

WEST VIRGINIA LEGISLATURE

2020 REGULAR SESSION

Introduced

Senate Bill 84

BY SENATORS SMITH, HAMILTON, AND FACEMIRE

[Introduced January 8, 2020; referred
to the Committee on Energy, Industry, and Mining;
and then to the Committee on the Judiciary]

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 and expedited oil and gas well permit
 3 modifications upon the payment of applicable expedited fees; designating the proceeds of
 4 such expedited fees; providing for the daily pro rata refund of the expedited fees if the
 5 permit is not approved between day 45 and day 60 after the submission of a permit
 6 application; providing for the daily pro rata refund of one half of the modification fees
 7 between day 10 and day 20 after the submission of a permit modification application; and
 8 relating generally to horizontal well oil and gas permitting.

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) An applicant may enter into an expedited permit application process with the secretary
104 for a well permit by paying an additional permit fee of \$20,000 for the initial horizontal well drilled
105 at a location, and for an additional permit fee of \$10,000 for each additional horizontal well drilled
106 on a single well pad at the same location. Upon entering into an expedited permit timeline, and
107 meeting all the criteria set forth in this article, the secretary shall issue a permit within 45 days of
108 the submission of a permit application under this article, unless the secretary denies the permit,
109 or seeks additional information or modification from the applicant, which would toll the 45 days
110 until the secretary received the required responsive information from the applicant. Based upon
111 objective criteria rating an applicant's compliance history, to be determined and published by the
112 secretary as guidance, the secretary may further reduce the expedited timeframe for approving
113 the permit to less than 45 days, but no less than 30 days, if the secretary determines that the
114 applicant's compliance history merits such accelerated approval: *Provided*, That deep well
115 permitting is excluded from this expedited permit processing due to the independent board review
116 and approval required the time frame for which is outside the authority of the secretary to dictate:

117 Provided, however, That: (1) One half of the permit fee revenue of this subsection shall be
118 dedicated to funding the Oil and Gas Operating Permit and Processing Fund and earmarked
119 specifically for agency permit review staffing costs of the secretary which staffing shall be
120 dedicated to the permit review, processing, and approval of the applicable horizontal wells
121 pending before the agency, not to exceed \$1 million annually in combination with proceeds
122 received through subdivision (1), subsection (i) of this section, any residuary fee proceeds to be
123 distributed as set forth in subdivision (2), subsection (h) of this section; and (2) one half of the
124 permit fee revenue of this subsection, plus any residuary as set forth in subdivision (1), subsection
125 (h) of this section, shall be dedicated to funding the Oil and Gas Reclamation Fund earmarked
126 specifically for the reclamation and plugging of orphaned oil or gas wells; (3) for each day the
127 agency exceeds: (A) The 45-day deadline for approval of an expedited initial horizontal well
128 drilled, the secretary shall be required to refund \$1,333.33 per day up to and including day 60
129 after the submission of a permit application, up to the \$20,000 additional fee amount until reduced
130 to the normal permit fee amount; and/or (B) the 45-day deadline for approval of an expedited
131 permit for any additional horizontal well drilled on a single well pad at the same location, the
132 secretary shall be required to refund \$666.66 per day up to and including day 60 after the
133 submission of a permit application, up to the \$10,000 additional fee amount until reduced to the
134 normal permit fee amount.

135 (i) An applicant may enter into an expedited permit modification application process with
136 the secretary for a well permit by paying an additional permit modification fee of \$5,000 for the
137 modification of the permit for any horizontal well drilled at a location. Upon entering into an
138 expedited permit timeline, and meeting all the criteria set forth in this article, the secretary shall
139 issue a permit modification within 20 days of the submission of a permit modification application
140 under this article, unless the secretary denies the modification, or seeks additional information or
141 further modification from the applicant, which would toll the 20 days until the secretary received
142 the required responsive information from the applicant: *Provided, That deep well permit*

143 modifications shall be excluded from this expedited permit modification processing if the
144 modification is subject to independent board review and approval: *Provided, however, That:* (1)
145 One half of the permit modification fee revenue of this subsection shall be dedicated to funding
146 the Oil and Gas Operating Permit and Processing Fund and earmarked specifically for agency
147 permit review staffing costs of the secretary which staffing shall be dedicated to the permit review,
148 processing, and approval of the applicable horizontal wells pending before the agency, not to
149 exceed \$1 million annually in combination with proceeds received through subdivision (1),
150 subsection (h) of this section, any residuary fee proceeds to be distributed as set forth in
151 subdivision (2), subsection (i) of this section; and (2) one half of the permit modification fee
152 revenue of this subsection, plus any residuary as set forth in subdivision (1), subsection (i) of this
153 section, shall be dedicated to funding the Oil and Gas Reclamation Fund earmarked specifically
154 for the reclamation and plugging of orphaned oil or gas wells; (3) for each day the agency exceeds
155 the 20-day deadline for approval of an expedited initial horizontal well permit modification, the
156 secretary shall be required to refund \$500 per day up to and including day 30 after the submission
157 of a permit modification application, up to the \$5,000 additional fee amount until reduced to zero.

158 (i) Any balance in the Oil and Gas Reclamation Fund, earmarked specifically for the
159 reclamation and plugging of orphaned oil or gas wells pursuant to subdivision (2), subsection (h)
160 and subdivision (2), subsection (i) of this section, which remains at the end of any state fiscal
161 year does not revert to the General Revenue Fund but shall remain in the special revenue account
162 as indicated and may be used only as provided in subdivision (2), subsection (h) and subdivision
163 (2), subsection (i) of this section. The revenues deposited in the Oil and Gas Reclamation Fund,
164 earmarked specifically for the reclamation and plugging of orphaned oil or gas wells pursuant to
165 subdivision (2), subsection (h) and subdivision (2), subsection (i) of this section may not be
166 designated as nonaligned state special revenue funds under §11B-2-32 of this code.

167 (h) (k) The well operator named in the application shall designate the name and address
168 of an agent for the operator who is the attorney-in-fact for the operator and who is a resident of

169 the State of West Virginia upon whom notices, orders, or other communications issued pursuant
170 to this article or §22-11-1 *et seq.* of this code may be served, and upon whom process may be
171 served. Every well operator required to designate an agent under this section shall, within five
172 days after the termination of the designation, notify the secretary of the termination and designate
173 a new agent.

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

178 ~~(j)~~ (m) The secretary may waive the requirements of this section and §22-6A-8, §22-6A-
179 10, §22-6A-11, and §22-6A-24 of this code in any emergency situation if the secretary considers
180 the action necessary. In that case the secretary may issue an emergency permit which is effective
181 for not more than 30 days, unless reissued by the secretary.

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

189 ~~(l)~~ (o) If the secretary finds that a substantial violation has occurred and that the operator
190 has failed to abate or seek review of the violation in the time prescribed, the secretary may
191 suspend the permit on which the violation exists, after which suspension the operator shall
192 forthwith cease all well work being conducted under the permit. However, the secretary may
193 reinstate the permit without further notice, at which time the well work may be continued. The
194 secretary shall make written findings of the suspension and may enforce the same in the circuit

195 courts of this state. The operator may appeal a suspension pursuant to the provisions of §22-6A-
196 5(a)(23) of this code. The secretary shall make a written finding of any such determination.

197 ~~(m)~~ (p) Any well work permit issued in accordance with this section may be transferred
198 with the prior written approval of the secretary upon his or her finding that the proposed transferee
199 meets all requirements for holding a well work permit, notwithstanding any other provision of this
200 article or rule adopted pursuant to this article. Application for the transfer of any well work permit
201 shall be upon forms prescribed by the secretary and submitted with a permit transfer fee of \$500.
202 Within 90 days of the receipt of approval by the secretary, the transferee shall give notice of the
203 transfer to those persons entitled to notice in §22-6A-10(b) of this code by personal service or by
204 registered mail or by any method of delivery that requires a receipt or signature confirmation, and
205 shall further update the emergency point of contact provided pursuant to subdivision (13),
206 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.

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