

HB5268

WEST VIRGINIA LEGISLATURE

2024 REGULAR SESSION

ENROLLED

House Bill 5268

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

2024 MAR 26 P 2: 35

FILED

BY DELEGATES ANDERSON, ZATEZALO, SHEEDY, STREET,

STEPHENS, HECKERT, AND BARNHART

[Passed February 24, 2024; in effect ninety days from
passage.]

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1 AN ACT to amend and reenact §22-6A-4, §22-6A-5 and §22-6A-6 of the of the Code of West
2 Virginia, 1931, as amended, all relating to the enhanced recovery of oil and natural gas in
3 horizontal wells; providing definitions; providing certain methods of enhanced recovery to
4 be part of horizontal drilling and horizontal wells; incorporating provisions related to the
5 permitting of wells for certain purposes; and providing the authority of the secretary over
6 enhanced recovery of oil and natural gas.

Be it enacted by the Legislature of West Virginia:

ARTICLE 6A. NATURAL GAS HORIZONTAL WELL CONTROL ACT.

§22-6A-4. Definitions.

1 (a) All definitions set forth in article six of this chapter apply when those defined terms are
2 used in this article, unless the context in which the term is used clearly requires a different
3 meaning.

4 (b) Unless the context in which the term used clearly requires a different meaning, as used
5 in this article:

6 (1) "Best management practices" means schedules of activities, prohibitions of practices,
7 maintenance procedures and other management practices established by the department to
8 prevent or reduce pollution of waters of this state. For purposes of this article, best management
9 practices also includes those practices and procedures set out in the Erosion and Sediment
10 Control Manual of the Office of Oil and Gas;

11 (2) "Department" means the Department of Environmental Protection;

12 (3) "Flowback Recycle Pit" means a pit used for the retention of flowback and freshwater
13 and into which no other wastes of any kind are placed;

14 (4) "Freshwater Impoundment" means an impoundment used for the retention of fresh
15 water and into which no wastes of any kind are placed;

16 (5) "Horizontal drilling" means a method of drilling a well for the production of natural gas
17 or the injection or placement of any fluid or gas, not otherwise prohibited by law or rule, including
18 carbon dioxide, to enhance recovery of oil and natural gas that is intended to maximize the length
19 of wellbore that is exposed to the formation and in which the wellbore is initially vertical but is
20 eventually curved to become horizontal, or nearly horizontal, to parallel a particular geologic
21 formation;

22 (6) "Horizontal well" means any well site, other than a coalbed methane well, drilled using
23 a horizontal drilling method, and which disturbs three acres or more of surface, excluding
24 pipelines, gathering lines and roads, or utilizes more than two hundred ten thousand gallons of
25 water in any thirty day period for the production of natural gas, including injection or placement of
26 any fluid or gas, not otherwise prohibited by law or rule, including carbon dioxide, to enhance
27 recovery of oil and natural gas;

28 (7) "Impoundment" means a man-made excavation or diked area for the retention of fluids;

29 (8) "Karst terrain" means a terrain, generally underlain by limestone or dolomite, in which
30 the topography is formed chiefly by the dissolving of rock, and which may be characterized by
31 sinkholes, sinking streams, closed depressions, subterranean drainage and caves;

32 (9) "Perennial stream" means a stream or portion of a stream that flows year-round, is
33 considered a permanent stream and for which base flow is maintained by ground-water discharge
34 to the streambed due to the ground-water elevation adjacent to the stream being higher than the
35 elevation of the streambed;

36 (10) "Pit" means a man-made excavation or diked area that contains or is intended to
37 contain an accumulation of process waste fluids, drill cuttings or any other liquid substance
38 generated in the development of a horizontal well and which could impact surface or groundwater;

39 (11) "Secretary" means the Secretary of the Department of Environmental Protection as
40 established in article one of this chapter or other person to whom the secretary has delegated
41 authority or duties pursuant to sections six or eight, article one of this chapter;

42 (12) "Water purveyor" means any person engaged in the business of selling water to
43 another and who is regulated by the Bureau for Public Health pursuant to title sixty-four, series
44 three of the West Virginia Code of State Rules; and

45 (13) "Well work" means the drilling, redrilling, deepening, stimulating, pressuring by
46 injection or placement of any fluid or gas, not otherwise prohibited by law or rule, including carbon
47 dioxide, converting from one type of well to another, combining or physically changing to allow
48 the migration of fluid from one formation to another or plugging or replugging of any well.

§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
2 oil and gas wells regulated under article six of this chapter, the following sections of article six of
3 this chapter are hereby incorporated by reference in this article:

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

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

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

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

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

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

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

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

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

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

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

39 (10) The provisions of §22-6-16 of this code pertaining to the process of issuing permits
40 related only to the introduction of liquids or waste for the purposes for enhanced recovery, with
41 the exception that the type of wells used for enhanced recovery referenced in §22-6-16 of this
42 code shall also include the introduction of fluids or gases, not otherwise prohibited by law or rule,
43 including carbon dioxide, for the purposes provided for in §22-6-25 of this code;

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

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

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

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

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

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

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

66 (18) The provisions of §22-6-27 of this code regarding a cause of action for damages
67 caused by an explosion;

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

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

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

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

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

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

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

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

87 (b) Notwithstanding any other provision of this code to the contrary, no provision of article
88 six of this chapter shall apply to horizontal wells subject to this article except as expressly
89 incorporated by reference in this article. Any conflict between the provisions of article six and the
90 provisions of this article shall be resolved in favor of this article.

§22-6A-6. Secretary of Department of Environmental Protection; powers and duties.

1 (a) The secretary is vested with jurisdiction over all aspects of this article, including, but
2 not limited to, the following powers and duties:

3 (1) All powers and duties conferred upon the secretary pursuant to article six, chapter
4 twenty-two of this code;

5 (2) To control and exercise regulatory authority over all gas operations regulated by this
6 article;

7 (3) To utilize any oil and gas inspectors or other employees of the department in the
8 enforcement of the provisions of this article;

9 (4) To propose any necessary legislative rules, in accordance with the provisions of §29A-
10 1-1 *et seq.* of this code to implement the provisions of this article;

11 (5) To make investigations and inspections necessary to ensure compliance with the
12 provisions of this article;

13 (b) Except for the duties and obligations conferred by statute upon the shallow gas well
14 review board pursuant to §22C-8-1 *et seq.* of this code, the coalbed methane review board
15 pursuant to §22-21-1 *et seq.* of this code, and the oil and gas conservation commission pursuant
16 to §22C-9-1 *et seq.* of this code, the secretary has sole and exclusive authority to regulate the
17 permitting, location, spacing, drilling, fracturing, stimulation, well completion activities, operation,
18 enhanced recovery, any and all other drilling and production processes, plugging and reclamation
19 of oil and gas wells and production operations within the state.

20 (c) The secretary shall, on a monthly basis, make a written report to the Governor
21 disclosing, for all well work permits issued in a particular month, the average number of days
22 elapsed between the date on which a complete application for a well work permit was filed and
23 the date on which such well work permit was issued. This report shall be posted to the website
24 required to be established and maintained pursuant to section twenty-one of this article.

The Clerk of the House of Delegates and the Clerk of the Senate hereby certify that the foregoing bill is correctly enrolled.

Stephen J. Harrison
.....
Clerk of the House of Delegates

Joe Lavin
.....
Clerk of the Senate

2024 MAR 26 P 2: 35
OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

FILED

Originated in the House of Delegates.

In effect ninety days from passage.

Alan Jackson
.....
Speaker of the House of Delegates

Robert C. Byrd
.....
President of the Senate

The within is *approved* this the *26th*
Day of *March* 2024.

James E. Justice
.....
Governor

PRESENTED TO THE GOVERNOR

MAR 06 2024

Time 2:49pm