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H. B. 4266

(By Delegate Manypenny)
[Introduced January 23, 2012; referred to the
Committee on the Judiciary then Finance.]

**FISCAL
NOTE**

A BILL to amend and reenact §22-6A-7 of the Code of West Virginia,
1931, as amended, relating to requiring the posting of
material data safety sheets and documentation of fracking
fluid components at oil and gas well sites where fracking
fluids are used and providing that information to workers at
the sites, to emergency responders, to the local emergency
planning committee, publishing in local newspapers and posting
on the West Virginia Department of Environmental's website.

Be it enacted by the Legislature of West Virginia:

That §22-6A-7 of the Code of West Virginia, 1931, as amended,
be amended and reenacted to read as follows:

ARTICLE 6A. NATURAL GAS HORIZONTAL WELL CONTROL ACT.

**§22-6A-7. Horizontal well permit required; permit fee; application;
soil erosion control plan; well site safety plan; site**

1 **construction plan; water management plan; permit fee;**
2 **installation of permit number; suspension of a permit.**

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

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

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

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

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

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

1 (5) The approximate total depth to which the well is to be
2 drilled or deepened, or the actual depth if the well has been
3 drilled; the proposed angle and direction of the well; the actual
4 depth or the approximate depth at which the well to be drilled
5 deviates from vertical, the angle and direction of the nonvertical
6 well bore until the well reaches its total target depth or its
7 actual final depth and the length and direction of any actual or
8 proposed horizontal lateral or well bore;

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

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

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

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

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

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

5 (12) The erosion and sediment control plan required under
6 subsection (c) of this section for applications for permits to
7 drill;

8 (13) A well site safety plan to address proper safety measures
9 to be employed for the protection of persons on the site as well as
10 the general public. The plan shall encompass all aspects of the
11 operation, including the actual well work for which the permit was
12 obtained, completion activities and production activities, and
13 shall provide an emergency point of contact for the well operator.
14 If the proposed well work involves the use of fracking fluids, the
15 well site safety plan shall include the preparation of material
16 data safety sheets and documentation of all components of fracking
17 fluids which shall be submitted with the application and posted at
18 each site. Copies of the data sheets and documentation of
19 components of fracking fluids shall be provided to all workers on
20 the site and to all local and regional emergency response
21 organizations and their employees. The well operator shall provide
22 a copy of the well site safety plan, including copies of the
23 material data safety sheets and documentation of fracking fluid
24 components, to the local emergency planning committee established

1 pursuant to section seven, article five-a, chapter fifteen of this
2 code, for the emergency planning district in which the well work
3 will occur at least seven days before commencement of well work or
4 site preparation work that involves any disturbance of land. Prior
5 to the initiation of fracking activity, the well operator shall
6 cause to have published a copy of the material data safety sheets
7 and documentation of fracking fluid components in all local
8 newspapers and the secretary shall publish same on the West
9 Virginia Department of Environmental Protection's website, also
10 prior to the start of fracking activity.

11 (14) A certification from the operator that: (i) It has
12 provided the owners of the surface described in subdivisions (1),
13 (2) and (4), subsection (b), section ten of this article, the
14 information required by subsections (b) and (c), section sixteen of
15 this article; (ii) that the requirement was deemed satisfied as a
16 result of giving the surface owner notice of entry to survey
17 pursuant to subsection (a), section ten of this article; or (iii)
18 the notice requirements of subsection (b), section sixteen of this
19 article were waived in writing by the surface owner; and

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

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

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

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

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

21 (e) In addition to the other requirements of this section, if
22 the drilling, fracturing or stimulating of the horizontal well
23 requires the use of water obtained by withdrawals from waters of
24 this state in amounts that exceed two hundred ten thousand gallons

1 during any thirty day period, the application for a well work
2 permit shall include a water management plan, which may be
3 submitted on an individual well basis or on a watershed basis, and
4 which shall include the following information:

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

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

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

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

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

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

24 (A) Identification of the current designated and existing

1 water uses, including any public water intakes within one mile
2 downstream of the withdrawal location;

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

9 (C) Methods to be used for surface water withdrawal to
10 minimize adverse impact to aquatic life; and

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

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

19 (g) The application for a permit under this section shall be
20 accompanied by the applicable bond as required by section fifteen
21 of this article, the applicable plat required by subdivision (6),
22 subsection (a), section five of this article and a permit fee of
23 \$10,000 for the initial horizontal well drilled at a location and
24 a permit fee of \$5,000 for each additional horizontal well drilled

1 on a single well pad at the same location.

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

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

18 (j) The secretary may waive the requirements of this section
19 and sections eight, ten, eleven and twenty-four of this article in
20 any emergency situation, if the secretary deems the action
21 necessary. In such case the secretary may issue an emergency
22 permit which is effective for not more than thirty days, unless
23 reissued by the secretary.

24 (k) The secretary shall deny the issuance of a permit if the

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

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

NOTE: The purpose of the bill is to require the posting of material data safety sheets and compounds in fracking fluids at oil and gas sites using fracking fluids and to provide copies of same to workers at the sites, emergency responders, the local emergency planning committee, publishing in local newspapers and posting on the West Virginia Department of Environmental's website.

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