

WEST VIRGINIA LEGISLATURE

2016 REGULAR SESSION

Committee Substitute

for

Senate Bill 565

BY SENATORS BOSO AND WALTERS

[Originating in the Committee on Energy, Industry and

Mining; reported on February 19, 2016.]

1 A BILL to amend and reenact §22-6A-7 of the Code of West Virginia, 1931, as amended, relating
2 to allowing well pad and road construction for oil and gas activities that are done pursuant
3 to a storm water permit; clarifying that the requirements of the section apply only to well
4 work permits and not storm water permits; and providing notice to property owners.

Be it enacted by the Legislature of West Virginia:

1 That §22-6A-7 of the Code of West Virginia, 1931, as amended, be amended and
2 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 construction plan; water management plan; permit
fee; installation of permit number; suspension and transfer of a permit.**

1 (a) It is unlawful for any person to commence any well work, ~~including other than~~ site
2 preparation work, ~~which involves any disturbance of land~~ including well pad and road construction,
3 that is done in accordance with a storm water permit for oil and gas activities for a horizontal well
4 without first securing from the secretary a well work permit pursuant to this article.

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

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

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

15 (3) The number of the well or other identification the secretary may require;

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

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

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

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

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

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

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

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

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

38 (13) A well site safety plan to address proper safety measures to be employed for the
39 protection of persons on the site as well as the general public. The plan shall encompass all
40 aspects of the operation, including the actual well work for which the permit was obtained,
41 completion activities and production activities, and shall provide an emergency point of contact

42 for the well operator. The well operator shall provide a copy of the well site safety plan to the local
43 emergency planning committee established pursuant to section seven, article five-a, chapter
44 fifteen of this code for the emergency planning district in which the well work will occur at least
45 seven days before commencement of well work or site preparation work that involves any
46 disturbance of land;

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

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

54 (c)(1) An erosion and sediment control plan shall accompany each application for a well
55 work permit under this article. The plan shall contain methods of stabilization and drainage,
56 including a map of the project area indicating the amount of acreage disturbed. The erosion and
57 sediment control plan shall meet the minimum requirements of the West Virginia Erosion and
58 Sediment Control Manual as adopted and, from time to time, amended by the department. The
59 erosion and sediment control plan shall become part of the terms and conditions of any well work
60 permit that is issued pursuant to this article and the provisions of the plan shall be carried out
61 where applicable in the operation. The erosion and sediment control plan shall set out the
62 proposed method of reclamation which shall comply with the requirements of section fourteen of
63 this article.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

119 (j) The secretary may waive the requirements of this section and sections eight, ten, eleven
120 and twenty-four of this article in any emergency situation if the secretary considers the action
121 necessary. In that case the secretary may issue an emergency permit which is effective for not
122 more than thirty days unless reissued by the secretary.

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

131 (l) If the secretary finds that a substantial violation has occurred and that the operator has
132 failed to abate or seek review of the violation in the time prescribed, the secretary may suspend
133 the well work permit on which the violation exists, after which suspension the operator shall
134 forthwith cease all well work being conducted under the permit. However, the secretary may
135 reinstate the permit without further notice, at which time the well work may be continued. The
136 secretary shall make written findings of the suspension and may enforce the same in the circuit
137 courts of this state. The operator may appeal a suspension pursuant to the provisions of
138 subdivision (23), subsection (a), section five of this article. The secretary shall make a written
139 finding of any such determination.

140 (m) Any well work permit issued in accordance with this section may be transferred with
141 the prior written approval of the secretary upon his or her finding that the proposed transferee
142 meets all requirements for holding a well work permit, notwithstanding any other provision of this
143 article or rule adopted pursuant to this article. Application for the transfer of any well work permit
144 shall be upon forms prescribed by the secretary and submitted with a permit transfer fee of \$500.

145 Within ninety days of the receipt of approval by the secretary, the transferee shall give notice of
146 the transfer to those persons entitled to notice in subsection (b), section ten of this article by
147 personal service or by registered mail or by any method of delivery that requires a receipt or
148 signature confirmation, and shall further update the emergency point of contact provided pursuant
149 to subdivision (13), subsection (b) of this section.

150 (n) Prior to filing a storm water permit application, the operator shall provide notice of
151 planned entry on to the surface tract to conduct any plat surveys required pursuant to this article.
152 Such notice shall be provided at least seven days but no more than forty-five days prior to such
153 entry to: (1) The surface owner of such tract; (2) any owner or lessee of coal seams beneath such
154 tract that has filed a declaration pursuant to section thirty-six, article six, chapter twenty-two of
155 this code; and (3) any owner of minerals underlying such tract in the county tax records. The
156 notice shall include a statement that copies of the state erosion and sediment control manual and
157 the statutes and rules related to oil and gas exploration and production may be obtained from the
158 secretary, which statement shall include contact information, including the address for a web page
159 on the secretary's website, to enable the surface owner to obtain copies from the secretary.

160 (o) Notwithstanding any provision of subsection (a) of this section, no later than the filing
161 date of the application, the applicant for a storm water permit as required by this article shall
162 deliver, by personal service or by registered mail or by any method of delivery that requires a
163 receipt or signature confirmation, copies of the application, the erosion and sediment control plan
164 required by section seven of this article and the well plat to each of the following persons:

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

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

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

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

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

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

182 (p)(1) If more than three tenants in common or other co-owners of interest described in
183 subsection (o) of this section hold interests in the lands, the applicant may serve the documents
184 required upon the person described in the records of the sheriff required to be maintained
185 pursuant to section eight, article one, chapter eleven-a of this code.

186 (2) Notwithstanding any provision of this article to the contrary, notice to a lienholder is not
187 notice to a landowner, unless the lienholder is the landowner.

NOTE: The purpose of this bill is to allow well pad and road construction for oil and gas activities that are done pursuant to a storm water permit. The bill clarifies that the requirements of the section apply only to well work permits and not storm water permits, and provides notice to property owners.

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