

**Protections Needed for Citizens and the Environment
In Response to the Rapid Industrialization of Rural West Virginia
Caused by Marcellus Shale and Other Gas Well Drilling.**

UPDATE: FEBRUARY 27, 2011

[Note: A word for word comparison was not done, so please report any errors to author and check for updates.]

Provision Needed!	In Senate Com Sub for S.B. 424	In House Com Sub for HB 2878
<p>1. Scope. -A bill needs passed with improvements in the law for the new Marcellus/horizontal wells that have large well pads, or use millions of gallons of frac water and generate large amounts of return frac water and other waste. -Improvements also need to be made in the laws governing conventional wells.</p>	<p>-Applies to ALL horizontal wells. -NO effect on conventional wells – not even on Marcellus vertical wells using 1,000,000 gallon frac jobs. -Horizontal wells are exempt from conventional well requirements unless specifically referenced.</p>	<p>-Applies only to horizontal wells that are “shallow”, and not to wells “deep” formations such as the Utica shale. -Some help for conventional well drilling.</p>
<p>2. Increase funding from permit fees and general revenue to have more D.E.P. inspectors and other staff. Fee for each horizontal well was \$10,000 in original DEP bill– wells cost \$4 Million to drill.</p>	<p>-\$5000 fee for first horizontal well on pad, \$1000 for each additional well on same pad. (8 or more horizontal wells can be placed on one pad.) -\$300 for impoundments. -Leaves \$500,000 gap in funding for current staff levels.</p>	<p>-Fee is left to rulemaking.</p>
<p>3. Require advance notice to surface owners of seismic activity on or around their land.</p>	<p>No.</p>	<p>No.</p>

4. PRE-survey notice to surface owners of driller's plans for building roads and drilling wells on them – so surface owner can explain to the driller the surface owner's uses and interests prior to the driller's paying for preparation of plat and preparation/engineering of site. [In original DEP and Interim bills.]	No. Only notice is after driller has already spent thousands of dollars planning locations of well sites and roads and is therefore unlikely to pay for new plans necessary to move them.	Yes -Written notice 30 days before entry. -Offer to meet with surface owner. -Driller must document reason why surface owner requests not used. -Applies to conventional and horizontal wells! -Does not extend 15 days to comment on permit. We would prefer 15 and 30 over 30 and 15.
5. PRE-surveying notification to include information about Soil Erosion and Sediment Control Manual, Surface Damage Compensation Act, and permitting statutes. [In original DEP and Interim bills.]	No.	Yes.
6. Incentives for driller to work with the surface owner <u>before</u> preparing permit application in order to plan surface use that recognizes surface owner's existing uses and rights.	-None. Not even notice. See #5. Can sneak on land. -Does extend permit comment time (see #4 above) to 30 days from 15.	None.
7. Publication notice to public of horizontal well drilling permit applications so they can check out potential road problems etc.	No.	No.
8. Notice to surface owner before driller's actual entry on to land with bulldozer (since permits are good for two years and many permits never get drilled at all.) [In original DEP bill.]	-Only if comment on permit application and request. 2 to 7 days.	No.
9. Improvements to procedures and standards for surface owners damage compensation act. Example: Under current law, surface owner only gets current use value of land, not the market value or the value of the site to the driller.	No.	Yes, but only as to timber.
10. Water well testing expanded. Currently drillers are only required to test water wells etc. 1000 feet of where gas well enters the ground, but horizontal well legs go 4000 feet or longer. Currently they test for drilling fluids, not fracing fluids.	-Only flow tests water wells? No chemical tests! -Flow tests water wells within 2500 feet upon request? -Identify only officially permitted wells?	-For horizontal wells, extends distance to 5,500 feet of well. -For horizontal wells, extends tests to include frac chemicals.

11. Require driller to have water management plan (including sources and volumes, disclosure of additives for drilling and fracturing, transportation and disposal plans) with limits on withdrawals during periods of low flow. None of this is now required by statute, but is suggested by State.	Yes if over 210,000 gallons, including withdrawal signage. -Keep but do not report frac water flowback records.	Yes. -Monitor and report frac water and flowback.
12. Establish new general environmental protection standards for surface and air.	-None for surface. -Only air provision is for dust – not VOC's or methane etc.	No.
13. Authorize denial or conditioning of permit for damages to publicly owned lands , natural landmarks, habitats of rare or endangered species or communities, historical and archeological sites.	No.	Yes.
14. Impose <u>temporary</u> moratorium on drilling through karst formations until potential problems can be studied.	Yes.	No.
15. Expand current requirement that well location cannot be closer than 200 feet to a water well or dwelling.	No.	Yes. For horizontal wells only. -1000 feet from well or occupied dwelling with variances allowed. -100 feet from a watercourse, or pond or wetland. -From public water supply, 2500 feet from surface source and 1000 feet from well or spring, with variances. -Consider impact on publicly owned land, rare habitats, trout streams etc.
16. Require well site emergency services safety plan to be submitted.	Yes. -Only requires “industry standards” to minimize fire hazards (We have had 3 major fires in 18 months -- so current industry standard is not good).	No.

17. Clarify D.E.P. authority for regulation of air emissions from gas wells, tanks, etc. Those emissions are not currently being regulated.	No.	No.
18. Improvements in well site construction and reclamation . (Note that D.E.P. is rewriting its Soil Erosion and Sediment Control Manual.) (Fernow Experimental Forest report on conventional well site said that it lost 1 ton of soil per acre with current standards and enforcement.)	-Engineering plan required for site only if 5+ acres not counting roads. -Allows areas used for production not to be re-seeded, but does not require graveling fibre mats etc. -- only says “prevent [erosion] to the extent possible using the best management practices”.	No.
19. Construction etc. requirements for new, huge frac water impoundments . (Currently no authority for safety etc. regulations of impoundments that are not on the well sites.)	-Yes. Requires engineer to design if over 210,000 gallons. -Prohibits waste in impoundments but not additives. -Flowback pits must have dual liner leak detection.	-Only extends the standards in current rule for impoundments on permitted well sites extended to impoundments that are not on well sites. -Does not include dual liners/leak protection for waste pits.
20. New reclamation requirements needed for the new centralized sites/pads with multiple well pads .	Yes. Requires reclamation within 6 months unless next well is started.	No.
21. Increase inspection requirements for gas well casing/cementing that are essential to protecting groundwater.	No.	Yes. Requires state inspector to inspect at each phase of drilling.
22. Prohibit burial of pit waste on surface owners.	Allows burial.	Allows burial.
23. If burial is allowed, require markers for where pit waste was buried ?	No.	No.
24. Expand presumption of water well contamination or loss from current 1000 feet to include pollution from horizontals.	No. Similar.	No. Same.
25. Water supply replacement requirements articulated/expanded. [In original DEP bill.]	No.	No.
26. Start requiring surface reclamation plan for permit to plug a well. [In original DEP bill.]	?	?

27. Improve bonding requirements to prevent wells from being orphaned and unplugged . (Current blanket bond provisions allow bonding amounts of \$25 or less per well for large drillers.)	\$50,000 blanket bond allowed for all of operator's horizontal wells.	No.
28. Add surface owner representative on Shallow Gas Well Review Board, and on deep well Oil and Gas Conservation Commission. [In original DEP bill.]	No.	No.
29. Eliminate Oil and Gas Inspector Examining Board which puts industry in hiring and firing process; and eliminate requirements that inspectors have industry employment history; and provide for hiring etc. of inspectors the same way all other DEP inspectors are hired. [In original DEP and Interim bills.]	No. Continues to require the hiring of foxes to guard hen house.	No.
30. Modernize enforcement procedures to match other enforcement regimes in agency. Examples: State should be able to issue cessation order in dangerous situations without having to find what the violation was that caused the situation. State should be able to issue an administrative fine without first going to Circuit Court. [In original DEP and Interim bills.]	-No. -Driller can get horizontal well permits even if in violation of requirements for conventional wells! 6A-7(k)	No.
31. Increase penalties for violations from current \$2,500 civil and \$5,000 criminal.	Yes, but for horizontal wells only.	No.
32. Authorize permit blocking of companies who have not fixed roads/complied with DOH requirements. [In original Interim bill.]	No.	Yes, but for horizontal wells only.
33. Improvements to prevent operator who is permit blocked for not following law, from operating under different corporate shell .	No.	No.
34. Make all appeals of agency actions to Environmental Quality Board.	Only of impoundment certificate.	No.
35. Local jobs for local workers /Apprenticeships and training/Workplace safety	No.	Apprenticeships
36. Some industry wants forced pooling for horizontal wells , to which we say IF and ONLY if done right.	No.	No.
37. Preserve local zoning, land use and safety laws.	Overrides local zoning. 6A-6(5)	Yes.
38. Notice to municipal and other water supplies of spills in streams.	No.	No.
39. Requires warning notice on new leases that property owner should get advice of a lawyer.	No.	Yes

40. Requires surface owner consent for horizontal well pads subject to voluntary pooling and unitization.	No.	Yes. -Pads prohibited without consent. -Allows roads and pipelines if in lease/severance.
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Prepared for the West Virginia Environmental Council and the West Virginia Surface Owners' Rights Organization

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