

1 **H. B. 4265**

2
3 (By Delegates Manypenny, Talbott, Mahan,
4 Guthrie, Manchin, Barill, Barker, Walker,
5 Fleischauer and Doyle)
6

7 [Introduced January 23, 2012; referred to the
8 Committee on the Judiciary then Finance.]
9

10 A BILL to amend and reenact §22-6A-7 and §22-6A-8 of the Code of
11 West Virginia, 1931, as amended, all relating to requiring
12 flowback plans for all work on oil and gas wells; requiring a
13 flowback tank with a closed loop system that prevents the
14 release of volatile organic compounds and fugitive pollutants
15 into the environment; permitting flowback pits to only be used
16 under certain conditions; and requiring the proper disposal of
17 drilling mud.

18 *Be it enacted by the Legislature of West Virginia:*

19 That §22-6A-7 and §22-6A-8 of the Code of West Virginia, 1931,
20 as amended, be amended and reenacted, all to read as follows:

21 **ARTICLE 6A. NATURAL GAS HORIZONTAL WELL CONTROL ACT.**

22 **§22-6A-7. Horizontal well permit required; permit fee;**
23 **application; soil erosion control plan; well site**
24 **safety plan; site construction plan; water**
25 **management plan; flowback plan; permit fee;**
26 **installation of permit number; suspension of a**

1 **permit.**

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

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

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

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

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

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

24 (5) The approximate total depth to which the well is to be
25 drilled or deepened, or the actual depth if the well has been

1 drilled; the proposed angle and direction of the well; the actual
2 depth or the approximate depth at which the well to be drilled
3 deviates from vertical, the angle and direction of the nonvertical
4 well bore until the well reaches its total target depth or its
5 actual final depth and the length and direction of any actual or
6 proposed horizontal lateral or well bore;

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

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

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

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

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

23 (11) If the proposed well work is to stimulate a horizontal
24 well, all information necessary to demonstrate compliance with the
25 requirements of subdivision (7), subsection (a), section five of

1 this article;

2 (12) The erosion and sediment control plan required under
3 subsection © of this section for applications for permits to drill;

4 (13) A well site safety plan to address proper safety measures
5 to be employed for the protection of persons on the site as well as
6 the general public. The plan shall encompass all aspects of the
7 operation, including the actual well work for which the permit was
8 obtained, completion activities and production activities, and
9 shall provide an emergency point of contact for the well operator.
10 The well operator shall provide a copy of the well site safety plan
11 to the local emergency planning committee established pursuant to
12 section seven, article five-a, chapter fifteen of this code, for
13 the emergency planning district in which the well work will occur
14 at least seven days before commencement of well work or site
15 preparation work that involves any disturbance of land;

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

25 (15) The flowback plan required under subsection (m) of this

1 section for applications for permits to drill; and

2 ~~(15)~~ (16) Any other relevant information which the secretary
3 may reasonably require.

4 © (1) An erosion and sediment control plan shall accompany
5 each application for a well work permit under this article. The
6 plan shall contain methods of stabilization and drainage, including
7 a map of the project area indicating the amount of acreage
8 disturbed. The erosion and sediment control plan shall meet the
9 minimum requirements of the West Virginia Erosion and Sediment
10 Control Manual as adopted and from time to time amended by the
11 department. The erosion and sediment control plan shall become
12 part of the terms and conditions of any well work permit that is
13 issued pursuant to this article and the provisions of the plan
14 shall be carried out where applicable in the operation. The
15 erosion and sediment control plan shall set out the proposed method
16 of reclamation which shall comply with the requirements of section
17 fourteen of this article.

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

22 (d) For well sites that disturb three acres or more of
23 surface, excluding pipelines, gathering lines and roads, the
24 operator shall submit a site construction plan that shall be
25 certified by a registered professional engineer and contains

1 information that the secretary may require by rule.

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

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

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

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

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

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

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

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

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

13 © Methods to be used for surface water withdrawal to minimize
14 adverse impact to aquatic life; and

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

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

23 (g) The application for a permit under this section shall be
24 accompanied by the applicable bond as required by section fifteen
25 of this article, the applicable plat required by subdivision (6),

1 subsection (a), section five of this article and a permit fee of
2 \$10,000 for the initial horizontal well drilled at a location and
3 a permit fee of \$5,000 for each additional horizontal well drilled
4 on a single well pad at the same location.

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

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

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

1 reissued by the secretary.

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

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

1 (m) A flowback plan for produced water, using best available
2 technology, shall accompany each application for a well work permit
3 under this article. This plan shall minimally include:

4 (1) A flowback tank with closed loop systems that prevents the
5 release of volatile organic compounds and fugitive pollutants into
6 the environment, helping to eliminate exposure of public to
7 potential health hazards which could otherwise be caused by the
8 igniting of volatile organic compounds from sparks from equipment;

9 (2) An identified, written plan to process and dispose of
10 materials pursuant to the public health and environmental
11 provisions of this code; and

12 (3) That drilling mud be given a reasonable time to determine
13 if it will become radioactive or toxic and then properly disposed
14 of in accordance with its status and the requirements of this code
15 or federal law; and

16 (4) Any other relevant information which the director may
17 require by rule.

18 **§22-6A-8. Review of application; issuance of permit; performance**
19 **standards; copy of permits to county assessor.**

20 (a) The secretary shall review each application for a well
21 work permit and shall determine whether or not a permit is issued.

22 (b) No permit may be issued less than thirty days after the
23 filing date of the application for any well work except plugging or
24 replugging; and no permit for plugging or replugging may be issued
25 less than five days after the filing date of the application except

1 a permit for plugging or replugging a dry hole: *Provided*, That if
2 the applicant certifies that all persons entitled to notice of the
3 application under the provisions of subsection (b), section ten of
4 this article have been served in person or by certified mail,
5 return receipt requested, with a copy of the well work application,
6 including the erosion and sediment control plan, if required, and
7 the well plat, and further files written statements of no objection
8 by all such persons, the secretary may issue the well work permit
9 at any time.

10 © Prior to the issuance of any permit, the secretary shall
11 ascertain from the Executive Director of Workforce West Virginia
12 and the Insurance Commissioner whether the applicant is in default
13 pursuant to the provisions of section six-c, article two, chapter
14 twenty-one-a of this code, and in compliance with section five,
15 article two, chapter twenty-three of this code, with regard to any
16 required subscription to the Unemployment Compensation Fund or
17 mandatory Workers' Compensation Insurance, the payment of premiums
18 and other charges to the fund, the timely filing of payroll reports
19 and the maintenance of adequate deposits. If the applicant is
20 delinquent or defaulted, or has been terminated by the executive
21 director or the Insurance Commissioner, the permit may not be
22 issued until the applicant returns to compliance or is restored by
23 the executive director or the Insurance Commissioner under a
24 reinstatement agreement: *Provided*, That in all inquiries the
25 Executive Director of Workforce West Virginia and the Insurance

1 Commissioner shall make response to the Department of Environmental
2 Protection within fifteen calendar days; otherwise, failure to
3 respond timely is considered to indicate the applicant is in
4 compliance and the failure will not be used to preclude issuance of
5 the permit.

6 (d) The secretary may cause such inspections to be made of the
7 proposed well work location as necessary to assure adequate review
8 of the application. The permit may not be issued, or may be
9 conditioned including conditions with respect to the location of
10 the well and access roads prior to issuance if the director
11 determines that:

12 (1) The proposed well work will constitute a hazard to the
13 safety of persons;

14 (2) The plan for soil erosion and sediment control is not
15 adequate or effective;

16 (3) Damage would occur to publicly owned lands or resources;
17 or

18 (4) The proposed well work fails to protect fresh water
19 sources or supplies.

20 (e) In addition to the considerations set forth in subsection
21 (d) of this section, in determining whether a permit should be
22 issued, issued with conditions, or denied, the secretary shall
23 determine that:

24 (1) The well location restrictions of section twelve of this
25 article have been satisfied, unless the requirements have been

1 waived by written consent of the surface owner or the secretary has
2 granted a variance to the restrictions, each in accordance with
3 section twelve of this article;

4 (2) The water management plan submitted to the secretary, if
5 required by ~~subdivision~~ subsection(e), section seven of this
6 article, has been received and approved; and

7 (3) The flowback plan submitted to the secretary under
8 subsection (m), section seven of this article, has been received,
9 determined adequate and effective and approved.

10 (f) The secretary shall promptly review all written comments
11 filed by persons entitled to notice pursuant to subsection (b),
12 section ten of this article. If after review of the application
13 and all written comments received from persons entitled to notice
14 pursuant to subsection (b), section ten of this article, the
15 application for a well work permit is approved, and no timely
16 objection has been filed with the secretary by the coal operator
17 operating coal seams beneath the tract of land, or the coal seam
18 owner or lessee, if any, if said owner or lessee is not yet
19 operating said coal seams, or made by the secretary under the
20 provisions of section ten and eleven of this article, the permit
21 shall be issued, with conditions, if any. This section does not
22 supersede the provisions of section seven or subdivisions (6)
23 through (9), subsection (a), section five of this article.

24 (g) Each permit issued by the secretary pursuant to this
25 article shall require the operator at a minimum to:

1 (1) Plug all wells in accordance with the requirements of this
2 article and the rules promulgated pursuant thereto when the wells
3 become abandoned;

4 (2) With respect to disposal of cuttings at the well site, all
5 drill cuttings and associated drilling mud generated from
6 horizontal well sites shall be disposed of in an approved solid
7 waste facility, or if the surface owner consents, the drill
8 cuttings and associated drilling mud may be managed on-site in a
9 manner approved by the secretary;

10 (3) Grade, terrace and plant, seed or sod the area disturbed
11 that is not required in production of the horizontal well where
12 necessary to bind the soil and prevent substantial erosion and
13 sedimentation;

14 (4) Take action in accordance with industry standards to
15 minimize fire hazards and other conditions which constitute a
16 hazard to health and safety of the public;

17 (5) Protect the quantity and the quality of water in surface
18 and groundwater systems both during and after drilling operations
19 and during reclamation by: (A) Withdrawing water from surface
20 waters of the state by methods deemed appropriate by the secretary,
21 so as to maintain sufficient in-stream flow immediately downstream
22 of the withdrawal location. In no case shall an operator withdraw
23 water from ground or surface waters at volumes beyond which the
24 waters can sustain; (B) casing, sealing or otherwise managing wells
25 to keep returned fluids from entering ground and surface waters; ©

1 conducting oil and gas operations so as to prevent, to the extent
2 possible using the best management practices, additional
3 contributions of suspended or dissolved solids to streamflow or
4 runoff outside the permit area, but in no event shall the
5 contributions be in excess of requirements set by applicable state
6 or federal law; and (D) registering all water supply wells drilled
7 and operated by the operator with the Office of Oil and Gas. All
8 drinking water wells within one thousand five hundred feet of a
9 water supply well shall be flow and quality tested by the operator
10 upon request of the drinking well owner prior to operating the
11 water supply well. The secretary shall propose legislative rules
12 to identify appropriate methods for testing water flow and quality.

13 (6) In addition to the other requirements of this subsection,
14 an operator proposing to drill any horizontal well requiring the
15 withdrawal of more than two hundred ten thousand gallons in a
16 thirty day period shall have the following requirements added to
17 its permit:

18 (A) Identification of water withdrawal locations. Within
19 forty-eight hours prior to the withdrawal of water, the operator
20 shall identify to the department the location of withdrawal by
21 latitude and longitude and verify that sufficient flow exists to
22 protect designated uses of the stream. The operator shall use
23 methods deemed appropriate by the secretary to determine if
24 sufficient flow exists to protect designated uses of the stream.

25 (B) Signage for water withdrawal locations. All water

1 withdrawal locations and facilities identified in the water
2 management plan shall be identified with a sign that identifies
3 that the location is a water withdrawal point, the name and
4 telephone number of the operator and the permit numbers(s) for
5 which the water withdrawn will be utilized.

6 © Record-keeping and reporting. For all water used for
7 hydraulic fracturing of horizontal wells and for flowback water
8 from hydraulic fracturing activities and produced water from
9 production activities from horizontal wells, an operator shall
10 comply with the following record keeping and reporting
11 requirements:

12 (I) For production activities, the following information shall
13 be recorded and retained by the well operator:

14 (I) The quantity of flowback water from hydraulic fracturing
15 the well;

16 (II) The quantity of produced water from the well; and

17 (III) The method of management or disposal of the flowback and
18 produced water.

19 (ii) For transportation activities, the following information
20 shall be recorded and maintained by the operator:

21 (I) The quantity of water transported;

22 (II) The collection and delivery or disposal locations of
23 water; and

24 (III) The name of the water hauling company.

25 (iii) The information maintained pursuant to this subdivision

1 shall be available for inspection by the department along with
2 other required permits and records and maintained for three years
3 after the water withdrawal activity.

4 (iv) This subdivision is intended to be consistent with and
5 does not supersede, revise, repeal or otherwise modify articles
6 eleven, twelve or twenty-six of this chapter and does not revise,
7 repeal or otherwise modify the common law doctrine of riparian
8 rights in West Virginia law.

9 (h) The secretary shall mail a copy of the permit as issued or
10 a copy of the order denying a permit to any person entitled to
11 submit written comments pursuant to subsection (a), section eleven
12 of this article and who requested a copy.

13 (I) Upon the issuance of any permit pursuant to the provisions
14 of this article, the secretary shall transmit a copy of the permit
15 to the office of the assessor for the county in which the well is
16 located.

NOTE: The purpose of this bill is to require flowback plans for all work on oil and gas wells. The bill requires a flowback tank with a closed loop system that prevents the release of volatile organic compounds and fugitive pollutants into the environment to be part of that plan. The bill permits flowback pits to be used only under certain conditions. The bill also requires the proper disposal of drilling mud.

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