

Talking Points on Proposed Changes to Oil & Gas Rules

The West Virginia Department of Environmental Protection (DEP) is proposing significant changes to 35-CSR-4, the agency rule that regulates “Oil and Gas Wells and Other Wells.” These proposed rule changes will be sent to the Legislature for its consideration in 2010.

This is the public’s first – and only – opportunity to comment on these oil and gas rules before they are sent to the Legislature. We encourage everyone to look at the proposed rules and file comments or attend the public hearing, as you feel necessary.

An increase in drilling in recent years has revealed serious deficiencies and problems with the regulation of oil and gas drilling in West Virginia. The drilling of wells to the Marcellus Shale formation takes these existing problems to a new level, and heightens the need to address existing problems with the rules and to address new concerns about surface disturbance, water use and waste disposal.

The West Virginia Surface Owners’ Rights Organization (WV SORO) is part of an informal coalition of statewide groups concerned about oil and gas issues that developed the following “talking points” to assist individuals in commenting on this rule. In addition to WV SORO, this informal working group includes representatives from the West Virginia Rivers Coalition, the West Virginia Sierra Club, the West Virginia Highlands Conservancy, the West Virginia Citizen Action Group and the West Virginia Environmental Council.

1. Section 16.4.d of the proposed rule requires all pits and impoundments to have a synthetic liner to prevent seepage or leakage. DEP should be applauded for making this long-overdue change.
2. Proper reclamation of all pits and impoundments should include removal of all solid wastes, including the liners, to authorized off-site waste disposal facilities. Drillers should not be allowed to bury the liners and the waste contained in them on a surface owner’s land. The current practice of burying pit waste sterilizes the area from future construction and other uses.
3. The rule has no limitations on pit location with respect to ground or surface water. DEP should develop siting requirements for pits to prevent contamination of freshwater and to protect human health and the environment. In particular, there should be restrictions on placement of pits in karst areas and alluvium (most creek and river valleys).
4. The construction and reclamation plans for oil and gas wells should show where the pipeline is going to go and how it is going to be reclaimed. This is not the case now. Surface owners are surprised when the bulldozer takes off in a new direction that was not designated on the well work application and the operator tells them for the first time that there is going to be a pipeline there.

5. We fully support the addition of section 35-4-21 "Construction of Pits and Impoundments with Capacity of Greater Than Five Thousand (5000) Barrels." This new section will help protect freshwater resources throughout the drilling process, and will provide for more responsible reclamation.
6. We support the requirement that a registered professional engineer design and certify the plans for and inspect all pits and impoundments before the pit is used.
7. We support the requirement that all pits and impoundments be inspected every three days for the life of the structure.
8. In addition, DEP should require prior notice be given to the surface owner and all landowners down gradient before construction of all pits and impoundments.
9. DEP should require that drillers at the well site have an emergency plan that includes a list of landowners down gradient and emergency service personnel to contact in the event of any pit failure.
10. If a potential hazard is discovered during an inspection, it should be reported immediately to DEP and appropriate emergency agencies.
11. Sections 16 and 21 should apply to all pits and impoundments used in association with an oil or gas operation, including off-site pits or impoundments that supply water to or take water or waste from wells.
12. West Virginia has no requirement for disclosure, let alone regulation, of the chemicals that can be put into the water used to "fracture" a well. This rule should require that DEP regulate these chemicals, in addition to requiring their disclosure.
13. West Virginia does not require disclosure of the levels of salt and naturally occurring radioactive materials (NORMs) that contaminate "frac" water while it is underground, before it flows back to be disposed of. This rule should require testing and disclosure of the flow-back water contents, in addition to monitoring and reporting the flow-back volumes.
14. This rule should require that the flow-back water from all large volume "frac" jobs (greater than five thousand (5,000) barrels) be captured and transported off-site to authorized disposal or treatment facilities.
15. A more complete analysis of the constituents of drinking well water would provide both landowners and operators greater confidence in whether or not the quality of a landowner's water well changed during or after drilling. Therefore, in addition to the parameters currently required, all water samples should be analyzed for major ions (calcium, magnesium, sodium, potassium, carbonate, sulfate, and chloride). At a minimum, sodium concentrations should be measured in all water samples and reported to the landowner.