

# ADMINISTRATIVE WATCH

ADDRESSING ENVIRONMENTAL, ENERGY AND NATURAL RESOURCE ISSUES



**Babst | Calland**  
Attorneys at Law

[babstcalland.com](http://babstcalland.com)

**Pittsburgh, PA**

Two Gateway Center  
603 Starwix Street  
Sixth Floor  
Pittsburgh PA 15222  
412-394-5400  
FAX 412-394-6576

**State College, PA**

Suite 302  
330 Innovation Blvd.  
State College, PA 16803  
814-867-8055  
FAX 814-867-8051

**Charleston, WV**

United Center  
500 Virginia Street East  
Charleston, WV 25301  
681-205-8888  
FAX 681-205-8814

**Sewell, NJ**

380-A Tylers Mill Road  
Sewell, NJ 08080  
856-256-2495  
FAX 412-586-1082

## New Horizontal Well Location Restrictions and Setback Requirements in West Virginia

Oil and natural gas operators should be aware that new horizontal well location restrictions and setback requirements, that are included in the recently adopted Horizontal Well Act (the Act), may significantly affect well drilling plans in West Virginia. Any well work permit application filed with the West Virginia Department of Environmental Protection (WVDEP) that does not satisfy the new well location restrictions may be denied or in the alternative, conditionally issued with restrictions as to the location of the proposed well. To avoid having a permit denied or conditionally issued, operators must understand and properly address the following well location restrictions.

First, the Act prohibits horizontal wells from being drilled within 250 feet of any existing water well or developed spring used for human or domestic animal consumption. The Act further prohibits the center of any horizontal well pad from being located within 625 feet of any dwelling structure that is occupied or under construction, or a building that is 2,500 square feet or larger and used to house or shelter dairy cattle or poultry husbandry. It is important to note that these two restrictions are only applicable to those water supplies or buildings that actually exist on the earlier of either the date the operator provides notice to the surface owner of its entry for surveying and/or staking work, or the date the operator gave notice of its intent to drill a horizontal well. This legislative change is beneficial to operators because it prevents surface owners from constructing water wells, dwellings or structures after receiving notice from an operator as a means to obstruct or delay the development of horizontal wells.

Furthermore, it is important to note that these two restrictions can be waived by obtaining the written consent of the surface owner, or they can be modified by variance issued by the WVDEP. To be valid, any written waiver obtained from a surface owner must be recorded in the property records of the clerk of the county commission for the county in which the subject property is located. To receive a variance, an operator must submit a plan to the WVDEP that identifies sufficient measures, facilities or practices to be employed during well site construction, drilling and operation that will ensure the safety and protection of the affected persons and property. A variance, if issued, may require additional insurance, bonding and indemnification requirements, as well as added technical requirements.

Next, the Act prohibits the construction of a horizontal well pad or the drilling of a horizontal well within 100 feet from any perennial stream,

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natural or artificial lake, pond or reservoir, or a wetland. Also, no well pad or well may be placed within 300 feet of a naturally reproducing trout stream or within 1,000 feet of a surface or ground water intake of a public water supply. To calculate the distance from a public water supply, if the surface water intake is on a lake or reservoir, the 1,000-foot distance must be measured from the boundary of the lake or reservoir. If the surface water intake is on a flowing stream, the 1,000-foot distance must be measured from a semicircular radius extending upstream of the surface water intake. If the water supply is a groundwater source, the 1,000-foot distance must be measured from the wellhead or spring. Again, each of these additional setback requirements may be waived upon submission of a plan demonstrating an operator's ability to protect the waters of West Virginia during well site construction, drilling and operation.

Last, the setback requirements outlined above do not apply to any horizontal well on a multiple well pad if at least one of the wells was permitted or had an application pending prior to the effective date of the Act, December 14, 2011.

If you have any questions regarding the setback requirements or any other aspects of the West Virginia Horizontal Drilling Act, please contact Lisa Bruderly at 412-394-6495 – [lbruderly@babstcalland.com](mailto:lbruderly@babstcalland.com), Matt Casto at 681-205-8888 – [mcasto@babstcalland.com](mailto:mcasto@babstcalland.com), or Steven Green at 681-205-8888 – [sgreen@babstcalland.com](mailto:sgreen@babstcalland.com).