



Surface Owners' Rights Recognition Act Introduced

Bill will give more notice, say to landowners

by Julie Archer, julie@wvsoro.org

The WV Surface Owners' Rights Organization (WV SORO) is asking the legislature to ensure that the rights of West Virginia surface owners are recognized and respected by oil and gas well drillers. For the past two years we have urged the legislature to pass the 'Surface Owners' Bill of Rights,' which would give landowners more say in the location of wells and access roads and improve damage compensation procedures and awards. This year we are pushing a more modest version of the Bill of Rights called the 'Surface Owners' Rights Recognition Act' (HB 4408 and SB 529).

We feel strongly that the provisions in the Surface Owners' Bill of Rights are reasonable and we remain committed to working toward getting those into law. However, we were hearing from our supporters in the legislature that we were trying to accomplish too much at once. The Surface Owners' Rights Recognition Act is a compromise that we and our sponsors believe will help us overcome industry opposition and get some rights for surface owners this year.

Key provisions of the Surface Owners' Rights Recognition Act include:

- Requiring drillers to give 10 days notice to the surface owners before coming on to the land to start planning a well site and access road(s). This notice must include an offer to meet with the surface owner to discuss the driller's plans.
- Requiring the driller to negotiate a "surface use and compensation agreement" with the landowner before the driller applies for the well work permit.

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Time to Speak Out

by Norm Steenstra III, norm@wvsoro.org

Over the past couple of weeks, we have been working to recruit sponsors for a more modest version of our Surface Owners' Bill of Rights that we are calling the Surface Owners' Rights Recognition Act (HB 4408 and SB 529). Our supporters in the legislature believe this compromise bill will improve our chance of gaining some rights for surface owners this year.

We need your help if we want to ensure that surface owners' rights are recognized and respected by oil and gas well drillers.

Here's what you can do:

•**Join us at the Capitol to meet with your legislators.** A face-to-face meeting and your first-hand accounts of needless destruction of timber, lost home sites, destructive road building and ruined pastures caused by drillers can have a big impact. Since the oil and gas lobby is several times larger than our team, it will also help offset their numbers. Please contact Julie or me at 1-866-WVB-FAIR. We'll be happy to make appointments with your legislators and show you around the Capitol. Invite your friends and neighbors to come with you. The more voting landowners our legislators meet and hear from, the more seriously they are going to take this issue.

•**Contact YOUR legislators.** If you're unable to join us at the Capitol, please contact your delegate(s) and senators. Let them know how you've been treated. Let them know that the rights and interests of West Virginia surface owners need to be protected. Tell them to support and pass the Surface Owners' Rights Recognition Act (HB 4408 and SB 529) this year. Make your voice heard! Call toll-free 1-877-565-3447 or visit www.wvsoro.org for other ways to contact your legislators.

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Surface Owners' Rights Recognition Act Introduced *(continued from page 1)*

The agreement would set out the location of the well site and associated access road(s), impoundments, pits and pipelines, and how these will be built, maintained and reclaimed. The agreement would also specify proposed financial compensation for damages

By common law, the drillers are only supposed to do what is 'fairly necessary' to the surface to get to and develop their minerals. Unfortunately, as many of you know, in practice, many drillers do mostly as they please and the surface owner has no way to enforce their common law rights without going to court. Very few surface owners can afford to hire a lawyer to go to court. Citizens need something to encourage negotiations on locations and damage compensation before drilling to help ensure that landowners receive fair compensation for their losses and inconveniences.

The Surface Owners' Rights Recognition Act gives drillers an incentive for drillers to come to a pre-drilling surface use and compensation agreement with landowners. If the two parties reach an agreement, the permitting process can move forward more quickly. However, if they cannot come to an agreement after 30 days the driller can still get a permit but must post an individual bond for the well to ensure efforts are made to pay damages, rather than placing the well under a blanket bond with other wells it operates.

Surface owners face huge disadvantages in their dealings with drillers. The industry continues to dismiss abuses as isolated incidents. They also claim our efforts would result in fewer permits being issued and would be detrimental to the industry. These allegations are simply not true. The Surface Owners' Rights Recognition Act is designed to encourage drillers to sit down with landowners before they survey for well sites and access roads. We've worked with our sponsors to come up with legislation that will ensure that the rights of surface owners are recognized and respected without placing an undue burden on the industry. We just want the drillers to be good neighbors.

Surface owners' rights legislation also has the support of the WV AFL-CIO, the WV Council of Churches and the WV Environmental Council.

Read on for more on what you can do to help us advance surface owners' rights legislation this year.

Time to Speak Up *(continued from page 1)*

•Contact House Judiciary Committee members. Although we will be working to have the bill taken up in the Senate as well, we have more support in the House of Delegates and expect the bill to be taken up there first. HB 4408 has been assigned to the House Judiciary Committee. Please call members and urge their support. (See page 5 for a list of members and contact information.)

•Thank our sponsors. Thanks go out to Delegate Mike Manypenny (D-Taylor County) and Senator Larry Edgell (D-Wetzel) for taking the lead on our surface owners' rights issues. Be sure to thank them and the cosponsors of HB 4408 and SB 529 for their efforts on behalf of West Virginia surface owners.

House Sponsors

Del. Mike Manypenny (D-Taylor) (304) 340-3139

Del. Barbara Fleischauer (D-Monongalia)
(304) 340-3169

Del. Tal Hutchins (D-Ohio) (304) 340-3270

Del. Dale Martin (D-Putnam) (304) 340-3134

Del. Terry Walker (D-Jefferson) (304) 304-3274

Del. Sally Susman (D-Raleigh) (304) 340-3183

Del. Alex Shook (D-Monongalia) (304) 340-3173

Del. Ricky Moyer (D-Raleigh) (304) 340-3162

Del. Clif Moore (D-McDowell) (304) 340-3189

Del. Brady Paxton (D-Putnam) (304) 340-3337

Senate Sponsors

Senator Larry Edgell (D-Wetzel) (304) 357-7827

Senator Randy White (D-Webster) (304) 357-7906

Senator Clark Barnes (R-Randolph) (304) 357-7973

Senator Jeff Kessler (D-Marshall) (304) 357-7880

Senator Erik Wells (D-Kanawha) (304) 357-7841

We hope to hear from you and see you in the next couple of weeks.

Strengthening Drilling Rules and Protecting Our Water Resources

by Julie Archer, julie@wvsoro.org

In addition to working to advance Surface Owners' Rights legislation, this session we are also supporting bills to address issues of concern related to the drilling of wells to the Marcellus Shale formation.

A number of these issues, such as where the large quantities of water required to drill these wells will come from, what ends up in the water when it is used in hydraulic fracturing and where drillers dispose of that water afterward have been the subject of monthly meetings of the Joint Legislative Oversight Commission on State Water Resources. The Commission was set to consider new legislation that would set up a system for regulating water withdrawals as well as addressing some of the issues regarding fracking fluid content and wastewater disposal at its final interim meeting in January, however only four of ten members were present, so they adjourned without taking a vote to recommend passage to the full legislature. The good news is Senator Randy White plans to sponsor it on his own in the Senate and Delegate Tim Manchin (D-Marion) plans to sponsor a different version of the same bill in the House.

We will also be working to strengthen the Department of Environmental Protection's (DEP) proposed changes to the rules that regulate oil and gas drilling. Some of DEP's proposed changes to the rule are beneficial, such as finally requiring synthetic liners for drilling pits and new construction standards for waste pits and water storage impoundments. However, these changes fall short of being protective of the threats to water and land resources and human health. Although we thought the Legislative Rule-Making Review Committee had approved the rule without changes during the January interims, we learned that a "hallway deal" between industry and DEP brokered by the Senate chair of the committee weakened the requirement that pit and impoundments to use impermeable synthetic liners. (See "Dirty Pool Under the Dome" on page 4 for more on how the deal went down.)

Finally, bills to address enforcement issues and funding for inspectors and that give the surface owner the right of first refusal with regard to buying the minerals under their land if taxes are delinquent may also be introduced this session.

We'll be posting regular updates on these and other issues at www.wvsoro.org throughout the remainder of the session.

Lawmakers again try to regulate gas drilling

by Lawrence Messina, *The Associated Press*
(The following is excerpted from an article published February 10, 2010.)

Charleston, W.Va. — A renewed push to drill for natural gas is pushing West Virginia lawmakers to consider new safeguards for property owners and the environment.

Bills introduced in the Senate and House this week would require that owners be notified before drilling companies with mineral rights apply for permits to build structures such as wells or pipelines on their land.

"The surface owners really have no leverage in law right now to object to or even negotiate the placement of wells, access roads and pipelines on their property," said Gary Zuckett, a lobbyist for West Virginia Citizen Action Group. "Now, they're not required to be notified until the permit has been applied for and the surveying has already been done."

The industry successfully opposed similar measures proposed during the previous two sessions. Industry lobbyists say current protections are sufficient, and the new proposals would handicap business.

"This frustrates the ability of the industry in an already heavily regulated environment," said Phil Reale, a lobbyist for the state's Independent Oil and Gas Association. "Much of what is proposed would change an entire body of real estate law that's existed in the state for 150 years and has worked."

David McMahon, a lobbyist for surface owners, said the pending bills address cases in which companies have drilled where the owners had planned to build something else — for instance, a retirement home. He said the provisions are similar to New Mexico's laws on the issue. ...

... The industry enjoyed a brief expansion in drilling before the recession took hold and natural gas prices dropped. Reale said that decline persists, and said 2009 saw 60 percent fewer wells drilled when compared to the previous year.

But Zuckett and McMahon believe the market is headed for an upswing and they question whether DEP is prepared. Regulators had told lawmakers on Tuesday that the department has 17 inspectors for 57,000 active wells. Each inspector would have to check more than a dozen a day to ensure that each well gets a single visit annually.

"That's why we feel this is the right time to enact these modest protections for surface owners, before the boom really takes off," Zuckett said.

Dirty Pool Under the Dome

by Donald S. Garvin, Jr., WV Environmental Council
(WVEC) Legislative Coordinator, dsgjr@aol.com

In the first issue of WVEC's Legislative Update, we reported to you that DEP's proposed changes to the Oil and Gas Well Rule (35CSR4) passed out of the Joint Legislative Rule-Making Review Committee "with no changes to the proposed rule."

We also mentioned that industry lobbyists were out in force, but no amendments were offered. Well, what actually happened was that we got "snookered" (to use a more polite term for what I am really feeling). Here's what happened:

While the Rule-Making Review Committee was considering other rules, the Senate Chairman of the committee, Joe Minard (D-Harrison) went out in the hall and huddled together with industry lobbyists, and DEP staff.

They made a deal in the hall to change the language in the rule that requires all oil and gas well drilling pits and impoundments to use impermeable synthetic liners. They agreed to add the following language: "except those pits and impoundments authorized by the Office, based on soil analysis from the operator."

DEP agreed to this new language, so a committee amendment would not need to be offered (it's the agency's rule, so they can simply agree to a "modification").

When the full committee deliberated on the oil and gas rule, committee staff explained that the rule had been modified because a previous rule on marking gas pipelines at coalmine sites had to be combined with the new rule covering impoundments.

Committee members – and those of us in the audience – were never told that there was an additional modification, or what was in that modification.

Senator Minard made a motion to vote on the rule "as modified," and the committee approved it unanimously.

Delegate Bonnie Brown (D-Kanawha), the House chair of the Joint Legislative Rule-Making Review Committee, was not aware that a deal had been cut in the hallway and never saw the modified language.

Senator Herb Snyder (D-Jefferson), the Senate vice-chair of the Committee, was not aware that a

deal had been cut in the hallway and never saw the modified language.

In fact, no one on the committee, other than Senator Minard, knew that a deal had been cut in the hallway and what the modified language was. Certainly, we didn't know. I and other members of the WVEC lobby team were sitting right there, along with Julie Archer from WV-SORO. The public was never told that a deal had been cut in the hallway and never saw the modified language.

Last week the Senate Judiciary Committee took up the oil and gas rule and an amendment by Senator Clark Barnes (R-Randolph) was adopted that tightened up the modified language somewhat. As it stands now, the rule reads, "All pits and impoundments shall have an impermeable synthetic liner to prevent seepage or leakage, except those pits and impoundments deemed to be suitable to prevent seepage or leakage based on soil analysis from the operator and standards developed and certified by a registered professional engineer and approved by the Office."

And as it stands now, it is no longer mandatory under the rule that all pits and impoundments use synthetic liners, as originally proposed by DEP's Office of Oil and Gas.

This is absolutely the worst breach of the legislative process I have witnessed in the years I have lobbied for WVEC.

I am totally disgusted. And there are still almost five weeks of the Session remaining.

(Editor's Note: This is a slightly revised version of Don's article, which originally appeared in the February 5, 2010 edition of the WVEC's *GREEN Legislative Update*. Don's article prompted Ken Ward to post about it at *the Charleston Gazette's* Sustained Outrage blog and Erica Peterson did a story for West Virginia Public Broadcasting. We have links to these at www.wvsoro.org.

The rule is now before the House Judiciary Committee. Please contact committee members and ask them to require that all pits and impoundments be lined, without exception. Urge them to strengthen the rule to make it more protective of the environment and human health. See page 5 for a list of members and contact information.)

Summary of the 2010 Oil and Gas Surface Owners' Rights Recognition Act (HB 4408 and SB 529)

- Requires drillers to give 10 days notice to the surface owners before coming on to the land to start planning a well site and access road(s). This notice must include an offer to meet with the surface owner and copies of all applicable statutes and rules regarding permitting, soil erosion and sediment control, and damage compensation.

- Requires the driller to negotiate a "surface use and compensation agreement" with the landowner before the driller applies for the well work permit. The agreement would set out the location of the well site and associated access road(s), impoundments, pits and pipelines, and how these will be built, maintained and reclaimed. The agreement would also specify proposed financial compensation for damages

- If the driller and surface owner reach an agreement, drilling can begin almost immediately. However, if the driller does not plan ahead, the most the permitting process can be delayed is 30 days.

- If the surface owner and driller cannot come to an agreement, the driller must post an individual bond for the well to ensure efforts are made to pay damages, rather than placing the well under the blanket bond that covers the driller's other wells. The driller can place the well under its blanket bond when the surface damages are settled, or after two years, whichever comes first.

- Failure by the operator to comply with the preceding requirements allows the surface owner to recover three times their actual damages or \$200, whichever is greater.

- Gives DEP the authority to deny a permit if the operator is in violation of an existing permit or rule, even if an inspector has not had time to write an official "violation" yet. (The Office of Oil and Gas has only 17 inspectors who must cover more than 57,000 existing wells. Meanwhile, the state is issuing anywhere from 1,000 to 3,000 new permits a year.)

- Requires the future location of pipelines to be shown on the reclamation plan, in addition to the well site and access road(s).

- Requires soil erosion and sediment control plans for both plugging and drilling permits. Current law does not require soil erosion and sediment control plans for permits to plug wells.

- Requires the operator of existing wells to notify the surface owner by phone, mail or personal visit any time before coming out to the land for any purpose other than crossing it to get to other surface land. The surface owner can waive this requirement in a written agreement.

House Judiciary Committee Members

Del. Tim Miley (D-Harrison), Chair ~ (304) 340-3252

Del. Mark Hunt (D-Kanawha) (304) 340-3392

Del. Larry Barker (D-Boone) (304) 340-3149

Del. Bonnie Brown (D-Kanawha) (304) 340-3106

Del. Mike Caputo (D-Marion) (304) 340-3249

Del. John Ellem (R-Wood) (304) 340-3394

Del. Michael Ferro (D-Marshall) (304) 340-3111

Del. Barbara Fleischauer (D-Monongalia)

(304) 340-3169

Del. John Frazier (D-Mercer) (304) 340-3396

Del. Bill Hamilton (R-Upshur) (304) 340-3167

Del. Tal Hutchins (D-Ohio) (304) 340-3270

Del. Patrick Lane (R-Kanawha) (304) 340-3275

Del. Linda Longstreth (D-Marion) (304) 340-3124

Del. Harold Michael (D-Hardy) (304) 340-3340

Del. Cliff Moore (D-McDowell) (304) 340-3189

Del. John Overington (R-Berkeley) (304) 340-3148

Del. Mike Ross (D-Randolph) (304) 340-3145

Del. Robert Schadler (R-Mineral) (304) 340-3191

Del. Patti Schoen (R-Putnam) (304) 340-3141

Del. Alex Shook (D-Monongalia) (304) 340-3173

Del. Doug Skaff (D-Kanawha) (304) 340-3362

Del. Kelli Sobonya (R-Cabell) (304) 340-3175

Del. Sally Susman (D-Raleigh) (304) 340-3183

Del. Danny Wells (D-Kanawha) (304) 340-3287

Del. Bill Wooton (D-Raleigh) (304) 340-3164

Does the WV Farm Bureau Leadership Support Surface Owners' Rights?

by Julie Archer, julie@wvsoro.org

Following the introduction of the Surface Owners' Rights Recognition Act, WV-SORO sent out a press release about the bill and what we hope to accomplish this legislative session. At the end of the release, we mentioned other organizations that have expressed support for or that have a policy statement supporting surface owners' rights legislation to show that there is broad support for ensuring the rights of West Virginia landowners are recognized and respected by oil and gas well drillers. One of the organizations mentioned was the WV Farm Bureau. However, as we were going to press, we received a call from the Farm Bureau asking us for a retraction.

Our release did not say that the Farm Bureau had endorsed the Surface Owners' Rights Recognition Act. It simply said:

"Surface owners' rights also has the support of the WV AFL-CIO, the WV Council of Churches, the WV Environmental Council and the WV Farm Bureau."

Perhaps our release could have been clearer and we should have started the sentence as follows:

"Although they have not endorsed a specific bill, surface owners' rights..."

But isn't this just splitting hairs?

The Farm Bureau does in fact have a written policy statement (Policy #100) supporting private property and surface owners' rights with regard to oil and gas drilling. As WV-SORO and Farm Bureau member Rich Niehaus wrote in our last newsletter, this statement was unanimously approved by over 200 voting member delegates who attended the Farm Bureau's annual meeting in Flatwoods last fall. This and other Farm Bureau policies were developed through a "grassroots" process that began with recommendations from individual members at the county level.

Rich wrote in his article, *"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."*

We have no doubt that the WV Farm Bureau's

grassroots members, especially those of you who are also members of WV-SORO, support us on this issue. But what about the Farm Bureau leadership?

If you are a WV Farm Bureau member, please contact the leadership in Buckhannon at 1-800-398-4630. Ask them to clarify their position on surface owners' rights and ask them what they are doing in Charleston to protect and further those rights.

Perhaps they objected more to being mentioned along with other groups with which they may disagree on other issues, rather than with the substance of the release. However, we should be able to put differences aside, when we agree, and work together for the common good.

Governor Manchin to IOGA: "Call me if you don't think you're being treated right."

Last month, Governor Joe Manchin was quoted in the Charleston Daily Mail telling the attendees of the Independent Oil and Gas Association's (IOGA) winter meeting, "We want you to do well. Call me if you don't think you're being treated right. I want to make sure 'retail government' works for you."

We already knew that the governor previously tried to push through a bill that would have bailed out gas companies guilty of defrauding thousands of West Virginians on their royalty payments. Now he seems to be offering the industry his support to continue to let it do as it pleases. You can read the entire article here -- Manchin says state is 'partner.'

The fact the governor sees state government as a "partner" to the industry is a big part of the problem. If you resent this "open for business" attitude, contact Governor Manchin and your legislators and let them know how you've been treated. Let them know that the rights and interests of West Virginia surface owners' need to be protected -- not just those of big oil and gas. Tell them to support and pass legislation this year to ensure that surface owners' rights are recognized and respected by oil and gas well drillers. You can call legislators toll-free at 1-877-565-3447 or visit www.wvsoro.org for other ways to contact your legislators. To write or call the Governor's office:

The Honorable Governor Joe Manchin
1900 Kanawha Blvd East
Charleston, WV 25305
(304) 558-2000 or call toll-free: 1-888-438-2731
e-mail: governor@wv.gov

EPA Announces “Eyes on Drilling”

Tipline

(from an EPA Press Release, January 27, 2010)

Philadelphia, Pa. – The U.S. Environmental Protection Agency today announced the creation of the “Eyes on Drilling” tipline for citizens to report non-emergency suspicious activity related to oil and natural gas development.

The agency is asking citizens to call 1-877-919-4EPA (toll free) if they observe what appears to be illegal disposal of wastes or other suspicious activity. Anyone may also send reports by email to eyesondrilling@epa.gov. Citizens may provide tips anonymously if they don’t want to identify themselves.

In the event of an emergency, such as a spill or release of hazardous material, including oil, to the environment, citizens are advised to call the National Response Center at 1-800-424-8802.

Public concern about the environmental impacts of oil and natural gas drilling has increased in recent months, particularly regarding development of the Marcellus Shale formation where a significant amount of activity is occurring. While EPA doesn’t grant permits for oil and gas drilling operations, there are EPA regulations, which may apply to the storage of petroleum products and drilling fluids. The agency is also very concerned about the proper disposal of waste products, and protecting air and water resources.

EPA wants to get a better understanding of what people are experiencing and observing as a result of these drilling activities. The information collected may also be useful in investigating industry practices.

The agency is also counting on concerned citizens to report unusual or suspicious activity related to drilling operations.

EPA is asking citizens to report the location, time and date of such activity, as well as the materials, equipment and vehicles involved and any observable environmental impacts.

Tipline Instructions

Tip line number (toll free):

877-919-4372 (877-919-4EPA)

Tip email address: eyesondrilling@epa.gov

Tip mailing address: EPA Region 3
1650 Arch Street (3CEOO)
Philadelphia, PA 19103-2029

Documenting Suspicious Activity

To the extent possible, record:

- Location of the event
- Date of the event
- Time of the event

- Who, if anyone you interacted with during the event

Photos and videos are great ways to document observations. Be sure to record the date and time the photo or video was taken. Email your digital files, or mail your photographic prints, video cassettes, or CD-ROM disks to EPA using the contact information above.

When describing what you observed, include:

- Activity taking place, including description of equipment and materials involved
- Descriptions of vehicles
 - Color
 - Company name or logo
 - License plate number
 - Type of vehicle
- Destination of discharge (physical location and stream name, if known)
- Environmental impacts: discoloration, dying vegetation, dead fish or other wildlife

Thank you for reporting this information to EPA.

Landman Report Card Website Launched: A Resource to Support Citizens Negotiating with Big Energy

A Landman Report Card website (www.landmanreportcard.com) has been launched by MIT's Center for Future Civic Media where researchers develop novel technologies for communities. The Landman Report Card is an easy-to-use web-based resource that helps landowners learn and share information about landmen for companies that are approaching them to sign oil and gas leases.

Landman Report Card allows users to submit reports about individual landmen and their companies, browse report cards submitted by other users, contact other users, and use the site as their own private diary of interactions with these industry representatives. The site also provides links to information about best practices for land professionals, information about the gas leasing process, and information to help landowners prepare for a visit from a landman.

Landman Report Card was produced in collaboration with WV-SORO, and other citizens' alliances in Colorado, New Mexico, Texas, New York, Pennsylvania, and Ohio as well as EARTHWORKS/Oil and Gas Accountability Project.



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