



West Virginia Surface Owners' Rights Organization

Surface Owners' News

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Marcellus Shale vertical well sites in the Catskill Mountains based on 40 acre spacing (plus one gravel pit in the left foreground). © J. Henry Fair 2009, www.industrialsoars.com.

WV-SORO Responds to Drilling Rule Changes

by Julie Archer, julie@wvsoro.org

The West Virginia Department of Environmental Protection (DEP) is proposing significant changes to the agency rule that regulates oil and gas drilling. In July, WV-SORO joined other statewide groups concerned about oil and gas issues (the West Virginia Rivers Coalition, the West Virginia Sierra Club, the West Virginia Highlands Conservancy, the West Virginia Citizen Action Group, the West Virginia Environmental Council and the Appalachian Center on the Economy and the Environment) to submit comments on these rule changes. Several WV-SORO members also submitted comments and we appreciate you taking the time to share your concerns with the DEP.

It has been more than 25 years since any significant changes were made to West Virginia's drilling rules. The state's regulation of oil and gas well drilling already has many problems and new techniques, such as horizontal drilling and large volume fracturing, are creating new problems that need to be addressed, as well as the need for additional resources to address them.

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Judge Hears Oral Arguments in Marcellus Well Spacing Case

by John Snyder, snyder.je@gmail.com &

Sally Snyder, priusowner01@gmail.com

On a beautiful autumn day (October 19, 2009), deep in the coal country town of Welch in McDowell County, circuit judge Rudolph J. Murensky, II heard oral arguments in the Marcellus well spacing case.

There were lawyers representing the various parties with interests in coal, land, oil and gas and the West Virginia Oil and Gas Conservation Commission (OGCC). David McMahon, co-founder of WV-SORO, and a public interest lawyer, presented oral arguments representing the interests of surface owners. In addition to lawyers representing the various parties there were also 30-40 observers in the courtroom, including the General Counsel of the Pocahontas Land Company, the Executive Director of the West Virginia Oil and Natural Gas Association, the chairman of the OGCC, one OGCC staff member and two members of WV-SORO.

Judge Murensky commented that he had read all of the law briefs, that they were well written and that oral arguments must focus on evidence already presented at the administrative hearing held by the OGCC in 2007. Most of the judge's questions were about the huge size of the gas fields for which the oil and gas companies had petitioned the OGCC for special field rules with changes in well spacing. He asked the lawyers representing oil and gas interests and the OGCC about how large gas fields generally were compared to those covered by the existing orders from the Commission.

The judge also questioned the lack of findings in the OGCC's current orders that would justify exceptions to the existing rule with regard to the size of the field and to 3,000 foot well spacing.

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What caused big fracking fluid spill in Doddridge County?

by Ken Ward Jr.

(Excerpted from a post at the Charleston Gazette's Sustained Outrage blog <http://blogs.wvgazette.com/watchdog/> and reprinted with permission.)

West Virginia regulators aren't saying exactly what happened, but environmentalists are growing increasingly concerned about a large spill of "fracking fluid" from a gas drilling operation in Doddridge County.

The incident in question apparently occurred in late August along Buckeye Run, between West Union and Salem. The stream is a tributary of Middle Island Creek, and the drilling operation run by West Union-based TAPO under a permit issued by the West Virginia Department of Environmental Protection....

...More than a month later, James Martin, chief of the DEP Office of Oil and Gas, said his agency "still can't say exactly what transpired."

But between 50 and 70 barrels of what a DEP inspector called "the contaminate" has been cleaned out of Buckeye Creek. Martin told me the material is consistent with what you would find in "drilling pit fluids," the toxic wastes leftover from gas drilling, especially in the Marcellus Shale formation that's all the rage with the gas industry....

Editor's note: Be sure to read WV-SORO member Louanne Fatora's letter to Governor Manchin regarding the spill on page 7. We hope it will inspire you to write a letter of your own to the Governor and your legislators. For contact information visit www.wvsoro.org.

160 Organizations Urge Congress to Pass

FRAC Act from Earthworks, Earthnotes # 14, October 23, 2009

As the expansion of hydraulic fracturing operations associated with natural gas drilling continues, and the concerns of citizens living in oil and gas field communities are becoming realized, it has become imperative that we put in place safeguards to protect our communities and the water they depend on. We do not want 10-15 years of natural gas production to leave us with a lifetime legacy of contaminated water.

A letter signed by 160 local, regional, and national organizations [including WVSORO and several other West Virginia organizations], representing faith, conservation, sportsmen, and civic interests was released on September 18, 2009, calling on Congress

to support and pass the Fracturing Responsibility and Awareness of Chemicals Act or FRAC Act.

The FRAC Act, also known as H.R. 2766, and its Senate counterpart, S. 1215, would do two things: require public disclosure of chemical constituents used in hydraulic fracturing and bring hydraulic fracturing back under the Safe Drinking Water Act.

Learn more about the FRAC Act on page 5 and at <http://earthblog.org/node/33>.

WV-SORO Responds to Drilling Rule Changes

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While the proposed agency rule makes some changes in response to the drilling of new Marcellus Shale formation wells, more changes are needed, and existing rules need strengthened. WV-SORO and others applaud the changes proposed by DEP; however, they don't go far enough in terms of protecting public health and the environment.

DEP approved the rule and submitted it to the legislature on July 30, 2009. Although DEP incorporated a few of our recommendations, we still have the following concerns:

Where will the additional quantities of water required for these new drilling techniques come from? What ends up in the water when it is used in hydraulic fracturing? Where do drillers dispose of that water?

The Legislative Rule-Making Review Committee is expected to take up the rule in December or January and we will push for stronger regulation of the industry.

You can read the agency-approved rule, along with the comments submitted on the proposed rule and DEP's response to those comments at www.wvsoro.org.

Judge Hears Oral Arguments in Marcellus Well Spacing Case (continued from page 1)

He also stated that too many exceptions to any rule would essentially mean there was no longer a rule.

He also wanted to know if surface owners could veto a well permit, and at what point in the process they were given that choice. He asked if surface owners were still eligible for compensation for damages to their property if they gave their consent.

Judge Murensky acknowledged that land ownership rights are an emotional issue, and in his experience he has seen situations where such cases were more emotional than divorce cases.

Information on Letters from EQT, Others Regarding Free Gas & Federal Income Tax

Many WV-SORO members who receive free gas recently received letters from EQT regarding their free gas. Members may be getting similar letters from other producers. The letters state that the producer thinks that all or a portion of the value of the free gas that at least some surface owners receive may be "income" for the purposes of federal income tax. The letters direct surface owners to send EQT an IRS W-9 form disclosing their social security numbers by September 30, 2009.

WV-SORO is not a tax adviser; however, we think that most WV-SORO members will want to send in the W-9, if they haven't already, as a precautionary measure. (Even though it is after September 30, 2009, it may still be in time.)

A producer thinking the receipt of free gas is income for federal income tax purposes does not make it true. The IRS will make that determination when the surface owner files his/her income tax return in April 2010. WV-SORO hopes to have more information available for our members by then.

A surface owner receives free gas in four common legal situations. Whether you will owe income taxes on the free gas will likely depend on which situation(s) apply to you. These situations are explained in detail at the WV SORO website (www.wvsoro.org) and in a memo that we can mail you upon request. We will update this with new information as we learn more.

We apologize that those you who don't get our e-mail alerts are getting this information late and that we don't know more about the federal income tax issue at this time. This came as a surprise and turns out to be very complicated. However, surface owners have been receiving free gas all over the state for a century without this issue. We hope that it can be resolved so that surface owners do not, once again, get the short end of the stick.

For more information, or to receive a copy of our memo on free gas and federal income tax, call (866) WVB-FAIR or e-mail info@wvsoro.org.

WV SORO Launches Video Project

by Norm Steenstra III, norm@wvsoro.org

The WV-SORO video project is underway. On Saturday, October 24, I traveled to the Clarksburg area and visited with Cam Forfar and Jeff Furner, whose properties are just off US Route 50. Both were kind enough to be interviewed on camera. Cam Forfar works with the Veterans Administration. She moved to West Virginia from Florida in order to purchase her dream home, a beautiful A-Frame on a wooded hillside. Jeff Furner is a West Virginia native who works for Dominion. He was willing to give us insight on how to work with gas companies and points out how East Resources has failed to work with him.

There is a large East Resources storage field right across the road from Jeff's property and easily within sight of Cam's property further up the hill. Both Cam and Jeff have numerous issues with the operation, ranging from noise disturbances to structural damage to their homes and properties, to the draining of their fishing creek and the cutting down of trees on their property without any warning.

The video interviews with Cam and Jeff should be available on YouTube soon and we will have links to them at www.wvsoro.org under "Surface Owner Stories."

We are looking for more folks who are interested in participating in the video project. The key has been trying to coordinate the schedules of those who live close together in order to do as many interviews as we can at one time. If you are interested in sharing your story, and have friends or neighbors nearby who may also be willing to participate in our project, please let me know. Give me a call at 866-WVB-FAIR or email me at norm@wvsoro.org.

Legislative Session Just Around the

Corner by Gary Zuckett, garyz@wvcag.org

It's hard to believe the 2010 West Virginia legislative session is just weeks away. The session begins January 13, and we'll be there ready to advocate for the passage of several new bills to further the rights of surface owners in their struggle for fair treatment and just compensation when minerals are developed on their land. We have no illusion that this will be an easy task. The oil and gas lobby in Charleston has friends in high places and plenty of money to throw around.

However, we have you — the voters and constituents of the Delegates and Senators — on our side. Your horror stories of mistreatment and broken agreements, torn down fences and ruined springs, wells and other property damage will help make the case for improved legislation. Norm will be coordinating landowner visits to the Capitol during both the remaining interim sessions and during the regular session. Contact him at 866-WVB-FAIR or norm@wvsoro.org to set up a time to visit your lawmakers in Charleston.

Better yet, don't wait until the session begins. Your representatives live near you. Look them up at their place of work or set up a time to take a few neighbors over to visit them on a weekend or over lunch at a local restaurant. If you want some backup, let us know ahead of time and we'll see about getting someone from the office or a regional leader to go with you. Until our lawmakers hear from enough people back home, they will tend to believe the lies and misinformation repeated by the industry — that all is well in the oil fields and the laws governing oil and gas exploration are working just fine. NOT!

Citizen activists are a critical component of our grassroots legislative campaign. Our legislators need to hear the truth and we need to respond to the industry's propaganda by being vocal and visible. Please do your part. With a team approach, we have a much better chance to make changes to help all surface owners this upcoming session.

Upcoming Events

Tuesday, December 1, 2009

WV-SORO Educational Meeting on
Leasing and Surface Owners' Rights
6PM ~ Town of Addison Municipal Bldg.
146 McGraw Avenue
Webster Springs, WV

WV Farm Bureau Strongly Supports

Land Owner Protection by Rich Niehaus, Vice
President/Policy Chairperson, Marshall
County Farm Bureau, richniehaus@yahoo.com

At its 90th annual meeting held the first weekend in November, in Flatwoods, WV, the West Virginia Farm Bureau reiterated its strong support for legislation that would protect agriculture's most important asset; the farm landowner.

With over 200 voting member delegates present, the Farm Bureau, during its policy review session, unanimously voted in favor of a strengthened Policy #100 "Private Property Rights."

The WV Farm Bureau recognizes the rights of mineral owners and their lessees to extract mineral resources in a fair manner, but feels it is imperative that the landowner [farmer], who derives a livelihood from agricultural products produced on the surface land, be protected from possible abusive practices from mineral extractors.

All 186 Farm Bureau policies were developed by a "grassroots" process that began with recommendations from individual members at the county level. These recommendations were then considered by a statewide Resolutions Committee made up of representatives from every county Farm Bureau. The recommendations were discussed, amended if deemed appropriate, and then voted on by the elected voting delegates from the county Farm Bureaus at the annual meeting. These policies represent WV Farm Bureau's public policy goals for 2010 and are deemed essential in attaining the long-term goal of better opportunities for farm families.

The WV Farm Bureau, with over 21,000 members, is a voluntary, non-governmental organization existing to provide a voice to West Virginia farmers and rural landowners.

Policy #100 "Private Property Rights" is found under the Public Issues section of WV Farm Bureau's 2010 Policies.

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WV Farm Bureau Strongly Supports Land Owner Protection *(continued from page 4)*

Excerpt of Policy #100 "Private Property Rights:"

...A significant number of landowners have split estates, not owning their minerals. Therefore, Farm Bureau urges the Legislature to enact appropriate legislation to address issues identified by our membership. We recommend legislation that will require those drilling and/or operating oil and gas fields – both shallow and deep, including storage fields – to pay to the owner of the surface a yearly fee for each producing well and/or capped well and/or storage areas and for all environmental damage. ... Furthermore, we believe compensation to the landowner for damage sustained from drilling or transport should be based on actual losses versus a set fee. In order to accomplish this, we support:

- a) Giving a 90-day notification to the landowner before any surface operations begin*
- b) Compensation for timber at current market value*
- c) Compensation for pasture and crops*
- d) Returning soil and nutrients to at least the previous level of production*
- e) Replenishing water sources in both quantity and quality*
- f) Replacing an/or repairing fences and roads*
- g) Providing free gas to surface owners*

Congress Approves Provision Urging EPA to Study Risks of Hydraulic Fracturing

(excerpted from a press release issued by Congressman Maurice Hinchey, October 29, 2009)

The U.S. House of Representatives approved a provision authored by Congressman Maurice Hinchey (D-NY) that formally urges the U.S. Environmental Protection Agency (EPA) to conduct a new study on the risks that hydraulic fracturing poses to drinking water supplies. The Senate is due to pass [an] identical bill in the coming days and President Obama is expected to sign the measure into law soon after that. Earlier this week, members of the Interior Appropriations Conference Committee, including Hinchey, signed off on the Interior and Environment Appropriations bill and report for fiscal year 2010, which contains the study provision.

"While natural gas certainly has an important role in our national energy policy, it's imperative that we take every step possible to ensure that our drinking

water supplies are not contaminated or adversely impacted in any way," Hinchey said. "This legislation puts Congress on record in support of a new, comprehensive study that will examine the impact that hydraulic fracturing really has on our water supplies. The study results will put us in a position to take any further steps that are necessary to protect our drinking water supplies from the chemical concoctions being pumped into the ground by energy companies."

In May, the congressman asked EPA Administrator Lisa Jackson at a House Interior Appropriations Subcommittee hearing about the need for such a study. Jackson told Hinchey that she believed her agency should review the risk that fracturing poses to drinking water in light of various cases across the country that raise questions about the safety of the natural gas drilling practice. Hinchey's measure would formalize that congressional request for an EPA study on the risks that toxic chemicals used in hydraulic fracturing pose to drinking water supplies in New York and across the nation. The EPA [conducted] a study on the matter in 2004 under the Bush administration, but that study is widely considered to be flawed for a variety of reasons, including the way data were selectively collected from sources that had a vested interest in the oil and gas industry while other relevant information was ignored.

Urge Senators to Support the Hinchey Provision

The Hinchey provision has critical implications for the gas drilling safety situation that West Virginia and other Appalachian states face. As this issue comes before the U.S. Senate, we need your help to bring it to the national level.

Please take a moment to phone or write our Senators and simply say:

I strongly urge you to support the Hinchey Provision that has passed the House, requiring the EPA to conduct new studies on the risks hydraulic fracturing poses to drinking water supplies. There is growing evidence that the toxic chemicals that are used in this process, are causing cancer and neurological and endocrine disorders to mention just a few of those documented. Thank you.

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Urge Senators to Support the Hinchey Provision

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Contact information for Senators Byrd and Rockefeller:

Senator Robert C. Byrd
311 Hart Senate Office Building,
Washington, DC 20510-4801
Phone: (202) 224-3954
Charleston Office Phone: (304) 342-5855
E-mail: senator_byrd@byrd.senate.gov

Senator John D. Rockefeller IV
531 Hart Senate Office Building,
Washington, DC 20510-4802
Phone: (202) 224-6472
Charleston Office Phone: (304) 347-5372
E-mail: senator@rockefeller.senate.gov

Dunkard Dies

by Cindy Rank,
WV Highlands Conservancy, clrank@hughes.net

This will be old news to those of you who read *the Charleston [WV] Gazette* or listen to WV Public Radio, but several miles of a healthy stream called Dunkard Creek died this past month.

The cause is unknown, or as yet clearly identified, but it was not a natural death and there is a debate raging as to who is responsible and how it occurred.

Still a mystery to me is the presence of excessive amounts of chloride in discharges from a flooded deep mine pool. More normal in this area are tons of iron, sulfate or other acid mine related constituents that are found in the vast underground pools of groundwater throughout northern West Virginia and southwestern Pennsylvania. However, chloride emanating from the mine pools in and around the Dunkard Creek watershed has exceeded state water quality standards for nearly ten years.

The WV Department of Environmental Protection (DEP) has been granting delays and extended deadlines in a series of compliance orders to CONSOL and others to meet standards at their discharges since at least 2002.

Nevertheless, the stream maintained a rich abundance of aquatic life — fish, salamanders, mussels, and all sorts of other living, breathing critters — until mid-September 2009, when everything changed.

The sights and smells of dead and decaying fish assaulted earthbound neighbors along Dunkard Creek.

People, who for decades have prided themselves in their love and caring for the creek, began to see a phenomenon of death that they were powerless to control.

In came Frank Jernejcic of the WV Division of Natural Resources (DNR) and long-time lover of all things fishy in northern West Virginia, to assess the dead and dying population of these waters that he, too, loves. Others followed and the debate began.

Was it CONSOL's briny water? Could it be an unpermitted discharge of brine water from that new and nasty Marcellus gas well fracing? And what about that gold-brown alga normally associated with brackish waters? Where did that come from? And what role has it played in this tragedy of Dunkard Creek? Did some unwashed gas drilling equipment bring it with the rigs from Texas?

Everyone is pointing fingers at everyone else, but what we know is far less decisive.

Is it that the gold-brown algae, however introduced — thrived so much that it released enough toxins to suffocate all life in the stream? Or did some extra influx of chloride cause the stream life to die leaving no critters to munch away at the algae and keep in it check?

From what I can tell, all we know is that this stretch of once-thriving stream, shared by West Virginia and southwestern Pennsylvania, is dead.

There is no relief in sight, no definitive cause and no one to accept the responsibility for cleaning up whatever can be cleaned up.

The response by West Virginia officials so far has disappointed concerned citizens and residents of the area. They have asked the federal Environmental Protection Agency to step in. According to a news release:

"The Friends of Dunkard Creek of Pennsylvania, Dunkard Creek Watershed Association of West Virginia, Wheeling Creek Watershed Conservancy and the Greene County Watershed Alliance urge the US Environmental Protection Administration to take the lead role in the investigation of the biological disaster that killed over 130 species of aquatic life in Dunkard Creek."

Editor's note: This article originally appeared in the *West Virginia Highlands Voice* and is reprinted with permission. For more information see

<http://www.dunkardcreek.org/> and
http://www.uppermon.org/Dunkard_Creek/index.html

Letter from Louanne Fatora to Governor Manchin

Dear Governor Manchin,

I have been very impressed with the new theme of “Coming Home to West Virginia” and the articles in the “Wonderful West Virginia” magazine.

I grew up on the banks of Buckeye Run, a tributary of Middle Island Creek in Doddridge County. I am a 5th generation West Virginian, my great-great-grandfather built the house I grew up in and that has always been a point of family pride. Our creek was quite a popular spot and many of the local churches used our swimming hole for their baptisms. I still have a picture on our wall at home of all the people in their white clothes, before heading down to the creek. Long, lazy summers at our “Swimming Hole” and riding my pony around the fields, provided a foundation for the love of my home and I have been determined to pass this on to my three sons.

I married and moved away to Colorado, having been blessed with a wonderful husband who also appreciates the beauty, traditions, and the people who work hard here. Though we live near Vail, Colorado during the school year, we love our cabin on the banks of the Greenbrier River in Pocahontas County and our farm near Lewisburg and are making preparations to return “home” in the future. My sons have been brought here to West Virginia every summer since they were born as I felt it was important for them to experience “real living” and not only the glamour of the ski resort community in Colorado. Monday night, August 24th, I went “home” to Doddridge County to spend the night with my oldest son as we were going to Oberlin, Ohio the next day to get him settled in at college. My son chose to take that route, as it would give him just one more opportunity to cast his line in the waters of Buckeye Run Creek. He headed down to the creek at 9:00 pm and came back saying there appeared to be a “problem.” We took flashlights down to our fishing hole, the acrid, oily smell of this red/orange gel met us almost up to the house. I got it on my hands, the smell of which didn’t go away for some time despite repeated washing.

Is this the “Come home to West Virginia” you had in mind?

It is now Friday, Sept. 11th. I previously knew very little about gas and oil well drilling, particularly the Marcellus Shale drilling. This summer I became more aware of it since there has been a lot of activity

upstream, downstream and all around my family home. After having called the DEP, oil and gas division, we STILL do not know what this is. Though they were quick to respond, and were initially polite, information has been sketchy. Clean up has been ongoing by a drilling company, the employees of which were in the water with this contaminant all over their bare skin. I have been told that they don’t know yet what it is. If you don’t know ‘what it is’ how do you know you are cleaning it up properly and it is safe for people to touch? When I notified my neighbors downstream, they stated they had seen before that time that the water appeared “funny” and red. There is no educational outreach to people who live downwind, downstream from possible pollution sources, informing them what to look for and who to call when there is a suspected problem. Neither is there a system in place to notify the people who live along the stream when such a problem occurs. My neighbors downstream had not been notified. Many children play in the creek as mine do.

A sound business climate is very important in keeping and attracting people to our home state. But if we foul up our waters and our lands, keep antiquated laws in place without updating these as new technologies leap ahead through loopholes, we will all be losers. Who wants to live in a state known for razing and polluting their own home? West Virginia’s biggest asset lies in our bright and hopeful children. Their heritage is being plundered and altered by others who do not respect other people’s homes and safety. We need to make sure that we are passing on a clean environment; to do otherwise is dishonorable to those who came before us. West Virginia has such bright, passionate people; we could become a leader in this nation in renewable, clean energy, along with industries that abide by good, strong laws to keep our drinking and recreational waters safe. We can become a state others look to instead of down upon. Laws need to be changed quickly and we need closer scrutiny of industries with the potential to pollute our homes and make us sick.

The pictures I have sent are not pretty. Cancer is not pretty either. I just lost my third sibling to cancer, my sister, who “came home to West Virginia” and used to swim side-by-side with me in Buckeye Run Creek.

Louanne McConnell Fatora



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