

H. B. 4362

(By Delegates Manypenny, Staggers, Sigler, Frazier, Talbott, Longstreth, Doyle, Walker, Shaver and Rowan)

[Introduced January 31, 2012; referred to the Committee on the Judiciary then Finance.]

A BILL to amend and reenact §22-6-6 of the Code of West Virginia, 1931, as amended; and to amend and reenact §22-6A-12 of said code, all relating to requiring the center of all new gas wells to be more than one thousand feet from water wells or six hundred twenty-five feet from the edge of the well pad to water wells, whichever is further.

Be it enacted by the Legislature of West Virginia:

That §22-6-6 of the Code of West Virginia, 1931, as amended, be amended and reenacted; and that §22-6A-12 of said code be amended and reenacted, all to read as follows:

ARTICLE 6. OFFICE OF OIL AND GAS; OIL AND GAS WELLS; ADMINISTRATION; ENFORCEMENT.

§22-6-6. Permit required for well work; distance from water wells and dwellings; permit fee; application; soil erosion control plan.

(a) (1) It is unlawful for any person to commence any well

1 work, including site preparation work which involves any  
2 disturbance of land, without first securing from the director a  
3 well work permit. An application may propose and a permit may  
4 approve two or more activities defined as well work.

5 (2) All new natural gas wells shall be no less than one  
6 thousand feet from the well's center to a water well or dwelling or  
7 six hundred twenty-five feet from the gas well pad edge to the  
8 water well or dwelling, whichever is further.

9 (b) The application for a well work permit shall be  
10 accompanied by applicable bond as prescribed by section twelve,  
11 fourteen or twenty-three of this article, and the applicable plat  
12 required by section twelve or fourteen of this article.

13 (c) Every permit application filed under this section shall be  
14 verified and shall contain the following:

15 (1) The names and addresses of: (i) The well operator; (ii)  
16 the agent required to be designated under subsection (e) of this  
17 section; and (iii) every person whom the applicant must notify  
18 under any section of this article together with a certification and  
19 evidence that a copy of the application and all other required  
20 documentation has been delivered to all such persons;

21 (2) The name and address of every coal operator operating coal  
22 seams under the tract of land on which the well is or may be  
23 located, and the coal seam owner of record and lessee of record  
24 required to be given notice by section twelve, if any, if said

1 owner or lessee is not yet operating said coal seams;

2 (3) The number of the well or such other identification as the  
3 director may require;

4 (4) The type of well;

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

6 (6) The approximate depth to which the well is to be drilled  
7 or deepened, or the actual depth if the well has been drilled;

8 (7) Any permit application fee required by law;

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

14 (9) If the proposed well work is to convert an oil well or a  
15 combination well or to drill a new well for the purpose of  
16 introducing pressure for the recovery of oil as provided in section  
17 twenty-five of this article, specifications in accordance with the  
18 data requirements of section fourteen of this article;

19 (10) If the proposed well work is to plug or replug the well:  
20 (i) Specifications in accordance with the data requirements of  
21 section twenty-three of this article; (ii) a copy of all logs in  
22 the operator's possession as the director may require; and (iii) a  
23 work order showing in detail the proposed manner of plugging or  
24 unplugging the well, in order that a representative of the director

1 and any interested persons may be present when the work is done.  
2 In the event of an application to drill, redrill or deepen a well,  
3 if the well work is unsuccessful so that the well must be plugged  
4 and abandoned, and if the well is one on which the well work has  
5 been continuously progressing pursuant to a permit, the operator  
6 may proceed to plug the well as soon as the operator has obtained  
7 the verbal permission of the director or the director's designated  
8 representative to plug and abandon the well, except that the  
9 operator shall make reasonable effort to notify as soon as  
10 practicable the surface owner and the coal owner, if any, of the  
11 land at the well location, and shall also timely file the plugging  
12 affidavit required by section twenty-three of this article;

13       (11) If the proposed well work is to stimulate an oil or gas  
14 well, specifications in accordance with the data requirements of  
15 section thirteen of this article;

16       (12) The erosion and sediment control plan required under  
17 subsection (d) of this section for applications for permits to  
18 drill; and

19       (13) Any other relevant information which the director may  
20 require by rule.

21       (d) An erosion and sediment control plan shall accompany each  
22 application for a well work permit except for a well work permit to  
23 plug or replug any well. Such plan shall contain methods of  
24 stabilization and drainage, including a map of the project area

1 indicating the amount of acreage disturbed. The erosion and  
2 sediment control plan shall meet the minimum requirements of the  
3 West Virginia Erosion and Sediment Control Manual as adopted and  
4 from time to time amended by the division, in consultation with the  
5 several soil conservation districts pursuant to the control program  
6 established in this state through section 208 of the federal Water  
7 Pollution Control Act Amendments of 1972 (33 U.S.C. §1288). The  
8 erosion and sediment control plan shall become part of the terms  
9 and conditions of a well work permit, except for a well work permit  
10 to plug or replug any well, which is issued and the provisions of  
11 the plan shall be carried out where applicable in the operation.  
12 The erosion and sediment control plan shall set out the proposed  
13 method of reclamation which shall comply with the requirements of  
14 section thirty of this article.

15 (e) The well operator named in such application shall  
16 designate the name and address of an agent for such operator who  
17 shall be the attorney-in-fact for the operator and who shall be a  
18 resident of the State of West Virginia upon whom notices, orders or  
19 other communications issued pursuant to this article or article  
20 eleven, chapter twenty-two, may be served, and upon whom process  
21 may be served. Every well operator required to designate an agent  
22 under this section shall within five days after the termination of  
23 such designation notify the director of such termination and  
24 designate a new agent.

1           (f) The well owner or operator shall install the permit number  
2 as issued by the director in a legible and permanent manner to the  
3 well upon completion of any permitted work. The dimensions,  
4 specifications and manner of installation shall be in accordance  
5 with the rules of the director.

6           (g) The director may waive the requirements of this section  
7 and sections nine, ten and eleven of this article in any emergency  
8 situation, if the director deems such action necessary. In such  
9 case the director may issue an emergency permit which would be  
10 effective for not more than thirty days, but which would be subject  
11 to reissuance by the director.

12           (h) The director shall deny the issuance of a permit if the  
13 director determines that the applicant has committed a substantial  
14 violation of a previously issued permit, including the erosion and  
15 sediment control plan, or a substantial violation of one or more of  
16 the rules promulgated hereunder, and has failed to abate or seek  
17 review of the violation within the time prescribed by the director  
18 pursuant to ~~the provisions of~~ sections three and four of this  
19 article and the rules promulgated hereunder, which time may not be  
20 unreasonable: *Provided*, That in the event that the director does  
21 find that a substantial violation has occurred and that the  
22 operator has failed to abate or seek review of the violation in the  
23 time prescribed, the director may suspend the permit on which said  
24 violation exists, after which suspension the operator shall

1 forthwith cease all well work being conducted under the permit:  
2 *Provided, however,* That the director may reinstate the permit  
3 without further notice, at which time the well work may be  
4 continued. The director shall make written findings of any such  
5 determination and may enforce the same in the circuit courts of  
6 this state and the operator may appeal such suspension pursuant to  
7 ~~the provisions of~~ section forty of this article. The director  
8 shall make a written finding of any such determination.

9 (i) Any person who violates ~~any provision of~~ this section  
10 shall be guilty of a misdemeanor and, upon conviction ~~thereof,~~  
11 shall be fined not more than \$5,000, or be ~~imprisoned~~ confined in  
12 ~~the county~~ jail not more than twelve months, or both fined and  
13 ~~imprisoned~~ confined.

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

15 **§22-6A-12. Well location restrictions.**

16 (a) ~~Wells may not be drilled within two hundred fifty feet~~  
17 ~~measured horizontally from any existing water well or developed~~  
18 ~~spring used for human or domestic animal consumption. All new gas~~  
19 wells shall be no less than one thousand feet from the well's  
20 center to a water well or a developed spring used for human or  
21 domestic animal consumption or six hundred twenty-five feet from  
22 the gas well pad edge to the water well or developed spring used  
23 for human or domestic animal consumption, whichever is further. The  
24 center of well pads may not be located within six hundred twenty-

1 five feet of an occupied dwelling structure, or a building two  
2 thousand five hundred square feet or larger used to house or  
3 shelter dairy cattle or poultry husbandry. This limitation is  
4 applicable to those wells, developed springs, dwellings or  
5 agricultural buildings that existed on the date a notice to the  
6 surface owner of planned entry for surveying or staking as provided  
7 in section ten of this article or a notice of intent to drill a  
8 horizontal well as provided in subsection (b), section sixteen of  
9 this article was provided, whichever occurs first, and to any  
10 dwelling under construction prior to that date. This limitation  
11 may be waived by written consent of the surface owner transmitted  
12 to the department and recorded in the real property records  
13 maintained by the clerk of the county commission for the county in  
14 which such property is located. Furthermore, the well operator may  
15 be granted a variance by the secretary from these distance  
16 restrictions upon submission of a plan which identifies the  
17 sufficient measures, facilities or practices to be employed during  
18 well site construction, drilling and operations. The variance, if  
19 granted, shall include terms and conditions the department requires  
20 to ensure the safety and protection of affected persons and  
21 property. The terms and conditions may include insurance, bonding  
22 and indemnification, as well as technical requirements.

23 (b) No well pad may be prepared or well drilled within one  
24 hundred feet measured horizontally from any perennial stream,



1 natural or artificial lake, pond or reservoir, or a wetland, or  
2 within three hundred feet of a naturally reproducing trout stream.  
3 No wellpad may be located within one thousand feet of a surface or  
4 ground water intake of a public water supply. The distance from  
5 the public water supply as identified by the department shall be  
6 measured as follows:

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

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

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

20       (c) Notwithstanding the foregoing provisions of this section,  
21 nothing contained in this section prevents an operator from  
22 conducting the activities permitted or authorized by a Clean Water  
23 Act Section 404 permit or other approval from the United States  
24 Army Corps of Engineers within any waters of the state or within

1 the restricted areas referenced in this section.

2 (d) The well location restrictions set forth in this section  
3 shall not apply to any well on a multiple well pad if at least one  
4 of the wells was permitted or has an application pending prior to  
5 the effective date of this article.

6 (e) The secretary shall, by December 31, 2012, report to the  
7 Legislature on the noise, light, dust and volatile organic  
8 compounds generated by the drilling of horizontal wells as they  
9 relate to the well location restrictions regarding occupied  
10 dwelling structures pursuant to this section. Upon a finding, if  
11 any, by the secretary that the well location restrictions regarding  
12 occupied dwelling structures are inadequate or otherwise require  
13 alteration to address the items examined in the study required by  
14 this subsection, the secretary shall have the authority to propose  
15 for promulgation legislative rules establishing guidelines and  
16 procedures regarding reasonable levels of noise, light, dust and  
17 volatile organic compounds relating to drilling horizontal wells,  
18 including reasonable means of mitigating such factors, if  
19 necessary.

NOTE: The purpose of this bill is to require the center of all new gas wells to be more than one thousand feet from water wells or developed springs used for human or domestic animal consumption or six hundred twenty-five feet from the edge of the well pad to water wells or developed springs used for human or domestic animal consumption, whichever is further.

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