

Natural Gas Horizontal Well Control Act

W. Va. Code § 22-6A

Frequently Asked Questions

PERMITTING

Q1: When submitting a list of frac additives with Water Management Plans, do we need to be exact?

A1: Yes, operators need to submit chemical names and CAS # to the Office of Oil & Gas (“OOG”). Operators are also required to submit an actual list of additives and their percentages used with the WR-35 report of well work on forms provided by OOG or submitted in FracFocus format.

Q2: Are operators “locked in” to disposing of all cuttings on horizontal 6A wells in an approved solid waste facility?

A2: 22-6A-8(g)(2) With respect to disposal of cuttings at the well site, all drill cuttings and associated drilling mud generated from horizontal well sites shall be disposed of in an approved solid waste facility or if the surface owner consents, the drill cuttings and associated drilling mud may be managed on-site in a manner approved by the secretary.

Q3: Are there offset spacing requirements for agricultural structures under 2500 square feet?

A3: No, only if it is 2500 square feet or larger.

Q4: Under 22-6A-7(c)2 & (d), if an operator gets a permit to drill a well on an existing pad (pre-22-6A) is a professional engineer (“PE”) certification required for all work previously completed? Or does PE certification only become required for new pads?

A4. If existing, no certification will be required on construction plans unless there is additional acreage disturbed, E&S Plans should bear the seal of a registered PE.

Q5: How can a PE certify work that has already taken place on a pad that was built prior to Emergency Rule and was not required to have PE certified plans?

A5. If pad is existing, no certification will be required on construction plans but all E&S plans should be certified by a registered PE.

Q6: If a location falls within a floodplain what is the next step?

A6: Operators should check with county floodplain coordinators for all of their locations and obtain permits if needed. Please go to the following website for the county floodplain managers:
<http://www.dhsem.wv.gov/mitigation/floodplain/Pages/default.aspx>

Q7: Have the parameters for water well testing changed?

A7: No

Q8: Where wetlands are involved, may an operator submit a letter with the permit application that they are talking with the Army Corps of Engineers regarding the wetlands?

A8: In regard to 22-6A-12 (well location restrictions), the well work permit application may be submitted to the OOG with documentation indicating an application to the United States Army Corps of Engineers (“USACE”) has been submitted or is being prepared to submit. The well work permit application if issued will be conditioned to require the applicant to have obtained the appropriate USACE permit(s) prior to beginning work.

Q9: If a water well is used for livestock only do we need to consider it for well restrictions?

A9: Yes

WATER MANAGEMENT PLANS (“WMP”)

Q10: When preparing a WMP and one of the sources will be water reused from a pad that hasn’t been developed yet, how do we identify it as a source?

A10: The WMP should have a letter accompanying it explaining the situation and DWWM will try to resolve this issue.

Q11: Does a multi-site impoundment qualify as a “Large Quantity User?”

A11: Yes

Q12: What changes to a WMP are considered permit modifications?

A12: Modifications to a WMP include pump rate and source changes; if a date range has changed we request the operator contact DWWM and we will determine whether the permit should be modified on a case by case basis.

Q13: Are POTWs a valid source for water use?

A13: Yes

NOTICE

Q14: Do the surface owners above the lateral need to be noticed for the plat survey?

A14: No, only the surface owner where the top hole is surveyed.

Q15: If we have applied for a permit already, do we need to reapply using the new forms?

A15: No, we will accept the forms you have completed but you will have to notice all the required parties with all of the required notices as the legislation dictates.

Q16: Does the signed green card serve as the only proof of notice for Certified Mail?

A16: No, the post-marked Certified Mail receipt serves as proof of notice for Certified Mail. In addition, any receipt that proves notice was sent in a means that requires a signature will serve as long as it is dated with the date sent.

Q17: Is it required for coal owners and/or lessees without declaration to be noticed?

A17: Operators are required to notice coal owners, lessees with declarations on file and operators with maps on file for application.

Q18: Do any of the notices trigger a public meeting?

A18: No

Q19: On the right to entry, and for that matter all notices, what if the surface, mineral, coal owners change between wells?

A19. Notice must be served per well.

Q20: Do modifications require a public notice?

A20. No

Q21: Regarding Public Notice, is an affidavit of publication required?

A21. An affidavit of publications or a copy of the ad with the date it was posted will serve as proof of public notice.

BONDING

Q22: Do you have to maintain both a \$50,000 blanket bond for conventional wells and a \$250,000 blanket bond for horizontal 6A wells?

A23: No, the \$250,000 blanket bond will cover both conventional and wells that fall within the new legislation.

PITS AND IMPOUNDMENTS

Q24. When is a PE certification required?

A24. 22-6A-9(g) states “Plans and specifications for the placement, construction, erosion and sediment control, enlargement, alteration, repair or removal and reclamation of impoundments shall be the charge of a registered professional engineer licensed to practice in West Virginia. Any plans or specifications submitted to the department shall bear the seal of a registered professional engineer.”

Q25. Should the liners and fencing be in place before filling?

A25. Yes, all E&S controls should be in place before filling.

Q26. When are inspections to take place?

A26. Inspections are required once every two weeks and reports submitted to OOG monthly. The inspections are to be kept on-site.

Q27. Is there a specific distance that a pit or impoundment not associated with a well work permit has to maintain from the well pad?

A27. No

Q28: How should the certification from the P.E. be submitted for the as-built Pit/Impoundment?

A28. Form No. IMP-3 should be filled out and submitted to OOG. The form can be found on the website: <http://www.dep.wv.gov/oil-and-gas/Impoundments/Pages/default.aspx>

Q29: What if an operator would like to submit a pit or impoundment design that is outside the standards but still follows what the statute calls for?

A29. An alternative plan that is equally protective can be considered.

Q30: Why is a WMP required for fresh water impoundments that are centralized?

A30. Under WV Code 22-6A-7, water management plans are required as part of a well work permit application to ensure adequate protections of waters of the state. Specifically for surface water withdrawals, the protections should assist to ensure that a sufficient pass by flow is maintained and that the withdrawal methods will minimize adverse impacts to aquatic life. As they are integral to the operation of the activity associated with individual well work permit applications, centralized impoundments, also need to have a water management plan. The very purpose of the centralized impoundment is to serve as the water source for the activities covered under multiple well work permits. The operations associated with “sourcing” the centralized impoundment and consequently the water protections needed, are the same as those associated with an impoundment on a well site that is covered under a specific well work permit.

SITE RESTRICTIONS

Q31: What constitutes “occupied” related to offset spacing from occupied dwellings?

A31: The 625’ offset from “occupied” dwellings refers to those dwellings that are being lived in or are capable of being lived in or are being constructed for the purpose of being lived in.

Q32: Is distance measured from center of pad or LOD for streams, lakes, ponds, reservoirs, wetlands, native trout streams?

A32. Distance is measured from the limit of disturbance including control features.

Q33: As far as large volume pits and impoundments are concerned, do we measure from center of impoundment, side of impoundment, or LOD to perennial streams?

A33. Distance is measured from the limit of disturbance including control features.

RECLAMATION

Q34: Does the new reclamation (under 22-6A) requirements apply to existing pads that were built or permitted prior to December 14, 2011? For example: Pad built in 2010, horizontal well #1 drilled, can a subsequent well #2 be drilled within 24 months to extend reclamation? Or does the 6 month rule apply in 22-6?

A34: If a well (Well #1) permitted under W. Va. Code § 22-6 has been partially reclaimed and the operator files for a new permit (Well #2) under W. Va. Code § 22-6A on the same pad as Well #1 within the six (6) month reclamation period for Well #1, then Well #1's permit life/reclamation requirement then attaches to the permit life of the 22-6A permitted Well #2. However, within six months after the completion of the final horizontal well on the pad or the expiration of the five-year maximum aggregate partial reclamation period (which began at the beginning of constructing the well pad), whichever occurs first, the operator shall complete final reclamation of the well pad as set forth in this subsection.

GENERAL QUESTIONS

Q35: The Emergency Rule has specific details that were not included in the new legislation, is the Emergency Rule still in effect?

A35: Yes

Q36. Is a wellbore schematic required?

A36. 22-6A-7(b) "Every permit application filed under this section shall be on a form as may be prescribed by the secretary, shall be verified and shall contain the following information...(5) "The approximate total depth to which the well is to be drilled or deepened, or the actual depth if the well has been drilled; the proposed angle and direction of the well; the actual depth or the approximate depth at which the well is to be drilled, deviates from vertical, the angle and direction of the nonvertical well bore until the well reaches its total target depth or its actual final depth and the length and direction of any actual or proposed horizontal lateral or well bore..." A detailed wellbore schematic could be used to satisfy this requirement.

Q37: What is the definition of a "Developed Spring"?

A37. A spring that is used for human or animal consumption.

Q38: Do seismic rec plans need to be submitted and approved by OOG?

A38. No

Q39: What will be the application fee for plugging permits?

A39. There is not a fee for plugging applications, but if a pit is to be utilized there will be a \$100 pit fee.

Q40. If a well site fulfills the Spill Prevention Control and Countermeasure requirements; can a Site Safety Plan, Emergency Preparedness Plan form and a Spill Prevention Control and Countermeasure form be combined into a single document?

A40. No

Q41: Is there a website for storage field maps?

A41. OOG is currently in the process of developing this information.

Q42: Who receives tax reimbursements?

A42: The surface owner where the pad is located.

Q43. Who should be identified in the Site Safety Plan's one mile radius if the location is in a densely populated area?

A43. Operators should check with the emergency response county director. An alternate plan can be reviewed accordingly.

Q44: Do re-works require a \$5,000 fee?

A44: Yes

Q45: Where in the Rule is the setback for impoundments?

A45: There are no specific setback requirements in a rule or statute. There is setback language for centralized pits in the design and construction standards for centralized pits.

Q46: Under 6A, what water wells are required to be sampled?

A46: All drinking water wells within one thousand five hundred feet (measured from the center of well pad) of a water supply well shall be flow and quality tested by the operator upon request of the drinking well owner prior to operating the water supply well.

Q47: Pertaining to 22-6A-18, how does the WVDEP want to be notified?

A47: The surface owner may file a written complaint with OOG.

Q48: What is needed for the notification? Complaint information and baseline pre-drill water testing?

A48: The written complaint should include the complainant's contact information, the operator and location of alleged incident. The written complaint may include any baseline pre-drill water testing that the complainant may possess.

Q49. As per the timetable outlined by the secretary in 22-6A-18, when does that begin?

A49: The timetables will be determined on a case by case basis at the discretion of the secretary.