

WEST VIRGINIA LEGISLATURE

2017 REGULAR SESSION

Introduced

House Bill 2990

BY DELEGATES SYPOLT AND PAYNTER

[Introduced March 14, 2017; Referred
to the Committee on Energy then the Judiciary]

1 A BILL to amend and reenact §22-6A-12 of the Code of West Virginia, 1931, as amended; and to
 2 amend said code by adding thereto a new section, designated §22-6A-12a, all relating to
 3 requiring continuous monitoring of air, noise, dust and particulates; requiring the operator
 4 to undertake the best available control technology if standards for air, noise, dust or
 5 particulates are exceeded; and changing the set back from horizontal well work activity to
 6 a residence to fifteen hundred feet from the limit of well work disturbance.

Be it enacted by the Legislature of West Virginia:

1 That §22-6A-12 of the Code of West Virginia, 1931, as amended, be amended and
 2 reenacted; and that said code be amended by adding thereto a new section, designated §22-6A-
 3 12a, all to read as follows:

ARTICLE 6A. NATURAL GAS HORIZONTAL WELL CONTROL ACT.

§22-6A-12. Well location restrictions.

1 (a) Wells may not be drilled within two hundred fifty feet measured horizontally from any
 2 existing water well or developed spring used for human or domestic animal consumption. ~~The~~
 3 ~~center of well pads may not be located within~~ The limit of disturbance of a well site may not be
 4 closer than fifteen hundred ~~six hundred twenty-five~~ feet of an occupied dwelling structure, or a
 5 building two thousand five hundred square feet or larger used to house or shelter dairy cattle or
 6 poultry husbandry unless in the operators permit application an estimate certified by a registered
 7 professional engineer provides that the well work activity will avoid exceeding limits for specified
 8 parameters set out in section twelve-a of this article. This limitation is applicable to those wells,
 9 developed springs, dwellings or agricultural buildings that existed on the date a notice to the
 10 surface owner of planned entry for surveying or staking as provided in section ten of this article
 11 or a notice of intent to drill a horizontal well as provided in subsection (b), section sixteen of this
 12 article was provided, whichever occurs first, and to any dwelling under construction prior to that
 13 date. This limitation may be waived by written consent of the surface owner transmitted to the
 14 department and recorded in the real property records maintained by the clerk of the county

15 commission for the county in which such property is located. Furthermore, the well operator may
16 be granted a variance by the secretary from these distance restrictions upon submission of a plan
17 which identifies the sufficient measures, facilities or practices to be employed during well site
18 construction, drilling and operations. The variance, if granted, shall include terms and conditions
19 the department requires to ensure the safety and protection of affected persons and property.
20 The terms and conditions may include insurance, bonding and indemnification, as well as
21 technical requirements.

22 (b) No well pad may be prepared or well drilled within one hundred feet measured
23 horizontally from any perennial stream, natural or artificial lake, pond or reservoir, or a wetland,
24 or within three hundred feet of a naturally reproducing trout stream. No wellpad may be located
25 within one thousand feet of a surface or ground water intake of a public water supply. The distance
26 from the public water supply as identified by the department shall be measured as follows:

27 (1) For a surface water intake on a lake or reservoir, the distance shall be measured from
28 the boundary of the lake or reservoir.

29 (2) For a surface water intake on a flowing stream, the distance shall be measured from a
30 semicircular radius extending upstream of the surface water intake.

31 (3) For a groundwater source, the distance shall be measured from the wellhead or spring.
32 The department may, in its discretion, waive these distance restrictions upon submission of a plan
33 identifying sufficient measures, facilities or practices to be employed during well site construction,
34 drilling and operations to protect the waters of the state. A waiver, if granted, shall impose any
35 permit conditions as the secretary considers necessary.

36 (c) Notwithstanding the foregoing provisions of this section, nothing contained in this
37 section prevents an operator from conducting the activities permitted or authorized by a Clean
38 Water Act Section 404 permit or other approval from the United States Army Corps of Engineers
39 within any waters of the state or within the restricted areas referenced in this section.

40 (d) The well location restrictions set forth in this section shall not apply to any well on a

41 multiple well pad if at least one of the wells was permitted or has an application pending prior to
42 the effective date of this article.

43 (e) The secretary shall, by December 31, 2012, report to the Legislature on the noise,
44 light, dust and volatile organic compounds generated by the drilling of horizontal wells as they
45 relate to the well location restrictions regarding occupied dwelling structures pursuant to this
46 section. Upon a finding, if any, by the secretary that the well location restrictions regarding
47 occupied dwelling structures are inadequate or otherwise require alteration to address the items
48 examined in the study required by this subsection, the secretary shall have the authority to
49 propose for promulgation legislative rules establishing guidelines and procedures regarding
50 reasonable levels of noise, light, dust and volatile organic compounds relating to drilling horizontal
51 wells, including reasonable means of mitigating such factors, if necessary.

§22-6A-12a. Air, noise, light, dust.

1 (a) This section does not apply to or affect any well work permitted for a horizontal well
2 prior to the enactment of this section, or to permit applications pending prior to the effective date
3 of this section: *Provided*, That if actual monitoring of a residence near a well to which this section
4 is otherwise inapplicable shows that parameters of this section are exceeded, the secretary shall
5 require the implementation of technologies up to the maximum available control technology so
6 that the parameters do not continue to be exceeded.

7 (b) At each site, the operator shall set up continuous real-time monitoring of air, noise,
8 light and dust and particulates at the residence or other point or points of impact that are closest
9 or most likely to be impacted by the well work, including traffic associated with the site. The
10 operator shall continuously monitor those parameters in real time. If the monitored levels exceed
11 any of the required parameters as determined by continuous process control analysis more than
12 five percent of the time during any running twenty-four hour averaging period, the operator shall
13 implement the maximum available control technology available to limit the levels. The monitored
14 levels need to be continuously available by wireless or other transmission to those persons or

15 entities within fifteen hundred feet of the limit of disturbance who request it. When levels exceed
16 parameters, alerts shall be sent to those persons or entities. The data shall be available to the
17 public for study. Unless altered by legislative rule, the parameters shall be:

18 (1) For noise during site construction, 70 dBA average an hour.

19 (2) For noise at all other times, 55 dBA at any time.

20 (3) For dust, the national ambient air quality standard level for a twenty-four hour period
21 and no visible dust on residences or crops.

22 (4) For air, the Minimal Risk Levels for chronic (365 days or more) exposure of organic
23 compounds set by the Agency for Toxic Substances and Disease Registry of the Centers for
24 Disease Control and Prevention of the United States Department of Health and Human Services.

25 (c) No light from artificial illumination, flares or other sources shall shine directly on any
26 residence or livestock or structure containing livestock.

27 (d) Notwithstanding the provisions of subsection (a) of this section if, after completion of
28 well work, production or production facilities cause a violation of the standards set out in
29 subsection (b) at a residence, then the operator shall implement the maximum available control
30 technology available to limit the levels that violate the standards.

NOTE: The purpose of this bill is to implement the recommendations arising out of the studies required by the passage of sections twelve, twenty-two and twenty-three of the Natural Gas Horizontal Well Control Act passed by the Legislature December 14, 2011.

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