

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

Prepared February 8, 2011

Provision Needed!	In D.E.P. bill? (S.B. 424 - H.B. 3042)	In Interim bill? (S.B. 258 - H.B.2878)
<p>1. Scope. -A bill needs passed with improvements in the law for the new Marcellus/horizontal wells that have large well pads, or use millions of gallons of frac water and generate large amounts of return frac water and other waste. -Improvements also need to be made in the laws governing conventional wells.</p>	<p>-Some improvements for all wells. -Most provisions apply to horizontal. -Better reclamation plan requirements only apply to if 5+ acres. Should be 3+. -Trigger for water management plan is good at 210,000 gal.</p>	<p>New article applies only to Marcellus Shale, horizontal wells, and 210,000 gallon frac jobs!</p>
<p>2. Increase funding from permit fees and general revenue to have more D.E.P. inspectors and other staff.</p>	<p>-New \$10,000 permit fee for horizontal wells only. -No general revenue.</p>	<p>-\$15,000 for permit; -\$10,000 for modification; -\$5,000 annual. -No general revenue.</p>
<p>3. Require advance notice to surface owners of seismic activity on or around their land.</p>	<p>Yes.</p>	<p>No.</p>
<p>4. PRE-survey notice to surface owners of driller's plans for building roads and drilling wells on them.</p>	<p>Notice of entry 3 to 45 days before surveyor.</p>	<p>-Notice of entry 15 days before on land evaluation. -Notice of all planned activities on surface, and proposed compensation, before permit filed.</p>
<p>5. PRE-surveying notification to include copies of Soil Erosion and Sediment Control Manual, Surface Damage Compensation Act, and permitting statutes.</p>	<p>No.</p>	<p>Only references to, and not copies of, documents.</p>
<p>6. Incentives for driller to work with the surface owner <u>before</u> preparing permit application in order to plan surface use that recognizes surface owner's existing uses and rights.</p>	<p>No.</p>	<p>-Faster permit if agreed/mediated surface use and compensation agreement. -Extra bond to post if no agreement.</p>

7. Publication notice to public of horizontal well drilling permit applications.	Not in DEP bill.	Not in Interim bill.
8. Notice to surface owner before driller's actual entry on to land (since permits are good for two years and many permits never get drilled at all.)	Yes. 2 to 7 days.	No.
9. Improvements to procedures and standards for surface owners damage compensation act . Example: Under current law, surface owner only gets current use value of land, not the market value of the value of the site to the driller.	Minimal – Surface owner to get stumpage value for trees.	None.
10. Water well testing expanded . Currently drillers are only required to test water wells etc. 1000 feet of where gas well enters the ground, but horizontal well legs go 4000 feet or longer. Currently they test for drilling fluids, not fracturing fluids.	No.	Distance and test parameters improved.
11. Require driller to have water management plan (including sources and volumes, disclosure of additives for drilling and fracturing, transportation and disposal plans) with limits on withdrawals during periods of low flow. None of this is now required by statute.	-Yes. -Also requires 48 hour's notice, and signage at location of withdrawal.	Yes
12. Establish new general environmental protection standards for surface and air.	Yes.	No.
13. Authorize denial or conditioning of permit for damages to publicly owned lands , natural landmarks, habitats of rare or endangered species or communities, historical and archeological sites.	No. Public lands comment removed.	Yes.
14. Impose <u>temporary</u> moratorium on drilling through karst formations until potential problems can be studied.	No.	No.
15. Expand current requirement that well location cannot be closer than 200 feet to a water well or dwelling.	-Adds requirement that gas well must be 100 feet away from any surface water. -Adds requirement that a dwelling must be occupied for distance requirement to apply.	-Horizontal wells must be 1000 feet from water well or building, with variance possible. -Horizontal wells must be 100 feet from surface waters. -Horizontal wells must be 2500 away from a surface water public water supply, and 1000 feet from groundwater source – with waivers
16. Require well site emergency services safety plan to be submitted.	Yes in DEP bill.	Not in Interim bill.
17. Clarify D.E.P. authority for regulation of air emissions from gas wells, tanks, etc. That is now not occurring at all.	Only requires plans for fugitive particulates	No.

18. Improvements in well site reclamation . (Note that D.E.P. is rewriting its Soil Erosion and Sediment Control Manual.)	-Must be planned by registered professional engineer.	No.
19. Construction etc. requirements for new, huge frac water impoundments . (Currently no authority for safety etc. regulations of impoundments that are not on the well sites.)	Certificate of approval required. Registered professional engineer must sign off on construction plans.	Dual liner and leak protection systems for impoundments.
20. New reclamation requirements needed for the new centralized sites/pads with multiple well pads .	If multiple well site, must reclaim within 6 months unless new well started.	No change in 6 month requirement.
21. Increase inspection requirements for gas well casing/cementing that are essential to protecting groundwater.	No.	Yes
22. Prohibit burial of pit waste on surface owners.	No. (Does say to stabilize; use impervious materials, if necessary; assure leachate will not degrade surface or groundwater below water quality standards.)	No
23. If burial is allowed, require markers for where pit waste was buried?	No	No.
24. Expand presumption of water well contamination or loss from current 1000 feet to include pollution from horizontals.	No	2500 feet from horizontal.
25. Water supply replacement requirements articulated/expanded.	Yes	Yes
26. Start requiring surface reclamation plan for permit to plug a well.	Yes	No.
27. Improve bonding requirements to prevent wells from being orphaned and unplugged . (Current blanket bond provisions allow bonding amounts of \$25 or less per well for large drillers.)	None!	Yes. \$25,000 bond for new horizontal wells.
28. Add surface owner representative on Shallow Gas Well Review Board, and on deep well Oil and Gas Conservation Commission.	Yes.	No.
29. Eliminate Oil and Gas Inspector Examining Board which puts industry in hiring and firing process; and eliminate requirements that inspectors have industry employment history; and provide for hiring etc. of inspectors the same way all other DEP inspectors are hired.	Yes in DEP bill	Not in Interim Bill
30. Modernize enforcement procedures to match other enforcement regimes in agency. Examples: State should be able to issue cessation order in dangerous situations without having to	Yes.	No.

find what the violation was that caused the situation. State should be able to issue an administrative fine without first going to Circuit Court.		
31. Increase penalties for violations from current \$2,500 civil and \$5,000 criminal.	-UP to \$10,000 civil plus State's attorney fees; -Up to \$10,000 criminal.	-Up to \$10,000 civil; -Up to \$20,000 criminal.
32. Authorize permit blocking of companies who have not fixed roads/complied with DOH requirements.	No mention	Yes
33. Improvements to prevent operator who is permit blocked for not following law, from operating under different corporate shell .	Yes.	No.
34. Make all appeals of agency actions to Environmental Quality Board.	No.	Yes.
35. Local jobs for local workers /Apprenticeships and training/Workplace safety	No.	No.
36. Some industry wants forced pooling for horizontal wells , to which we say IF and ONLY if done right.	-Provisions included that are NOT good. -Drillers can force new huge horizontal well sites on fee and surface owners. -Does not ensure that the unleased/forced mineral owner is paid what a lessee would get if there was a lease. -Unclaimed funds in escrow go to State instead of surface owner. -Eliminates well spacing for some vertical Marcellus wells!	No provisions.
37. Preserve local zoning, land use and safety laws.	No change to existing law.	Yes.
38. Notice to municipal and other water supplies of spills in streams.	No.	No.

Prepared for the West Virginia Environmental Council and the West Virginia Surface Owners' Rights Organization

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ComparisonChartMarcellusBills2011-02-09.wpd