

WEST VIRGINIA LEGISLATURE

2020 REGULAR SESSION

Committee Substitute

for

House Bill 4091

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[Originating in the Committee on Energy, January 14,
2020.]

1 A BILL to amend and reenact §22-6A-7 of the Code of West Virginia, 1931, as amended, relating
2 to allowing for expedited oil and gas well permitting for certain wells under the Natural Gas
3 Horizontal Well Control Act upon payment of applicable expedited fees; allowing expedited
4 oil and gas well permit modifications under the same Act upon the payment of applicable
5 expedited fees; permitting one half of any residual fees to be deposited in the Oil and Gas
6 Operations Permit and Processing Fund; permitting one half of any residual fees to be
7 deposited in the Oil and Gas Reclamation Fund; providing for the daily pro rata refund of
8 the horizontal well expedited fee if the permit is not approved between day 45 and day 60
9 after the submission of a permit application; providing for the daily pro rata refund of the
10 modification fees between day 20 and day 30 after the submission of a permit modification
11 application; providing for a maximum cap amount of \$1 million for all residual fees from
12 this article to be deposited in the Oil and Gas Operations Permit and Processing Fund;
13 and providing that any balance in the Oil and Gas Reclamation Fund at the end of a fiscal
14 year remain in the special revenue account and not be remitted to the General Revenue
15 Fund.

Be it enacted by the Legislature of West Virginia:

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 site preparation
2 work which involves any disturbance of land, for a horizontal well without first securing from the
3 secretary a well work permit pursuant to this article.

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

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

10 (2) The names and addresses of every coal operator operating coal seams under the tract
11 of land on which the well is or may be located, and the coal seam owner of record and lessee of
12 record required to be given notice by §22-6A-5(a)(6) of this code, if any, if the owner or lessee is
13 not yet operating the coal seams;

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

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

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

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

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

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

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

29 (10) If the proposed well work is to plug or replug the well, all information necessary to
30 demonstrate compliance with the legislative rules promulgated by the secretary in accordance
31 with §22-6A-13 of this code;

32 (11) If the proposed well work is to stimulate a horizontal well, all information necessary
33 to demonstrate compliance with the requirements of §22-6A-5(a)(7) of this code;

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

36 (13) A well site safety plan to address proper safety measures to be employed for the
37 protection of persons on the site as well as the general public. The plan shall encompass all
38 aspects of the operation, including the actual well work for which the permit was obtained,
39 completion activities and production activities, and shall provide an emergency point of contact
40 for the well operator. The well operator shall provide a copy of the well site safety plan to the local
41 emergency planning committee established pursuant to §15-5A-7 of this code for the emergency
42 planning district in which the well work will occur at least seven days before commencement of
43 well work or site preparation work that involves any disturbance of land;

44 (14) A certification from the operator that: (A) It has provided the owners of the surface
45 described in §22-6A-10(b)(1), §22-6A-10(b)(2), and §22-6A-10(b)(4) of this code, the information
46 required by §22-6A-16(b) and §22-6A-16(c) of this code; (B) that the requirement was deemed
47 satisfied as a result of giving the surface owner notice of entry to survey pursuant to §22-6A-10(a)
48 of this code; or (C) the notice requirements of §22-6A-16(b) of this code were waived in writing
49 by the surface owner; and

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

51 (c)(1) An erosion and sediment control plan shall accompany each application for a well
52 work permit under this article. The plan shall contain methods of stabilization and drainage,
53 including a map of the project area indicating the amount of acreage disturbed. The erosion and
54 sediment control plan shall meet the minimum requirements of the West Virginia Erosion and
55 Sediment Control Manual as adopted and from time to time amended by the department. The
56 erosion and sediment control plan shall become part of the terms and conditions of any well work
57 permit that is issued pursuant to this article and the provisions of the plan shall be carried out

58 where applicable in the operation. The erosion and sediment control plan shall set out the
59 proposed method of reclamation which shall comply with the requirements of §22-6A-14 of this
60 code.

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

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

67 (e) In addition to the other requirements of this section, if the drilling, fracturing, or
68 stimulating of the horizontal well requires the use of water obtained by withdrawals from waters
69 of this state in amounts that exceed 210,000 gallons during any 30-day period, the application for
70 a well work permit shall include a water management plan, which may be submitted on an
71 individual well basis or on a watershed basis, and which shall include the following information:

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

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

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

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

79 (5) A listing of the anticipated additives that may be used in water utilized for fracturing or
80 stimulating the well. Upon well completion, a listing of the additives that were actually used in the
81 fracturing or stimulating of the well shall be submitted as part of the completion log or report
82 required by §22-6A-5(a)(14) of this code;

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

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

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

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

93 (7) This subsection is intended to be consistent with and does not supersede, revise,
94 repeal, or otherwise modify §22-11-1 *et seq.*, §22-12-1 *et seq.*, or §22-26-1 *et seq.* of this code
95 and does not revise, repeal, or otherwise modify the common law doctrine of riparian rights in
96 West Virginia law.

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

99 (g) The application for a permit under this section shall be accompanied by the applicable
100 bond as required by §22-6A-15 of this code, the applicable plat required by §22-6A-5(a)(6) of this
101 code, and a permit fee of \$10,000 for the initial horizontal well drilled at a location and a permit
102 fee of \$5,000 for each additional horizontal well drilled on a single well pad at the same location.

103 (h)(1) An applicant may enter into an expedited permit application process with the
104 secretary for a well permit and pay an additional expedited permit fee of \$20,000 for the initial
105 horizontal well drilled at a location and an additional expedited permit fee of \$10,000 for each
106 additional horizontal well drilled on a single well pad at the same location: *Provided*, That deep
107 well permitting is excluded from this expedited permit process due to the independent board
108 review and approval requirement which is outside the secretary's control.

109 (2) Upon entering into an expedited permit process and meeting all the criteria set forth in
110 this article, the secretary shall issue or deny a permit within 45 days of the submission of a permit
111 application under this article, unless the secretary seeks additional information or modification
112 from the applicant, which would toll the 45 day period until the secretary receives the required
113 responsive information from the applicant.

114 (3) Each day the agency exceeds: (A) The 45-day deadline for approval or denial of an
115 expedited initial horizontal well drilled, the secretary shall refund \$1,333.33 per day up to and
116 including day 60 after the submission of a permit application until the expedited fee is reduced to
117 the normal permit fee amount; or (B) the 45-day deadline for approval or denial of an expedited
118 permit for any additional horizontal well drilled on a single well pad at the same location, the
119 secretary shall be required to refund \$666.66 per day up to and including day 60 after the
120 submission of a permit application, until the expedited fee is reduced to the normal permit fee
121 amount.

122 (4)(A) After all refunds are paid by the secretary, one half of the additional expedited permit
123 fee shall be deposited in the Oil and Gas Operating Permit and Processing Fund and shall be
124 used by the agency to cover costs to review, process, and approve or deny the applicable
125 horizontal well permit applications and modifications pending before the agency, but not to exceed
126 \$1 million annually in combination with proceeds received through §22-6A-7(i)(4)(A) of this code
127 and any residuary fee proceeds to be distributed as set forth in §22-6A-7(h)(4)(B) of this code.

128 (B) After all refunds are paid by the secretary, one half of the additional expedited permit
129 fee, plus any residuary as set forth in §22-6A-7(h)(4)(A) of this code, shall be deposited in the Oil
130 and Gas Reclamation Fund and used specifically for the reclamation and plugging of orphaned
131 oil or gas wells.

132 (i)(1) An applicant may enter into an expedited permit modification application process
133 with the secretary for a well permit and pay an expedited permit modification fee of \$5,000 for the
134 modification of the permit for any horizontal well drilled at a location: *Provided*, That deep well

135 permit modifications are excluded from this expedited permit modification process if the
136 modification is subject to independent board review and approval.

137 (2) Upon entering into an expedited permit modification process and meeting all the criteria
138 set forth in this article, the secretary shall issue or deny a permit modification within 20 days of
139 the submission of a permit modification application under this article, unless the secretary seeks
140 additional information or further modification from the applicant, which would toll the 20 day period
141 until the secretary receives the required responsive information from the applicant.

142 (3) Each day the agency exceeds the 20-day deadline for approval or denial of an
143 expedited horizontal well permit modification, the secretary shall refund \$500 per day up to and
144 including day 30 after the submission of an expedited permit modification application, until the
145 expedited permit modification fee of \$5,000 is reduced to zero.

146 (4)(A) After all refunds are paid by the secretary, one half of the expedited permit
147 modification fee shall be deposited in the Oil and Gas Operating Permit and Processing Fund and
148 shall be used by the agency to cover costs to review, process, and approve or deny the applicable
149 horizontal well permit applications and modifications pending before the agency, but not to exceed
150 \$1 million annually in combination with proceeds received through §22-6A-7(h)(4)(A) of this code
151 and any residuary fee proceeds to be distributed as set forth in §22-6A-7(i)(4)(B) of this code.

152 (B) After all refunds are paid by the secretary, one half of the expedited permit modification
153 fee, plus any residuary as set forth in §22-6A-7(i)(4)(A) of this code, shall be deposited in the Oil
154 and Gas Reclamation Fund and used specifically for the reclamation and plugging of orphaned
155 oil or gas wells.

156 (i) Any balance in the Oil and Gas Reclamation Fund, earmarked specifically for the
157 reclamation and plugging of orphaned oil or gas wells pursuant to §22-6A-7(h)(4)(B) and §22-6A-
158 7(i)(4)(B) of this code, which remains at the end of any state fiscal year does not revert to the
159 General Revenue Fund but shall remain in the special revenue account as indicated and may be
160 used only as provided in §22-6-29(b) of this code. The revenues deposited in the Oil and Gas

161 Reclamation Fund, earmarked specifically for the reclamation and plugging of orphaned oil or gas
162 wells pursuant to §22-6A-7(h)(4)(B) and §22-6A-7(i)(4)(B) of this code may not be designated as
163 nonaligned state special revenue funds under §11B-2-32 of this code.

164 ~~(h)~~ (k) The well operator named in the application shall designate the name and address
165 of an agent for the operator who is the attorney-in-fact for the operator and who is a resident of
166 the State of West Virginia upon whom notices, orders, or other communications issued pursuant
167 to this article or §22-11-1 *et seq.* of this code may be served, and upon whom process may be
168 served. Every well operator required to designate an agent under this section shall, within five
169 days after the termination of the designation, notify the secretary of the termination and designate
170 a new agent.

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

175 ~~(j)~~ (m) The secretary may waive the requirements of this section and §22-6A-8, §22-6A-
176 10, §22-6A-11, and §22-6A-24 of this code in any emergency situation if the secretary considers
177 the action necessary. In that case the secretary may issue an emergency permit which is effective
178 for not more than 30 days, unless reissued by the secretary.

179 ~~(k)~~ (n) The secretary shall deny the issuance of a permit if the secretary determines that
180 the applicant has committed a substantial violation of a previously issued permit for a horizontal
181 well, including the applicable erosion and sediment control plan associated with the previously
182 issued permit, or a substantial violation of one or more of the rules promulgated under this article,
183 and in each instance has failed to abate or seek review of the violation within the time prescribed
184 by the secretary pursuant to the provisions of §22-6A-5(a)(1) and §22-6A-5(a)(2) of this code and
185 the rules promulgated hereunder, which time may not be unreasonable.

186 ~~(t)~~ (o) If the secretary finds that a substantial violation has occurred and that the operator
187 has failed to abate or seek review of the violation in the time prescribed, the secretary may
188 suspend the permit on which the violation exists, after which suspension the operator shall
189 forthwith cease all well work being conducted under the permit. However, the secretary may
190 reinstate the permit without further notice, at which time the well work may be continued. The
191 secretary shall make written findings of the suspension and may enforce the same in the circuit
192 courts of this state. The operator may appeal a suspension pursuant to the provisions of §22-6A-
193 5(a)(23) of this code. The secretary shall make a written finding of any such determination.

194 ~~(m)~~ (p) Any well work permit issued in accordance with this section may be transferred
195 with the prior written approval of the secretary upon his or her finding that the proposed transferee
196 meets all requirements for holding a well work permit, notwithstanding any other provision of this
197 article or rule adopted pursuant to this article. Application for the transfer of any well work permit
198 shall be upon forms prescribed by the secretary and submitted with a permit transfer fee of \$500.
199 Within 90 days of the receipt of approval by the secretary, the transferee shall give notice of the
200 transfer to those persons entitled to notice in §22-6A-10(b) of this code by personal service or by
201 registered mail or by any method of delivery that requires a receipt or signature confirmation, and
202 shall further update the emergency point of contact provided pursuant to subdivision (13),
203 subsection (b) of this section.

NOTE: The purpose of this bill is to allow for expedited oil and gas well permitting and expedited oil and gas well permit modifications upon the payment of applicable expedited fees, the designation of the proceeds of such expedited fees, and the daily pro rata refund of the expedited fees if the permit is not approved between the 45th and 60th days after the submission of a permit application, and daily pro rata refund of one-half of the modification fees between the 10th and 20th days after the submission of a permit modification application; all generally related to horizontal well oil and gas permitting.

This bill was recommended for passage during the 2020 legislative session by the Joint Committee on Energy.

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

