



Industry to push again for pooling in natural gas shales

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An industry push to allow pooling in natural gas-rich shale formations died in the recently concluded sessions of the state Legislature, but supporters vow to try again.

Pooling would permit the extraction of gas from an area even if some landowners object. The industry says pooling is necessary to efficiently extract gas and it claims all owners would be treated fairly.

It is controversial. Consider: Some call it "forced pooling," because mineral owners who hold out on signing a lease and owners who can't be found can be forced to participate.

On the other hand, industry portrays pooling as a good thing for everyone. Steve Roberts of the West Virginia Chamber of Commerce has described it this way: "Pooling allows the majority of landowners to benefit from gas royalties while still protecting minority interests. Pooling also protects surface owners, communities and the environment by reducing the number of wells needed to recover gas deposits."

The state chamber, which bills itself as "the voice of business in West Virginia," formed a coalition midway through the 2014 regular legislative session — "Pooling Together for West Virginia." The group also unveiled a website, www.poolingtogether.com.

The chamber argues that although the state was among the first to provide a regulatory framework for the shale gas industry, the lack of a pooling mechanism when drilling horizontal wells puts West Virginia at a competitive disadvantage.

Roberts said pooling is already allowed in West Virginia for deep wells, shallow secondary oil recovery and coal-bed methane wells.

But when it comes to horizontal drilling, an owner of 1 percent of a tract's mineral rights can thwart efforts by other owners to tap the resource.

Two trade associations — the West Virginia Oil and Natural Gas Association and the Independent Oil and Gas Association of West Virginia — represent the industry.

Corky DeMarco, executive director of the West Virginia Oil and Natural Gas Association, said small tracts are particularly common in northern West Virginia.

"To drill laterally, you'll run into unknown or 'un-locatables,' where the landowner doesn't want the property disturbed," he said. "We can deal with you by filing a partition suit. But when you file a partition suit, every single heir to a piece of property must be represented in the suit even if you may be looking for only one unlocatable heir.

"This can be an extensive and expensive process, where a pooling statute will allow you to fairly contract for a lease or bring someone in at a price that is competitive in the market and the formation," DeMarco said. "If they are unknown, the money can be escrowed.

"For example, say you want to make a lateral that's 2,000 feet long. Somebody's out there at 1,500 feet and they have a small tract and you can't get your lateral to the other side of that. You'll cut it off and in the future you'll probably sterilize that five acres and what's on the other side because you can't get to it.

"If we're going to optimize the potential we have for West Virginia and downstream manufacturing, we need to make accommodations for situations where it is in the state's and county's interest to bring all of these tracts together and drill as efficiently and effectively as we possibly can."

The Legislature provided the industry with regulatory certainty when it passed the Horizontal Well Control Act in 2011, he said. "So we've been operating with a set of rules that work."

However, "if we want to be able to capitalize and monetize the potential that this shale development can do for West Virginia," he said, "we need a statute that allows us to pool tracts."

Demarco said operators can occupy one pad and drill eight to ten wells to extract gas from 640 acres. It would require 30 to 36 traditional vertical wells to achieve the same result.

"When you have one pad you have one road in and out and one pipeline," he said. "When you have 36 wells, you have 36 roads, 36 pipelines."

The industry's pooling bill (House Bill 4558; Senate Bill 578) was introduced halfway through the regular session but never got out of the House Energy Committee.

Charlie Burd, executive director of the Independent Oil and Gas Association of West Virginia, said his organization and WVONGA would have liked to have seen the legislation advance.

"It was discussed in the House Energy Committee, but time constraints prohibited action to be taken on the bill," Burd said. "The late introduction of the bill contributed to that process."

Burd said the bill was introduced late in the session "because, quite frankly, it took longer than expected to achieve balance between the varied interests of large and small producers. In the end, we felt the bill achieved that goal."

David McMahon of the Surface Owners' Rights Organization said, "Our position has always been if it's a fair bill it would be a good thing even though some people might find it philosophically objectionable. The problem is the industry has never offered a fair bill."

McMahon said in the existing bill, the commission that would decide how much a forced owner would get paid "has no mineral owners on it. It's all government and industry people."

The bill also doesn't make sure wells aren't so close to boundary lines they drain some gas from neighboring property, he said. Furthermore, the legislation "needs to make sure units are the right distance apart or they will strand acreage," he said.

McMahon thinks the biggest controversy may focus on how to determine the amount unknown or unlocatable royalty owners should get paid.

At first the industry said it would pay the average paid to other owners. But that average is low because it is based on conventional wells, McMahon said.

"Then they said they would look at more recent leases. We think it needs to be a fair market value — what a knowledgeable person with access to the facts would pay and what a knowledgeable person with access to the facts would accept.

"They're going to people who don't understand pooling and have no idea how valuable access to their property is," he charged. "Marcellus Shale gas is worth \$85,000 an acre. Granted it might take 30 or 35 years to get that gas out. But that's what it's worth.

"People are used to vertical wells. That produced gas is worth \$8,000 an acre. It's a whole new economy out there and people need to be treated fairly."

Furthermore, McMahon said studies have shown that a decibel level over 55 will interfere with human activity.

"Studies show that in many places, using current setbacks, the decibels are much higher than that," he said. "The industry wants something but when the Horizontal Well Act was passed (in 2011), it mandated studies to help decide how far the gas wells should be set back from houses."

McMahon said the studies have been done, but nothing has been done to implement the results.

"If industry wants pooling, the owners want the results of the study to be implemented," he said. "If the Legislature is going to do something for the industry they need to do something for us, too."

Ted Streit, chairman of the Oil and Gas Committee of the West Virginia Land and Mineral Owners Association, said owners support the concept of pooling.

"What we've tried to get the industry and others to focus on is the whole concept of conservation and not just pooling," he said. "I can explain conservation fairly simply: To minimize waste and protect correlative rights of oil and gas owners.

"Minimizing waste is the proper spacing of wells so you don't leave oil and gas in the ground between two wells. Correlative rights are if you have multiple owners that a well is draining, they each get a fair share of the proceeds from that well."

Streit said that if wells are spaced too close together, "you drill too many wells; if they're spaced too far apart, you leave some gas in the middle."

The industry bill deals with getting the needed rights "but they have not dealt with the proper spacing of wells," he said. "You have to have that before pooling."

Also, the state body that will act on behalf of unknown or unlocatable owners "should negotiate on behalf of those owners as if they were an owner, not as an oil and gas operator," Streit said. "We felt there should be a standard reporting form for the royalty statements that go to property owners."

Under current law, he said, "each operator reports the way he wants to so it is sometimes difficult to figure out what's going on.

"The bill they introduced this year is better than the bill that was introduced two years ago, but we think it still has a ways to go," Streit said.

What's next?

Roberts of the chamber said, "We're at the first stages at helping to lead an education campaign about what is involved, why pooling is important, why it will help with economic development, lead to increased tax collections and job growth."

"Nobody is too surprised the bill didn't get out of committee," he said. "The idea was to get the bill introduced and under discussion, to come back after people think it through."

Burd of the Independent Oil and Gas Association of West Virginia said his organization and the West Virginia Oil and Natural Gas Association "will jointly seek to reach out to educate legislators and stakeholders on the provisions of the bill and to address questions and potential concerns with the proposed legislation.

"Unless something unusual happens, we will again introduce the legislation in the 2015 legislation session."

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