

WVDEP Secretary Addresses Shale Gas Permitting Delays

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The **West Virginia Department of Environmental Protection (WVDEP)** is currently taking an average of four months to process a complete well work permit application for proposed horizontal wells to be drilled in the Marcellus Shale gas formation, according to WVDEP Secretary Randy Huffman. Huffman, who spoke on May 10, 2012, at the **West Virginia Oil and Natural Gas Association (WVONGA)** Spring Meeting, conceded that this is approximately three (3) months longer than the agency's historical review period for conventional oil and gas well permit applications. He attributed the delays to several different factors.

First, the number of applications seeking horizontal well permits has increased significantly over the last three to four years, leaving WVDEP unable to keep up and resulting in a backlog of 239 applications currently pending. This alone explains some of the need for additional manpower to keep processing times at a consistent level. Corresponding to these numbers, Huffman observed that in 2008, 2.3% of all natural gas produced in West Virginia came from horizontal wells; in 2010, 23% of West Virginia's gas production came from such wells. There are now some 516 active horizontal shale gas wells in the State that account for this 23% of natural gas production. The remaining 77% of gas produced in West Virginia comes from the approximately 50,000 conventional gas wells.

Second, since December, 2011, most of those applications have been filed under the new Natural Gas Horizontal Well Control Act, W.Va. Code Chapter 22, Article 6A ("Horizontal Well Act"). Both the enhanced application requirements for such wells and new requirements that apply to approvals for ancillary installations under that law have materially increased the review time for those applications. Furthermore, at least some of that review is necessitated by applicants who are unfamiliar with or are not carefully ensuring compliance with the law. Issues that have arisen that require further attention and can slow the process include a failure to complete all necessary notice requirements in connection with an application; the failure to confirm that a proposed location for a well pad complies with the new statute's siting restrictions; issues pertaining to drainage across access roads; the need to properly size and propose an appropriate number of drilling pits; and the specification of excessively large limits of disturbance and acreage.

Third, the WVDEP still does not have the staff that it needs to properly review such permit applications at an appropriate pace and maintain an adequate inspection force for all permitted wells. On the positive side, Huffman reported that the WVDEP has collected about \$1.15 million in application and related fees since January 1, 2012. On the negative side, the agency estimates that it needs 46 full time equivalent positions (FTE's) for the Office of Oil and Gas, but currently has only 28

FTE spots filled. At least part of the reason for the agency's difficulty in recruiting inspectors is the relatively modest yearly salary of \$35,000, which does not compare well with positions offered in industry. By all accounts, that is an issue that the Legislature needs to address with some urgency.

Finally, Secretary Huffman noted that in the midst of his agency's efforts to process a growing number of permit applications (and develop policies and proposed regulations to implement the Horizontal Well Act), the Office of Oil and Gas has been undergoing a legislative performance evaluation audit since February, 2011. Although it is a common and necessary process, working with and responding to informational requests from legislative auditors puts an additional strain on an already overworked staff at the Office of Oil and Gas.

Concluding his remarks, WVDEP Secretary Huffman noted that his agency is required to complete a total of three studies prior to July 1, 2013, with two of those studies due to the Legislature by January 1, 2013. The first is to focus on noise, light, dust and volatile organic compounds emitted into the air in connection with horizontal well drilling and consider whether the occupied dwelling setback provisions are adequate; the second must address the safety of pits and impoundments used in the industry; and the third is to assess the need for additional air pollution control rulemaking in connection with horizontal gas well sites. The WVDEP recently signed contracts with West Virginia University to prepare those studies on its behalf, and is seeking industry participants to identify sites that may be subjects of those studies. Though this apparently will not require full-time participation by Office of Oil and Gas staff, it is reasonable to assume that at least some work time will be devoted to assisting these study efforts and therefore diverted from the permitting or other regular functions of staff members.

The WVDEP has made remarkable progress since the Horizontal Well Act was enacted on December 14, 2011, developing useful application forms and guidance documents to assist both the industry and its staff in understanding and implementing the myriad new requirements that are imposed on this unique type of natural gas production. Although the necessary planning horizon will likely never be below 4 months for any Marcellus horizontal well, as those involved in the process gain additional experience with it and the WVDEP is able to hire additional staff, it is reasonable to hope that the average application review time will not grow any longer.

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