

# WEST VIRGINIA LEGISLATURE

## 2020 REGULAR SESSION

**ENROLLED**

**Committee Substitute**

**for**

**House Bill 4091**

BY DELEGATES ANDERSON, J. KELLY, PORTERFIELD,  
HARTMAN, PETHTEL, BOGGS, EVANS, TOMBLIN, PHILLIPS,  
AZINGER AND HOTT

[Passed February 5, 2020; in effect ninety days from  
passage.]

OFFICE REGISTERING  
SECRETARY OF STATE

2020 FEB 18 A 8:59

FILED

HB 4091

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1 AN ACT to amend and reenact §22-6A-7 of the Code of West Virginia, 1931, as amended, relating  
2 to allowing for expedited oil and gas well permitting for certain wells under the Natural Gas  
3 Horizontal Well Control Act upon payment of applicable expedited fees; allowing expedited  
4 oil and gas well permit modifications under the same Act upon the payment of applicable  
5 expedited fees; permitting one half of any residual fees to be deposited in the Oil and Gas  
6 Operating Permit and Processing Fund; permitting one half of any residual fees to be  
7 deposited in the Oil and Gas Reclamation Fund; providing for the daily pro rata refund of  
8 the horizontal well expedited fee if the permit is not approved between day 45 and day 60  
9 after the submission of a permit application; providing for the daily pro rata refund of the  
10 modification fees between day 20 and day 30 after the submission of a permit modification  
11 application; providing for a maximum cap amount of \$1 million for all residual fees from  
12 this article to be deposited in the Oil and Gas Operating Permit and Processing Fund; and  
13 providing that any balance in the Oil and Gas Reclamation Fund at the end of a fiscal year  
14 remain in the special revenue account and not be remitted to the General Revenue Fund.

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

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

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

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

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

6 (1) The names and addresses of: (A) The well operator; (B) the agent required to be  
7 designated under subsection (k) of this section; and (C) every person whom the applicant shall

8 notify under any section of this article, together with a certification and evidence that a copy of the  
9 application and all other required documentation has been delivered to all such persons;

10 (2) The names and addresses of every coal operator operating coal seams under the tract  
11 of land on which the well is or may be located, and the coal seam owner of record and lessee of  
12 record required to be given notice by §22-6A-5(a)(6) of this code, if any, if the owner or lessee is  
13 not yet operating the coal seams;

14 (3) The number of the well or other identification the secretary may require;

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

16 (5) The approximate total depth to which the well is to be drilled or deepened, or the actual  
17 depth if the well has been drilled; the proposed angle and direction of the well; the actual depth  
18 or the approximate depth at which the well to be drilled deviates from vertical, the angle, and  
19 direction of the nonvertical well bore until the well reaches its total target depth or its actual final  
20 depth; and the length and direction of any actual or proposed horizontal lateral or well bore;

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

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

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

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

29 (10) If the proposed well work is to plug or replug the well, all information necessary to  
30 demonstrate compliance with the legislative rules promulgated by the secretary in accordance  
31 with §22-6A-13 of this code;

32 (11) If the proposed well work is to stimulate a horizontal well, all information necessary  
33 to demonstrate compliance with the requirements of §22-6A-5(a)(7) of this code;

34           (12) The erosion and sediment control plan required under subsection (c) of this section  
35 for applications for permits to drill;

36           (13) A well site safety plan to address proper safety measures to be employed for the  
37 protection of persons on the site as well as the general public. The plan shall encompass all  
38 aspects of the operation, including the actual well work for which the permit was obtained,  
39 completion activities and production activities, and shall provide an emergency point of contact  
40 for the well operator. The well operator shall provide a copy of the well site safety plan to the local  
41 emergency planning committee established pursuant to §15-5A-7 of this code for the emergency  
42 planning district in which the well work will occur at least seven days before commencement of  
43 well work or site preparation work that involves any disturbance of land;

44           (14) A certification from the operator that: (A) It has provided the owners of the surface  
45 described in §22-6A-10(b)(1), §22-6A-10(b)(2), and §22-6A-10(b)(4) of this code, the information  
46 required by §22-6A-16(b) and §22-6A-16(c) of this code; (B) that the requirement was deemed  
47 satisfied as a result of giving the surface owner notice of entry to survey pursuant to §22-6A-10(a)  
48 of this code; or (C) the notice requirements of §22-6A-16(b) of this code were waived in writing  
49 by the surface owner; and

50           (15) Any other relevant information which the secretary may reasonably require.

51           (c)(1) An erosion and sediment control plan shall accompany each application for a well  
52 work permit under this article. The plan shall contain methods of stabilization and drainage,  
53 including a map of the project area indicating the amount of acreage disturbed. The erosion and  
54 sediment control plan shall meet the minimum requirements of the West Virginia Erosion and  
55 Sediment Control Manual as adopted and from time to time amended by the department. The  
56 erosion and sediment control plan shall become part of the terms and conditions of any well work  
57 permit that is issued pursuant to this article and the provisions of the plan shall be carried out  
58 where applicable in the operation. The erosion and sediment control plan shall set out the

59 proposed method of reclamation which shall comply with the requirements of §22-6A-14 of this  
60 code.

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

64 (d) For well sites that disturb three acres or more of surface, excluding pipelines, gathering  
65 lines and roads, the operator shall submit a site construction plan that shall be certified by a  
66 registered professional engineer and contains information that the secretary may require by rule.

67 (e) In addition to the other requirements of this section, if the drilling, fracturing, or  
68 stimulating of the horizontal well requires the use of water obtained by withdrawals from waters  
69 of this state in amounts that exceed 210,000 gallons during any 30-day period, the application for  
70 a well work permit shall include a water management plan, which may be submitted on an  
71 individual well basis or on a watershed basis, and which shall include the following information:

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

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

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

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

79 (5) A listing of the anticipated additives that may be used in water utilized for fracturing or  
80 stimulating the well. Upon well completion, a listing of the additives that were actually used in the  
81 fracturing or stimulating of the well shall be submitted as part of the completion log or report  
82 required by §22-6A-5(a)(14) of this code;

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

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

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

91 (C) Methods to be used for surface water withdrawal to minimize adverse impact to aquatic  
92 life; and

93 (7) This subsection is intended to be consistent with and does not supersede, revise,  
94 repeal, or otherwise modify §22-11-1 *et seq.*, §22-12-1 *et seq.*, or §22-26-1 *et seq.* of this code  
95 and does not revise, repeal, or otherwise modify the common law doctrine of riparian rights in  
96 West Virginia law.

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

99 (g) The application for a permit under this section shall be accompanied by the applicable  
100 bond as required by §22-6A-15 of this code, the applicable plat required by §22-6A-5(a)(6) of this  
101 code, and a permit fee of \$10,000 for the initial horizontal well drilled at a location and a permit  
102 fee of \$5,000 for each additional horizontal well drilled on a single well pad at the same location.

103 (h)(1) An applicant may enter into an expedited permit application process with the  
104 secretary for a well permit and pay an additional expedited permit fee of \$20,000 for the initial  
105 horizontal well drilled at a location and an additional expedited permit fee of \$10,000 for each  
106 additional horizontal well drilled on a single well pad at the same location: *Provided*, That deep  
107 well permitting is excluded from this expedited permit process due to the independent board  
108 review and approval requirement which is outside the secretary's control.

109 (2) Upon entering into an expedited permit process and meeting all the criteria set forth in  
110 this article, the secretary shall issue or deny a permit within 45 days of the submission of a permit

111 application under this article, unless the secretary seeks additional information or modification  
112 from the applicant, which would toll the 45 day period until the secretary receives the required  
113 responsive information from the applicant.

114 (3) Each day the agency exceeds: (A) The 45-day deadline for approval or denial of an  
115 expedited initial horizontal well drilled, the secretary shall refund \$1,333.33 per day up to and  
116 including day 60 after the submission of a permit application until the expedited fee is reduced to  
117 the normal permit fee amount; or (B) the 45-day deadline for approval or denial of an expedited  
118 permit for any additional horizontal well drilled on a single well pad at the same location, the  
119 secretary shall be required to refund \$666.66 per day up to and including day 60 after the  
120 submission of a permit application, until the expedited fee is reduced to the normal permit fee  
121 amount.

122 (4)(A) After all refunds are paid by the secretary, one half of the additional expedited permit  
123 fee shall be deposited in the Oil and Gas Operating Permit and Processing Fund and shall be  
124 used by the agency to cover costs to review, process, and approve or deny the applicable  
125 horizontal well permit applications and modifications pending before the agency, but not to exceed  
126 \$1 million annually in combination with proceeds received through §22-6A-7(i)(4)(A) of this code  
127 and any residuary fee proceeds to be distributed as set forth in §22-6A-7(h)(4)(B) of this code.

128 (B) After all refunds are paid by the secretary, one half of the additional expedited permit  
129 fee, plus any residuary as set forth in §22-6A-7(h)(4)(A) of this code, shall be deposited in the Oil  
130 and Gas Reclamation Fund and used specifically for the reclamation and plugging of orphaned  
131 oil or gas wells.

132 (i)(1) An applicant may enter into an expedited permit modification application process  
133 with the secretary for a well permit and pay an expedited permit modification fee of \$5,000 for the  
134 modification of the permit for any horizontal well drilled at a location: *Provided*, That deep well  
135 permit modifications are excluded from this expedited permit modification process if the  
136 modification is subject to independent board review and approval.



137 (2) Upon entering into an expedited permit modification process and meeting all the criteria  
138 set forth in this article, the secretary shall issue or deny a permit modification within 20 days of  
139 the submission of a permit modification application under this article, unless the secretary seeks  
140 additional information or further modification from the applicant, which would toll the 20 day period  
141 until the secretary receives the required responsive information from the applicant.

142 (3) Each day the agency exceeds the 20-day deadline for approval or denial of an  
143 expedited horizontal well permit modification, the secretary shall refund \$500 per day up to and  
144 including day 30 after the submission of an expedited permit modification application, until the  
145 expedited permit modification fee of \$5,000 is reduced to zero.

146 (4)(A) After all refunds are paid by the secretary, one half of the expedited permit  
147 modification fee shall be deposited in the Oil and Gas Operating Permit and Processing Fund and  
148 shall be used by the agency to cover costs to review, process, and approve or deny the applicable  
149 horizontal well permit applications and modifications pending before the agency, but not to exceed  
150 \$1 million annually in combination with proceeds received through §22-6A-7(h)(4)(A) of this code  
151 and any residuary fee proceeds to be distributed as set forth in §22-6A-7(i)(4)(B) of this code.

152 (B) After all refunds are paid by the secretary, one half of the expedited permit modification  
153 fee, plus any residuary as set forth in §22-6A-7(i)(4)(A) of this code, shall be deposited in the Oil  
154 and Gas Reclamation Fund and used specifically for the reclamation and plugging of orphaned  
155 oil or gas wells.

156 (j) Any balance in the Oil and Gas Reclamation Fund, earmarked specifically for the  
157 reclamation and plugging of orphaned oil or gas wells pursuant to §22-6A-7(h)(4)(B) and §22-6A-  
158 7(i)(4)(B) of this code, which remains at the end of any state fiscal year does not revert to the  
159 General Revenue Fund but shall remain in the special revenue account as indicated and may be  
160 used only as provided in §22-6-29(b) of this code. The revenues deposited in the Oil and Gas  
161 Reclamation Fund, earmarked specifically for the reclamation and plugging of orphaned oil or gas

162 wells pursuant to §22-6A-7(h)(4)(B) and §22-6A-7(i)(4)(B) of this code may not be designated as  
163 nonaligned state special revenue funds under §11B-2-32 of this code.

164 (k) The well operator named in the application shall designate the name and address of  
165 an agent for the operator who is the attorney-in-fact for the operator and who is a resident of the  
166 State of West Virginia upon whom notices, orders, or other communications issued pursuant to  
167 this article or §22-11-1 *et seq.* of this code may be served, and upon whom process may be  
168 served. Every well operator required to designate an agent under this section shall, within five  
169 days after the termination of the designation, notify the secretary of the termination and designate  
170 a new agent.

171 (l) The well owner or operator shall install the permit number as issued by the secretary  
172 and a contact telephone number for the operator in a legible and permanent manner to the well  
173 upon completion of any permitted work. The dimensions, specifications, and manner of installation  
174 shall be in accordance with the rules of the secretary.

175 (m) The secretary may waive the requirements of this section and §22-6A-8, §22-6A-10,  
176 §22-6A-11, and §22-6A-24 of this code in any emergency situation if the secretary considers the  
177 action necessary. In that case the secretary may issue an emergency permit which is effective for  
178 not more than 30 days, unless reissued by the secretary.

179 (n) The secretary shall deny the issuance of a permit if the secretary determines that the  
180 applicant has committed a substantial violation of a previously issued permit for a horizontal well,  
181 including the applicable erosion and sediment control plan associated with the previously issued  
182 permit, or a substantial violation of one or more of the rules promulgated under this article, and in  
183 each instance has failed to abate or seek review of the violation within the time prescribed by the  
184 secretary pursuant to the provisions of §22-6A-5(a)(1) and §22-6A-5(a)(2) of this code and the  
185 rules promulgated hereunder, which time may not be unreasonable.

186 (o) If the secretary finds that a substantial violation has occurred and that the operator has  
187 failed to abate or seek review of the violation in the time prescribed, the secretary may suspend

188 the permit on which the violation exists, after which suspension the operator shall forthwith cease  
189 all well work being conducted under the permit. However, the secretary may reinstate the permit  
190 without further notice, at which time the well work may be continued. The secretary shall make  
191 written findings of the suspension and may enforce the same in the circuit courts of this state. The  
192 operator may appeal a suspension pursuant to the provisions of §22-6A-5(a)(23) of this code.  
193 The secretary shall make a written finding of any such determination.

194 (p) Any well work permit issued in accordance with this section may be transferred with  
195 the prior written approval of the secretary upon his or her finding that the proposed transferee  
196 meets all requirements for holding a well work permit, notwithstanding any other provision of this  
197 article or rule adopted pursuant to this article. Application for the transfer of any well work permit  
198 shall be upon forms prescribed by the secretary and submitted with a permit transfer fee of \$500.  
199 Within 90 days of the receipt of approval by the secretary, the transferee shall give notice of the  
200 transfer to those persons entitled to notice in §22-6A-10(b) of this code by personal service or by  
201 registered mail or by any method of delivery that requires a receipt or signature confirmation, and  
202 shall further update the emergency point of contact provided pursuant to subdivision (13),  
203 subsection (b) of this section.

The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

*Steve Caputo*  
.....  
Chairman, House Committee

*Mark Harmon*  
.....  
Chairman, Senate Committee

Originating in the House.

In effect ninety days from passage.

*Steve Aron*  
.....  
Clerk of the House of Delegates

*Joe Curri*  
.....  
Clerk of the Senate

*Les Hunter*  
.....  
Speaker of the House of Delegates

*W. B. Combs*  
.....  
President of the Senate

OFFICE OF THE CLERK  
SECRETARY OF STATE

2020 FEB 18 A 9:00

FILED

The within *is approved* this the *17th*  
day of *February* 2020.

*James Justice*  
.....  
Governor

PRESENTED TO THE GOVERNOR

FEB 11 2020

Time 9:40 am