

# **WEST VIRGINIA LEGISLATURE**

## **2021 REGULAR SESSION**

**Introduced**

### **House Bill 2074**

BY DELEGATE SYPOLT

[Introduced February 10, 2021; Referred to the  
Committee on Energy and Manufacturing then the  
Judiciary]

1 A BILL to amend and reenact §22-6A-12 of the Code of West Virginia, 1931, as amended; and  
 2 to amend said code by adding thereto a new section, designated §22-6A-12a, all relating  
 3 to requiring continuous monitoring of air, noise, dust and particulates; requiring the  
 4 operator to undertake the best available control technology if standards for air, noise, dust  
 5 or particulates are exceeded; and changing the set back from horizontal well work activity  
 6 to a residence to 1,500 feet from the limit of well work disturbance.

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

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

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

1 (a) Wells may not be drilled within 250 feet measured horizontally from any existing water  
 2 well or developed spring used for human or domestic animal consumption. ~~The center of well~~  
 3 ~~pads may not be located within six hundred twenty-five~~ The limit of disturbance of a well site may  
 4 not be closer than 1,500 feet of an occupied dwelling structure, or a building 2,500 square feet or  
 5 larger used to house or shelter dairy cattle or poultry husbandry unless in the operators permit  
 6 application an estimate certified by a registered professional engineer provides that the well work  
 7 activity will avoid exceeding limits for specified parameters set out in §22-6A-12a of this code.  
 8 This limitation is applicable to those wells, developed springs, dwellings or agricultural buildings  
 9 that existed on the date a notice to the surface owner of planned entry for surveying or staking as  
 10 provided in §22-6A-10 of this code or a notice of intent to drill a horizontal well as provided in §22-  
 11 6A-16(b) of this code was provided, whichever occurs first, and to any dwelling under construction  
 12 prior to that date. This limitation may be waived by written consent of the surface owner  
 13 transmitted to the department and recorded in the real property records maintained by the clerk  
 14 of the county commission for the county in which such property is located. Furthermore, the well  
 15 operator may be granted a variance by the secretary from these distance restrictions upon  
 16 submission of a plan which identifies the sufficient measures, facilities or practices to be employed  
 17 during well site construction, drilling and operations. The variance, if granted, shall include terms

18 and conditions the department requires to ensure the safety and protection of affected persons  
19 and property. The terms and conditions may include insurance, bonding and indemnification, as  
20 well as technical requirements.

21 (b) No well pad may be prepared or well drilled within 100 feet measured horizontally from  
22 any perennial stream, natural or artificial lake, pond or reservoir, or a wetland, or within 300 feet  
23 of a naturally reproducing trout stream. No well pad may be located within 1,000 feet of a surface  
24 or ground water intake of a public water supply. The distance from the public water supply as  
25 identified by the department shall be measured as follows:

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

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

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

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

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

42 (e) The secretary shall, by December 31, 2012, report to the Legislature on the noise,  
43 light, dust and volatile organic compounds generated by the drilling of horizontal wells as they

44 relate to the well location restrictions regarding occupied dwelling structures pursuant to this  
45 section. Upon a finding, if any, by the secretary that the well location restrictions regarding  
46 occupied dwelling structures are inadequate or otherwise require alteration to address the items  
47 examined in the study required by this subsection, the secretary shall have the authority to  
48 propose for promulgation legislative rules establishing guidelines and procedures regarding  
49 reasonable levels of noise, light, dust and volatile organic compounds relating to drilling horizontal  
50 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 24-hour averaging period, the operator shall implement  
13 the maximum available control technology available to limit the levels. The monitored levels need  
14 to be continuously available by wireless or other transmission to those persons or entities within  
15 1,500 feet of the limit of disturbance who request it. When levels exceed parameters, alerts shall  
16 be sent to those persons or entities. The data shall be available to the public for study. Unless  
17 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 24-hour period and no  
21 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 §22-6A-12a(a) of this code if, after completion of well  
28 work, production or production facilities cause a violation of the standards set out in §22-6A-  
29 12a(b) of this code at a residence, then the operator shall implement the maximum available  
30 control 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 Natural Gas Horizontal Well Control Act passed by the Legislature December 14, 2011. The bill requires continuous monitoring of air, noise, dust and particulates. The bill requires the operator to undertake the best available control technology if standards for air, noise, dust or particulates are exceeded. The bill changes the set back from horizontal well work activity to a residence to 1,500 feet from the limit of well work disturbance.

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