied upon,
23 along with factual circumstances surrounding the alleged
24 violation. If the department suspends or revokes the permit or
25 registration, the department may order the operator to cap the
26 well if the likely result of the violation is an unsafe
27 operation or environmental damage.

28 (d) Immediate orders.--An order of the department requiring
29 immediate cessation of drilling operations shall be effective
30 only if authorized by the secretary or a designee.

1 (e) Grievances.--A person aggrieved by a department order
2 issued under this section shall have the right, within 30 days
3 of receipt of the notice, to appeal to the Environmental Hearing
4 Board.

5 § 3254. Restraining violations.

6 (a) General rule.--In addition to any other remedy provided
7 in this chapter, the department may institute a suit in equity
8 in the name of the Commonwealth for an injunction to restrain a
9 violation of this chapter or rules, regulations, standards or
10 orders adopted or issued under this chapter and to restrain the
11 maintenance or threat of a public nuisance. Upon motion of the
12 Commonwealth, the court shall issue a prohibitory or mandatory
13 preliminary injunction if it finds that the defendant is
14 engaging in unlawful conduct, as defined by this chapter, or
15 conduct causing immediate and irreparable harm to the public.
16 The Commonwealth shall not be required to furnish bond or other
17 security in connection with the proceeding. In addition to an
18 injunction, the court in equity may level civil penalties as
19 specified in section 3256 (relating to civil penalties).

20 (b) District attorney.--In addition to other remedies in
21 this chapter, upon relation of the district attorney of a county
22 affected, or upon relation of the solicitor of a municipality
23 affected, an action in equity may be brought in a court of
24 competent jurisdiction for an injunction to restrain a violation
25 of this chapter or rules and regulations promulgated under this
26 chapter or to restrain a public nuisance or detriment to health.

27 (c) Concurrent penalties.--Penalties and remedies under this
28 chapter shall be deemed concurrent. Existence or exercise of one
29 remedy shall not prevent the department from exercising another
30 remedy at law or in equity.

1 (d) Jurisdiction.--Actions under this section may be filed
2 in the appropriate court of common pleas or in Commonwealth
3 Court, and those courts are hereby granted jurisdiction to hear
4 actions under this section.

5 § 3254.1. Well control emergency response cost recovery.

6 A person liable for a well control emergency is responsible
7 for all response costs incurred by the department to respond to
8 the well control emergency. In an action before a court of
9 competent jurisdiction, the department may recover all its
10 response costs, including the cost of regaining control of the
11 well, controlling the perimeter of the well site, preparing
12 water sprays, establishing trenches or dikes to capture runoff
13 fluids and providing the resources and equipment needs for the
14 incident.

15 § 3255. Penalties.

16 (a) General violation.--A person violating a provision of
17 this chapter commits a summary offense and, upon conviction,
18 shall be sentenced to pay a fine of not more than \$1,000 or to
19 imprisonment of not more than 90 days, or both. Each day during
20 which the violation continues is a separate and distinct
21 offense.

22 (b) Willful violation.--A person willfully violating a
23 provision of this chapter or an order of the department issued
24 under this chapter commits a misdemeanor and, upon conviction,
25 shall be sentenced to pay a fine of not more than \$5,000 or to
26 imprisonment of not more than one year, or both. Each day during
27 which the violation continues is a separate and distinct
28 offense.

29 (c) Authority.--The department may institute a prosecution
30 against any person or municipality for a violation of this

1 chapter.

2 § 3256. Civil penalties.

3 In addition to other remedies available at law or in equity
4 for a violation of this chapter, a regulation of the department,
5 a departmental order or a permit condition, the department,
6 after a hearing, may assess a civil penalty regardless of
7 whether the violation was willful. The penalty shall not exceed
8 \$25,000 plus \$1,000 for each day during which the violation
9 continues or, in the case of a violation arising from the
10 construction, alteration or operation of an unconventional well,
11 \$75,000 plus \$5,000 for each day during which the violation
12 continues. In determining the amount, the department shall
13 consider willfulness of the violation, damage or injury to
14 natural resources of this Commonwealth or their uses,
15 endangerment of safety of others, the cost of remedying the
16 harm, savings resulting to the violator as a result of the
17 violation and any other relevant factor. When the department
18 proposes to assess a civil penalty, it shall notify the person
19 of the proposed amount of the penalty. The person charged with
20 the penalty must, within 30 days of notification, pay the
21 proposed penalty in full or file an appeal of the assessment
22 with the Environmental Hearing Board. Failure to comply with the
23 time period under this section shall result in a waiver of all
24 legal rights to contest the violation or the amount of the
25 penalty. The civil penalty shall be payable to the Commonwealth
26 and collectible in any manner provided at law for collection of
27 debts. If a violator neglects or refuses to pay the penalty
28 after demand, the amount, together with interest and costs that
29 may accrue, shall become a lien in favor of the Commonwealth on
30 the real and personal property of the violator, but only after

1 the lien has been entered and docketed of record by the
2 prothonotary of the county where the property is situated. The
3 department may transmit to the prothonotaries of the various
4 counties certified copies of all liens. It shall be the duty of
5 each prothonotary to enter and docket the liens of record in the
6 prothonotary's office and index them as judgments are indexed,
7 without requiring payment of costs as a condition precedent to
8 entry.

9 § 3257. Existing rights and remedies preserved and cumulative
10 remedies authorized.

11 Nothing in this chapter stops the Commonwealth or a district
12 attorney from proceeding in a court of law or in equity to abate
13 pollution forbidden under this chapter or a nuisance under
14 existing law. It is hereby declared to be the purpose of this
15 chapter to provide additional and cumulative remedies to control
16 activities related to drilling for, or production of, oil and
17 gas in this Commonwealth, and nothing contained in this chapter
18 abridges or alters rights of action or remedies existing, or
19 which existed previously, in equity or under common or statutory
20 law, criminal or civil. Neither this chapter, the grant of a
21 permit under this chapter nor an act done by virtue of this
22 chapter stops the Commonwealth, in exercising rights under
23 common or decisional law or in equity, from suppressing a
24 nuisance, abating pollution or enforcing common law or statutory
25 rights. No court of this Commonwealth with jurisdiction to abate
26 public or private nuisances shall be deprived of jurisdiction in
27 an action to abate a private or public nuisance instituted by
28 any person on grounds that the nuisance constitutes air or water
29 pollution.

30 § 3258. Inspection and production of materials, witnesses,

1 depositions and rights of entry.

2 (a) General rule.--The department may make inspections,
3 conduct tests or sampling or examine books, papers and records
4 pertinent to a matter under investigation under this chapter to
5 determine compliance with this chapter. For this purpose, the
6 duly authorized agents and employees of the department may at
7 all reasonable times enter and examine any involved property,
8 facility, operation or activity.

9 (a.1) Preoperation inspections.--The operator may not
10 commence drilling activities until the department has conducted
11 an inspection of the unconventional well site after the
12 installation of erosion and sediment control measures. The
13 department may conduct follow-up inspections of well sites and
14 related activities to determine compliance with this chapter.

15 (b) Access.--The owner, operator or other person in charge
16 of a property, facility, operation or activity under this
17 chapter, upon presentation of proper identification and purpose
18 either for inspection or to remediate or otherwise respond to a
19 well control emergency, by agents or employees of the
20 department, shall provide free and unrestricted entry and
21 access. Upon refusal, the agent or employee may obtain a search
22 warrant or other suitable order authorizing entry and
23 inspection, remediation or response. It shall be sufficient to
24 justify issuance of a search warrant authorizing examination and
25 inspection if:

26 (1) there is probable cause to believe that the object
27 of the investigation is subject to regulation under this
28 chapter; and

29 (2) access, examination or inspection is necessary to
30 enforce the provisions of this chapter.

1 (c) Witnesses.--In any part of this Commonwealth, the
2 department may subpoena witnesses, administer oaths, examine
3 witnesses, take testimony and compel production of books,
4 records, maps, plats, papers, documents and other writings
5 pertinent to proceedings or investigations conducted by the
6 department under this chapter. Upon refusal to obey a subpoena
7 by any person and on application of the department, a court may
8 enforce a subpoena in contempt proceedings. Fees for serving a
9 subpoena shall be the same as those paid to sheriffs for similar
10 services.

11 (d) Deposition.--The department or a party to a proceeding
12 before the department may cause the deposition of a witness who
13 resides in or outside of this Commonwealth to be taken in the
14 manner prescribed by law for taking depositions in civil
15 actions.

16 (e) Witness fee.--Witnesses summoned before the department
17 shall be paid the same fees as are paid to witnesses in courts
18 of record of general jurisdiction. Witnesses whose depositions
19 are taken under this chapter, and the officers taking those
20 depositions, shall be entitled to the same fees as those paid
21 for like services in court.

22 (f) Purchasers.--Upon request, a purchaser of oil or gas
23 shall provide the department information necessary to determine
24 ownership of facilities from which the purchaser obtained oil or
25 gas. The information shall be kept confidential for a period of
26 five years, and the department may utilize it in enforcement
27 proceedings. The department may request information under this
28 section only when a well does not comply with section 3211(h)
29 (relating to well permits).

30 § 3259. Unlawful conduct.

1 It shall be unlawful for any person to:

2 (1) Drill, alter, operate or utilize an oil or gas well
3 without a permit or registration from the department as
4 required by this chapter or in violation of rules or
5 regulations adopted under this chapter, orders of the
6 department or a term or condition of a permit issued by the
7 department.

8 (2) Conduct an activity related to drilling for, or
9 production of, oil and gas:

10 (i) contrary to this chapter, rules or regulations
11 adopted under this chapter, an order of the department or
12 a term or condition of a permit issued by the department;
13 or

14 (ii) in any manner as to create a public nuisance or
15 adversely affect public health, safety, welfare or the
16 environment.

17 (3) Refuse, obstruct, delay or threaten an agent or
18 employee of the department acting in the course of lawful
19 performance of a duty under this chapter, including, but not
20 limited to, entry and inspection.

21 (4) Attempt to obtain a permit or identify a well as an
22 orphan well by misrepresentation or failure to disclose all
23 relevant facts.

24 (5) Cause abandonment of a well by removal of casing or
25 equipment necessary for production without plugging the well
26 in the manner prescribed under section 3220 (relating to
27 plugging requirements), except that the owner or operator of
28 a well may temporarily remove casing or equipment necessary
29 for production, but only if it is part of the normal course
30 of production activities.

1 § 3260. Collection of fines and penalties.

2 Fines and penalties shall be collectible in a manner provided
3 by law for collection of debts. If a person liable to pay a
4 penalty neglects or refuses to pay after demand, the amount,
5 together with interest and costs that may accrue, shall be a
6 judgment in favor of the Commonwealth on the person's property,
7 but only after the judgment has been entered and docketed of
8 record by the prothonotary of the county where the property is
9 situated. The department may transmit to prothonotaries of the
10 various counties certified copies of all judgments, and it shall
11 be the duty of each prothonotary to enter and docket them of
12 record in the prothonotary's office and index them as judgments
13 are indexed, without requiring payment of costs as a condition
14 precedent to entry.

15 § 3261. Third party liability.

16 If a person other than a well operator renders a service or
17 product to a well or well site, that person is liable with the
18 well owner or operator for violations of this chapter arising
19 out of and caused by the person's actions at the well or well
20 site, in accordance with State law.

21 § 3262. Inspection reports.

22 The department shall post inspection reports on its publicly
23 accessible Internet website. The inspection reports shall
24 include:

25 (1) The nature and description of violations.

26 (2) The operator's written response to the violation, if
27 available.

28 (3) The status of the violation.

29 (4) The remedial steps taken by the operator or the
30 department to address the violation.

1 by another operator or an orphan well, the permit fee and the
2 surcharge for the well shall be waived.

3 (2) The department shall study its experience in
4 implementing this section and shall report its findings to
5 the Governor and the General Assembly by August 1, 1992. The
6 report shall contain information relating to the balance of
7 the fund, number of wells plugged, number of identified wells
8 eligible for plugging and recommendations as to alternative
9 funding mechanisms.

10 (3) Expenditures by the department for plugging orphan
11 wells are limited to fees collected under this chapter. No
12 money from the General Fund shall be expended for this
13 purpose.

14 § 3272. (Reserved).

15 § 3273. Effect on department authority.

16 This chapter does not affect, limit or impair any right or
17 authority of the department under the act of June 22, 1937
18 (P.L.1987, No.394), known as The Clean Streams Law; the act of
19 January 8, 1960 (1959 P.L.2119, No.787), known as the Air
20 Pollution Control Act; the act of November 26, 1978 (P.L.1375,
21 No.325), known as the Dam Safety and Encroachments Act; or the
22 act of July 7, 1980 (P.L.380, No.97), known as the Solid Waste
23 Management Act.

24 § 3273.1. Relationship to solid waste and surface mining.

25 (a) General rule.--The obligation to obtain a permit and
26 post a bond under Articles III and V of the act of July 7, 1980
27 (P.L.380, No.97), known as the Solid Waste Management Act, and
28 to provide public notice under section 1905-A(b)(1)(v) of the
29 act of April 9, 1929 (P.L.177, No.175), known as The
30 Administrative Code of 1929, for any pit, impoundment, method or

1 facility employed for the disposal, processing or storage of
2 residual wastes generated by the drilling of an oil or gas well
3 or from the production of wells which is located on the well
4 site, shall be considered to have been satisfied if the owner or
5 operator of the well meets the following conditions:

6 (1) the well is permitted under the requirements of
7 section 3211 (relating to well permits) or registered under
8 section 3213 (relating to well registration and
9 identification);

10 (2) the owner or operator has satisfied the financial
11 security requirements of section 3225 (relating to bonding)
12 by obtaining a surety or collateral bond for the well and
13 well site; and

14 (3) the owner or operator maintains compliance with this
15 chapter and applicable regulations of the Environmental
16 Quality Board.

17 (b) Noncoal surface mining.--Obligations under the act of
18 December 19, 1984 (P.L.1093, No.219), known as the Noncoal
19 Surface Mining Conservation and Reclamation Act, or a
20 regulation promulgated under the Noncoal Surface Mining
21 Conservation and Reclamation Act, for any borrow area where
22 minerals are extracted solely for the purpose of oil and gas
23 well development, including access road construction, shall be
24 considered to have been satisfied if the owner or operator of
25 the well meets the conditions imposed under subsection (a)(1)
26 and (2) and maintains compliance with this chapter and
27 applicable regulations of the Environmental Quality Board.

28 (c) Solid Waste Management Act.--This section does not
29 diminish or otherwise affect duties or obligations of an owner
30 or operator under the Solid Waste Management Act. This section

1 does not apply to waste classified as hazardous waste under the
2 Solid Waste Management Act or the Resource Conservation and
3 Recovery Act of 1976 (Public Law 94-580, 90 Stat. 2795, 42
4 U.S.C. § 6901 et seq.).

5 (d) Definition.--As used in this section, the term "well
6 site" means areas occupied by all equipment or facilities
7 necessary for or incidental to drilling, production or plugging
8 a well.

9 § 3274. Regulations.

10 The Environmental Quality Board shall promulgate regulations
11 to implement this chapter.

12 CHAPTER 33

13 LOCAL ORDINANCES RELATING TO

14 OIL AND GAS OPERATIONS

15 Sec.

16 3301. Definitions.

17 3302. Oil and gas operations regulated pursuant to Chapter 32.

18 3303. Oil and gas operations regulated by environmental acts.

19 3304. Uniformity of local ordinances.

20 3305. Commission.

21 3306. Civil actions.

22 3307. Attorney fees and costs.

23 3308. Ineligibility.

24 3309. Applicability.

25 § 3301. Definitions.

26 The following words and phrases when used in this chapter
27 shall have the meanings given to them in this section unless the
28 context clearly indicates otherwise:

29 "Building." An occupied structure with walls and a roof
30 within which individuals live or customarily work.

1 "Commission." The Pennsylvania Public Utility Commission.
2 "Environmental acts." All statutes enacted by the
3 Commonwealth relating to the protection of the environment or
4 the protection of public health, safety and welfare, that are
5 administered and enforced by the department or by another
6 Commonwealth agency, including an independent agency, and all
7 Federal statutes relating to the protection of the environment,
8 to the extent those statutes regulate oil and gas operations.

9 "Local government." A county, city, borough, incorporated
10 town or township of this Commonwealth.

11 "Local ordinance." An ordinance or other enactment,
12 including a provision of a home rule charter, adopted by a local
13 government that regulates oil and gas operations.

14 "MPC." The act of July 31, 1968 (P.L.805, No.247), known as
15 the Pennsylvania Municipalities Planning Code.

16 "Oil and gas operations." The term includes the following:

17 (1) well location assessment, including seismic
18 operations, well site preparation, construction, drilling,
19 hydraulic fracturing and site restoration associated with an
20 oil or gas well of any depth;

21 (2) water and other fluid storage or impoundment areas
22 used exclusively for oil and gas operations;

23 (3) construction, installation, use, maintenance and
24 repair of:

25 (i) oil and gas pipelines;

26 (ii) natural gas compressor stations; and

27 (iii) natural gas processing plants or facilities
28 performing equivalent functions; and

29 (4) construction, installation, use, maintenance and
30 repair of all equipment directly associated with activities

1 specified in paragraphs (1), (2) and (3), to the extent that:

2 (i) the equipment is necessarily located at or
3 immediately adjacent to a well site, impoundment area,
4 oil and gas pipeline, natural gas compressor station or
5 natural gas processing plant; and

6 (ii) the activities are authorized and permitted
7 under the authority of a Federal or Commonwealth agency.

8 "Permitted use." A use which, upon submission of written
9 notice to and receipt of a permit issued by a zoning officer or
10 equivalent official, is authorized to be conducted without
11 restrictions other than those set forth in section 3304
12 (relating to uniformity of local ordinances).

13 § 3302. Oil and gas operations regulated pursuant to Chapter
14 32.

15 Except with respect to local ordinances adopted pursuant to
16 the MPC and the act of October 4, 1978 (P.L.851, No.166), known
17 as the Flood Plain Management Act, all local ordinances
18 purporting to regulate oil and gas operations regulated by
19 Chapter 32 (relating to development) are hereby superseded. No
20 local ordinance adopted pursuant to the MPC or the Flood Plain
21 Management Act shall contain provisions which impose conditions,
22 requirements or limitations on the same features of oil and gas
23 operations regulated by Chapter 32 or that accomplish the same
24 purposes as set forth in Chapter 32. The Commonwealth, by this
25 section, preempts and supersedes the regulation of oil and gas
26 operations as provided in this chapter.

27 § 3303. Oil and gas operations regulated by environmental acts.

28 Notwithstanding any other law to the contrary, environmental
29 acts are of Statewide concern and, to the extent that they
30 regulate oil and gas operations, occupy the entire field of

1 regulation, to the exclusion of all local ordinances. The
2 Commonwealth by this section, preempts and supersedes the local
3 regulation of oil and gas operations regulated by the
4 environmental acts, as provided in this chapter.

5 § 3304. Uniformity of local ordinances.

6 (a) General rule.--In addition to the restrictions contained
7 in sections 3302 (relating to oil and gas operations regulated
8 pursuant to Chapter 32) and 3303 (relating to oil and gas
9 operations regulated by environmental acts), all local
10 ordinances regulating oil and gas operations shall allow for the
11 reasonable development of oil and gas resources.

12 (b) Reasonable development of oil and gas resources.--In
13 order to allow the for the reasonable development of oil and gas
14 resources, a local ordinance:

15 (1) Shall allow well and pipeline location assessment
16 operations, including seismic operations and related
17 activities conducted in accordance with all applicable
18 Federal and State laws and regulations relating to the
19 storage and use of explosives throughout every local
20 government.

21 (2) May not impose conditions, requirements or
22 limitations on the construction of oil and gas operations
23 that are more stringent than conditions, requirements or
24 limitations imposed on construction activities for other
25 industrial uses within the geographic boundaries of the local
26 government.

27 (3) May not impose conditions, requirements or
28 limitations on the heights of structures, screening and
29 fencing, lighting or noise relating to permanent oil and gas
30 operations that are more stringent than the conditions,

1 requirements or limitations imposed on other industrial uses
2 or other land development within the particular zoning
3 district where the oil and gas operations are situated within
4 the local government.

5 (4) Shall have a review period for permitted uses that
6 does not exceed 30 days for complete submissions or that does
7 not exceed 120 days for conditional uses.

8 (5) Shall authorize oil and gas operations, other than
9 activities at impoundment areas, compressor stations and
10 processing plants, as a permitted use in all zoning
11 districts.

12 (5.1) Notwithstanding section 3215 (relating to well
13 location restrictions), may prohibit, or permit only as a
14 conditional use, wells or well sites otherwise permitted
15 under paragraph (5) within a residential district if the
16 well site cannot be placed so that the wellhead is at least
17 500 feet from any existing building. In a residential
18 district, all of the following apply:

19 (i) A well site may not be located so that the outer
20 edge of the well pad is closer than 300 feet from an
21 existing building.

22 (ii) Except as set forth in paragraph (5) and this
23 paragraph, oil and gas operations, other than the
24 placement, use and repair of oil and gas pipelines, water
25 pipelines, access roads or security facilities, may not
26 take place within 300 feet of an existing building.

27 (6) Shall authorize impoundment areas used for oil and
28 gas operations as a permitted use in all zoning districts,
29 provided that the edge of any impoundment area shall not be
30 located closer than 300 feet from an existing building.

1 (7) Shall authorize natural gas compressor stations as a
2 permitted use in agricultural and industrial zoning districts
3 and as a conditional use in all other zoning districts, if
4 the natural gas compressor building meets the following
5 standards:

6 (i) is located 750 feet or more from the nearest
7 existing building or 200 feet from the nearest lot line,
8 whichever is greater, unless waived by the owner of the
9 building or adjoining lot; and

10 (ii) the noise level does not exceed a noise
11 standard of 60dbA at the nearest property line or the
12 applicable standard imposed by Federal law, whichever is
13 less.

14 (8) Shall authorize a natural gas processing plant as a
15 permitted use in an industrial zoning district and as
16 conditional uses in agricultural zoning districts if all of
17 the following apply:

18 (i) The natural gas processing plant building is
19 located at the greater of at least 750 feet from the
20 nearest existing building or at least 200 feet from the
21 nearest lot line unless waived by the owner of the
22 building or adjoining lot.

23 (ii) The noise level of the natural gas processing
24 plant building does not exceed a noise standard of 60dbA
25 at the nearest property line or the applicable standard
26 imposed by Federal law, whichever is less.

27 (9) Shall impose restrictions on vehicular access routes
28 for overweight vehicles only as authorized under 75 Pa.C.S.
29 (relating to vehicles) or the MPC.

30 (10) May not impose limits or conditions on subterranean

1 operations or hours of operation of compressor stations and
2 processing plants or hours of operation for the drilling of
3 oil and gas wells or the assembly and disassembly of drilling
4 rigs.

5 (11) May not increase setback distances set forth in
6 Chapter 32 (relating to development) or this chapter. A local
7 ordinance may impose setback distances that are not regulated
8 by or set forth in Chapter 32 or this chapter if the setbacks
9 are no more stringent than those for other industrial uses
10 within the geographic boundaries of the local government.

11 § 3305. Commission.

12 (a) Advisory opinions to municipalities.--

13 (1) A municipality may, prior to the enactment of a
14 local ordinance, in writing, request the commission to review
15 a proposed local ordinance to issue an opinion on whether it
16 violates the MPC, this chapter or Chapter 32 (relating to
17 development).

18 (2) Within 120 days of receiving a request under
19 paragraph (1), the commission shall, in writing, advise the
20 municipality whether or not the local ordinance violates the
21 MPC, this chapter or Chapter 32.

22 (3) An opinion under this subsection shall be advisory
23 in nature and not subject to appeal.

24 (b) Orders.--

25 (1) An owner or operator of an oil or gas operation, or
26 a person residing within the geographic boundaries of a local
27 government, who is aggrieved by the enactment or enforcement
28 of a local ordinance may request the commission to review the
29 local ordinance of that local government to determine whether
30 it violates the MPC, this chapter or Chapter 32.

1 (2) Participation in the review by the commission shall
2 be limited to parties specified in paragraph (1) and the
3 municipality which enacted the local ordinance.

4 (3) Within 120 days of receiving a request under this
5 subsection, the commission shall issue an order to determine
6 whether the local ordinance violates the MPC, this chapter or
7 Chapter 32.

8 (4) An order under this subsection shall be subject to
9 de novo review by the Commonwealth Court. A petition for
10 review must be filed within 30 days of the date of service of
11 the commission's order. The order of the commission shall be
12 made part of the record before the court.

13 (c) Exemptions.--An opinion under subsection (a) and an
14 order under subsection (b) shall not be subject to:

15 (1) 2 Pa.C.S. Ch. 5 Subch. A (relating to practice and
16 procedure of Commonwealth agencies);

17 (2) 65 Pa.C.S. Ch. 7 (relating to open meetings); or

18 (3) 66 Pa.C.S. Ch. 3 Subch. B (relating to
19 investigations and hearings).

20 (d) Authority.--The commission has the following powers to
21 carry out this chapter:

22 (1) Employ individuals.

23 (2) Issue orders.

24 (3) Promulgate regulations.

25 (4) Until January 1, 2013, promulgate temporary
26 regulations. Regulations under this paragraph:

27 (i) shall expire no later than two years following
28 the effective date of this section; and

29 (ii) are exempt from:

30 (A) sections 201, 202 and 203 of the act of July

1 31, 1968 (P.L.769, No.240), referred to as the
2 Commonwealth Documents Law; and

3 (B) the act of June 25, 1982 (P.L.633, No.181),
4 known as the Regulatory Review Act.

5 § 3306. Civil actions.

6 The following shall apply:

7 (1) Notwithstanding any provision of 42 Pa.C.S. Ch. 85
8 Subch. C (relating to actions against local parties), any
9 person who is aggrieved by the enactment or enforcement of a
10 local ordinance that violates the MPC, this chapter or
11 Chapter 32 may bring an action in Commonwealth Court to
12 invalidate the ordinance or enjoin its enforcement.

13 (2) An aggrieved person may proceed under this section
14 without first obtaining review of the ordinance by the
15 commission.

16 (3) In an action relating to the enactment or
17 enforcement of a local ordinance, a determination of the
18 commission made under section 3305(b) (relating to
19 commission) shall become part of the record before the court.

20 § 3307. Attorney fees and costs.

21 In an action brought under section 3306 (relating to civil
22 actions), the court may do any of the following:

23 (1) If the court determines that the local government
24 enacted or enforced a local ordinance with willful or
25 reckless disregard of the MPC, this chapter or Chapter 32
26 (relating to development), it may order the local government
27 to pay the plaintiff reasonable attorney fees and other
28 reasonable costs incurred by the plaintiff in connection with
29 the action.

30 (2) If the court determines that the action brought by

1 the plaintiff was frivolous or was brought without
2 substantial justification in claiming that the local
3 ordinance in question was contrary to the MPC, this chapter
4 or Chapter 32, it may order the plaintiff to pay the local
5 government reasonable attorney fees and other reasonable
6 costs incurred by the local government in defending the
7 action.

8 § 3308. Ineligibility.

9 If the commission, the Commonwealth Court or the Supreme
10 Court issues an order that a local ordinance violates the MPC,
11 this chapter or Chapter 32 (relating to development), the
12 municipality enacting or enforcing the local ordinance shall be
13 immediately ineligible to receive any funds collected under
14 Chapter 23 (relating to unconventional gas well fee). The local
15 government shall remain ineligible to receive funds under
16 Chapter 23 until the local government amends or repeals its
17 ordinance in accordance with this chapter or the order or
18 determination that the local ordinance is unlawful is reversed
19 on appeal.

20 § 3309. Applicability.

21 (a) Ordinances.--This chapter shall apply to the enforcement
22 of local ordinances existing on the effective date of this
23 chapter and to the enactment or enforcement of a local ordinance
24 enacted on or after the effective date of this chapter.

25 (b) Local governments.--A local government that has enacted
26 a local ordinance relating to oil and gas operations prior to
27 the effective date of this chapter shall have 120 days from the
28 effective date of this chapter to review and amend an ordinance
29 in order to comply with this chapter.

30 CHAPTER 35

1 RESPONSIBILITY FOR FEE

2 Sec.

3 3501. Declaration of policy.

4 3502. Prohibition.

5 3503. Existing agreements.

6 3504. Future agreements.

7 § 3501. Declaration of policy.

8 The General Assembly finds and declares as follows:

9 (1) The enactment of this chapter is an exercise of the
10 authority of the Commonwealth to safeguard the vital
11 interests of its citizens.

12 (2) This chapter is intended to advance the significant
13 and legitimate public purpose of ensuring that entities
14 responsible for the impacts of unconventional oil and gas
15 well development are solely responsible for payment of impact
16 fees.

17 § 3502. Prohibition.

18 A producer may not make the fee authorized under Chapter 23
19 (relating to unconditional gas well fee) an obligation,
20 indebtedness or liability of a landowner, leaseholder or other
21 person in possession of real property, upon which the removal or
22 extraction occurs.

23 § 3503. Existing agreements.

24 A provision of an agreement in existence prior to the
25 effective date of this section which violates section 3502
26 (relating to prohibition) is declared to be illegal and contrary
27 to public policy and shall be null and void.

28 § 3504. Future agreements.

29 On or after the effective date of this section, a provision
30 of an agreement in violation of section 3502 (relating to

1 prohibition) is declared to be illegal and contrary to public
2 policy and shall be null and void.

3 Section 2. For fiscal year 2011-2012, \$250,000 is
4 appropriated from the General Fund to the Pennsylvania Public
5 Utility Commission for costs associated with implementation of
6 this act.

7 Section 3. Repeals are as follows:

8 (1) The General Assembly declares that the repeal under
9 paragraph (2) is necessary to effectuate the addition of 58
10 Pa.C.S. Ch. 32.

11 (2) The act of December 19, 1984 (P.L.1140, No.223),
12 known as the Oil and Gas Act, is repealed.

13 Section 4. The addition of 58 Pa.C.S. Ch. 32 and 58 Pa.C.S.
14 § 3302 is a continuation of the act of December 19, 1984
15 (P.L.1140, No.223), known as the Oil and Gas Act. The following
16 apply:

17 (1) Except as otherwise provided in 58 Pa.C.S. Ch. 32 or
18 33, all activities initiated under the Oil and Gas Act shall
19 continue and remain in full force and effect and may be
20 completed under 58 Pa.C.S. Chs. 32 and 33. Orders,
21 regulations, rules and decisions which were made under the
22 Oil and Gas Act and which are in effect on the effective date
23 of section 3(2) of this act shall remain in full force and
24 effect until revoked, vacated or modified under 58 Pa.C.S.
25 Ch. 32 or 33. Except as provided in 58 Pa.C.S. Ch. 35,
26 contracts, obligations and collective bargaining agreements
27 entered into under the Oil and Gas Act are not affected nor
28 impaired by the repeal of the Oil and Gas Act.

29 (2) Except as set forth in paragraph (3), any difference
30 in language between 58 Pa.C.S. Ch. 32 and the Oil and Gas Act

1 is intended only to conform to the style of the Pennsylvania
2 Consolidated Statutes and is not intended to change or affect
3 the legislative intent, judicial construction or
4 administration and implementation of the Oil and Gas Act.

5 (3) Paragraph (2) does not apply to the addition of the
6 following provisions of 58 Pa.C.S.:

- 7 (i) Section 3203.
- 8 (ii) Section 3211.
- 9 (iii) Section 3212.1.
- 10 (iv) Section 3215.
- 11 (v) Section 3216.
- 12 (vi) Section 3218.
- 13 (vii) Section 3218.1.
- 14 (viii) Section 3218.2.
- 15 (ix) Section 3218.3.
- 16 (x) Section 3218.4.
- 17 (xi) Section 3218.5.
- 18 (xii) Section 3219.1.
- 19 (xiii) Section 3222.
- 20 (xiv) Section 3222.1.
- 21 (xv) Section 3225.
- 22 (xvi) Section 3227.
- 23 (xvii) Section 3252.
- 24 (xviii) Section 3253.
- 25 (xix) Section 3254.1.
- 26 (xx) Section 3255.
- 27 (xxi) Section 3256.
- 28 (xxii) Section 3258.
- 29 (xxiii) Section 3261.
- 30 (xxiv) Section 3262.

1 (4) Any difference in language between 58 Pa.C.S. § 3302
2 and section 602 of the Oil and Gas Act is intended only to
3 conform to the style of the Pennsylvania Consolidated
4 Statutes and is not intended to change or affect the
5 legislative intent, judicial construction or administration
6 and implementation of section 602 of the Oil and Gas Act.

7 Section 5. The addition of 58 Pa.C.S. Ch. 23 shall apply to
8 all oil and gas deposits and oil and gas development activities
9 and operations subject to the jurisdiction of the Commonwealth.
10 With respect to oil and gas deposits on national forest lands
11 identified under section 17(o) of the Mineral Leasing Act (106
12 Stat. 3108, 30 U.S.C. § 226(o)), the application of regulations
13 and statutes adopted by the Commonwealth shall be the exclusive
14 method and means by which any requirements may be imposed on any
15 feature, aspect or process of oil and gas operations pertaining
16 to the development of the deposits.

17 Section 6. It is not the intent of the General Assembly to
18 change, repeal or otherwise affect any of the provisions of the
19 act of December 18, 1984 (P.L.1069, No.214), known as the Coal
20 and Gas Resource Coordination Act, or to change, repeal or
21 otherwise affect any of the provisions of the act of January 26,
22 2011 (P.L.7, No.2), entitled "An act amending the act of
23 December 18, 1984 (P.L.1069, No.214), entitled 'An act requiring
24 coordination of coal mine and gas well operators; authorizing
25 Department of Environmental Resources enforcement powers; and
26 providing penalties,' further providing for definitions, for
27 permits, for permit application, for minimum distance between
28 gas wells, for well class designation and for coordination of
29 gas well drilling through active coal mines; providing for a
30 pillar support study; and further providing for plugging gas

1 wells penetrating workable coal seams, for penalties and for
2 validity of other laws," which amended the Coal and Gas Resource
3 Coordination Act.

4 Section 7. Within 90 days of the effective date of this
5 section, the Department of Transportation shall issue a
6 statement of policy, effective upon publication in the
7 Pennsylvania Bulletin, adopting an appropriate methodology to
8 provide letters of local determination that identify particular
9 vehicles, routes or uses as local in nature. The Department of
10 Transportation may determine that hauling related to
11 unconventional oil and gas development is excluded from local
12 traffic status based on its disproportionate and qualitatively
13 different impact upon highways and bridges. The methodology
14 shall allow for exemptions from 67 Pa. Code Ch. 189 (relating to
15 hauling in excess of posted weight limit) related to at-risk
16 industry sectors in this Commonwealth that have experienced a
17 20% or more decline in Statewide employment since 2002 or that
18 demonstrate other evidence of economic decline as determined by
19 the department in consultation with the Department of Labor and
20 Industry. The exemptions and related requirements shall remain
21 in existence until December 31, 2015.

22 Section 8. The Energy Executive of the Governor shall
23 consult with the Department of Environmental Protection, the
24 Pennsylvania Public Utility Commission, State legislators, local
25 government organizations, natural gas industry representatives,
26 conservationists and other affected entities on the issue of
27 pipeline placement for natural gas gathering lines in this
28 Commonwealth. The Energy Executive of the Governor shall submit
29 a report summarizing pipeline placement for natural gas
30 gathering lines and make his recommendations to the General

1 Assembly within one year of the effective date of this section.

2 Section 9. This act shall take effect as follows:

3 (1) The following provisions shall take effect
4 immediately:

5 (i) The addition of 58 Pa.C.S. Ch. 23.

6 (ii) Section 6 of this act.

7 (iii) Section 7 of this act.

8 (iv) This section.

9 (2) The remainder of this act shall take effect in 60
10 days.

ENROLLED

H. B. 401

(By Mr Speaker, Mr. Thompson)

[By Request of the Executive]

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

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

thereto a new article, designated §22-6B-1, §22-6B-2, §22-6B-3, §22-6B-4, §22-6B-5, §22-6B-6, §22-6B-7 and §22-6B-8; to amend and reenact §22C-8-2 of said code; and to amend and reenact §22C-9-2 of said code, all relating generally to oil and gas wells; requiring West Virginia Workforce Investment Council to complete certain reviews and provide report to Legislature; expanding powers of Secretary of the Department of Environmental Protection; authorizing secretary to determine number of oil and gas inspectors and supervisors and to make investigations or inspections to ensure compliance with applicable law; providing for inspector qualifications, duties and minimum salaries; creating Natural Gas Horizontal Well Control Act; providing short title; making legislative findings and declarations of public policy; requiring secretary to submit written report to Legislature on number of waivers granted; providing for applicability of act and exceptions; providing special considerations regarding karst formations; requiring the secretary to propose emergency and legislative rules pertaining to drilling in karst formations; defining terms; making horizontal wells subject to certain provisions in article six, chapter twenty-two of the Code of West Virginia; specifying powers and duties of secretary, including certain rule-making power and reporting duties; requiring permit for horizontal wells; establishing permit

application requirements and contents; requiring bond and permit fees; providing for issuance of emergency permits; providing for denial, suspension and reinstatement of permits in certain circumstances; providing for application review, requirements for issuance of permit and permit requirements; establishing performance standards; providing for copies of permits to be furnished to county assessors; requiring certificate of approval for large pits or impoundments construction; requiring application for certificate; establishing application requirements and payment of fees; providing for modification, revocation or suspension of certificate and hearing procedure, including an administrative appeals process; providing exceptions for certain farm ponds; authorizing secretary to propose legislative rules governing large pits and impoundment; providing certain notices to certain property owners regarding certain applications and intent to enter property to survey or to conduct seismic activity; requiring the submission of certain documents and information to be provided with such notice; clarifying that notice to certain lienholders is not notice to certain landowners; providing for public notice and comment; requiring applicant to file Class II ad and allowing submission of written comments to Department of Environmental Protection; establishing certain information to be contained in the

published newspaper notice; providing for the publishing public comment received by the Department of Environmental Protection on the department's public website; clarifying method of delivery of notice; establishing procedure for filing written comments; establishing well location restrictions; requiring the secretary to prepare a report to the legislature on noise, light dust and volatile organic compounds and their relationship to well location restrictions for occupied dwellings; allowing the secretary to propose guidelines and procedures for controlling and mitigating levels of noise, light, dust and volatile organic compounds in relation to horizontal drilling activities; requiring promulgation of legislative rules for plugging and abandonment of horizontal wells; exempting certain wells from Natural Gas Horizontal Well Control Act; establishing reclamation requirements; requiring performance bonds or other security; providing notice of planned operation and contents of notice to certain surface owners; providing notice to certain surface owner and offer for compensation for certain damages to certain surface owner; providing for reimbursement of property taxes to surface owner; providing for civil action, rebuttable presumption and relief for water contamination or deprivation; establishing water rights and replacement procedure; establishing civil penalties and offenses; establishing

criminal penalties and offenses; requiring gas operations to submit certification from Division of Highways that operator has entered into road maintenance agreement pursuant to Division of Highways Oil and Gas Road Policy; creating public website and electronic notification registry of horizontal well permit applications and public notice of website; providing for the publication of information pertaining to permit applications on that public website; providing for air quality study, report to Legislature and rulemaking; requiring secretary to report to Legislature regarding safety of pits and impoundments; providing casing and cement standards; authorizing secretary to promulgate legislative and emergency rules relating to casing and cement standards; authorizing secretary to promulgate legislative rules governing pits and impoundments; providing secretary authority to establish, revise and grant waivers regarding casing and cement standards and programs; creating the Oil and Gas Horizontal Well Production Damage Compensation Act; providing legislative findings and purpose; defining terms; providing conditions and parameters for compensation of surface owners for drilling operations; preserving common law right of action and providing offset for compensation or damages paid; requiring notice of claims by surface owners; providing manner in which oil and gas operator must provide notice of reclamation;

providing for offers of settlement; providing procedures for civil actions, arbitration and fees; preserving alternate remedies; and modifying definitions of "shallow wells" and "deep wells".

Be it enacted by the Legislature of West Virginia:

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

CHAPTER 5B. ECONOMIC DEVELOPMENT ACT OF 1985.

ARTICLE 2B. WEST VIRGINIA WORKFORCE INVESTMENT ACT.

§5B-2B-4a. Report to Legislature.

(a) The Legislature finds that:

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

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

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

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

(b) To assist in maximizing the economic opportunities available with horizontal drilling, the council shall make a report to the Joint Committee on Government and Finance and the Legislative Oversight Commission on Education Accountability on or

before November 1 of each year through 2016, detailing a comprehensive review of the direct and indirect economic impact of employers engaged in the production of horizontal wells in the State of West Virginia, as more specifically defined in article six-a, chapter twenty-two of this code, which shall include:

- (1) A review of the total number of jobs created;
 - (2) A review of total payroll of all jobs created;
 - (3) The average salary per job type;
 - (4) A review of the number of employees domiciled in the State of West Virginia;
 - (5) A review of total economic impact;
 - (6) The council's recommendations for the establishment of an overall workforce investment public education agenda with goals and benchmarks toward maximizing job creation opportunities in the State of West Virginia;
 - (7) A review of number of jobs created for minorities based on race, ethnicity and gender;
 - (8) A review of number of jobs created for individuals re-employed from the state of West Virginia's unemployment rosters;
 - (9) A review of number of jobs created for returning veterans;
- and
- (10) A review of number of jobs created for legal West Virginia residents and non-West Virginia residents.

(c) To the extent permitted by federal law, and to the extent

necessary for the council to comply with this section, the council, Workforce West Virginia, the Division of Labor, and the Office of the Insurance Commissioner may enter into agreements providing for the sharing of job data and related information.

CHAPTER 22. ENVIRONMENTAL RESOURCES.

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

§22-6-1. Definitions.

As used in this article:

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

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

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

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

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

(f) "Director" means the Secretary of the Department of Environmental Protection as established in article one of this

chapter or other person to whom the secretary has delegated authority or duties pursuant to sections six or eight, article one of this chapter.

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

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

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

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

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

(l) "Owner" when used with reference to any well, shall include any person or persons, firm, partnership, partnership association or corporation that owns, manages, operates, controls

or possesses such well as principal, or as lessee or contractor, employee or agent of such principal;

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

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

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

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

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

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

(s) "Secretary" means the Secretary of the Department of Environmental Protection as established in article one of this

chapter or other person to whom the secretary has delegated authority or duties pursuant to sections six or eight, article one of this chapter;

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

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

(v) "Waste" means (i) physical waste, as the term is generally understood in the oil and gas industry; (ii) the locating, drilling, equipping, operating or producing of any oil or gas well in a manner that causes, or tends to cause a substantial reduction in the quantity of oil or gas ultimately recoverable from a pool under prudent and proper operations, or that causes or tends to cause a substantial or unnecessary or excessive surface loss of oil or gas; or (iii) the drilling of more deep wells than are reasonably required to recover efficiently and economically the maximum amount of oil and gas from a pool; (iv) substantially inefficient, excessive or improper use, or the substantially unnecessary dissipation of, reservoir energy, it being understood

that nothing in this chapter authorizes any agency of the state to impose mandatory spacing of shallow wells except for the provisions of section eight, article nine, chapter twenty-two-c of this code and the provisions of article eight, chapter twenty-two-c of this code; (v) inefficient storing of oil or gas: *Provided*, That storage in accordance with a certificate of public convenience issued by the Federal Energy Regulatory Commission is conclusively presumed to be efficient; and (vi) other underground or surface waste in the production or storage of oil, gas or condensate, however caused. Waste does not include gas vented or released from any mine areas as defined in section two, article one, chapter twenty-two-a of this code, or from adjacent coal seams which are the subject of a current permit issued under article two of chapter twenty-two-a of this code: *Provided, however*, That nothing in this exclusion is intended to address ownership of the gas;

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

(x) "Well" means any shaft or hole sunk, drilled, bored or dug into the earth or into underground strata for the extraction or injection or placement of any liquid or gas, or any shaft or hole sunk or used in conjunction with such extraction or injection or placement. The term "well" does not include any shaft or hole sunk, drilled, bored or dug into the earth for the sole purpose of

core drilling or pumping or extracting therefrom potable, fresh or usable water for household, domestic, industrial, agricultural or public use;

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

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

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

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

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

(c) The secretary shall have full charge of the oil and gas matters set out in this article and in articles six-a, eight, nine,

ten and twenty-one of this chapter. In addition to all other powers and duties conferred upon him or her, the secretary shall have the power and duty to:

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

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

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

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

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

(6) Employ a hearing officer and such clerks, stenographers and other employees, as may be necessary to carry out his or her

duties and the purposes of the office of oil and gas and fix their compensation;

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

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

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

(10) Collect a permit fee of \$400 for each permit application filed other than an application for a deep well, horizontal wells regulated pursuant to article six-a of this chapter, or a coalbed methane well; and collect a permit fee of \$650 for each permit application filed for a deep well: *Provided*, That no permit application fee is required when an application is submitted solely for the plugging or replugging of a well, or to modify an existing

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

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

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

(13) Adopt rules with respect to the issuance, denial, retention, suspension or revocation of permits, authorizations and requirements of this chapter, which rules shall assure that the rules, permits and authorizations issued by the secretary are

adequate to satisfy the purposes of this article and articles six-a, seven, eight, nine, ten and twenty-one of this chapter particularly with respect to the consolidation of the various state and federal programs which place permitting requirements on the exploration, development, production, storage and recovery of this state's oil and gas; and

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

(d) The secretary shall have authority to visit and inspect any well or well site and any other oil or gas facility in this state and may call for the assistance of any oil and gas inspector or inspectors or supervising inspector whenever such assistance is necessary in the inspection of any such well or well site or any other oil or gas facility. Similarly, all oil and gas inspectors and supervising inspectors shall have authority to visit and inspect any well or well site and any other oil or gas facility in this state. Such inspectors shall make all necessary inspections of oil and gas operations required by this article and articles six-a, eight, nine, ten and twenty-one of this chapter; administer and enforce all oil and gas laws and rules; and perform other duties and services as may be prescribed by the secretary. The

inspectors shall note and describe all violations of this article and articles six-a, eight, nine, ten or twenty-one of this chapter and promptly report those violations to the secretary in writing, furnishing at the same time a copy of the report to the operator concerned. Any well operator, coal operator operating coal seams beneath the tract of land, or the coal seam owner or lessee, if any, if said owner or lessee is not yet operating said coal seams beneath said tract of land may request the secretary to have an immediate inspection made. The operator or owner of every well or well site or any other oil or gas facility shall cooperate with the secretary, all oil and gas inspectors and the supervising inspector in making inspections or obtaining information.

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

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

(a) No person is eligible for appointment as an oil and gas inspector or supervising inspector unless, at the time of probationary appointment, the person: (1) is a citizen of West Virginia, in good health and of good character, reputation and temperate habits; (2) has had at least two years actual relevant experience in the oil and gas industry: *Provided*, That no more than one year of the experience requirement may be satisfied by any of following: (i) A bachelor of science degree in science or

engineering; (ii) an associate degree in petroleum technology; or (iii) actual relevant environmental experience including, without limitation, experience in wastewater, solid waste or reclamation, each full year of which shall be considered as a year of actual relevant experience in the oil and gas industry; and (3) has good theoretical and practical knowledge of oil and gas drilling and production methods, practices and techniques, sound safety practices and applicable water and mining laws.

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

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

ARTICLE 6A. NATURAL GAS HORIZONTAL WELL CONTROL ACT.

§22-6A-1. Short title.

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

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

(a) The Legislature finds that:

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

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

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

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

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

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

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

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

(b) The Legislature declares that the establishment of a new regulatory scheme to address new and advanced natural gas development technologies and drilling practices is in the public

interest and should be done in a manner that protects the environment and our economy for current and future generations.

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

§22-6A-3. Applicability; exceptions.

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

§22-6A-3a. Karst terrain; rulemaking.

(a) Because drilling horizontal wells in naturally occurring karst terrain may require precautions not necessary in other parts

of the state, the secretary may require additional safeguards to protect this geological formation. When drilling horizontal wells in naturally occurring karst terrain, such additional safeguards may include changing proposed well locations to avoid damage to water resources, special casing programs, and additional or special review of drilling procedures.

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

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

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

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

§22-6A-4. Definitions.

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

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

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

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

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

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

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

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

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

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

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

(10) "Pit" means a man-made excavation or diked area that

contains or is intended to contain an accumulation of process waste fluids, drill cuttings or any other liquid substance generated in the development of a horizontal well and which could impact surface or groundwater;

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

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

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

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

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

and notice of findings and orders;

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

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

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

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

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

(A) Under subsection (a), section twelve, article six of this chapter, the plat also shall identify all surface tract boundaries within the scope of the plat proposed to be crossed by the

horizontal lateral of the horizontal well and the proposed path of such horizontal lateral, and

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

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

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

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

(10) The provisions of section eighteen, article six of this

chapter providing for protective devices for when a well penetrates one or more workable coal beds and when gas is found beneath or between workable coal beds;

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

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

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

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

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

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

(17) The provisions of section twenty-nine, article six of

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

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

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

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

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

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

(23) The provisions of section forty, article six of this chapter relating to appeals from orders issuing or refusing to

issue a permit to drill or fracture, and the procedure therefore.

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

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

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

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

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

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

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

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

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

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

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

(a) It is unlawful for any person to commence any well work,

including site preparation work which involves any disturbance of land, for a horizontal well without first securing from the secretary a well work permit pursuant to this article.

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

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

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

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

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

(5) The approximate total depth to which the well is to be drilled or deepened, or the actual depth if the well has been drilled; the proposed angle and direction of the well; the actual

depth or the approximate depth at which the well to be drilled deviates from vertical, the angle and direction of the nonvertical well bore until the well reaches its total target depth or its actual final depth and the length and direction of any actual or proposed horizontal lateral or well bore;

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

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

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

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

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

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

this article;

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

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

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

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

article were waived in writing by the surface owner; and

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

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

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

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

certified by a registered professional engineer and contains information that the secretary may require by rule.

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

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

(2) The anticipated volume of each water withdrawal;

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

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

(5) A listing of the anticipated additives that may be used in water utilized for fracturing or stimulating the well. Upon well completion, a listing of the additives that were actually used in the fracturing or stimulating of the well shall be submitted as

part of the completion log or report required by subdivision (14), subsection (a), section five of this article;

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

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

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

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

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

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

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

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

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

(j) The secretary may waive the requirements of this section

and sections eight, ten, eleven and twenty-four of this article in any emergency situation, if the secretary deems the action necessary. In such case the secretary may issue an emergency permit which is effective for not more than thirty days, unless reissued by the secretary.

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

(1) In the event the secretary finds that a substantial violation has occurred and that the operator has failed to abate or seek review of the violation in the time prescribed, the secretary may suspend the permit on which said violation exists, after which suspension the operator shall forthwith cease all well work being conducted under the permit. However, the secretary may reinstate the permit without further notice, at which time the well work may be continued. The secretary shall make written findings of any

such suspension and may enforce the same in the circuit courts of this state. The operator may appeal a suspension pursuant to the provisions of subdivision (23), subsection (a), section five of this article. The secretary shall make a written finding of any such determination.

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

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

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

(c) Prior to the issuance of any permit, the secretary shall ascertain from the Executive Director of Workforce West Virginia

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

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

determines that:

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

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

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

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

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

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

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

(f) The secretary shall promptly review all written comments filed by persons entitled to notice pursuant to subsection (b), section ten of this article. If after review of the application

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

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

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

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

(3) Grade, terrace and plant, seed or sod the area disturbed that is not required in production of the horizontal well where

necessary to bind the soil and prevent substantial erosion and sedimentation;

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

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

water supply well. The secretary shall propose legislative rules to identify appropriate methods for testing water flow and quality.

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

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

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

(C) Recordkeeping and reporting. For all water used for hydraulic fracturing of horizontal wells and for flowback water from hydraulic fracturing activities and produced water from production activities from horizontal wells, an operator shall

comply with the following record keeping and reporting requirements:

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

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

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

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

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

(I) The quantity of water transported;

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

(III) The name of the water hauling company.

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

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

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

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

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

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

(b) It is unlawful for any person to place, construct, enlarge, alter, repair, remove or abandon any freshwater

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

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

(d) Any certificate of approval required by this section shall be issued or denied no later than sixty days from the submission of an application containing the information required by this section.

However, if the application for a certificate of approval is submitted with the application for a horizontal well permit, the certificate shall be issued or denied no later than thirty days

from the submission of the permit application.

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

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

(g) Plans and specifications for the placement, construction, erosion and sediment control, enlargement, alteration, repair or removal and reclamation of impoundments shall be the charge of a

registered professional engineer licensed to practice in West Virginia. Any plans or specifications submitted to the department shall bear the seal of a registered professional engineer.

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

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

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

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

(j) Upon expiration of the certificate of approval, the operator shall within six months, or upon its revocation by the

secretary, the operator shall within sixty days, fill all impoundments that are not required or allowed by state or federal law or rule or agreement between the operator and the surface owner allowing the impoundment to remain open for the use and benefit of the surface owner and reclaim the site in accordance with the approved erosion and sediment control plan.

(k) This section does not apply to:

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

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

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

§22-6A-10. Notice to property owners.

(a) Prior to filing a permit application, the operator shall provide notice of planned

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

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

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

(2) The owners of record of the surface tract or tracts overlying the oil and gas leasehold being developed by the proposed

well work, if the surface tract is to be used for roads or other land disturbance as described in the erosion and sediment control plan submitted pursuant to subsection (c), section seven of this article;

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

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

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

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

(c) (1) If more than three tenants in common or other co-owners of interests described in subsection (b) of this section hold interests in the lands, the applicant may serve the documents required upon the person described in the records of the sheriff

required to be maintained pursuant to section eight, article one, chapter eleven-a of this code.

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

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

(e) Prior to filing an application for a permit for a horizontal well under this article, the applicant shall publish in the county in which the well is located or is proposed to be located a Class II legal advertisement as described in section two, article three, chapter fifty-nine of this code, containing notice of the public website required to be established and maintained pursuant to section twenty-one of this article and language indicating the ability of the public to submit written comments on the proposed permit, with the first publication date being at least ten days prior to the filing of the permit application. The secretary shall consider, in the same manner required by subsection (f), section eight of this article and subdivision one, subsection

(c), section eleven of this article, written comments submitted in response to the legal advertisement received by the secretary within thirty days following the last required publication date: *Provided*, That such parties submitting written comments pursuant to this subsection are not entitled to participate in the processes and proceedings that exist under sections fifteen, seventeen or forty, article six of this chapter, as applicable and incorporated into this article by section five of this article.

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

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

(h) The surface owners described in subdivisions (1), (2) and

(4), subsection (b) of this section, and the coal owner, operator or lessee described in subdivision (3) of that subsection is also entitled to receive notice within seven days but no less than two days before commencement that well work or site preparation work that involves any disturbance of land is expected to commence.

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

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

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

(3) The notice shall also include a reclamation plan in accordance with the erosion and sediment control manual that provides for the reclamation of any areas disturbed as a result of

the seismic activity, including filling of shotholes used for blasting.

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

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

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

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

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

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

mailing.

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

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

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

prepared by the secretary is open to inspection by the public.

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

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

conditions the department requires to ensure the safety and protection of affected persons and property. The terms and conditions may include insurance, bonding and indemnification, as well as technical requirements.

(b) No well pad may be prepared or well drilled within one hundred feet measured horizontally from any perennial stream, natural or artificial lake, pond or reservoir, or a wetland, or within three hundred feet of a naturally reproducing trout stream.

No wellpad may be located within one thousand feet of a surface or ground water intake of a public water supply. The distance from the public water supply as identified by the department shall be measured as follows:

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

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

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

impose any permit conditions as the secretary considers necessary.

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

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

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

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

The secretary shall propose legislative rules for promulgation

to govern the procedures for plugging horizontal wells, including rules relating to the methods of plugging the wells and the notices required to be provided in connection with plugging the wells.

§22-6A-14. Reclamation requirements.

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

(1) Except as provided elsewhere in this article, within six months after a horizontal well is drilled and completed on a well pad designed for a single horizontal well, the operator shall fill all the pits and impoundments that are not required or allowed by state or federal law or rule or agreement between the operator and the surface owner that allows the impoundment to remain open for the use and benefit of the surface owner (i.e. a farm pond as described in section nine of this article) and remove all concrete bases, drilling supplies and drilling equipment: *Provided*, That impoundments or pits for which certificates have been approved pursuant to section nine of this article shall be reclaimed at a time and in a manner as provided in the applicable certificate and section nine. Within that six-month period, the operator shall grade or terrace and plant, seed or sod the area disturbed that is not required in production of the horizontal well in accordance with the erosion and sediment control plan. No pit may be used for

the ultimate disposal of salt water. Salt water and oil shall be periodically drained or removed and properly disposed of from any pit that is retained so the pit is kept reasonably free of salt water and oil. Pits may not be left open permanently.

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

(3) Within six months after a horizontal well that has produced oil or gas is plugged or after the plugging of a dry hole,

the operator shall remove all production and storage structures, supplies and equipment and any oil, salt water and debris and fill any remaining excavations. Within that six-month period, the operator shall grade or terrace and plant, seed or sod the area disturbed where necessary to bind the soil and prevent substantial erosion and sedimentation.

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

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

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

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

(b) A separate bond as described in subsection (d) of this section may be furnished for each horizontal well drilled. Each of

these bonds shall be in the sum of \$50,000 payable to the State of West Virginia, conditioned on full compliance with all laws, rules relating to the drilling, redrilling, deepening, casing and stimulating of horizontal wells and to the plugging, abandonment and reclamation of horizontal wells and for furnishing reports and information required by the secretary.

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

(d) The form of the bond required by this article shall be approved by the secretary and may include, at the option of the operator, surety bonding, collateral bonding, including cash and securities, letters of credit, establishment of an escrow account, self-bonding or a combination of these methods. If collateral bonding is used, the operator may elect to deposit cash, or collateral securities or certificates as follows: Bonds of the United States or its possessions, of the federal land bank, or of the homeowners' loan corporation; full faith and credit general obligation bonds of the State of West Virginia or other states or of any county, district or municipality of the State of West Virginia or other states; or certificates of deposit in a bank in this state, which certificates shall be in favor of the department.

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

(e) When an operator has furnished a separate bond from a corporate bonding or surety company to drill, fracture or stimulate a horizontal well and the well produces oil or gas or both, its operator may deposit with the secretary cash from the sale of the oil or gas or both until the total deposited is \$50,000. When the sum of the cash deposited is \$50,000, the separate bond for the well shall be released by the secretary. Upon receipt of that cash, the secretary shall immediately deliver that amount to the State Treasurer, who shall hold the cash in the name of the state in

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

(f) Any separate bond furnished for a particular well prior to the effective date of this article continues to be valid for all work on the well permitted prior to the effective date of this article; but no permit may be issued on such a particular well without a bond complying with the provisions of this section. Any blanket bond furnished prior to the effective date of this article shall be replaced with a new blanket bond conforming to the requirements of this section, at which time the prior bond is discharged by operation of law; and if the secretary determines that any operator has not furnished a new blanket bond, the secretary shall notify the operator by registered mail or by any method of delivery that requires a receipt or signature

confirmation of the requirement for a new blanket bond, and failure to submit a new blanket bond within sixty days after receipt of the notice from the secretary works a forfeiture under subsection (i) of this section of the blanket bond furnished prior to the effective date of this article.

(g) Any such bond shall remain in force until released by the secretary, and the secretary shall release the same upon satisfaction that the conditions thereof have been fully performed.

Upon the release of that bond, any cash or collateral securities deposited shall be returned by the secretary to the operator who deposited it.

(h) (1) Whenever the right to operate a well is assigned or otherwise transferred, the assignor or transferor shall notify the department of the name and address of the assignee or transferee by registered mail or by any method of delivery that requires a receipt or signature confirmation not later than thirty days after the date of the assignment or transfer. No assignment or transfer by the owner relieves the assignor or transferor of the obligations and liabilities unless and until the assignee or transferee files with the department the well name and the permit number of the subject well, the county and district in which the subject well is located, the names and addresses of the assignor or transferor, and assignee or transferee, a copy of the instrument of assignment or transfer accompanied by the applicable bond, cash, collateral

security or other forms of security described in this section, and the name and address of the assignee's or transferee's designated agent if the assignee or transferee would be required to designate an agent under this article if the assignee or transferee were an applicant for a permit under this article. Every well operator required to designate an agent under this section shall, within five days after the termination of the designation, notify the department of the termination and designate a new agent.

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

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

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

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

State of West Virginia in the Oil and Gas Reclamation Fund as defined in section twenty-nine, article six of this chapter.

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

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

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

(c) No later than the date for filing the permit application, an operator shall, by certified mail return receipt requested or hand delivery, give the surface owner whose land will be used for

the drilling of a horizontal well notice of the planned operation.

The notice required by this subsection shall include:

(1) A copy of this code section;

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

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

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

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

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

§22-6A-18. Civil action for contamination or deprivation of fresh

**water source or supply; presumption; water rights
and replacement; waiver of replacement.**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

the civil penalties collected shall be credited to the General Fund of the state.

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

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

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

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

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

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

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

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

drilling in their designated county or counties of interest.

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

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

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

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

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

(a) The operator may only drill through fresh groundwater

zones in a manner that will minimize any disturbance of the zones. Further, the operator shall construct the well and conduct casing and cementing activities for all horizontal wells in a manner that will provide for control of the well at all times, prevent the migration of gas and other fluids into the fresh groundwater and coal seams, and prevent pollution of or diminution of fresh groundwater.

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

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

- (1) Effective control of the horizontal well by the operator;
- (2) Prevention of the migration of gas or other fluids into sources of fresh groundwater or into coal seams;
- (3) Prevention of pollution of or diminution of fresh groundwater;
- (4) Prevention of blowouts, explosions, or fires; and
- (5) Appropriate disposition of brines and discharges from the drilling or operation of horizontal well.

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

- (1) The operator shall prepare a casing program demonstrating

how the horizontal well is to be drilled, cased, and cemented. The program shall comply with rules promulgated by the secretary.

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

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

(B) The diameter of the borehole;

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

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

(E) The estimated location of centralizers;

(F) The proposed borehole conditioning procedures; and

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

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

(4) Supervisory oil and gas inspectors and oil and gas inspectors may approve revisions to previously approved casing programs when conditions encountered during the drilling process so require: *Provided, That* any revisions to casing programs approved by inspectors as aforesaid shall ensure that the revised casing

programs are at least as protective of the environment as the casing and cementing standards required by this section. Any revisions to the casing program made as a result of on-site modifications shall be documented in the program by the inspector approving the modification. The person making any revisions to the program shall initial and date the revisions and make the revised program available for inspection by the department.

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

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

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

(3) Installation of intermediate production casing;

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

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

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

(f) *Minimum casing standards.*

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

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

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

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

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

(g) *Minimum cement standards.*

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

(2) Cement used in conjunction with surface and coal

protection casing must provide zonal isolation in the casing annulus.

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

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

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

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

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

(a) The Legislature finds the following:

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

(2) The surface owner of lands on which horizontal wells are drilled shall be compensated for damages to the surface of the land

pursuant to the provisions of this article.

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

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

Section four of this article shall be interpreted to benefit all persons.

(d) The provisions of this article apply to any natural gas well, other than a coalbed methane well, drilled using a horizontal drilling method, and which disturbs three acres or more of surface, excluding pipelines, gathering lines and roads or uses more than two hundred ten thousand gallons of water in any thirty-day period.

Article seven of this chapter does not apply to any damages

associated with the drilling of a horizontal well.

§22-6B-2. Definitions.

In this article:

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

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

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

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

(5) "Person" means any natural person, corporation, firm, partnership, partnership association, venture, receiver, trustee, executor, administrator, guardian, fiduciary or other

representative of any kind, and includes any government or any political subdivision or agency thereof;

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

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

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

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

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

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

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

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

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

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

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

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

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

(a) Nothing in section three or elsewhere in this article diminishes in any way the common law remedies, including damages, of a surface owner or any other person against the oil and gas developer for the unreasonable, negligent or otherwise wrongful

exercise of the contractual right, whether express or implied, to use the surface of the land for the benefit of the developer's mineral interest.

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

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

§22-6B-5. Notification of claim.

Any surface owner, to receive compensation under section three of this article, shall notify the oil and gas developer of the damages sustained by the person within two years after the date that the oil and gas developer files notice that final reclamation is commencing under section fourteen, article six-a of this chapter. The notice of reclamation shall be given to surface owners by registered or certified mail, return receipt requested, and is complete upon mailing. If more than three tenants in common

or other co-owners hold interests in the lands, the oil and gas developer may give the notice to the person described in the records of the sheriff required to be maintained pursuant to section eight, article one, chapter eleven-a of this code or publish in the county in which the well is located or to be located a Class II legal advertisement as described in section two, article three, chapter fifty-nine of this code, containing the notice and information the secretary prescribes by rule.

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

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

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

(a) (1) Unless the oil and gas developer has paid the surface owner a negotiated settlement of compensation within seventy-five days after the date the notification of claim was mailed under section five of this article, the surface owner may, within eighty days after the notification mail date, either (i) Bring an action

for compensation in the circuit court of the county in which the well is located; or (ii) elect instead, by written notice delivered by personal service or by certified mail, return receipt requested, to the designated agent named by the oil and gas developer under the provisions of section seven, article six-a of this chapter, to have his, her or its compensation finally determined by binding arbitration pursuant to article ten, chapter fifty-five of this code.

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

(b) The compensation to be awarded to the surface owner shall be determined by a panel of three disinterested arbitrators. The first arbitrator shall be chosen by the surface owner in the party's notice of election under this section to the oil and gas developer; the second arbitrator shall be chosen by the oil and gas developer within ten days after receipt of the notice of election; and the third arbitrator shall be chosen jointly by the first two arbitrators within twenty days thereafter. If they are unable to agree upon the third arbitrator within twenty days, then the two arbitrators shall immediately submit the matter to the court under the provisions of section one, article ten, chapter fifty-five of

this code, so that, among other things, the third arbitrator can be chosen by the judge of the circuit court of the county in which the surface estate lies.

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

(d) The panel of arbitrators shall hold hearings and take testimony and receive exhibits necessary to determine the amount of compensation to be paid to the surface owner. However, no award of compensation may be made to the surface owner unless the panel of arbitrators has first viewed the surface estate in question. A

transcript of the evidence may be made but is not required.

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

§22-6B-8. Application of article.

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

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

ARTICLE 8. SHALLOW GAS WELL REVIEW BOARD.

§22C-8-2. Definitions.

As used in this article:

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

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

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

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

(5) "Commission" means the Oil and Gas Conservation Commission

provided for in section four, article nine of this chapter;

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

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

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

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

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

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

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

(13) "Gas operator" means any person who owns or has the right to develop, operate and produce gas from a pool and to appropriate

the gas produced therefrom either for that person or for that person and others. In the event that there is no gas lease in existence with respect to the tract in question, the person who owns or has the gas rights therein is considered a "gas operator" to the extent of seven-eighths of the gas in that portion of the pool underlying the tract owned by such person, and a "royalty owner" to the extent of one-eighth of the gas;

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

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

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

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

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

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

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

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

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

(23) "Well" means any shaft or hole sunk, drilled, bored or

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

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

ARTICLE 9. OIL AND GAS CONSERVATION.

§22C-9-2. Definitions.

(a) As used in this article:

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

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

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

(4) "Operator" means any owner of the right to develop,

operate and produce oil and gas from a pool and to appropriate the oil and gas produced therefrom, either for that person or for that person and others; in the event that there is no oil and gas lease in existence with respect to the tract in question, the owner of the oil and gas rights therein is the "operator" to the extent of seven-eighths of the oil and gas in that portion of the pool underlying the tract owned by such owner, and as "royalty owner" as to one-eighth interest in such oil and gas; and in the event the oil is owned separately from the gas, the owner of the substance being produced or sought to be produced from the pool is the "operator" as to that pool;

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

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

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

(8) "Gas" means all natural gas and all other fluid

hydrocarbons not defined as oil in subdivision (7) of this section;

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

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

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

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

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

(14) "Waste" means and includes:

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

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

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

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

(16) "Just and equitable share of production" means, as to each person, an amount of oil or gas or both substantially equal to the amount of recoverable oil and gas in that part of a pool

underlying the person's tract or tracts.

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