



House Committee Holds Hearing on Marcellus Shale Drilling

by Julie Archer, julie@wvsoro.org

On Thursday, February 17, 2011, more than 100 people from across the state packed the House Chamber to urge lawmakers to pass tougher regulations for Marcellus Shale and other gas well drilling. The House Judiciary Committee held the hearing to seek input on two comprehensive bills (HB 2878 & HB 3024) being considered.

Marcellus Shale development is resulting in what can only be described as “the industrialization of rural West Virginia.” Because our oil and gas drilling laws have not been updated in nearly 30 years, this new boom in drilling (and the new technologies associated with it) is largely unregulated. There are also many problems with conventional gas well drilling that need to be addressed.

We greatly appreciate all the folks who traveled to Charleston to share their personal stories and concerns and to show their support. They include SORO members Roberta Fowlkes, Grace & Tom Lynch, George Monk & Molly Schaffnit, Elizabeth Mow, Paul Phillips, Nancy Powers and Eleanor Sporth. *(There were so many people in attendance who share our interests. My apologies to any other SORO members who I may not have recognized and failed to mention. Please let me know if you were there.)* Thanks also to those of you who sent comments to share with the committee. Many of these comments were read by volunteers, and all were submitted to the committee for its consideration.

Special thanks go to Steve Conlon, Bill Hughes, Ed Wade, Marty Whiteman and Sara Wood, who came from Wetzel County to talk about how their lives have been affected by Marcellus Shale drilling.

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Wetzel County resident Sara Wood talks to a reporter after the public hearing. She says natural gas drilling around her home is making her 4-year-old son extremely sick.

Legislature Fails to Address Drilling

Concerns by Julie Archer, julie@wvsoro.org

With two comprehensive bills to consider - one drafted from DEP after a year-long review of its oil and gas regulatory program and another proposed by a legislative study committee that had been hearing presentations from various stakeholders for more than two years - we were optimistic that 2011 would be the year the legislature would take action to protect our land and water resources from destructive drilling practices and give surface owners more say when the minerals beneath their land are developed. However, after 60 days, legislators failed to pass a bill and there is plenty of blame to go around.

First, industry backers in the Senate were allowed to rewrite and weaken DEP's proposal (SB 424). A subcommittee of the Senate Energy, Industry and Mining (EIM) Committee consisting of Senator Doug Facemire (D-Braxton), EIM Committee Chair Mike Green (D-Raleigh), and Senator Karen Facemyer (R-Jackson) amended the bill so that its scope was severely limited. The

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House Committee Holds Hearing

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Marty, a farmer and surface owner, told committee members that some of his farmland, including his best hay meadows, had been rendered useless by gas companies.

"When the gas companies came in, they told us we would not be affected at all, that this would be a minor inconvenience. It's been devastation. I'm the sacrificial lamb when it comes to all this," he said. "I thought this was America. I thought when you bought a piece of property, you actually did own it."

Marty's daughter, Sara, spoke of how her 4-year old son was the first one to notice a foul odor coming from one of the gas wells near their home last August. Shortly after that, their house became engulfed in a cloud of toxic gas. Several other families nearby complained about strong odors, vapors and health problems.

Air quality is a major issue in Wetzel and other counties experiencing heavy drilling activity. Many of the processes involved with this development release nitrogen oxide (NOx), volatile organic compounds (VOCs) and other potentially harmful substances into the air. However, DEP claims to have no authority to regulate emissions from gas well sites. Unfortunately, this issue was not addressed in either of the bills being considered during the session.

After the hearing, Sara told a reporter with WCHS-TV, "I'm tired of bathing my son in [our] water and him breaking out in rashes." She says natural gas drilling around her Wetzel County home is making her son extremely sick. "We don't drink our water. We don't know if it's polluted or not, but we're not going to take the chance," she said. You can watch and listen to Sara's interview at http://www.wchstv.com/newsroom/eyewitness/110217_4333.shtml.

Special thanks also to Spencer Wooddell, who talked about how high levels of methane had been discovered in several water supplies on his family farm since drilling began nearby. One drilling site is right on the Wooddell's property line, about 200 feet from one of their water wells and a natural spring. However, some of the affected water sources are as far as 2,400 feet from the well site. Currently, drillers are only required to do pre-drilling tests for water wells and some springs within 1,000 feet of where a gas well enters the ground. The bill that died on the last night of the session would have required the operator to conduct a pre-drilling test of water supplies, upon

written request "by any landowner residing within 5,500 feet of a proposed gas well using hydraulic fracturing." Had the bill passed, testing parameters would have been expanded to include chemicals or chemical compounds commonly used in hydraulic fracturing.

An industrial spill at the same site polluted the Wooddell's land. The spill was not reported to the DEP until the Wooddell's mechanic noticed lime on their property and hay bales leading from their fence line up to the site. You can read more about it at:

http://switchboard.nrdc.org/blogs/amall/west_virginia_a_spill_not_repo.html.

Turnout for the hearing was great and was well covered by the media. You can read more at www.wvsoro.org and view the video from the hearing at www.youtube.com/user/wvsoro.

Legislature Fails to Address Drilling Concerns

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amended bill drastically cut the permit fees requested by DEP, leaving the agency with a \$500,000 gap in funding for current staffing levels.

Then on the floor, the Senate narrowly defeated an amendment offered by Senator Clark Barnes (R-Randolph) to revise problematic hiring practices for oil and gas inspectors. Presently, the foxes are hiring the foxes to guard the hen house. Although the bill was not as strong as we would have liked, to its credit, the Senate passed the bill unanimously.

A House Judiciary subcommittee strengthened the original House bill (HB 2878), briefly making it almost too good to be true. Unfortunately, many of the changes adopted by the subcommittee were not in the final version of the bill advanced by the full Judiciary Committee, although it still included several good provisions. After the Senate passed its version of the bill, the House Judiciary Committee replaced the language in SB 424 with the language from HB 2878. However, efforts by industry's delegate, Delegate Sam Cann (D-Harrison), to delay consideration of the bill, along with inexplicable actions taken by House Speaker Rick Thompson (D-Wayne), caused it to die on the last night of the session.

Because of the lack of action taken by the legislature, WV-SORO, the WV Environmental Council and others, urged Acting Governor Earl Ray Tomblin to call a special session to address the environmental and other concerns related Marcellus Shale and other gas well drilling.

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Legislature Fails to Address Drilling Concerns

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Tomblin has not totally ruled out a special session, but said he believes there is too much of a divide between the House and Senate and is unwilling to call lawmakers into a special session until he is confident they can reach an agreement. We don't think there is as much of a divide as he and others are suggesting, and the good news is that Speaker Thompson and Acting Senate President Jeff Kessler (D-Marshall) agree on the need for a special session. We must continue to pressure Tomblin to give lawmakers the opportunity to work out the differences, sooner rather than later.

We can't go another year without increased regulation. There are only 15 inspectors for 59,000 active gas wells and our laws have not kept pace with technological advances. Thus, the DEP's ability to protect citizens and the environment from the threats natural gas development poses to human health and our land, air and water is extremely limited.

Surface owners have been waiting more than 4 years for legislation to keep drillers from covertly entering their property and surveying for well sites and access roads without notifying landowners first and involving them in the planning process. For Marcellus Shale operations in particular, we are concerned about the close proximity to people's homes – especially given their duration, and air, noise, light and other pollution from the sites. In addition, there is a potential for serious accidents. The Northern Panhandle has experienced three major fires and explosions in the past 18 months and current law allows gas wells to be drilled within 200 feet of people's homes.

The current system isn't working! We need a special session to address the environmental and other concerns related Marcellus Shale and other gas well drilling.

The failure of the Legislature to pass an effective and responsible bill to help regulate Marcellus Shale drilling, despite enormous public support for increased regulation, has resulted in several legislators requesting that the DEP stop issuing new permits until proper regulations are in place. The bipartisan group of legislators making this request also called for a special session to work out the differences between the House and Senate versions of the legislation that died. Please help us support their efforts.

If you haven't already - please call, e-mail or write Governor Tomblin and send a copy to Acting Senate President Kessler and House Speaker Thompson saying:

Dear Governor Tomblin:

I am disappointed that the Legislature was unable to reach any agreement on legislation to regulate Marcellus Shale gas drilling. It is important that you stop issuing new permits until regulations are in place to protect property owners and the environment and to ensure proper enforcement and inspector staffing. It is unacceptable that West Virginians were not heard during the 2011 Legislative Session when asking for protection from destructive gas drilling that is happening all over the state. Please call a special session to address environmental and other concerns related Marcellus Shale and other gas well drilling.

You can contact Governor Tomblin at:

Phone: (304) 558-2000 or 888-438-2731

E-Mail: governor@wv.gov

OR

Governor Earl Ray Tomblin
State Capitol, Building 1
1900 Kanawha Blvd East
Charleston, WV 25305

You can contact Senate President Kessler at:

Phone: (304) 357-7801

E-Mail: jeff.kessler@wvsenate.gov

OR

Senator Jeff Kessler
Room 227M, Building 1
State Capitol Complex
Charleston, WV 25305

You can contact House Speaker Thompson at:

Phone: (304) 340-3210

E-mail: Speaker.Thompson@frontier.com

OR

Delegate Rick Thompson
Room 228M, Building 1
State Capitol Complex
Charleston, WV 25305

Please see pages 9 & 10 for more legislative news.



Graphic by WV-SORO member Barbara Grigg.

Water Testing Before Drilling Starts: Why and How

by George Monk, gmonk@citynet.net
& Dave McMahon, wv david@wv david.net

It is becoming more and more evident that testing of a well or spring water source, especially a household/drinking water source, is an absolute necessity before a natural gas well is drilled in one's area. This is called baseline testing and the lab results form the basis of determining later if nearby drilling caused a change in water quality. If you later find that your water has been affected and there was no baseline test, it is still possible to establish that your water was affected by the driller, but it is much more difficult. If you have refused the driller's test (if your well or spring is within 1,000 feet of a proposed or existing gas well) or do not have one of your own done, then you can count on the driller to say that your water was bad before they drilled.

Contaminated water is a serious issue. Pollution can include carcinogens like arsenic or benzene and a host of other chemicals not even examined in these laboratory tests. For example, methane in home water supplies has caused home explosions, and the state does require analysis of methane. However, in Pennsylvania, USGS researchers found elevated levels of barium and arsenic in methane migrations from gas wells to private drinking water supplies, which are not on the state's list of testing parameters.

The State requires drillers to offer to do some testing, but it is limited. Drillers are only required to offer to test "any wells or springs located within one thousand 1,000 feet of the proposed gas well that is actually utilized by such owner or occupant for human consumption, domestic animals, or other general use." If you are within 1,000 feet, make sure the driller knows what wells or springs are nearby and utilized by you. If you are more than 1,000 feet away and you want them to do testing, you should request the test by contacting the driller through a certified return receipt letter. This way the driller will be more likely to respond to your request.

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Wheeling Jesuit Students Create Water Safety Plan for Drilling Communities

*(excerpts from WV Public Broadcasting story
by Keri Brown)*

Drilling for gas in the underground Marcellus shale is a growing industry in West Virginia, but some residents are concerned about what environmental effects the drilling may have, including on water supplies.

A group of biology students at Wheeling Jesuit University (WJU) have created a plan to help people learn about their water quality.

Biology professor at Wheeling Jesuit University, Ben Stout monitors waterways and conducts research on coal slurry, but lately he's focused his attention on another major industry: natural gas drilling. ...

...Stout said the water mixture [used in the process of hydraulic fracturing] contains sand and toxic chemicals including benzene, arsenic and barium. He said the waste can end up in wells, springs and local waterways. That's why Stout challenged some of his biology students to come up with a way to help people test the quality of their tap water.

"The first step is everyday, you need to test your water for conductivity. Conductivity is the ability of water to conduct an electrical current and the more dissolved salts in your water, the better it conducts so what we are seeing with Marcellus shale produced water is extremely high conductivities, off the scale of anything that you would normally see in your well or spring," said Stout.

The conductivity measurement is part of a three step [safety plan] that the students created. ...

...[Their] one page handout includes web links to other resources and companies that sell affordable test kits to further analyze water samples. After establishing background water quality conditions, Stout said people also need to be vigilant about recording the color, smell and odor of their water in a notebook each day. ...

...Stout said people need to be proactive.

"A lot of the constituents, especially heavy metals that are of primary water quality concern, in other words primary drinking water standards are colorless, odorless and tasteless and they need to protect themselves and not expect other people to protect them so you need to take the bull by the horns, take these three simple steps protect yourself and your family," said Stout.

[For WJU's recommendations for protecting your drinking water, see page 6.]

Water Testing Before Drilling Starts

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Drillers do their testing according to a list of criteria furnished by the DEP Office of Oil and Gas (see below). These criteria do not include heavy metals. (The EPA recommends home water supplies be tested for chloride, sodium, barium and strontium when there are gas drilling operations nearby.)

Nor do the state's criteria include all types of contamination that can occur. While it is impossible to test for everything, the state's criteria are perhaps more limited than they should be. Drillers will sometimes test for a wider range of constituents than the state requires, but usually not. Again, if you want them to test for more than is required, you can ask the driller to do a more extensive test.

Office of Oil and Gas' Required Testing Criteria
pH
Iron
Total Dissolved Solids (TDS)
Chloride
Detergents (MBAS)
Methane
Coliform Bacteria

See <http://water.epa.gov/drink/contaminants/index.cfm> for allowable concentrations of these contaminants in drinking water.

Concerned home owners who want a more extensive baseline test, as well as those whose wells are outside the 1,000 foot limit, must have to fend for themselves. They have to search out a laboratory, determine what constituents should be tested for, and pay for the work.

One option is to hire an environmental firm to do the work of collecting the samples and doing the testing (some internally and some using independent commercial labs), as well as an analysis of and report on the test results. Some of these firms are listed on our website. This can be expensive for the ordinary farm owner, but it is the best idea if you end up in court after a driller ruins your water.

Another alternative is to contact an independent water testing laboratory on the State's list of approved water testing labs (the list is available at http://www.dep.wv.gov/WWE/Programs/lab/Documents/Commercial%20labs%20Official%20list%20as%20of%2011_04_10.pdf) and ask them to collect samples

for you. They usually charge mileage and an hourly rate. This is less expensive than the full service given by an environmental firm, but is better than collecting the samples yourself. This option can still be expensive.

A third option is to collect samples yourself using your own bottles, or bottles provided by a laboratory, and taking them to the laboratory yourself. This is the least expensive way to go.

If you collect the samples yourself, you need to do some things so your samples will be admissible in court later, if necessary. To make your samples admissible and believable to a jury, it is important to show a "chain of custody" so you can prove that your sample was taken and tested without being tampered with. (Contact us or visit www.wvsoro.org for more information on how to collect a water sample.)

Even if you have limited means and probably couldn't afford a lawyer if a problem arises, it is a good idea to know what's going on with your water. The DEP may accept your test results and make the driller fix your water.

Testing for every possible contaminant is not necessary. To find out if something has gone wrong during drilling or fracturing, a limited list of constituents to test for can be created. We feel that the following constituents should be analyzed: chloride, arsenic, barium, iron, lead, magnesium, and sodium. Labs will charge from about \$75 to \$100 for this type of work if you collect the sample. (See <http://water.epa.gov/drink/contaminants/index.cfm> for allowable concentrations of these contaminants in drinking water.)

A second group of constituents called BTEX should be analyzed, if you can afford it. These are benzene, toluene, ethylbenzene and xylenes. Labs will charge from about \$75 to \$100 for this group of tests if you collect the sample. The state has strict standards for the allowable concentration of these chemicals in water, as does the EPA. (See link in previous paragraph.)

The final constituent is methane and it will cost a further \$75 or more for this test if you collect the sample. Not all labs can test for methane in water. REIC Laboratories in the southern part of the state or Pace Laboratories for the northern part of the state can do this test.

The barebones metals and chloride test will often indicate if something bad has happened, but testing for BTEX and methane is more comprehensive.

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Water Testing Before Drilling Starts

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Discoloration, bad taste or odor, or fizzing of water are all indications that a nearby gas well is causing problems. Of course, if something bad happens and another round of tests are required, complain to the DEP Office of Oil and Gas and they will usually make the driller do a second, more thorough, round of tests. Again, you may want to do your own tests at this point if you can afford it.

In conclusion, baseline testing should be considered by those living near drilling activity. If testing wasn't done previously and your water has changed, it is still worthwhile to have laboratory analysis. A neighbor's baseline test or water testing when the well was drilled might prove to be a useful comparison.

For more information on water testing, visit www.wvsoro.org or contact us at 1-866-WVB-FAIR or info@wvsoro.org. If there is a problem with your drinking water, contact the Office of Oil and Gas at (304) 926-0499 and notify WV-SORO.

WJU Recommendations for Protecting a Well or Spring

Step 1: *Test you water daily with a conductivity pen.* Conductivity is a measure of the ability of water to conduct an electrical current and changes in conductivity reflect changing water quality conditions. Check the conductivity of your household water supply once daily at relatively the same time each day and record the results in a notebook. Conductivity pens can be used to monitor your well water. They cost anywhere from \$80-150.

Step 2: *Establish background water quality conditions of your well water.* Conductivity measures how much material is dissolved in the water; however, it does not identify what the 'material(s)' are. To determine this, you can order kits from an EPA certified lab. Using the kit, collect samples of your well water and send them back to the lab. The lab will send a detailed evaluation of your existing well water conditions. Keep these results for your records.

Step 3: *Write it down, be vigilant and create a record for your well.* Record the characteristics of your water in your conductivity notebook. Include the color (i.e. clear, milky, brown), taste (i.e. no

taste, bitter, salty), and odor (i.e. no odor, sulfur smell) of your water. Some chemicals that are toxic do not have any odor, taste or smell. There may be a period of time between when your well goes bad and when you notice any change, and consuming the water during that period could harm your health. This is why measuring the conductivity daily is important. If you notice a significant change in the conductivity of your water then stop consuming it immediately and send a sample to an EPA certified lab as in Step 2.

The full "Protect Yourself" handout is available at <http://www.wvpbmedia.com/news/2011/ProtectYourself.pdf>. You may also contact SORO to request a copy.

2010 People's Oil and Gas Summit Makes Resources Available for Citizens Dealing with Oil and Gas Development

In November, more than 240 people from 26 states and 1 Canadian province gathered in Pittsburgh, PA to hear presentations and participate in panel discussions about oil and gas impacts, toxics associated with drilling activities, how natural gas fits into the climate change debate, and how to protect themselves and their communities.

Sponsored by the Earthworks Oil and Gas Accountability Project and 40 state and local organizations from across the country (including WV-SORO), the Summit brought together activists and advocates from across the country in an effort to build bridges between communities that have been dealing with oil and gas issues for decades and those facing the drilling boom for the first time.

Featured speakers and presenters included: Lois Gibbs – environmental justice advocate, Love Canal activist, Executive Director, Center for Health, Environment and Justice; Wes Wilson – EPA Whistle-blower; Wilma Subra – MacArthur Genius Award Winner, chemist, environmental advocate, President of Subra Company; Dr. Conrad Volz - Center for Health Environment and Communities, University of Pittsburgh; Josh Fox – "GASLAND" filmmaker; Chris Cziksentsmihalyi – Director, MIT Center for Future Civic Media; and activists and

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2010 People's Oil and Gas Summit

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citizens affected by oil and gas drilling. WV-SORO co-founder Dave McMahon was a panelist in a session on options available to landowners and mineral owners related to leasing, surface use agreements, pipelines and forced pooling.

A complete list of speakers, including links to speaker presentations and additional information related to the various panels, is available at <http://earthworksaction.org/2010SummitAgenda.cfm>.

Pipeline Right-of-Ways: Guide Available on Points to Consider When Deciding Whether or Not to Sign

WV-SORO now has a general guide and checklist available on points landowners should consider when deciding whether to sign a pipeline right-of-way agreement, as well as, what provisions to negotiate into the agreement and what you should be paid for signing.

The effects of signing a pipeline agreement are much more important and long lasting than any consumer contract except perhaps a mortgage. However, unlike consumer sales contracts and loan papers that contain language regulated by consumer protection laws, the language in right-of-way agreements is not controlled by any law. So surface owners need to take steps to protect themselves and be much more careful when they are signing a pipeline agreement than they might be when they sign other documents in their role as consumers.

The guide and checklist is specifically about natural gas pipelines. Generally, natural gas pipelines fall into three broad categories. First, there are gathering pipelines that gather the gas from a well or collection of wells for the producer(s). Second, there are transmission pipelines that take the gas to the utilities that sell it to the public and businesses. Finally, there are distribution pipelines that gas utilities use to supply the gas to consumers and businesses. This guide is about the first two types of pipelines – gathering pipelines and transmission pipelines – and the agreements companies try to get landowners to sign to give them permission to put these types of pipelines across the landowners' property. These are agreements for pipelines that will be gathering or moving gas that did not come from beneath the surface owners' land. (The guide is not about pipeline agreements that are included in lease agreements.)

Please keep in mind that this is a general guide and checklist and is not intended as legal advice in any one

person's situation, although it was written by a lawyer. If you are unsure whether your situation requires legal advice, ask an attorney. Finally, it is highly recommended that if you negotiate a right-of-way agreement on your own, with or without the advice of a lawyer, that you have a lawyer look over the final language before you sign.

Visit www.wvsoro.org to download a copy of the guide (under "Advice for Common Situations" click on "Pipelines" and select "What Land/Surface Owners Should Know When a Landman Shows Up...") or contact us at 1-866-WVB-FAIR or info@wvsoro.org to request a copy.

A gas company wants me to sign an amendment to an old lease. Should I sign?

by David McMahon, wvdavid@wvdavid.net

Note: This article is for people who own both the surface and all or part of the minerals beneath their land. If you only own the minerals and not the surface, then you will have fewer or perhaps different considerations in deciding whether to sign a lease amendment. You should consult a lawyer or other resource before signing, however this article was NOT written for you.

Even though you own the surface and the minerals, it may be that one of the previous owners leased to an oil or gas company many years ago. Although the lease was signed many years ago, the lease may still be in effect if a gas well or wells are still producing oil and gas from your mineral tract. This is called "held by production." (If you are still receiving significant royalty checks, this is the case.) However, you may be receiving smaller "shut in" checks. Despite those checks, you may be able to establish that the lease has ended and get the company to give you a new lease with a signing bonus and a better royalty. This does not happen very often. Start investigating by finding out how much production is occurring from the wells on your land. Ask the entity paying you the royalties for the API number(s) of the well(s). Then go to the DEP Office of Oil and Gas website and look for the wells under "Database Information" to see what production the company is reporting.

Even if an old lease is still in effect, the use of modern horizontal gas well drilling techniques almost always requires "pooling and unitization." In order

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A gas company wants me to sign an amendment to an old lease. *(continued from page 7)*

for your tract to be “unitized” with other mineral tracts for the drilling of one of these wells, the lease has to have a “pooling and unitization” provision in it. Many old leases do not have these provisions. If the current lease for your property does not have a “pooling and unitization” provision, the current owner of the lease will want an “amendment” to the old lease so they can drill one of these wells.

Horizontal wells use large volumes of water for hydraulic fracturing and are a huge intrusion on your land. The well site is much larger, the amount of time the driller is there is much longer, and the number of vehicles needed to transport water, equipment and other supplies to and from the site is much greater. It is our position that a driller cannot put one of these sites on your surface to drain neighboring mineral tracts without your permission. This is good. However, if there is already a lease for your property, and if the lease contains a pooling and unitization provision, then that provision would allow one of these new sites to be placed on your surface.

If you do not want one of these sites on your property, do not sign the amendment that would add a “pooling and unitization” provision to the lease.

There is a tradeoff, of course. The landman will say that by refusing to sign the amendment, you will be giving up substantial royalties. It is true that if you refuse to sign, you will be giving up the right to receive royalties IF the oil or gas company actually drills a well. Also, if you do not sign, they may drill a horizontal well near your property and drain gas from under your property. So, it is your decision. If you decide you are willing to risk having one of these new well sites on your land in order to get the royalties, then you should see a lawyer first to get advice regarding what language you should and should not agree to.

You may be able to hold off signing and still have a well drilled to your minerals, but without using your property. This would be unusual as, most of the time, oil and gas companies approach people with these amendments without having decided exactly where they want to put their horizontal well sites. The companies are simply trying to get amendments to all of their old leases to give themselves more options.

However, the landman may come to you with the company already knowing where they want to put their well site. If the well site is not on your property (if the company is only going to drill horizontally from another

surface tract and then underneath your land in order to drill into your minerals), then the company might be willing to agree to an amendment with a “no surface use” provision. A “no surface use” provision means that the oil or gas company could still “unitize” your minerals and you would get royalties if they drill the well. However, they would not put the well site on your land. (However, there might be a well site near you or on a neighbor's land, and you, or they, might not like that.) This situation would likely be the exception rather than the rule.

So, if you know that you do not want to risk a horizontal well site on your property, no matter what you might be giving up in terms of royalties, then you should tell the landman that you will only sign an amendment with a “pooling and unitization” provision, if it also has a “no surface use” provision. Tell him he should contact you when they know where the well sites will be located, if they do not need a well site on your land.

Be aware that refusing to sign the amendment could mean that oil and gas companies will never try to drill a well to your minerals. Instead, they may drill in places where they have signed amendments from others, or they may be content to drill as close to you as possible to drain gas from the edges of your property.

The ultimate choice of whether to sign the amendment or not is yours. Weigh the risks and rewards, determining what is important to you.

Student Seeks Participation in Survey on Effects of Marcellus Shale Development

Joanna Gallagher, an undergraduate at Salford University in Manchester (England) working toward a degree in Environmental Health is gathering information for her dissertation on the environmental impacts of shale gas extraction in America and its possible implications for Europe. Joanna hopes to get a better understanding of the problems experienced by those people directly effected by the extraction process and has designed a brief questionnaire to be completed by people who currently live in natural gas drilling areas, or who are involved with the industry. Participation is voluntary and any information provided will be completely confidential. In order to view or complete the questionnaire, please visit <https://spreadsheets.google.com/viewform?formkey=dER5T0xGMi1wYjFmMkdCeG9OS3VLQVE6MQ>.

For more information, please contact Joanna directly at j.k.gallagher@edu.salford.ac.uk.

Delegates Call for Moratorium on New Marcellus Permits

Despite enormous public support, the legislature failed to pass an effective and responsible bill to help regulate Marcellus Shale drilling. This led several legislators to call for a moratorium on new drilling permits until regulations are in place to protect property owners and the environment and to ensure adequate staffing and enforcement.

On March 18, 2011, more than 20 members of the House of Delegates sent a letter to DEP Secretary Randy Huffman requesting that he use his emergency powers to stop issuing new permits until the drilling industry is properly regulated.

West Virginia's drilling laws have not been updated in more than 30 years and have not kept up with new technologies being used to develop the Marcellus Shale. These technologies, which include horizontal drilling and hydraulic fracturing, cause an exponential increase in surface disturbance, water use and waste disposal. In addition to Marcellus Shale drilling, there are many problems with the drilling and plugging of conventional wells that also need to be addressed. Currently, the DEP only has 15 inspectors to oversee 59,000 active gas wells. The DEP has already issued over 900 permits for drilling in the Marcellus Shale.

Several of the legislators, who requested that the DEP stop issuing new permits until proper regulations are in place, are among those who worked the hardest to pass a strong comprehensive bill. At a legislatures' press conference, Delegate Mike Manypenny (D-Taylor) said, "No one wants to put a stranglehold on the oil and gas industry." However, he and the other delegates (Democrat and Republican) see a moratorium on new Marcellus permits as the only logical course of action. Like WV-SORO, these delegates recognize the opportunities for economic development and jobs, and the income potential for mineral owners, as well as state coffers, but want Marcellus Shale development to be done responsibly.

The delegates who signed the request are: Delegates Anthony Barill (D. Monongalia), Larry Barker (D-Boone), Bonnie Brown (D-Kanawha), Ray Canterbury (R-Greenbrier) John Doyle (D-Jefferson), Barbara Evans Fleischauer (D-Monongalia), Nancy Guthrie (D-Kanawha), Bobbie Hatfield (D-Kanawha), Linda Longstreth (D-Marion), Virginia Mahan (D-Summers), Mike Manypenny (D-Taylor), Dale Martin (D-Putnam), Clif Moore (D-McDowell), Don Perdue

(D-Wayne), Dan Poling (D-Wood), Mary Poling (D-Barbour), Ruth Rowan (R-Hampshire), Roger Romine (R-Tyler), Pete Sigler (R-Nicholas), Rick Snuffer (R-Raleigh), Margaret Staggers (D-Fayette), Joe Talbott (D-Webster), and Danny Wells (D-Kanawha).

The Good Things That Never Came to Be

Here's a brief summary of some of the important provisions in the bill that died on the last night of the legislative session.

- Required all new oil and gas leases to have language advising the signer to consult with an attorney.
- A pre-survey notice from the driller to surface owners that:
 - applies to ALL new wells, not just to horizontal wells
 - is 30 days in advance of entry to survey
 - requires the driller to offer to meet with the surface owner
- Abolished the Oil and Gas Inspector Examining Board to allow the Secretary of D.E.P. to hire these inspectors, rather than allowing the foxes to hire the foxes to guard the henhouse.
- Required horizontal wells to be 1,000 feet from occupied dwellings and water wells unless the owner consents, or unless a variance (with conditions) is granted.
- Required horizontal wells to be 100 feet from a watercourse, pond, or wetland.
- Required horizontal wells to be more than 1,000 feet upstream of a surface public water supply, and more than 1,000 feet from groundwater public water supply.
- Allowed the state to deny or condition a horizontal well permit based on impacts to parks, rare habitats, historical sites or bodies of water.
- Required an inspection of horizontal wells during each phase of cementing, completing and altering before the company could proceed to the next phase.
- Expanded water well testing near horizontal wells from 1,000 to 5,500 feet if requested by the well owner.

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The Good Things That Never Came to Be

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- Required frac fluid and flowback monitoring for horizontal wells and required the results to be reported to the DEP.

- Given DEP rulemaking authority and required that the agency study and report back to the Legislature on the following issues of concern related to horizontal drilling:
 - worker and resident safety from environmental and other adverse impacts
 - safety of pits and impoundments
 - air pollution and air quality impacts
 - permitting and inspection activities
 - waste disposal
 - drilling in karst formations
 - funding and permitting fees

- Required the driller for all wells to pay the surface owner twice the value of timber cut (to compensate for loss of future use) and to leave the cut timber for the surface owner.

What About Forced Pooling?

By far the most complex and controversial provisions in the various oil and gas regulatory bills introduced this legislative session dealt with forced pooling. Forced pooling provisions were initially proposed in a bill drafted by an interim study committee; however, these provisions were amended out before the committee advanced the bill (HB 2878 & SB 258) to the full legislature for its consideration. Early drafts of the DEP bill excluded forced pooling, but the version of the bill that was introduced (HB 3024 & SB 424) contained forced pooling provisions.

Because some in the industry want forced pooling, these provisions were considered by many to be their “carrot.” WV-SORO and some of our friends in the legislature assumed that the political reality was such that forced pooling provisions would need to be included in any bill increasing regulation of oil and gas drilling in order to overcome industry opposition. Our strategy was to make the forced pooling provisions as protective of surface and mineral owners’ interests as possible so we wouldn’t have to sacrifice other provisions needed to protect citizens and the environment.

The drilling of multiple horizontal wells from centralized well pads has benefits for surface owners and the environment because one well site, access road and pipeline can replace more than 20 vertical well

sites. However, the devil is in the details, and adoption of forced pooling statutes, in order to make horizontal drilling from centralized pads possible in more cases, is a good idea IF AND ONLY IF the statute offers proper protections for all interested parties and IF the statute is part of a variety of other reforms needed to protect surface owners and the environment.

If it's done right, forced pooling and unitization (or well spacing and royalty sharing) for all gas wells, whether they are “shallow,” “deep” or horizontal, is a fairer and a more economically efficient way of producing resources that are not confined to boundaries of an individual driller’s or mineral owner’s property (or rights). It keeps unnecessary wells from being drilled on the surface and ensures that mineral owners whose gas is currently being legally stolen (under the “Rule of Capture”) are compensated.

The provisions in DEP’s proposed bill were NOT good. They would have allowed drillers to force huge horizontal well sites on fee and surface owners and eliminate well spacing for some vertical Marcellus wells. They also failed to ensure that unleased/forced mineral owners are paid what a lessee would get.

At one point, a House Judiciary subcommittee was crafting a committee substitute for HB 2878 that combined parts of both the interim and DEP proposals, with some changes. Initially, the subcommittee considered including forced pooling provisions. WV-SORO’s Dave McMahon was involved in negotiations over these provisions, which were a significant improvement over those initially proposed in the DEP bill. Among other things, the subcommittee considered language that would have expressly prohibited the construction of well sites on the surface of forced tracts without the surface owner’s consent. However, the bill advanced by the subcommittee, and later approved by the full Judiciary Committee, did not include forced pooling provisions. The forced pooling provisions were also removed from the version of the DEP bill (SB 424) passed by the Senate, and were not included in the amended version of the bill that died in the House on the last night.

Although both the House and the Senate ended up taking the forced pooling provisions out of their bills, forced pooling continues to be desired by some factions within the industry, so we expect legislators

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Hampshire County Commission Establishes Marcellus Advisory Committee

by Michael Hasty, Hampshire County Independent Network, hampshireindependent@gmail.com

At its regularly scheduled meeting on February 8th, the Hampshire County Commission adopted a resolution establishing the Hampshire County Marcellus Shale Natural Gas Advisory Committee. Its purpose is to advise the County Commission and to educate county citizens about the potential benefits and dangers of new technologies for extracting natural gas in the Marcellus shale region.

The advisory committee was modeled on a similar committee established last year by the government of Garrett County MD, across the Potomac River from Hampshire County. As in other parts of West Virginia, the Potomac Highlands region is experiencing the beginnings of a boom in natural gas production, as the state seeks another base industry to fill the vacuum that a declining coal industry will leave behind.

However, the dangers and uncertainties that “fracking” (the relatively new technologies of horizontal drilling and the process of hydraulic fracture) introduce to the region have alarmed the public. This is especially true in the wake of last summer’s BP disaster. Many people no longer believe that industry can be trusted to regulate itself.

This is especially true in regard to the fracking process, which uses millions of gallons of water combined with chemicals and sand. This mixture is injected underground at high pressure, in order to fracture the shale and release the trapped gas. The contents of this mixture is kept secret from the public, due to an exemption in the federal Safe Drinking Water Act known as the “Halliburton loophole”. This exemption is named for the corporation that pioneered the fracking process.

A number of other counties in the region have expressed an interest in forming committees similar to those in Hampshire and Garrett. Much is unknown about the consequences of the new technologies, as well as a general lack of trust at the county level that state and federal governments will do the right thing.

The Hampshire County Marcellus Committee has a mandate to educate county citizens about Marcellus issues. Committee members will serve in an ongoing advisory capacity as long as the county commission feels their services are needed.

The committee held its first meeting in March.

Lewisburg City Council Says Drilling Regulations Inadequate *(excerpts from a*

Beckley Register-Herald article by Tina Alvey)

State regulations pertaining to the development of the Marcellus shale gas reserves are inadequate, according to a resolution that Lewisburg City Council voted Tuesday evening to send to legislators and the acting governor.

In the resolution, city officials expressed their concerns about the lack of protection afforded the state’s water resources, particularly the Greenbrier River watershed, which is the source of water for Lewisburg’s regional system, serving 4,732 customers.

“State regulations do not adequately regulate the amount of water that can be withdrawn from aquifers and public bodies of water by Marcellus shale development companies in West Virginia,” the resolution reads.

Reference is also made to “contamination from liquid byproducts of hydraulic fracking technologies being released into public bodies of water.”

The resolution points to a lack of funding for adequate numbers of inspectors at the state Department of Environmental Protection (DEP) to monitor the Marcellus developers ... [and] ... calls for the governor to call a special session of the legislature to address the regulatory issue in a timely fashion and to declare a moratorium on horizontal drilling permits in the Marcellus shale until adequate regulations protecting water supplies are in place.

Acting Gov. Earl Ray Tomblin has shown no inclination to convene a special session on the Marcellus issue, instead calling on legislators to find more money in the budget to hire additional DEP inspectors and instructing DEP Secretary Randy Huffman to formulate new regulations within the department.

In a related matter, the council approved the second and final reading of an ordinance prohibiting “locating, drilling, equipping or producing of any oil and gas” in any district within the city limits.

Editor’s note: The Hampshire County and Lewisburg resolutions are available at www.wvsoro.org.

What About Forced Pooling?

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will revisit this issue during their monthly interim meetings. We’ll continue to keep you posted. In the meantime, please visit www.wvsoro.org for more information.



WV Surface Owners' Rights Organization
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Charleston, WV 25311
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Final Thanks and More...

Although the Legislature failed to pass a bill to regulate Marcellus Shale and other gas well drilling, we would be remiss if we did not acknowledge the work of the House Judiciary Committee. Committee members, and in particular the members of the subcommittee appointed by Judiciary Chairman Tim Miley (D-Harrison), spent numerous hours and worked extremely hard to draft a strong, comprehensive bill. It was a bipartisan effort, with both Democrats and Republicans offering amendments to strengthen the bill, briefly making it almost too good to be true.

Chairman Miley, and members of this subcommittee especially, deserve our thanks and gratitude for their work and leadership on this issue. Subcommittee members were Delegates John Frazier (D-Mercer), - Chair, Larry Barker (D-Boone), Mike Caputo (D-Marion), John Ellem (R-Wood), Michael Ferro (D-Marshall), Bill Hamilton (R-Upshur), Woody Ireland (R-Ritchie), (Barbara Evans Fleischauer (D-Monongalia), Patrick Lane (R-Kanawha), Linda Longstreth (D-Marion), Mike Manypenny (D-Taylor), Harold Michael (D-Hardy), Carol Miller (R-Cabell)

and John Pino (D-Fayette). Delegate Tim Manchin (D-Marion) also served as a non-voting member of the subcommittee.

Unfortunately, the Legislature adjourned without passing a bill to protect our land and water resources from destructive drilling practices and to give surface owners more say when the minerals beneath their land are developed. However, we'll all keep fighting for the land we own and love. Please keep reading for more details, including actions you can take to help us build on the momentum gained this session.

In addition to legislative updates, this edition of *Surface Owners' News* also contains useful advice on getting your water tested before drilling and whether or not to sign lease amendments and pipeline right-of-way agreements, as well as local community news. (Send YOUR community news to julie@wvsoro.org for the next newsletter.)

Thanks for being a concerned and informed landowner and actively working to protect our beautiful Mountain State!