

WV Natural Gas Horizontal Well Control Act

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PRESENTED BY

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DISCLAIMER

- This presentation is intended to highlight certain new provisions in the new legislation and is not intended to be a comprehensive compilation of all requirements for drilling or operating horizontal wells



Department of Environmental Protection – Secretary Authority

- Expanded powers and duties to specifically recognize the WV Natural Gas Horizontal Well Control Act, and other existing statutory provisions for Abandoned Well Act and the Coalbed Methane Wells and Units provisions.
- Inspectors - Adds specific duty to determine the number of supervising and non-supervising oil and gas inspectors needed and sets forth such inspectors duties relative to ensuring compliance with the statute, to include this horizontal well statute, to include written reports of violations to the Secretary. W.Va. Code § 22-6-2(c)(2) and (d)

- Secretary duties:

- On January 1, 2013, and each year after, the Secretary is to provide a report to the Legislature of the number of waivers granted from minimum requirements of well work permits. W. Va. Code §22-6A-2(a)(6).
- On a monthly basis a written report shall be submitted to the Governor and posted on the website disclosing all well work permits issued, average number of days elapsed between date on which a complete application was filed and the date issued.

- Secretary Duties cont.
 - Provides for “broad authority to condition the issuance of well work permits” when it is necessary
 - to protect the safety of persons,
 - 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.
- W.Va. Code §22-6A-2(a)(5).

Applicability; Exceptions

W. Va. Code § 22-6A-3

- Natural gas well drilled using a horizontal drilling method
- Disturbs 3 acres or more, excluding pipelines, gathering lines and roads, or utilizes more than 210,000 gallons of water in any 30-day period
- Does not apply to applications pending prior to the effective date of this article
- Does not apply to any agreement between a surface owner and operator prior to the effective date of this article



Karst Terrain; Rulemaking

W. Va. Code § 22-6A-3a

- Secretary may require additional safeguards to protect this geological formation, including
 - changing proposed well locations to avoid damage to water resources;
 - special casing programs; and
 - additional or special review of drilling procedures
- Secretary and state geologist shall propose emergency and legislative rules to establish designated geographic regions and standards for drilling horizontal wells in naturally occurring karst terrain

- Rules shall, at a minimum:
 - Require predrilling testing to identify location of caves, voids, faults and relevant features such as sink holes; and
 - Provide any other requirements deemed necessary to protect unique characteristics of karst, which may include baseline water testing
- Nothing allows the department to prevent drilling

Definitions to Consider

- Best Management Practices includes those practices and procedures set out in the Erosion and Sediment Control Manual of the Office of Oil and Gas.
- Flowback Recycle Pit and Freshwater Impoundment definitions prohibit the introduction of “other wastes of any kind.”
- Under WV Water Pollution Control Act
 - industrial wastes include: any liquid, gaseous, solid or other waste substance, or a combination thereof, resulting from or incidental to any process of industry, manufacturing, trade or business, or from or incidental to the development, processing or recovery of any natural resource; and the admixture with such industrial wastes of sewage or other wastes.
 - “Other wastes” is defined as garbage, refuse, decayed wood, sawdust, shavings, bark or other wood debris and residues from secondary processing; sand, lime, cinders, ashes, offal, night soil, silt, oil, tar dyestuffs, acids, chemicals, heat or all other materials and substances not sewage or industrial wastes which may cause or might reasonably be expected to cause or to contribute to the pollution of the waters of the State.

What of existing oil and gas law is extended to horizontal wells?

- The new law moves through the current Office of Oil and Gas statutory provisions of W.Va. Code § 22-6 and only specifically incorporates those as follows:
 - Inspectors' findings and orders authorities
 - Secretary of DEP authority to review inspectors findings
 - Judicial review of final orders of the Secretary
 - Authority to issue separate water permits
 - Prohibition of flat well royalty lease permits
 - Preparation of plats for drilling or fracturing of wells
 - Protective devices in workable coal beds.
 - Protective devices during life of well

- Protective devices when through coalbed that has been mined.
- Installation of freshwater casing and prohibition of a well nearer than 200 feet from an existing water well or dwelling without written consent of the owner.
- Filing of well completion logs
- Explosion cause of action
- Supervision by secretary over drilling and reclamation operations, filing of complaints, hearings and appeals
- Operating Permit and Processing Fund is expanded to include horizontal well permit fees
- Prevention of waste of gas
- Notice and declaration of oil and gas notice by owners and lessees of coal seams
- Injunctive relief
- Appeals of orders



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What of existing oil and gas law is not extended to horizontal wells?

- Notice to property owners for horizontal wells is different from existing law.
- There has been an extension of time to 30 days (formerly 15 days) for the filing of an objection by coal operators, owners, or lessees to:
 - Drilling or fracturing; or
 - Deep well (below the top of the Onondaga) drilling sites
 - Shallow well (no coal bed methane) no deeper than 100 feet below the top of the Onondaga.
- Plugging of dry and abandoned well requirements are different from existing law.
- Performance bond requirements are changed for horizontal wells.
- Reclamation requirements are changed for horizontal wells.
- Penalties for horizontal well operations are different from those for conventional wells.
- Civil actions for horizontal well operations are different from conventional well.

Horizontal Well Permit Requirements

- It is unlawful for any person to commence any well work, including site preparation work which involved disturbance of land, for a horizontal well without first securing a well work permit. W. Va. Code § 22-6A-7(a)
- Must use agency form.



Permit Applications

W. Va. Code § 22-6A-7

- Names/Addresses for:
 - Well operator
 - Agent (attorney-in-fact and resident of WV to receive notices, etc.)
 - Every person to receive notification
 - Coal operator operating coal seams under tract where well will or may be located
- Certification and evidence of delivery
- Number of the well
- Description of well work
- Approximate total depth or actual depth if drilled; proposed angle and direction; approximate or actual depth at which well deviates from vertical, angle and direction of nonvertical well bore; final depth and length and direction



Permit Applications

W. Va. Code § 22-6A-7

- Each formation in which the well will be complete, if applicable.
- Description of stimulation
- If casing or tubing required, the entire casing program, size of each string, starting point and depth and extent of cementing
- If converting an existing well, all information set forth in permit application requirements, all producing formations and any plugging plans
- If to plug or replug, all information needed to demonstrate compliance with the plugging regulations for horizontal wells (that have not been promulgated yet)



- If stimulating a horizontal well, all information for providing notification of fracturing
- The erosion and sediment control plan
- Well site safety plan
- Certification that surface owner notice provided and evidence of waiver in writing if appropriate
- Other as determined by the Secretary



Permit Application: Well Site Safety Plan

W. Va. Code § 22-6A-7

- Proper safety measures to protect employees and public
- All aspects of operation
 - Actual well work
 - Completion activities
 - Production activities
 - Emergency point of contact for the well operator
- Provide well site safety plan to local emergency planning committee at least 7 days before commencing well work or site preparation that involves disturbance of land



Permit Application: Erosion and Sediment Control Plan

W. Va. Code § 22-6A-7

- Methods of stabilization and drainage
- Map of the project area including the amount of acreage disturbed
- Must meet minimum requirements of the WV Erosion and Sediment Control Manual
- The plan shall become part of the terms and conditions of the permit
- Reclamation methods (discussed below).



Permit Application: Registered Professional Engineer

(W. Va. Code § 22-6A-7)

- For well sites that disturb three acres or more of surface (excluding pipelines, gathering lines and roads, the erosion and sediment control plan submitted must be certified by a registered professional engineer
- Site construction plan must be certified by a registered professional engineer and contains information that the secretary may require by rule



Permit Application: Water Management Plan

(W. Va. Code § 22-6A-7)

- 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 shall include:
- Water Management Plan shall include:
 - Type of water source, surface or groundwater
 - County of source
 - Latitude and longitude
 - Anticipated volume
 - Anticipated months
 - Planned management and disposition of wastewater after completion from fracturing, refracturing, stimulation and production activities



- - Listing of anticipated additives that may be used in water for fracturing or stimulating
 - Upon completion, list of additives actually used to be included in the completion log



Permit Application: Surface Water Withdrawal Information

(W. Va. Code § 22-6A-7)

- Identification of the current designated and existing water use, including any public water intakes within one mile downstream of the withdrawal location
- For all surface waters, a demonstration, using accepted methods by 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 is preserved immediately downstream of the point of withdrawal
- Methods to be used to minimize adverse impact to aquatic life from surface water withdrawal
- Also applicable are the state statutes: Water Pollution Control Act, Groundwater Protection Act, and Water Resource Protection and Management Act



Permit Application: Activities, Bonds and Fees

(W. Va. Code § 22-6A-7)

- An application may propose and permit may approve two or more activities defined as well work, however, a separate permit shall be obtained for each horizontal well drilled
- A bond shall be submitted with a permit application.
- Permit fee of \$10,000 for the initial horizontal well drilled at a location and \$5,000 for each additional horizontal well on a single well pad at the same location



Installation of Permit No.

(W. Va. Code § 22-6A-7)

- Well owner or operator shall install the permit number and contact telephone number for the operator in a legible and permanent manner to the well upon completion of any permitted work. The Secretary may direct the details and specifications



Waiver of Requirements

(W. Va. Code § 22-6A-7)

- The Secretary may waive the requirements of the permitting section in an emergency situation under an emergency permit effective for no more than 30 days



Permit Suspension

(W. Va. Code § 22-6A-7)

- The Permit issuance may be denied if there has been substantial violation of a previously issued permit including applicable erosion and sediment control plan associated with the permit, or violations of a promulgated rule and in each instance has failed to abate or seek review
- If substantial violation and operator has failed to abate or seek review, the secretary may suspend the permit on which the violation exists after which the operator shall cease all well work under the permit. The permit may be reinstated without further notice
- The Secretary shall make written findings of any suspension and may enforce in the circuit courts of the state
- Suspension may be appealed to the circuit courts of the state



Division of Highways Certification

W. Va. Code § 22-6A-20

- As part of the permit application, the operator must submit a letter of certification from the Division of Highways that the operator has entered into an agreement with the Division of Highways pertaining to the state local service roads associated with the proposed well work or that no such agreement is required by the Oil and Gas Road Policy and the reasons therefor
 - Pertains to bonds for maintenance and repair of certain roads



Review of Application; Issuance of Permit

W. Va. Code § 22-6A-8

- Secretary reviews application and determines if a permit is to be issued
- No permit may be issued less than 30 days after filing date, except plugging or replugging
- Permit may be issued sooner if applicant certifies that required notices have been served in person or by certified mail, return receipt requested, including erosion and sediment control plan and well plat and further files written statements of no objection by all such persons



- Secretary must ascertain from Workforce West Virginia and the Insurance Commissioner whether the applicant is in default of required subscription to Unemployment Compensation Fund or mandatory Workers' Compensation insurance
- Secretary must inspect proposed well work location; permit may not be issued, or may be conditioned including conditions with respect to the location and access roads prior to issuance if the director determines that the application:
 - Poses a hazard to the safety of persons;
 - Has an inadequate soil erosion and sediment control plan;
 - Will damage publicly owned lands or resources; or
 - Fails to protect fresh water sources or supplies
- Secretary must also determine that:
 - Well location restrictions satisfied, requirements have been waived by written consent of the surface owner, or a variance is granted;
 - The water management plan received and approved



- Secretary must review all written comments and objections by coal operator, coal seam owner or lessee
- Each permit shall require the operator to:
 - Plug all wells;
 - Dispose of drill cuttings and drilling mud in approved solid waste facility, or if the surface owner consents, the drill cuttings and drilling mud may be managed on-site in a manner approved by the Secretary;
 - Grade, terrace and plant, seed or sod the area disturbed to bind the soil and prevent substantial erosion and sedimentation;
 - Take action consistent with industry standards to minimize fire hazards and other hazards to health and safety of the public;
 - Protect the quantity and the quality of water in surface and groundwater systems both during and after drilling operations and during reclamation by:



- Maintaining sufficient in-stream flow immediately downstream of the withdrawal location; operator shall not withdraw water at volumes beyond which the waters can sustain;
- Keeping returned fluids from entering ground and surface waters;
- Preventing additional contributions of suspended or dissolved solids to stream flow or runoff outside the permit area; and
- Registering all water supply wells drilled and operated
- Testing drinking water wells within 1,500 feet of water supply well prior to operating water supply well
 - Secretary must propose legislative rules identifying appropriate methods for testing water flow and quality



- Operator proposing to drill any horizontal well requiring the withdrawal of more than 210,000 gallons in a 30-day period shall have the following requirements added to its permit:
 - Identification of water withdrawal locations
 - Signage for water withdrawal locations
 - Recordkeeping and reporting for water used for hydraulic fracturing and flowback water from hydraulic fracturing
 - For production activities:
 - Quantity of flowback water;
 - Quantity of produced water; and
 - Method of management or disposal
 - Transportation activities are recorded and maintained by operator:
 - Quantity of water transported;
 - Collection and delivery points; and
 - Name of the water hauling company
 - Information maintained available for inspection by department
 - Upon issuance of any permit, secretary shall transmit a copy of permit to the office of the assessor for the county in which well is located
 - [wells will be assessed for taxation]



CERTIFICATE OF APPROVAL FOR LARGE PITS OR IMPOUNDMENTS

W. Va. Code § 22-6A-9

- Applies to large impoundments and pits (capacity of 210,000 gallons or more) not associated with a specific well work permit
- Unlawful to place, construct, enlarge, alter, repair, remove or abandon any freshwater impoundment or pit until certificate of approval for the same secured from secretary: *Provided*, routine repairs not affecting safety of impoundment are not subject to application and approval requirements
- Separate application for each impoundment desired
- Application fee is \$300; annual registration fee of \$100, is valid for more than one impoundment that supports one or more well pads
- Certificate issued or denied no later than 60 days; if certificate of approval submitted with the application for well permit, issuance no later than 30 days



- Initial term is 1 year; shall be extended 1 year upon receipt of annual registration fee, an inspection report, a monitoring and emergency action plan, and a maintenance plan
- Application to include monitoring and emergency action plan and a maintenance plan
- Plans and specifications for the placement, construction, erosion and sediment control, enlargement, alteration, repair or removal and reclamation of impoundments shall be the charge and bear the seal of a registered professional engineer licensed to practice in West Virginia
- Secretary may revoke or suspend any certificate constituting imminent danger to human life or property
- If necessary to safeguard human life or property, may also amend by issuing a new certificate
 - Before certificate of approval is amended, suspended or revoked without consent of operator, a hearing shall be held
 - Appeal to the Environmental Quality Board



- Upon expiration of certificate of approval, operator must, within 60 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 and reclaim the site in accordance with the approved erosion and sediment control plan
- Section does not apply to:
 - Farm ponds built with landowner permission to be used for agricultural purposes and meeting requirements by US Department of Agriculture's Natural Resources Conservation Service "Conservation Practice Standard - Ponds" (Code 378)



Notice to Property Owners

W. Va. Code § 22-6A-10

- Prior to filing a permit application, operator shall provide notice of planned entry on to the surface to conduct plat surveys
- 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
 - 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
- No later than the application filing date, permit applicants 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, and the well plat



- Notice must be given to:
 - The owners of record of the surface tracts
 - on which the well is proposed
 - to be used for roads or other land disturbance
 - to be used for an impoundment or pit
 - The coal owner, operator or lessee, if the tract on which the well is to be drilled is underlain by one or more coal seams
 - Any surface owner or water purveyor known 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
 - The operator of a natural gas storage field in the area



- If more than three tenants in common or other co-owners, the documents may be served upon the person described in the tax records
- Notice to surface owners or water purveyors shall be made on forms and in a manner prescribed by the secretary sufficient to identify, for those persons, the rights afforded them to file written comments, well location restrictions, and the opportunity for testing their water well
- Prior to filing an application for a permit, the applicant shall publish in the relevant county a Class II legal advertisement containing notice of the public website and language indicating the ability of the public to submit written comments on the proposed permit
 - First publication date must be at least ten days prior to the filing of the permit application



- Public parties submitting written comments are not entitled to participate in hearings and appeals
- But there is an appeal to WV Supreme Court testing constitutionality of this provision
- Notices must specify 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, a statement that the persons may request notice of the permit decision, and obtain a list of persons qualified to test water



- Surface owners and coal owners, operators or lessees are entitled to receive notice within seven days but no less than two days before commencement of well work or site preparation work that involves any disturbance of land
- Prior to conducting any seismic activity, three days' advance notice must be given to Miss Utility of West Virginia Inc., surface owners, coal owners and lessees, and natural gas storage field operators where seismic-related activities will occur
- Notice must include a reclamation plan in accordance with the erosion and sediment control manual that provides for the reclamation of disturbed areas, including filling of shotholes used for blasting



Method of Delivery of Notice

W. Va. Code § 22-6A-10a

- All notices required by this article shall be delivered by personal service or by registered mail or by any method of delivery that requires a receipt or signature confirmation, and provide that further information may be obtained from the DEP's website.



Written Comments and Objections and Newspaper Notice

W. Va. Code § 22-6A-11

- Surface owners receiving notice 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
- The applicant shall tender proof of and certify to the secretary that the notice requirements have been satisfied
 - The certification of notice may be made by affidavit of personal service, the return receipt card or other postal receipt for certified mailing



- The secretary must notify the applicant of the written comments within fifteen days after the close of the comment period
- Any objections by coal operators are still addressed through the Shallow Gas Well Review Board
- The written comments filed by the surface owners must be considered by the secretary, but they are not entitled to a hearing or appeal
 - Again, case pending in W. Va. Supreme Court of Appeals regarding the constitutionality of this provision
- The secretary must 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 Freedom of Information Act, the record prepared by the secretary is open to inspection by the public

Prior Restrictions

W. Va. Code § 22-6A-12

- Article 6 prohibits an oil or gas well from being drilled less than 200 feet from an existing water well or dwelling without first obtaining the written consent of the owner of such water well or dwelling.
- Article 6A applies to:
 - Natural gas well drilled using a horizontal drilling method
 - Disturbs 3 acres or more, excluding pipelines, gathering lines and roads, or utilizes more than 210,000 gallons of water in any 30-day period
- Article 6A does not apply to applications pending prior to the effective date of this article
- Does not apply to any agreement between a surface owner and operator prior to the effective date of this article



Well Location Restrictions

-- Occupied Dwellings

- 625 feet from occupied dwellings or other buildings 2500 sq.ft. or larger used to house or shelter dairy cattle or poultry husbandry
- Measured from the center of well pad
- Applies to structures existing or under construction on the date notice.
- Waiver by surface owner
 - Recording requirements
- Prior waivers – See §22-6A-3
- DEP variances

Well Location Restrictions

Water Wells/Developed Springs

- Wells may not be drilled within 250 feet of:
 - Existing water well
 - Developed springs used for human or domestic animal consumption
- Waiver by surface owner?
- DEP variance

Well Location Restrictions Streams/Public Water Supply

- No well pad within 100 feet from any:
 - Perennial stream
 - Natural or artificial lake
 - Pond or reservoir
 - Wetland
- No well pad within 300 feet of a naturally reproducing trout stream.
- No well pad within 1000 feet of a surface or ground water intake of a public water supply
 - Measurement points specified
- DEP variances only

Well Location Restrictions

W. Va. Code § 22-6A-13

- Do not apply to:
 - Rights under 404 permits
 - Currently permitted wells
 - Wells with application pending prior to the effective date
- Waivers
- Study/Future Rules



Well Location Restrictions

W. Va. Code § 22-6A-13

- Occupied Dwellings
- Water Wells/Developed Springs
- Streams
- Public Water Supplies



Reclamation Requirements

W. Va. Code § 22-6A-14

- Unless directed otherwise, within 6 months after a horizontal well is drilled and completed the operator shall fill all the pits and impoundments that are not required or allowed by law 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 shall be reclaimed at a time and in a manner as provided in the applicable certificate.
- Within that 6 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.



- For well pads designed to contain multiple horizontal wells, partial reclamation shall begin upon completion of the construction of the well pad.
- 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:
- 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



- 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.
- 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.
- 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.



Civil Action for Contamination of Fresh Water Source

W. Va. Code § 22-6A-18

- Nothing in the 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.
- 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 (1,500 feet) 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.



- In order to rebut the presumption of liability 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
- Any operator electing to preserve its defenses 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

- 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.
- 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.



- A person aggrieved under the water source/supply sections may seek relief in court
- The secretary shall propose rules to implement the requirements of this section
- 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



Offenses: Civil

W. Va. Code § 22-6A-19(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 (Oil and Gas Act penalty is \$2,500).
- 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.

- 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. (No Oil and Gas Act equivalent language.)
- 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.



Offenses: Misdemeanor

W.Va. Code § 22-6A-19(c)

- 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.



Offenses: Misrepresentation of a Material Fact

W. Va. Code § 22-6A-19(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.



DEP Website Postings

W. Va. Code § 22-6A-21

- No later than ninety days after the effective date of this article, the secretary shall establish a public website that will include searchable information related to all horizontal well applications filed in this state to include:
 - 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.

DEP E-Notice Database

W. Va. Code § 22-6A-21

- 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.



Air Quality

W. Va. Code §22-6A-22

- 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.
- Report shall include:
 - 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 it is determined that specialized permit conditions are necessary, the secretary shall promulgate legislative rules establishing these new requirements.

Impoundment and Pit Safety Study

W. Va. Code §22-6A-23

- By January 1, 2013, the Secretary shall report to the Legislature on the safety of pits and impoundments 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.



Casing and Cement Standards

W. Va. Code §22-6A-24

- The operator may only drill through fresh groundwater zones in a manner that will minimize any disturbance of the zones.
- 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.
- The secretary shall propose legislative and emergency rules for casing and cement standards.



- 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.



- Casing Program - The operator shall prepare a casing program demonstrating how the horizontal well is to be drilled, cased, and cemented in compliance with promulgated rules.
- 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.



- A copy of casing program shall be kept at the well site.
- 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:
- Any revisions to casing programs approved by inspectors 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.



- 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.



- 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.



- 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.



- Notwithstanding the minimum casing and cementing standards set the Secretary may:
 - 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
 - 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



Compensation of Surface Owners

Notice Requirements

W. Va. Code § 22-6A-16

- Notice to enter property
- Notice prior to filing a permit application
- Notice upon filing permit application
 - Surface owner whose land will be used for the drilling
- Notice of planned operation, copy of the application, the erosion and sediment control plan and well plat
- Copy of W.Va. Code § 22-6A-16
- Proposed Surface Use Agreement
- Notice may be waived in writing by the surface owner
- Address listed in the records of the sheriff at the time of notice
 - This may differ from lease records

Compensation of Surface Owners Reimbursement of Property Taxes

- W. Va. Code § 22-6A-17
- \$2500 fixed amount
- Compensate for payment of real property taxes for surface lands and surrounding lands
 - Encumbered or disturbed by construction or operation of the horizontal well pad
- One-time payment (without regard to the number of wells on a pad or permits issued)

Compensation of Surface Owners

W. Va. Code § 22-6A-1 et. seq. and § 22-6B-1 et. seq.

- Reimbursement of property taxes (W. Va. Code § 22-6A-17)
- Notice requirements and proposed Surface Use Agreement (W. Va. Code § 22-6A-16)
- Oil and Gas Horizontal Well Production Damage Compensation Act (W. Va. Code § 22-6B-1 et. seq.)
 - Applies to wells that cover 3 surface acres or use more than 210,000 gallons of water in any 30-day period
 - Article 7 no longer applies to these wells

Compensation of Surface Owners

W. Va. Code § 22-6B-3

- Compensable damages set by statute
- Common law rights preserved/offsets
- Notice of Claim
- Agreement/Offer of Settlement
- Final resolution procedures



Compensation of Surface Owners

W. Va. Code § 22-6B-3

- Compensable Damages
 - Lost income or expenses
 - Market value of crops destroyed, damaged or prevented from reaching market
 - Now specifically includes timber
 - Damages to water supply in use prior to commencement of activity
 - Cost of repair of personal property
 - Diminution in value of surface lands

Notification of Claim

W. Va. Code § 22-6B-5

- Any surface owner to receive compensation under section three shall notify the oil and gas developer of the damages sustained by the person within 2 years after the date that the oil and gas developer files notice that the final reclamation is commencing.
- Notice of reclamation must be given to the surface owners by registered or certified mail.



Common Law Rights of Action Preserved; Offsets

W. Va. Code § 22-6B-4

- Nothing 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
- Offset against common law claims –
 - An oil and gas developer is entitled to offset compensation agreed to be paid or awarded to a surface owner under Section 3 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
- Offset against compensation awarded under Article 6B -
 - 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 3 respecting the surface land actually occupied by the same drilling operation.



Oil and Gas Horizontal Well Production Damage Compensation Act

W. Va. Code § 22-6B-1(b)

- The compensation and damages provided in the Act 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.
 - Surface Use Agreements



Oil and Gas Horizontal Well Production Damage Compensation Act

- “Northern Panhandle firms set up Marcellus Shale hotline for landowners” West Virginia Record, December 16, 2011, <http://wvrecord.com/news/240377-northern-panhandle-firms-set-up-marcellus-shale-hotline-for-landowners>



Agreement; Offer of Settlement

W. Va. Code § 22-6B-6

- Oil and gas developer shall either make an offer of settlement to the surface owner seeking compensation or reject the claim
 - Within 60 days after the oil and gas developer received the claim
 - New Provision -- Provided, that the oil and gas developer may make a final offer within 75 days after receiving the notification of claim



Rejection; Legal Action; Arbitration; Fees and Costs

W. Va. Code § 22-6B-7

- The only change from Article 7 is that the time period for payment of a claim was increased from 60 days to 75 days.
- Now, a surface owner may not bring an action for compensation or demand arbitration unless the oil and gas developer has not paid a negotiated settlement of compensation within 75 days after the date the notification of claim was mailed.
- Time periods under this act are not consistently measured (e.g., from the date the oil and gas developer received the notice vs. the date the notification of claim was mailed)
- Right to arbitration by three disinterested arbitrators
- Costs to be shared (each party pays the arbitrator selected by them and the third arbitrator's fees are split equally)



Oil and Gas Conservation -- Definitions

- “Deep well” means any well other than a shallow well or coalbed methane well, drilled and completed in to a formation at or below the top of the uppermost member of the “Onondaga Group”
- “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



Contacts

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