WEST VIRGINIA CODE: §22-6A-8

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

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

(b) No permit may be issued less than thirty days after the filing date of the application for any well work except plugging or replugging; and no permit for plugging or replugging may be issued less than five days after the filing date of the application except a permit for plugging or replugging a dry hole: Provided, That if the applicant certifies that all persons entitled to notice of the application under the provisions of subsection (b), section ten of this article have been served in person or by certified mail, return receipt requested, with a copy of the well work application, including the erosion and sediment control plan, if required, and the well plat, and further files written statements of no objection by all such persons, the secretary may issue the well work permit at any time.

(c) Prior to the issuance of any permit, the secretary shall ascertain from the Executive Director of Workforce West Virginia and the Insurance Commissioner whether the applicant is in default pursuant to the provisions of section six-c, article two, chapter twenty-one-a of this code, and in compliance with section five, article two, chapter twenty-three of this code, with regard to any required subscription to the Unemployment Compensation Fund or mandatory Workers' Compensation insurance, the payment of premiums and other charges to the fund, the timely filing of payroll reports and the maintenance of adequate deposits. If the applicant is delinquent or defaulted, or has been terminated by the executive director or the Insurance Commissioner, the permit may not be issued until the applicant returns to compliance or is restored by the executive director or the Insurance Commissioner under a reinstatement agreement: Provided, That in all inquiries the Executive Director of Workforce West Virginia and the Insurance Commissioner shall make response to the Department of Environmental Protection within fifteen calendar days; otherwise, failure to respond timely is considered to indicate the applicant is in compliance and the failure will not be used to preclude issuance of the permit.

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

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

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

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

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

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

(1) The well location restrictions of section twelve of this article have been satisfied, unless the requirements have been waived by written consent of the surface owner or the secretary has granted a variance to the restrictions, each in accordance with section twelve of this article;

(2) The water management plan submitted to the secretary, if required by subdivision (e), section seven of this article, has been received and approved.

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

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

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

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

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

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

(5) Protect the quantity and the quality of water in surface and groundwater systems both during and after drilling operations and during reclamation by: (A) Withdrawing water from surface waters of the state by methods deemed appropriate by the secretary, so as to

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maintain sufficient in-steam flow immediately downstream of the withdrawal location. In no case shall an operator withdraw water from ground or surface waters at volumes beyond which the waters can sustain; (B) Casing, sealing or otherwise managing wells to keep returned fluids from entering ground and surface waters; (C) Conducting oil and gas operations so as to prevent, to the extent possible using the best management practices, additional contributions of suspended or dissolved solids to streamflow or runoff outside the permit area, but in no event shall the contributions be in excess of requirements set by applicable state or federal law; and (D) Registering all water supply wells drilled and operated by the operator with the Office of Oil and Gas. All drinking water wells within one thousand five hundred feet of a water supply well shall be flow and quality tested by the operator upon request of the drinking well owner prior to operating the water supply well. The secretary shall propose legislative rules to identify appropriate methods for testing water flow and quality.

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

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

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

(C) Recordkeeping and reporting. For all water used for hydraulic fracturing of horizontal wells and for flowback water from hydraulic fracturing activities and produced water from production activities from horizontal wells, an operator shall comply with the following record keeping and reporting requirements:

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

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

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

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

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

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(I) The quantity of water transported;

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

(III) The name of the water hauling company.

(iii) The information maintained pursuant to this subdivision shall be available for inspection by the department along with other required permits and records and maintained for three years after the water withdrawal activity.

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

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

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

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