



West Virginia Surface Owners' Rights Organization

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Landowners' group appeals state agency ruling on spacing for gas wells Spacing needed to protect interests of investors, mineral and surface owners

(Charleston, WV) This week, the West Virginia Surface Owners' Rights (WV SORO) organization filed an appeal in Kanawha County Circuit Court challenging state agency rulings on well spacing. At issue is the spacing of thousands of wells to be drilled in the latest "play" in natural gas drilling. The rulings allow new gas wells drilled to the Marcellus Shale formation to be located as close as 1,000 feet to existing Marcellus Shale wells.

If the WV SORO appeal is successful, these wells would have to be located at least 1,500 or even 3,000 feet apart. The West Virginia Coal Association and others have already filed an appeal of the same rulings by the state Oil & Gas Conservation Commission, taking the position that Marcellus gas wells are not statutory "deep wells." If the Coal Association suit is successful, there would be no limit on how close together the wells could be placed unless there is coal under the same land and the coal owner forces the well spacing.

The coal industry and others had previously filed a prohibition action in the West Virginia Supreme Court against the state agency regulating deep well spacing. However, in its May 2008 opinion in *Blue Eagle Land Company vs. West Virginia Oil & Gas Conservation Commission*, the Supreme Court told the parties to file in Circuit Court to pursue relief they wanted.

The rise in energy prices appears to be driving the increase in drilling and there is huge excitement in the industry about drilling the Marcellus. New ways of drilling into similar formations in the West have been very productive and drillers are hoping to do as well in the Marcellus, which runs through much of Pennsylvania and West Virginia. One large company has 1,700 Marcellus wells planned for West Virginia.

"Well sites using these new drilling and fracturing techniques are much larger than those contemplated at the time the severance deeds or leases were signed. So we are not sure that the drillers have the right to drill this way without agreement from the surface owner," said David McMahon, a lawyer and a founder of WV SORO. "However, if they are going to drill them, they need to be spaced according to geology and science, not economic expediency. Otherwise, unnecessary wells will get drilled and less total gas will be produced." More wells means surface owners will have to contend with more well sites and access roads on their land, and more inherent soil erosion, stream sedimentation and risk to groundwater as the wells are drilled.

McMahon said that WV SORO understands that the coal industry wants these wells to be statutory "shallow wells" so a different agency — using different laws — will still space the wells, but space them further apart. "We agree with them, that the wells should be spaced further apart than 1,000 feet,

which is why we filed our appeal. But if the coal industry wins and Marcellus wells are declared statutory “shallow wells,” then in places where there is no coal owner, the “rule of capture” will apply, and everyone loses — investors, mineral owners, surface owners and even most drillers.” He said that with 1,000 foot spacing a surface owner with 100 acres could have as many as nine wells drilled on their land, draining the 100 acres and neighboring mineral tracts. These larger well sites can disturb five acres or more each.

McMahon explained that in West Virginia, statutory “shallow wells” are subject to the “rule of capture” unless they are coal bed methane wells or are located where there is coal and the coal owner forces well spacing. Most wells drilled in West Virginia are “shallow wells” not subject to forced well spacing, though neighboring parties may agree to it. Under the “rule of capture,” any gas that comes out of a gas well belongs to the owner of the gas well, even if it is known to be draining gas well from neighboring mineral tracts. As a result, some neighboring mineral owners drill extra ‘offset’ wells to get the gas out of their well first, but other mineral owners can’t afford to do that and end up getting legally robbed.

“Some drillers who take advantage of unsophisticated investors drill as many wells as they can squeeze on a tract of land and take the profit from drilling the well, with little concern for who gets hurt by drilling too many wells too close together. It’s legalized thievery,” said McMahon. “States to the west, where drilling got started later, have enacted statutes making all wells subject to forced well spacing and royalty sharing. In those states the “rule of capture,” which evolved in Courts in feudal England in disputes over who owned deer, does not apply to any gas wells.”

McMahon said that a surface owner who also owns the minerals and has not leased them, might want to enter into a lease despite the increased size of the drilling sites, because Marcellus wells can be very profitable. However, he cautioned landowners in this situation to insist on including well spacing and other surface owner protections in the lease. For example, people can insist on lease add-ons or addendums that restrict the areas where drillers can put wells or that require better re-seeding and road construction that the state requires. These are things to negotiate, in addition to the up front and royalty payments. McMahon noted that these payments have steadily increased over the past few months.

An article for citizens that explains more about leasing and things to consider before signing a lease, and a guide for those who just own the surface are available at the WV SORO website. A slide show that explains well spacing and royalty sharing (also called “pooling and unitization”), and links to copies of the two most recent appeal petitions, plus the Supreme Court opinion can also be found at www.wvsoro.org.

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