

WEST VIRGINIA LEGISLATURE

2026 REGULAR SESSION

Introduced

House Bill 5409

By Delegates Leavitt, Fehrenbacher, Moore, Dittman,

Rohrbach, and Riley

[Introduced February 10, 2026; referred to the

Committee on Energy and Public Works]

1 A BILL to amend and reenact §22-6-1, §22-6-7, and §22-6A-5 of the Code of West Virginia, 1931,
 2 as amended, relating to the ownership of water and minerals in dissolved or undissolved
 3 form in produced liquids and solids related to oil and gas drilling.

Be it enacted by the Legislature of West Virginia:

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

§22-6-1. Definitions.

1 As used in this article:

2 (a) "Casing" means a string or strings of pipe commonly placed in wells drilled for natural
 3 gas or petroleum or both;

4 (b) "Cement" means hydraulic cement properly mixed with water;

5 (c) "Chair" means the chair of the West Virginia shallow gas well review board as provided
 6 for in ~~section four, article eight, chapter twenty-two-c~~ §22C-8-4 of this code;

7 (d) "Coal operator" means any person or persons, firm, partnership, partnership
 8 association or corporation that proposes to or does operate a coal mine;

9 (e) "Coal seam" and "workable coal bed" are interchangeable terms and mean any seam
 10 of coal twenty inches or more in thickness, unless a seam of less thickness is being commercially
 11 worked, or can in the judgment of the department foreseeably be commercially worked and will
 12 require protection if wells are drilled through it;

13 (f) "Director" means the Secretary of the Department of Environmental Protection as
 14 established in ~~article one of this chapter~~ §22-1-1 et seq. of this code or other person to whom the
 15 secretary has delegated authority or duties pursuant to ~~sections six or eight, article one of this~~
 16 ~~chapter~~ §22-1-6 or §22-1-8 of this code.

17 (g) "Deep well" means any well other than a shallow well or coalbed methane well, drilled
 18 to a formation below the top of the uppermost member of the "Onondaga Group";

19 (h) "Expanding cement" means any cement approved by the office of oil and gas which
20 expands during the hardening process, including, but not limited to, regular oil field cements with
21 the proper additives;

22 (i) "Facility" means any facility utilized in the oil and gas industry in this state and
23 specifically named or referred to in this article or in ~~article eight or nine of this chapter~~ §22-8-1 et
24 seq. or §22-9-1 et seq. of this code, other than a well or well site;

25 (j) "Gas" means all natural gas and all other fluid hydrocarbons not defined as oil in this
26 section;

27 (k) "Oil" means natural crude oil or petroleum and other hydrocarbons, regardless of
28 gravity, which are produced at the well in liquid form by ordinary production methods and which are
29 not the result of condensation of gas after it leaves the underground reservoirs;

30 (l) "Owner" when used with reference to any well, shall include any person or persons, firm,
31 partnership, partnership association or corporation that owns, manages, operates, controls or
32 possesses such well as principal, or as lessee or contractor, employee or agent of such principal;

33 (m) "Owner" when used with reference to any coal seam, shall include any person or
34 persons who own, lease or operate such coal seam;

35 (n) "Person" means any natural person, corporation, firm, partnership, partnership
36 association, venture, receiver, trustee, executor, administrator, guardian, fiduciary or other
37 representative of any kind, and includes any government or any political subdivision or any agency
38 thereof;

39 (o) "Plat" means a map, drawing or print showing the location of a well or wells as herein
40 defined;

41 (p) "Pollutant" has the same meaning as provided in ~~section three, article eleven of this~~
42 ~~chapter~~ §22-11-3 of this code;

43 "Produced liquids and solids" are all substances of whatever kind, other than oil and gas,
44 that are extracted during the drilling or operation of a well regulated under this article or §22-6A-1

45 et seq. of this code. "Produced liquids and solids" includes, but is not limited to, water and minerals
46 in dissolved or undissolved form;

47 (q) "Review board" means the West Virginia Shallow Gas Well Review Board as provided
48 for in ~~section four, article eight, chapter twenty-two~~ §22C-8-4 of this code;

49 (r) "Safe mining through of a well" means the mining of coal in a workable coal bed up to a
50 well which penetrates such workable coal bed and through such well so that the casing or plug in
51 the well bore where the well penetrates the workable coal bed is severed;

52 (s) "Secretary" means the Secretary of the Department of Environmental Protection as
53 established in article one of this chapter or other person to whom the secretary has delegated
54 authority or duties pursuant to ~~sections six or eight, article one of this chapter~~ §22-1-6 or §22-1-8 of
55 this code;

56 (t) "Shallow well" means any gas well, other than a coalbed methane well, drilled no deeper
57 than one hundred feet below the top of the "Onondaga Group": *Provided*, That in no event may the
58 "Onondaga Group" formation or any formation below the "Onondaga Group" be produced,
59 perforated or stimulated in any manner;

60 (u) "Stimulate" means any action taken by a well operator to increase the inherent
61 productivity of an oil or gas well, including, but not limited to, fracturing, shooting or acidizing, but
62 excluding cleaning out, bailing or workover operations;

63 (v) "Waste" means (i) physical waste, as the term is generally understood in the oil and gas
64 industry; (ii) the locating, drilling, equipping, operating or producing of any oil or gas well in a
65 manner that causes, or tends to cause a substantial reduction in the quantity of oil or gas ultimately
66 recoverable from a pool under prudent and proper operations, or that causes or tends to cause a
67 substantial or unnecessary or excessive surface loss of oil or gas; or (iii) the drilling of more deep
68 wells than are reasonably required to recover efficiently and economically the maximum amount of
69 oil and gas from a pool; (iv) substantially inefficient, excessive or improper use, or the substantially
70 unnecessary dissipation of, reservoir energy, it being understood that nothing in this chapter

71 authorizes any agency of the state to impose mandatory spacing of shallow wells except for the
72 provisions of ~~section eight, article nine, chapter twenty-two-e~~ §22C-9-8 of this code and the
73 provisions of ~~article eight, chapter twenty-two-e~~ §22C-8-1 et seq. of this code; (v) inefficient storing
74 of oil or gas: *Provided*, That storage in accordance with a certificate of public convenience issued
75 by the Federal Energy Regulatory Commission is conclusively presumed to be efficient; and (vi)
76 other underground or surface waste in the production or storage of oil, gas or condensate,
77 however caused. Waste does not include gas vented or released from any mine areas as defined
78 in ~~section two, article one, chapter twenty-two-a~~ §22A-1-2 of this code, or from adjacent coal
79 seams which are the subject of a current permit issued under ~~article two of chapter twenty-two-a~~
80 §22A-2-1 et seq. of this code: *Provided, however*, That nothing in this exclusion is intended to
81 address ownership of the gas;

82 (w) "Waters of this state" has the same meaning as the term "waters" as provided in
83 ~~section three, article eleven of this chapter~~ §22-11-3 of this code;

84 (x) "Well" means any shaft or hole sunk, drilled, bored or dug into the earth or into
85 underground strata for the extraction or injection or placement of any liquid or gas, or any shaft or
86 hole sunk or used in conjunction with such extraction or injection or placement. The term "well"
87 does not include any shaft or hole sunk, drilled, bored or dug into the earth for the sole purpose of
88 core drilling or pumping or extracting therefrom potable, fresh or usable water for household,
89 domestic, industrial, agricultural or public use;

90 (y) "Well work" means the drilling, redrilling, deepening, stimulating, pressuring by injection
91 of any fluid, converting from one type of well to another, combining or physically changing to allow
92 the migration of fluid from one formation to another or plugging or replugging of any well; and

93 (z) "Well operator" or "operator" means any person or persons, firm, partnership,
94 partnership association or corporation that proposes to or does locate, drill, operate or abandon
95 any well as herein defined.

§22-6-7. Water pollution control permits; powers and duties of the director; penalties;

ownership and disposition of produced liquids and solids.

1 (a) In addition to a permit for well work, the director, after public notice and an opportunity
2 for public hearings, may either issue a separate permit, general permit or a permit consolidated
3 with the well work permit for the discharge or disposition of any pollutant or combination of
4 pollutants into waters of this state upon condition that such discharge or disposition meets or will
5 meet all applicable state and federal water quality standards and effluent limitations and all other
6 requirements of the director.

7 (b) It shall be unlawful for any person conducting activities which are subject to the
8 requirements of this article, unless that person holds a water pollution control permit therefor from
9 the director, which is in full force and effect to:

10 (1) Allow pollutants or the effluent therefrom, produced by or emanating from any point
11 source, to flow into the water of this state;

12 (2) Make, cause or permit to be made any outlet, or substantially enlarge or add to the load
13 of any existing outlet, for the discharge of pollutants or the effluent therefrom, into the waters of this
14 state;

15 (3) Acquire, construct, install, modify or operate a disposal system or part thereof for the
16 direct or indirect discharge or deposit of treated or untreated pollutants or the effluent therefrom,
17 into the waters of this state, or any extension to or addition to such disposal system;

18 (4) Increase in volume or concentration any pollutants in excess of the discharges or
19 disposition specified or permitted under any existing permit;

20 (5) Extend, modify or add to any point source, the operation of which would cause an
21 increase in the volume or concentration of any pollutants discharging or flowing into the waters of
22 the state;

23 (6) Operate any disposal well for the injection or reinjection underground of any pollutant,
24 including, but not limited to, liquids or gasses, or convert any well into such a disposal well or plug
25 or abandon any such disposal well.

26 (c) Notwithstanding any provision of this article, ~~or articles seven, eight, nine or ten of this~~
27 ~~chapter §22-7-1 et seq., §22-8-1 et seq., §22-9-1 et seq., or §22-10-1 et seq. of this code~~ to the
28 contrary, the director shall have the same powers and duties relating to inspection and
29 enforcement as those granted under ~~article eleven, chapter twenty-two~~ §22-11-1 et seq. of this
30 code in connection with the issuance of any water pollution control permit or any person required
31 to have such permit.

32 (d) Any person who violates any provision of this section, any order issued under this
33 section or any permit issued pursuant to this section or any rule of the director relating to water
34 pollution or who willfully or negligently violates any provision of this section or any permit issued
35 pursuant to this section or any rule or order of the director relating to water pollution or who fails or
36 refuses to apply for and obtain a permit or who intentionally misrepresents any material fact in an
37 application, record, report, plan or other document files or required to be maintained under this
38 section shall be subject to the same penalties for such violations as are provided for in ~~sections~~
39 ~~twenty-two and twenty-four, article eleven, chapter twenty-two~~ §22-11-22 and §22-11-24 of this
40 code: *Provided*, That the provisions of ~~section twenty-six, article eleven, chapter twenty-two~~ §22-
41 11-26 of this code relating to exceptions to criminal liability shall also apply.

42 All applications for injunction filed pursuant to ~~section twenty-two, article eleven, chapter~~
43 ~~twenty-two~~ §22-11-22 of the code shall take priority on the docket of the circuit court in which
44 pending, and shall take precedence over all other civil cases.

45 (e) Any water pollution control permit issued pursuant to this section or any order issued in
46 connection with such permit for the purpose of implementing the "national pollutant discharge
47 elimination system" established under the federal Clean Water Act shall be issued by the chief of
48 the office of water resources of the division in consultation with the chief of the office of oil and gas
49 of the division and shall be appealable to the environmental quality board pursuant to the
50 provisions of ~~section twenty-five, article eleven, chapter twenty-two and section seven, article one,~~
51 ~~chapter twenty-two b~~ §22-11-25 and §22-1-7 of this code.

52 (f) Produced liquids and solids are the property of the well operator. All substances
53 reclaimed or removed from produced liquids and solids remain the property of the well operator.
54 Such removed substances are not part of the mineral or surface estates of the property or
55 properties on which the well is located or through which it is drilled.

56 (g) The well operator shall make provision for disposition of the produced liquids and
57 solids that are withdrawn from a well in a manner that is consistent with the requirements of this
58 chapter. In the case of a well drilled in accordance with §22-6A-1 et seq. of this code, the
59 disposition plan may be included as part of the plan required by §22-6A-7(e)(4) of this code.

ARTICLE 6A. NATURAL GAS HORIZONTAL WELL CONTROL ACT.

§22-6A-5. Application of article six of this chapter to horizontal wells subject to this article.

1 (a) To the extent that horizontal wells governed by this article are similar to conventional oil
2 and gas wells regulated under ~~article six of this chapter~~ §22-6-1 et seq. of this code, the following
3 sections of ~~article six of this chapter~~ §22-6-1 et seq. of this code are hereby incorporated by
4 reference in this article:

5 (1) The provisions of §22-6-3 of this code relating to the findings and orders of inspectors
6 concerning violations, the determination of reasonable time for abatement, extensions of time for
7 abatement, special inspections and notice of findings and orders;

8 (2) The provisions of §22-6-4 of this code providing for the review of findings and orders by
9 the secretary, special inspections and applications for annulment or revision of orders by the
10 secretary;

11 (3) The provisions of §22-6-5 of this code relating to the requirements for findings, orders
12 and notices, notice to the operator of findings and orders and judicial review of final orders of the
13 secretary;

14 (4) The provisions of §22-6-7 of this code relating to the issuance of water pollution control
15 permits, the powers and duties of the secretary related thereto and penalties for violations of the
16 same, the ownership and disposition of produced liquids and solids, and the ownership of

17 reclaimed or removed substances;

18 (5) The provisions of §22-6-8 of this code ~~of this chapter~~ relating to the prohibition of
19 permits for wells on flat well royalty leases and requirements for permits;

20 (6) The provisions of §22-6-12 of this code pertaining to plats prerequisite to drilling or
21 fracturing wells, the preparation and contents thereof, notice furnished to coal operators, owners
22 or lessees, the issuance of permits and required performance bonds, with the following
23 exceptions:

24 (A) Under subsection (a), §22-6-12 of this code, the plat also shall identify all surface tract
25 boundaries within the scope of the plat proposed to be crossed by the horizontal lateral of the
26 horizontal well and the proposed path of such horizontal lateral, and

27 (B) Under subsection (b), §22-6-12 of this code, any reference to a time period shall be
28 ~~thirty~~ 30 days in lieu of ~~fifteen~~ 15 days;

29 (7) The provisions of §22-6-13 of this code providing for notice of the operator's intention to
30 fracture wells, with the exception that under the third paragraph of §22-6-13 of this code, the
31 applicable periods shall be ~~thirty~~ 30 days in lieu of ~~fifteen~~ 15 days;

32 (8) The provisions of §22-6-14 of this code providing requirements related only to the
33 introduction of liquids for the purposes for enhanced recovery, with the exception that the type of
34 wells used for enhanced recovery referenced in §22-6-14(a) of this code shall also include the
35 introduction of fluids or gases, not otherwise prohibited by law or rule, including carbon dioxide, for
36 the purposes provided for in §22-6-25 of this code;

37 (9) The provisions of §22-6-15 of this code pertaining to objections to proposed deep well
38 drilling sites above seam or seams of coal, with the exception that the applicable time for filing
39 objections is within ~~thirty~~ 30 days of receipt by the secretary of the required plat and/or notice in
40 lieu of ~~fifteen~~ 15 days;

41 (10) The provisions of §22-6-16 of this code pertaining to the process of issuing permits
42 related only to the introduction of liquids or waste for the purposes for enhanced recovery, with the

43 exception that the type of wells used for enhanced recovery referenced in §22-6-16 of this code
44 shall also include the introduction of fluids or gases, not otherwise prohibited by law or rule,
45 including carbon dioxide, for the purposes provided for in §22-6-25 of this code;

46 (11) The provisions of §22-6-17 of this code pertaining to drilling of shallow gas wells,
47 notice to be provided to the chair of the review board, orders issued by the review board and
48 permits issued for such drilling, with the exception that the applicable time for filing objections is
49 ~~thirty~~ 30 days from the date of receipt by the secretary of the required plat and notice in lieu of
50 ~~fifteen~~ 15 days;

51 (12) The provisions of §22-6-18 of this code providing for protective devices for when a well
52 penetrates one or more workable coal beds and when gas is found beneath or between workable
53 coal beds;

54 (13) The provisions of §22-6-19 of this code providing for protective devices during the life
55 of the well and for dry or abandoned wells;

56 (14) The provisions of §22-6-20 of this code providing for protective devices when a well is
57 drilled through the horizon of a coalbed from which the coal has been removed;

58 (15) The provisions of §22-6-21 of this code requiring the installation of fresh water
59 casings;

60 (16) The provisions of §22-6-22 of this code relating to the filing of a well completion log
61 and the contents thereof, confidentiality and permitted use and the secretary's authority to
62 promulgate rules;

63 (17) The provisions of §22-6-25 of this code regarding the introduction of liquid pressure
64 into producing strata to recover oil contained therein, with the exception that (i) the purposes of
65 wells set forth in §22-6-25 of this code may also be for introducing fluid or gaseous pressure,
66 including carbon dioxide, and (ii) the substance that is the subject of recovery also includes natural
67 gas;

68 (18) The provisions of §22-6-27 of this code regarding a cause of action for damages

69 caused by an explosion;

70 (19) The provisions of §22-6-28 of this code ~~of this chapter~~ relating to supervision by the
71 secretary over drilling and reclamation operations, the filing of complaints, hearings on the same
72 and appeals;

73 (20) The provisions of §22-6-29 of this code providing for the Operating Permit and
74 Processing Fund, the oil and gas reclamation fund and associated fees, with the exception that in
75 the first paragraph of subsection (a), §22-6-29 of this code, the fees to be credited to the Oil and
76 Gas Operating Permit and Processing Fund are the permit fees collected pursuant to ~~section~~
77 ~~seven of this article~~ §22-6A-7 of this code;

78 (21) The provisions of §22-6-31 of this code providing for preventing waste of gas, plans of
79 operation for wasting gas in the process of producing oil and the secretary's rejection thereof;

80 (22) The provisions of §22-6-32 of this code pertaining to the right of an adjacent owner or
81 operator to prevent waste of gas and the recovery of costs;

82 (23) The provisions of §22-6-33 of this code relating to circuit court actions to restrain
83 waste;

84 (24) The provisions of §22-6-36 of this code providing for the declaration of oil and gas
85 notice by owners and lessees of coal seams and setting out the form of such notice;

86 (25) The provisions of §22-6-39 of this code relating to petitions for injunctive relief; and

87 (26) The provisions of §22-6-40 of this code ~~of this chapter~~ relating to appeals from orders
88 issuing or refusing to issue a permit to drill or fracture, and the procedure therefore.

89 (b) Notwithstanding any other provision of this code to the contrary, no provision of ~~article~~
90 ~~six of this chapter~~ §22-6A-1 et seq. of this code shall apply to horizontal wells subject to this article
91 except as expressly incorporated by reference in this article. Any conflict between the provisions of
92 ~~article six~~ §22-6-1 et seq. of this code and the provisions of this article shall be resolved in favor of
93 this article.

NOTE: The purpose of this bill is to clarify the ownership of minerals and other substances (other than hydrocarbons) in produced liquids and solids related to oil and gas drilling.

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