



## West Virginia Surface Owners' Rights Organization

# Surface Owners' News

Volume 3, Issue 3

[www.wvsoro.org](http://www.wvsoro.org)

Fall 2010

### WV-SORO Win: Ruling in Well Spacing Case Favors Surface Owners

by Dave McMahon, [wvdavid@wvdavid.net](mailto:wvdavid@wvdavid.net)

WV-SORO prevailed in a ruling in a case challenging state agency rulings on spacing for natural gas wells. The case, *Blue Eagle Land Company v. West Virginia Oil and Gas Conservation Commission*, was originally filed in the West Virginia Supreme Court but was sent back to circuit court. WV-SORO intervened in the case, asking McDowell Circuit Court Judge Rudolph Murensky to rule that certain Marcellus Shale gas wells, those drilled more than twenty feet beyond the Marcellus Shale into the Onondaga Limestone, are statutory “deep” wells.

Statutory “deep” wells are subject to forced well spacing which, for surface owners, will result in fewer wells being drilled on their land to produce the same amount or perhaps even more gas. There is also a requirement that statutory “deep” wells have the surface owner’s consent for the well location. Unfortunately, another Circuit Court ruling stated that this consent requirement does not usually apply.

In addition, the Court ruled that the administrative agency with authority over deep well spacing provided no explanation or justification for allowing the wells to be drilled within 1,000 feet of each other. The judge remanded the case back to the Oil and Gas Conservation Commission to take testimony and provide findings of fact in order to reach a decision on how far apart the wells should be spaced.

Unfortunately, this ruling does not cover the new horizontal wells that are currently being drilled to develop the Marcellus Shale. These wells are statutory “shallow” wells, governed by the “rule of capture” which means they can be drilled as close together and as close to a boundary lines as the driller wants them, unless a coal owner coal owner objects. The “rule of capture” allows wells drilled on one landowner's property to produce gas lying

under his neighbors without paying for it. A statutory change allowing forced pooling of all horizontal wells - and all other wells – is needed to help surface owners, as well as other involved parties.

For more information visit [www.wvsoro.org](http://www.wvsoro.org). See *Well Spacing for Marcellus Shale Wells* under *Current Events* and check out our slide show on *Well Spacing and Royalty Sharing: What it is and why it should apply to the drilling of oil and gas wells in W.Va.* under *Resources*.

### Good News for Surface Owners:

#### You might be able to refuse a horizontal well on your land

by Dave McMahon, [wvdavid@wvdavid.net](mailto:wvdavid@wvdavid.net)

WV-SORO believes that a surface owner who does not own their minerals cannot be forced to have a horizontal well pad on their land unless the horizontal well will only be draining the mineral tract beneath the surface owner's land.

WV-SORO generally favors horizontal drilling because one well site, access road and pipeline replaces three or four. Moreover, if horizontal wells are drilled from centralized well pads, one well site, access road and pipeline can replace more than 20 vertical well sites. However, this does not mean the rights of the surface owner of the land where the wells are being drilled should be ignored or that the surface owner should not share in the financial benefits of producing the gas.

The key is knowing the boundaries of the tract of land on the date the ownership of the surface was severed from the ownership of minerals. Any of the surface land or tracts within the boundaries of the mineral tract at the time ownership was severed can be accessed to get to and develop those minerals. But the surface of the land cannot be used to get the minerals from a neighboring mineral tract. If a driller wants to drill a horizontal leg that goes

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## Good News for Surface Owners

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beyond the boundaries of the tract at the time of the severance, then the driller has to have the permission of the surface owner to use the surface for drilling under that neighboring tract. If the driller does not get that permission, the driller has to stay inside the original boundaries.

Drillers prefer that centralized well pads be large enough to accommodate 6 or more horizontal wells, or enough to drain 640 or more acres. They can and will drill on smaller drainages, but it is less efficient and profitable. In the West Virginia counties where the Marcellus and other shales are being drilled horizontally, most tracts of land, even the original tracts at the time of severance, are smaller than 640 acres.

This is good news for surface owners because it means you can just say "no" to a horizontal well that goes beyond the original boundaries. This may force the driller to drill fewer and/or shorter horizontal legs, which will make the driller's plan less profitable. However, this probably will not reduce the damage to the surface by much if the driller decides to drill from that location. But it may be discouraging enough that the driller will go elsewhere. Or it may give you a bargaining advantage to get more money for allowing them to use your surface to get to minerals in neighboring tracts. We have not heard from any surface owners who thought they got enough money to adequately compensate them for what happened to their land and lives when a well site, let alone a centralized pad for multiple horizontal wells, was placed on them.. However, if you know of or are one, please let us know so we can help other surface owners who are looking for guidance to determine how much money they should ask for.

**[NOTE:** This may not apply if you own the surface and the minerals. If you or a previous owner signed a lease that is still in effect saying that your land can be used to produce oil and gas from neighboring lands, then the driller may still be able to use your surface to get to neighboring minerals by drilling horizontally - but ONLY IF it says so in the lease. The lease may allow pipelines from neighboring tracts to cross your land, for example, but may not permit other uses. It is important to get

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## SORO Member Wins Case Against Gas Company

*by Julie Archer, [julie@wvsoro.org](mailto:julie@wvsoro.org)*

A Marion County landowner and WV-SORO member won over \$95,000 in a case that may inspire other surface owners' to hire a lawyer and go to court to seek compensation for damages to their property. In the case, a jury found that Waco Oil & Gas Co.'s operations on the land owned by Rick Humphreys and his wife Rebecca constituted an unreasonable and unnecessary use of the surface and interfered with the Humphreys' use and enjoyment of their property.

The Humphreys purchased their 100 acres near Mannington in 2001 so they could return to their home state of West Virginia to raise their children and be near family. After the Humphreys bought the land, Waco proceeded to locate four gas wells on the property, the most recent of which was drilled in 2006. Under the common law, a driller is supposed to do only what is fairly necessary to get to and develop the minerals. This is why the finding by the jury that Waco's operations constituted an unreasonable and unnecessary use of the surface is significant. In the Humphreys' case, the actual surface disturbance went well beyond the projected disturbance indicated on the permits the company was issued by the DEP Office of Oil and Gas. Waco's operations also destroyed almost 20 acres of timber and damaged the Humphreys' water well.

According to a judgment order in the case, the jury awarded the Humphreys nearly \$75,000 for the damage to their water supply (the cost to extend public water to their property) and just over \$10,000 for the damaged timber. The Humphreys were also awarded \$10,000 due to unreasonable surface use and \$2,500 for annoyance and inconvenience. In addition, pre-judgment interest and the court costs were awarded to the plaintiffs by the judge.

The Humphreys' case demonstrates that surface owners who are willing to stand up and challenge these companies in court can win.

**Editors Note:** Rick Humphreys, is a retired Lieutenant Colonel in the U.S. Army with over 27 years military experience. Born, raised and educated in West Virginia, Rick has a deep connection with the Mountain State. He lives near Mannington in Marion County with his wife Rebecca and their three children. Rick is an independent candidate for the Marion County Commission. For more information about Rick as a professional, community member and candidate, you can contact him at (304) 825-1988 or [rikhumfrez@gmail.com](mailto:rikhumfrez@gmail.com).

## Good News for Surface Owners

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the lease and read it carefully, or better yet, have a lawyer review it for you.]

Finally, there is one other argument that may keep a driller from using your surface for a horizontal well or perhaps even a vertical Marcellus Shale well. Because the slick water fracturing and other techniques used in developing the Marcellus Shale require huge sites and impoundments, it's possible that if you sue to stop them from placing such a site on your land, the courts will say that this type of well site was not "in the contemplation of the parties" at the time of the severance or the signing of the lease. (Read about this in the WV Surface Owners' Guide to Oil and Gas and the updates to the Guide at [www.wvsoro.org](http://www.wvsoro.org).) The problem with using this theory to stop the driller is that the surface owner would have to bring suit in Circuit Court. (We hope someone does. We would consult with their lawyer if they do, and maybe file an amicus brief, etc.) On the other hand, drillers need a surface owner's consent before they can drill a horizontal well to get to minerals that were not within the boundary of the original tract. This places the surface owner in a much more advantageous position. If the driller is caught doing this without the surface owner's permission, then a huge lawsuit is possible. The people financing the drilling know this. So, the driller has to get your consent BEFORE drilling. You can say, "No," or at least get compensation that is more realistic.

## IRS may have ruled that "free" gas is not income

by Dave McMahon, [wvdavid@wvdavid.net](mailto:wvdavid@wvdavid.net)

Last year, many WV-SORO members who receive "free" gas received letters from EQT. (As far as we know, only EQT sent these out and the rest of the industry did not follow suit. If you received a letter from another company, please let us know.) The letters said that the producer believed that all or a portion of the value of the free gas that at least some surface owners receive might be "income" for the purposes of federal income tax. The letter requested that surface owners to send the company an IRS W-9 form disclosing their social security numbers.

WVSORO contacted several tax professionals to try to determine the position that the surface owners who received 1099's, as a result of their receipt of free gas, should take when they file their income tax returns. Several of the tax professionals we contacted could find no easy answer. Apparently, this issue has

not been brought up before. Finding an answer was complicated by the fact that there are four common situations in which the surface owner could be receiving free gas, as explained at [www.wvsoro.org](http://www.wvsoro.org).

In September, WV-SORO heard that the IRS issued a ruling to the gas company indicating that they do not have to give 1099's for free gas. This may mean that the IRS has determined that free gas is not "income" for surface owners' income tax purposes. We are trying to confirm this and will let you know when we do. In the meantime, rely on the advice of your tax professional.

## DOH Establishes New Bonding Policy for Drillers

by Julie Archer, [julie@wvsoro.org](mailto:julie@wvsoro.org)

As noted in a new bonding policy issued by the WV Division of Highways (DOH), "With the boom in gas drilling in West Virginia, it has become apparent that many of our roads cannot withstand the repeated heavy loads to which they are subjected." In a memo to all DOH District Engineers and Managers dated August 4, 2010, Transportation Secretary Paul Mattox acknowledged that gas companies have no choice but to rely on rural roads, but said that residents are frustrated by the increased volume of truck and heavy equipment traffic which has resulted in a number of accidents in some parts of the state and has caused some roads to deteriorate to the point that they are unsafe for vehicles. Mattox also commented on the frustrations of district personnel who are trying to maintain the roads with small work crews and limited budgets geared toward regular upkeep, not major repairs and construction.

In response, DOH is requiring natural gas drilling companies to anticipate and pay for the wear and tear they are causing. According to Maddox's memo, developers are now required to meet with local highway supervisors and agree on various obligations for widening, paving and drainage before, during and after a drilling job. Developers must also establish a twenty-four hour point of contact for use by both the DOH and citizens.

In addition, companies would have to post road-repair bonds ranging from \$50,000 to \$100,000 per mile, depending on whether the road is topped with gravel, tar and chip, or pavement. Those amounts could increase if bridges are in the agreed-upon truck routes.

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## **DOH Establishes New Bonding Policy for Drillers** *(continued from page 3)*

It comes as no surprise that at least some industry officials have complained that the new rules “are vague, unreasonable and potentially too expensive for some to bear,” according to the Associated Press.

Charlie Burd, executive director of the Independent Oil and Gas Association of West Virginia told the AP, “These go well above and beyond what is necessary to safeguard roadways in the state, and we are assessing our response. Let’s say you were 10 miles off the main highway to a well site. That’s a million-dollar bond. The bond’s more than three times as much as the well. This has the potential of being catastrophic in nature to conventional wells, and it could be very harmful to Marcellus wells.”

That may be true for conventional wells if the only factor you consider is the cost of drilling the wells. However, Burd’s statement overlooks the significant profits that will be made once the well goes into production. Furthermore, although conventional drilling can be “transportation intensive,” Marcellus drilling operations increase truck traffic exponentially. Estimates are that as many as 1,400 heavy tractor-trailer loads are needed to bring a Marcellus well into production. Considering this, it only makes sense for the DOH to look to the developers causing the damage for relief.

## **Wetzel County Residents Challenge Chesapeake Air Permits**

*[from a Group Against Smog and Pollution (GASP) press release, October 14, 2010]*

West Virginia residents filed an appeal before the West Virginia Air Quality Board challenging two air permits recently issued to Chesapeake Energy for a large—and growing—Marcellus Shale operation in West Virginia’s northern panhandle.

The new permits allow Chesapeake Energy to construct two new natural gas compressor stations. With these two facilities included, the Chesapeake project will expand to include 3 compressor stations; over 25 well pads; and a complex, interconnected network of pipes, storage tanks, and flares - all five miles or less from each other on a patch of land straddling Wetzel and Marshall Counties. (This project includes the McDowell B well, where a late-September well explosion resulted in a fire that emergency crews battled for 8 days.)



A fire burns at Chesapeake Energy’s McDowell B well near Cameron in Marshall County. The fire and explosion at the site on Sept. 20, 2010, was the third situation at a gas drilling site in the county since June. The fire burned for more than a week.

The compressors themselves produce significant quantities of air pollution, and the many flares, storage tanks, gas processing activities, and equipment leaks produce air pollution as well. “When you add it all up, it’s hundreds of tons of pollution,” said Bill Hughes, a Wetzel County resident and the named appellant in this case.

The appeal challenges the West Virginia Department of Environmental Protection’s decision to treat each of these air pollution-emitting activities as separate sources for permitting purposes. The Clean Air Act establishes tougher air pollution control requirements for major sources of air pollution. WVDEP has permitted these compressor stations under less-protective minor source permits, and Chesapeake’s other emissions sources avoid permitting requirements entirely.

When asked to comment on the importance of this appeal, Ed Wade, Jr. of the Wetzel County Action Group (WCAG) stated, “there have been many complaints about noxious gas releases over the past few years by residents who have wells on all sides of their homes. Regulating emissions at just the new compressor stations will not eliminate those problems.”

“Rather than considering total air pollution from the Chesapeake project, WVDEP is dividing these related activities up piecemeal. As it stands right now, air pollution from the Chesapeake project isn’t adequately monitored or controlled to satisfy the requirements of the Clean Air Act. Left unaddressed, this would be bad news for our air quality and bad

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## **Wetzel County Residents Challenge Chesapeake Air Permits** *(continued from page 4)*

news for our health,” said Joe Osborne, Legal Director of the Group Against Smog and Pollution, the organization filing the appeal on behalf of Mr. Hughes.

The most significant pollutants generated by Marcellus Shale operations like Chesapeake’s are volatile organic compounds (VOCs), nitrogen oxides (NOx), carbon monoxide (CO), and a variety of air toxics such as benzene, toluene, and hydrogen sulfide. The amount of pollution oil and gas extraction and processing creates is hard to believe. In the Dallas-Fort Worth area, located in the Barnett Shale gas play, annual NOx and VOC emissions from the oil and gas sector exceed emissions from all motor vehicles. A 2008 analysis by the Colorado Department of Public Health and Environment concluded that VOC and NOx emissions from Colorado’s oil and gas operations exceed motor vehicle emissions for the entire state.

In addition to being unhealthy in their own right, NOx and VOCs react with other compounds in the atmosphere to produce ozone and particulate matter. Much of the Northeastern U.S. already fails to meet federal health-based standards for ozone and particulate matter. The Chesapeake project is less than 10 miles from the Pennsylvania border. Southwestern Pennsylvania fails to meet federal standards for ozone and particulate matter. Marshall County, WV fails to meet federal standards for particulate matter.

“Because so many areas in or downwind of the Marcellus Shale region fail to meet these standards, it’s all the more important that the air impacts of operations like Chesapeake’s are minimized. One way to help do that is by making sure permitting authorities like WVDEP are properly aggregating air emissions from Marcellus operations,” Osborne said.

“I’ve told people from neighboring counties in Pennsylvania that tons of air pollution are being sent your way, we don’t want them, you can’t return them and they are marked ‘do not return to sender’ it’s your problem now,” Hughes added.

### **ABOUT GASP** ([www.gasp-pgh.org](http://www.gasp-pgh.org))

*The Group Against Smog and Pollution, Inc. (GASP) is Pittsburgh-based non-profit citizens group working for a healthy, sustainable environment. Founded in 1969, GASP serves as a watchdog, educator, litigator, and policy-maker on many environmental issues with a focus on air quality in southwestern Pennsylvania.*

### **ABOUT WCAG** ([www.wcag-wv.org](http://www.wcag-wv.org))

*The Wetzel County Action Group is located near New*

*Martinsville, in Wetzel County WV. It supports economic development for the county and state; and works to ensure that economic development does not negatively affect the safety, economic interests, and quality of life of the Citizens of Wetzel County. WCAG has actively focused on the economic, social and environmental impact of Marcellus Shale gas exploration for over four years.*

## **Foes in 1st District differ on Marcellus**

**regulation** *by the Associate Press (Oct. 4, 2010)*

WHEELING, W.Va. -- The 1st District candidates for the House of Representatives have different views on how to best regulate what is fast becoming a key part of the region's economy, Marcellus shale natural gas drilling.

Democrat Mike Oliverio said the federal government should take the lead on protecting groundwater from pollution, while Republican David McKinley said regulation is best left to the states.

Drilling companies must use horizontal drilling and hydraulic fracturing techniques to free the gas from the shale that underlies West Virginia, Pennsylvania and New York. There is growing concern about possible pollution.

McKinley, who owns a business in Wheeling, said too many federal restrictions are being aimed at West Virginia's mining and chemical industries already. Tapping the Marcellus reserves supports American energy independence, he said.

"With direction from the U.S. Environmental Protection Agency and the respected scientific research of the Ground Water Protection Council," he argued, "states can best carry out their regulatory role in the natural gas industry."

Oliverio, a state senator from Monongalia County, called Marcellus gas "the new coal" and said it creates both opportunity and challenges.

The state should have a role in protecting public health, Oliverio said, but some matters are better addressed by Congress.

"We have to have a system of bonding where companies are held responsible for roads and held responsible for replacing them," he said. "The federal role should be in inspection of the roadways and making certain there is no contamination of groundwater."

## Election Information Available at Many Websites

**WV Secretary of State** ([www.sos.wv.gov](http://www.sos.wv.gov) or [www.wvsos.com](http://www.wvsos.com)) – Provides useful information on registering to vote, absentee ballots, early voting, finding your polling place, offices and issues on the ballot, campaign finance and election procedures.

**[www.Vote411.org](http://www.Vote411.org)** – A League of Women Voters' website that provides nonpartisan, general and state-specific information to the public.

**League of Women Voters** ([www.lwv.org](http://www.lwv.org)) – Offers a variety of election-related tools.

**[www.FactCheck.org](http://www.FactCheck.org)** – Is a project of the Annenberg Public Policy Center of the University of Pennsylvania, which checks the accuracy of political ads, debates, speeches, interviews, and press releases.

**Project Vote Smart** ([www.votesmart.org](http://www.votesmart.org)) – Provides information about candidates and their positions, issues and voting records.

**National Institute on Money in State Politics** ([www.followthemoney.org](http://www.followthemoney.org)) — A resource for information on money in state politics.

**[www.OpenSecrets.org](http://www.OpenSecrets.org)** — A nonpartisan guide to money's influence on U.S. elections and public policy.

## Legislative Friends and Foes

As we go to press, early voting is already underway. However, if you haven't voted don't forget to vote before Tuesday, November 2.

Below is a list of legislators who were helpful (and not so helpful) to us during the 2010 legislative session.

### **Thanks to the following Senators:**

Larry Edgell (D-Wetzel), Clark Barnes (R-Randolph), Jeff Kessler (D-Marshall), Erik Wells (D-Kanawha), and Randy White (D-Webster)

### **Thanks to the following Delegates:**

Mike Manypenny (D-Taylor), Barbara Fleischauer (D-Monongalia), Tal Hutchins (D-Ohio), Dale Martin (D-Putnam), Clif Moore (D-McDowell), Ricky Moye (D-Raleigh), Brady Paxton (D-Putnam), Alex Shook (D-Monongalia), Sally Susman (D-Raleigh), Terry Walker (D-Jefferson), Bill Hamilton (R-Upshur), Dave Pethtel

(D-Wetzel), Tim Manchin (D-Marion), Bob Beach (D-Monongalia), Mike Caputo (D-Marion), Richard Iaquina (D-Harrison), Linda Longstreth (D-Marion), Virginia Mahan (D-Summers), Charlene Marshall (D-Monongalia), Don Perdue (D-Wayne), Bonnie Brown (D-Kanawha), Sam Argento (D-Nicholas), Dan Poling (D-Wood), Mary Poling (D-Barbour), Ralph Rodighiero (D-Logan), John Doyle (D-Jefferson), Bobbie Hatfield (D-Kanawha) and Tiffany Lawrence (D-Jefferson)

### **No Thanks to the following Delegates:**

Mike Ross (D-Randolph), Troy Andes (R-Putnam), Tim Armstead (R-Kanawha), Craig Blair (R-Berkeley), Mitch Carmichael (R-Jackson), Bill Hartman (D-Randolph), Patti Shoen (R-Putnam) and Ron Walters (R-Kanawha)

### **No Thanks to the following Senators:**

Mike Green (D-Raleigh), Joe Minard (D-Harrison), and Walt Helmick (D-Pocahontas)

For more information, see *Thanks (and No Thanks) to Legislators* in our Spring 2010 newsletter. If you don't see your legislator listed, give us a call at (304) 346-5891 or 866-WVB-FAIR or e-mail [info@wvsoro.org](mailto:info@wvsoro.org).

## Response to Membership Renewal Request Overwhelming ~ THANK YOU!

Thank you to everyone who renewed their WV-SORO membership over the past few months. The response to our membership renewal request has been overwhelming.

Your financial support makes it possible for us to continue to push a Surface Owners' Bill of Rights to improve and strengthen West Virginia's oil and gas laws and to give landowners more say in the location of wells and access roads on their property. In addition to advancing the rights of surface owners in their struggle for fair treatment and just compensation when minerals are developed on their land, we are also supporting efforts to strengthen West Virginia's oil and gas drilling regulations. This includes supporting a much needed overhaul to the process for inspectors, as well as pushing for additional funding to hire more inspectors to enforce the law.

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## Response to Membership Renewal Request Overwhelming ~ THANK YOU!

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We know the concerns that surface owners have with oil and gas drilling are direct and personal, and we greatly appreciate your generosity.

If you've been putting off renewing your membership, please do so now so that we can continue to educate landowners about their rights and keep up the fight for justice in West Virginia's oil and gas fields. Your continued support is needed now more than ever.

Please send your membership dues to WV-SORO, 1500 Dixie Street, Charleston, WV 25311

As always, feel free to contact us with any questions or concerns. **Thank you!**

## DEP Review of Drilling Regulations Continues by Julie Archer, [julie@wvsoro.org](mailto:julie@wvsoro.org)

This spring, DEP Secretary Randy Huffman initiated a total review of the state's regulation of oil and gas drilling in response to the growing rush to develop the Marcellus Shale, which lies under much of West Virginia, Pennsylvania and New York. As part of this ongoing review, WV-SORO and several other interested parties gave presentations and provided position papers to the DEP. With the help of WV-SORO members George Monk and Molly Schaffnit, we compiled a "laundry list" of the issues that need to be addressed, which we submitted to the DEP at a meeting on April 28, 2010.

Our laundry list includes many of the provisions of the proposed Surface Owners' Bill of Rights and much more. Surface owners' rights issues include: more notice to landowners, a mandated negotiation process with incentives for the driller to participate in good faith and improvements to the Surface Damage Compensation Act. In addition, we share many concerns with the environmental community. These include water use; management and disposal of both solid and liquid waste generated in the process of drilling and fracturing wells; and soil erosion and sediment control issues related to the construction of well sites and access roads.

Other important issues of concern were raised in April and at a subsequent meeting on July 28. These issues include:

**Drilling in karst areas.** Many areas in the eastern counties of West Virginia – Greenbrier, Monroe,

Pocahontas and the eastern panhandle counties - have karst geology. Drilling in karst presents special problems. Although measures are taken to prevent contamination of groundwater, in karst areas drilling can disturb the circulation of water in successive layers of caves. Groundwater in karst areas can travel quickly in a short period of time. As a result, drilling could affect water wells and springs that are more than 1,000 feet from the drillings site – the distance where state regulations hold drillers responsible for contamination or deprivation.

**Air quality.** Air quality is already an issue in Wetzel County, where folks are experiencing deteriorating air quality as a result of numerous gas wells being drilled, as well as pipelines and proposed compressor stations. Members of the Wetzel County Action Group are concerned about the impacts of the compressor stations in conjunction with air pollution from other drilling activity in the area. Unfortunately, neither DEP's Department of Air Quality (DAQ) nor the Office of Oil and Gas monitors or regulates air quality at gas wells.

After hearing presentations and gathering information from various stakeholders, DEP held private meetings with various groups including WV-SORO. The meeting provided an opportunity to discuss problems we would most like to see addressed in legislation during the 2011 session. Because the concerns that surface owners have with oil and gas drilling are direct and personal, we invited a small group of SORO members from around the state to share their stories and provide insights into needed changes based on their experiences. ***Special thanks to the following SORO members for making the time to be involved in this process:*** Jim Farrell (Upshur County), George Monk & Molly Schaffnit (Kanawha County), Rich & Felicia Niehaus (Marshall County), Nancy Powers (Harrison County), Ba Rea (Monroe County), Ray Renaud (Wetzel County), and John & Sally Snyder (Roane County). It was helpful for DEP to hear your perspectives and concerns.

The next steps in the review process require the DEP to develop and finalize its legislative proposals. Governor Manchin asked Secretary Huffman to convene a panel of stakeholders to provide input on these proposals. (See Gary's article on page 8 for more details.)

Additional information on the review, including copies of presentations and comments that have been submitted, is available at [www.wvsoro.org](http://www.wvsoro.org).

## Governor Manchin Meets with Industry and Citizens, Convenes Advisory Panel on Drilling Regulations

by Gary Zuckett, [garyz@wvcag.org](mailto:garyz@wvcag.org)

In August, David McMahon and Gary Zuckett represented WV-SORO at an informational meeting called by Governor Manchin and attended by WV-DEP Secretary Randy Huffman, Office Oil & Gas Chief James Martin, Department of Transportation (DOT) Secretary Paul Maddox and other DEP personnel.

Originally, the meeting was to be a closed door session with the industry, but after we got wind of it and started asking questions, it was opened up to all interested parties. However, as is often the case, your WV-SORO representatives were out-numbered by oil and gas drillers and industry lawyers at the meeting 50 to 1.

Governor Manchin kicked off the discussion with a pep talk on how the Marcellus Shale has great potential for the state but noted that the regulations developed for the older, conventional wells were not adequate for the technology and scale of the new Marcellus wells. He then turned the podium over to DEP Secretary Huffman who outlined some of the new regulations the agency was developing specifically for these wells.

New permits will require more detailed engineering, certifications and other "site-specific thought and planning," Huffman told the audience. He also said there were not enough inspectors to handle the increased workload with so many new wells. (This is something SORO has been demanding for years – even before the Marcellus came along). The Governor said he thought the industry could handle the cost of additional inspectors and the new regulations.

Next, the DOT Secretary Mattox outlined the new bonding and other requirements that drillers must follow in order to cover the cost for repairing damages caused by the heavy equipment needed for these massive operations.

After the governor and agency heads had their say, the industry and others were given a chance to respond. This included SORO's legal counsel and co-founder Dave McMahon. Dave outlined our positions on earlier notification, pre-permit negotiations with surface owners, fair compensation, pooling and other needed changes. Next SORO and Wetzel County Action Group member Bill Hughes gave a presentation on highway damages and air quality concerns resulting from the frenzy of drilling activity in their area.

At the conclusion of the meeting, the Governor

requested that Secretary Huffman convene a small panel of "stakeholders" to sit down with Huffman, provide input on the final version of the DEP's new rules on Marcellus drilling, and bring it to him in November. These rules will then be sent to the Legislature for their approval.

WV-SORO's David McMahon was one of nine chosen to serve on the panel along with six gas company representatives, a coal industry lawyer and Don Garvin of the WV Environmental Council. Editorials in the Exponent Telegram and the Dominion Post have noted the rather lopsided nature of the panel. We agree that the make-up of the work group favors the industry and could be more balanced. However, SORO hopes that by being at the table, more attention will be given to landowners' concerns than otherwise would be shown. The panel is not a voting body and in the end, Huffman will make the final call on what is presented to the legislature.

**Note:** This whole process may be affected (for better or worse) by the fact that we may have a temporary governor in place before the January legislative session if Manchin is successful in his run for the US Senate seat of departed Senator Byrd. Don't forget to vote by November 2!

## People's Oil and Gas Summit

**Pittsburgh, PA ~ November 19-20, 2010**

Presented by the Oil and Gas Accountability Project, WV-SORO and others.

### ***Presentations and Discussions will include...***

- \* Natural gas and Public Health: Impacts of Drilling, Hydraulic Fracturing and Drilling Waste
- \* Landowner and Mineral Owner Rights ~ Strategic Options for Individuals and Communities
- \* Beyond coal, oil and gas: What is our Energy Future?
- \* Media: Reforming the industry one blog, story, movie and wiki at a time
- \* Legislate, Litigate, Agitate: Strategies for Reducing Community and Environmental Impacts

The cost of registration is \$120 for citizens and non-profit or government representatives and includes meals for both days. **Travel and lodging scholarships are available.** For more information, please contact Julie at (304)-346-5891 or [julie@wvsoro.org](mailto:julie@wvsoro.org), or visit <http://summit.earthworksaction.org>.

Registration Deadline is November 7, 2010.



## **EPA Studying Potential Impact of Hydraulic Fracturing on Drinking Water**

In a major nationwide effort, the Environmental Protection Agency (EPA) is studying the relationship between hydraulic fracturing (fracing) and drinking water. It is important that this study is scientifically sound, as communities across the country, including state and local government, are anticipating its guidance.

The agency held four public information meetings, facilitated meetings with various stakeholder groups, and had a public comment period seeking input into developing its proposed plan to study the relationship between hydraulic fracturing and drinking water.

On June 23, 2010, WV-SORO participated in a stakeholders meeting and provided input on the emphasis of the study and the importance of protecting our rural water supplies. We also submitted written comments regarding the lack of state oversight of industry's casing and cementing process and other threats to groundwater from the oil and gas exploration and production. Our comments illustrate how gas and other contaminants might migrate into ground water due to the presence of old unplugged and abandoned gas wells. We emphasized the fact that the state has failed to ensure that these wells are plugged and has been unable to provide adequate oversight of drilling activities past and present. This does not speak well for the state's capacity to make sure that drilling and casing are done properly to protect groundwater before, during or after fracing.

Our complete comments and more on the EPA study can be found at [www.wvsoro.org](http://www.wvsoro.org).

### **WV-SORO, WV Highland Conservancy, WV Rivers Coalition and Concerned Citizens Host West Virginia Premier of GASLAND**

On August 22, WV-SORO, the WV Highlands Conservancy, the WV Rivers Coalition and concerned citizens hosted a screening of the documentary film GASLAND in Buckhannon. The screening was part of an exclusive tour by director Josh Fox in the run-up to the film's theatrical premiere.

GASLAND tells the story of the effects of the largest domestic natural gas drilling boom in history, which is sweeping across the United States. The film

focuses on the practice of hydraulic fracturing, which is being used to develop the Marcellus Shale formation that lies under much of West Virginia, New York and Fox's home state of Pennsylvania. After Fox was asked to lease his land for drilling, he started to investigate. He found there were problems with air pollution and water contamination, and that people living near the drilling were feeling completely overrun. The film documents the problems encountered in the West and South that he hoped could be addressed in Appalachia before the boom. Although residents around the country tell of water and health related problems that curiously coincide with drilling activity.

WV-SORO and the other sponsoring organizations are organizations who hosted the event to raise awareness about the potential impacts of natural gas drilling on public health and the environment and to educate the public about the need for better drilling regulations in West Virginia. Filmmaker Josh Fox introduced the film to an audience of more than 300 and participated in a lively question-and-answer session afterward.

*Thanks go to the following volunteers, whose financial and other contributions made the Buckhannon screening a success:* Leroy and Ginny Dixon, Sylvia Dodge, Lyndia Ervolina, Jim Farrell, Keith Gould, Hope Graff, Tim Higgins, Ginny and Leo Lojacono, Peter Lynch, Dave McMahon, Carol Sheffield, Mike and Lyn Solinas, Jason Solinas, Cindy Rank, Terry Ridgeway and Bill Thurman. We would also like to thank WV Wesleyan College for hosting us, with special thanks to the WVWC Campus Life and A-V Department staff.

Obviously, the gas industry is concerned. The day after the film was shown in Buckhannon, a full-page ad, "GASLAND Debunked," appeared in the local paper, *the Record Delta*. Josh Fox had seen it before; it was originally produced by Energy-in-Depth, a public relations and lobbying outfit funded by the American Petroleum Institute. Their charges and his responses, "GASLAND Affirmed," can be found at [www.gaslandthemovie.com](http://www.gaslandthemovie.com).

Fox will be on hand when the American Conservation Film Festival brings GASLAND to Shepherdstown, WV on November 5. Showtime is 7PM at Shepherd University's Frank Center Theater. For more information on this and future screenings visit [www.gaslandthemovie.com](http://www.gaslandthemovie.com).



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GASLAND Director Josh Fox being interviewed prior to the film's West Virginia premier at West Virginia Wesleyan College in Buckhannon, August 22, 2010. See page 9 for screening details.