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

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

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

(1) The names and addresses of: (A) The well operator; (B) the agent required to be designated under subsection (k) of this section; and (C) every person whom the applicant shall
notify under any section of this article, together with a certification and evidence that a copy of the
application and all other required documentation has been delivered to all such persons;

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

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

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

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

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

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

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

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

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

(11) If the proposed well work is to stimulate a horizontal well, all information necessary
to demonstrate compliance with the requirements of §22-6A-5(a)(7) of this code;
(12) The erosion and sediment control plan required under subsection (c) of this section for applications for permits to drill;

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

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

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

(c)(1) An erosion and sediment control plan shall accompany each application for a well work permit under this article. The plan shall contain methods of stabilization and drainage, including a map of the project area indicating the amount of acreage disturbed. The erosion and sediment control plan shall meet the minimum requirements of the West Virginia Erosion and Sediment Control Manual as adopted and from time to time amended by the department. The erosion and sediment control plan shall become part of the terms and conditions of any well work permit that is issued pursuant to this article and the provisions of the plan shall be carried out where applicable in the operation. The erosion and sediment control plan shall set out the
proposed method of reclamation which shall comply with the requirements of §22-6A-14 of this code.

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

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

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

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

(2) The anticipated volume of each water withdrawal;

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

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

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

(6) For all surface water withdrawals, a water management plan that includes the information requested in subdivisions (1) through (5) of this subsection and the following:
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(A) Identification of the current designated and existing water uses, including any public water intakes within one mile downstream of the withdrawal location;

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

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

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

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

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

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

(2) Upon entering into an expedited permit process and meeting all the criteria set forth in this article, the secretary shall issue or deny a permit within 45 days of the submission of a permit
application under this article, unless the secretary seeks additional information or modification
from the applicant, which would toll the 45 day period until the secretary receives the required
responsive information from the applicant.

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

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

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

(i) (1) An applicant may enter into an expedited permit modification application process
with the secretary for a well permit and pay an expedited permit modification fee of $5,000 for the
modification of the permit for any horizontal well drilled at a location: Provided, That deep well
permit modifications are excluded from this expedited permit modification process if the
modification is subject to independent board review and approval.
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(2) Upon entering into an expedited permit modification process and meeting all the criteria set forth in this article, the secretary shall issue or deny a permit modification within 20 days of the submission of a permit modification application under this article, unless the secretary seeks additional information or further modification from the applicant, which would toll the 20 day period until the secretary receives the required responsive information from the applicant.

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

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

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

(j) Any balance in the Oil and Gas Reclamation Fund, earmarked specifically for the reclamation and plugging of orphaned oil or gas wells pursuant to §22-6A-7(h)(4)(B) and §22-6A-7(i)(4)(B) of this code, which remains at the end of any state fiscal year does not revert to the General Revenue Fund but shall remain in the special revenue account as indicated and may be used only as provided in §22-6-29(b) of this code. The revenues deposited in the Oil and Gas Reclamation Fund, earmarked specifically for the reclamation and plugging of orphaned oil or gas wells.
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wells pursuant to §22-6A-7(h)(4)(B) and §22-6A-7(i)(4)(B) of this code may not be designated as nonaligned state special revenue funds under §11B-2-32 of this code.

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

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

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

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

(o) If the secretary finds that a substantial violation has occurred and that the operator has failed to abate or seek review of the violation in the time prescribed, the secretary may suspend
the permit on which the violation exists, after which suspension the operator shall forthwith cease all well work being conducted under the permit. However, the secretary may reinstate the permit without further notice, at which time the well work may be continued. The secretary shall make written findings of the suspension and may enforce the same in the circuit courts of this state. The operator may appeal a suspension pursuant to the provisions of §22-6A-5(a)(23) of this code. The secretary shall make a written finding of any such determination.

(p) Any well work permit issued in accordance with this section may be transferred with the prior written approval of the secretary upon his or her finding that the proposed transferee meets all requirements for holding a well work permit, notwithstanding any other provision of this article or rule adopted pursuant to this article. Application for the transfer of any well work permit shall be upon forms prescribed by the secretary and submitted with a permit transfer fee of $500. Within 90 days of the receipt of approval by the secretary, the transferee shall give notice of the transfer to those persons entitled to notice in §22-6A-10(b) of this code by personal service or by registered mail or by any method of delivery that requires a receipt or signature confirmation, and shall further update the emergency point of contact provided pursuant to subdivision (13), subsection (b) of this section.
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The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Chairman, House Committee

Chairman, Senate Committee

Originating in the House.

In effect ninety days from passage.

Clerk of the House of Delegates

Clerk of the Senate

Speaker of the House of Delegates

President of the Senate

The within ... approved this the ... day of ... 2020.

Governor