

WVDEP Holds Workshop on Compliance with New Horizontal Gas Well Law

February 21, 2012 by [Jennifer Hicks](#)

To remain in compliance with the newly enacted Natural Gas Horizontal Well Control Act, W. Va. Code § 22-6A-1 *et seq.* (2011), operators must now be aware of the law's vast number of new requirements. These include increased permit fees, increased bond amounts, and a long list of required well plans and notices, among others. Though the West Virginia Department of Environmental Protection (WVDEP) may be somewhat flexible during this time of transition, the statute became effective as of December 14, 2011, and operators must alter their permitting activity accordingly.¹

On February 1, 2012, the WVDEP, through its Office of Oil and Gas (the "OO&G"), held an informal workshop for oil and gas operators to provide guidance on the new law. The OO&G plans to distribute a compilation of statutory interpretations discussed during the workshop to serve as the agency's official policy. In addition to this informal policy making, the Act requires the agency to promulgate detailed regulations. Thus, while operators must conform to the new statutory requirements, as it stands this regulatory scheme is less than complete.

Companies operating under blanket bonds should be particularly aware of the possible forfeiture of their bonds. The blanket bond amount increased from \$50,000 to \$250,000, and *all blanket bonds covering a horizontal well, including those bonded prior to the effective date of the Act, must be replaced with the increased blanket bond.* Any operator not in compliance with this new bond requirement will be notified by the Secretary, and if the blanket bond is not replaced within 60 days of receipt of notice, the prior blanket bond will be *forfeited*. Individual well bonds also increased from \$5,000 per well to \$50,000 per well; however, individual wells that were bonded prior to the effective date of the Act are exempt from this increase.

Operators must also be careful to thoroughly comply with the many new procedural requirements. For example, operators are now required to provide public notice, as well as various notices to surface owners, and mineral owners and lessees including notice prior to conducting seismic activity, notice prior to entry for plat surveys, notice of intent to drill, notice of planned operation, notice of application, and notice of well work or site preparation. Importantly, notice requirements often begin long before the permit application is filed.

The Act also institutes many set-back provisions, including distance requirements for drinking water wells and springs, dwellings (including certain poultry and cattle dwellings), perennial streams, native trout streams, lakes, ponds, wetlands, groundwater intakes, and public water supplies. Please note, however, that these distance requirements apply only to new well *pads*. If at least one well on the pad was permitted or had an application on file prior to December 14, 2011, then the distance restrictions do not apply to subsequent wells drilled on the pad. In addition to set-back requirements, all drinking water wells within 1500 feet of a water supply well must be flow tested and quality tested upon request.

Among the many required well plans are Water Management Plans which cover water withdrawals, uses, and disposal. Importantly, the specifications set forth in the Water Management Plan will become enforceable as permit conditions. For example, operators must designate a maximum pumping rate for all water withdrawals. Once approved, this condition will require a permit modification in order to be revised. In addition, the Water Use Section of WVDEP will assess each proposed water intake location and provide a reference

gauge location and discharge flow reading which must be surpassed in order to withdraw water. Importantly, even where an operator chooses to purchase water from a Public Service District or other seller, the operator, and not the seller, will be responsible for ceasing withdrawal of water when flows are less than the minimum gauge reading listed in the Water Management Plan. Thus, the statute does not shift liability from the operator, even where the operator is purchasing water withdrawn by another entity. Also of note, the Water Management Plan electronic worksheet requires applicants to check a box indicating whether the operator is registered on the Frac Water Reporting Website. If an operator checks no, the Water Use Section will contact the operator and require it to register prior to processing the application. Operators that use 750,000 gallons of water or more to hydrofrac a well, must report water use through the Frac Water Reporting Website.

The OO&G will be looking closely at other water issues as well. While neither the Clean Water Act § 404 or floodplain issues are directly regulated by the WVDEP, the OO&G will be taking a close look at whether well permit applications implicate these issues. Due to the lag time in § 404 permitting and the stringent well permit conditions required where a well is located in a floodplain, the OO&G urged operators to contact the United States Army Corps of Engineers or the Floodplain Coordinator at the West Virginia Division of Homeland Security and Emergency Management to discuss anticipated issues *prior* to filing a well permit application.

Also, all drill cuttings and associated drilling mud must be transported to and disposed of in an approved solid waste facility. With surface owner consent, and Secretary approval, drill cuttings and mud *may* be managed onsite; however, the OO&G cautioned that Secretary approval will not be given liberally and will require thorough planning and communication with the agency. The Act also allows operators to permit centralized fresh water impoundments separately from individual wells. Operators can utilize this permitting process to formulate a plan that allows a central impoundment to be used for several well sites. This centralized impoundment will not be directly associated with the individual well permits and will have its own reclamation requirements and timeframe. Centralized impoundments will require individual plans and notices; however, some plans can be re-used for other well permit applications.

These are only a few of the many new permitting requirements that natural gas well operators using horizontal drilling must be familiar with for purposes of obtaining permits for new wells. As indicated, several of these requirements necessitate substantial advance planning before a well permit application is filed, and it will be to the permit applicant's benefit to approach WVDEP early in that process as the manner of implementing these requirements becomes better understood.

(1) On August 22, 2011, the WVDEP, as directed by Governor Earl Ray Tomblin in Executive Order No. 4-11, filed an emergency rule for horizontal drilling. To the extent there is no conflict with the Natural Gas Horizontal Well Control Act the emergency rule still applies.