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Ruling in Well Spacing Case Favors W. Va. Surface Owners

West Virginia surface owners declared victory in a ruling in a case challenging state agency rulings on spacing for natural gas wells. The case, *Blue Eagle Land Company v. West Virginia Oil and Gas Conservation Commission*, was originally filed in the West Virginia Supreme Court but was sent back to circuit court. Surface owners intervened in the case, asking McDowell Circuit Court Judge Rudolph Murensky to rule that certain Marcellus Shale gas wells, those drilled more than twenty feet beyond the Marcellus Shale into the Onondaga Limestone, are statutory "deep" wells.

"Statutory "deep" wells are subject to forced well spacing which surface owners believe will result in fewer wells being drilled on surface owners to produce the same amount or perhaps even more gas," said David McMahon, the attorney who represented the West Virginia Surface Owners' Rights Organization (WV-SORO) in the suit. "There is also a requirement that statutory "deep" wells have the surface owner's consent for the well location. Unfortunately, another Circuit Court ruling said that this consent requirement does not usually apply."

In addition to ruling that the wells in question are statutory "deep" wells, the Court ruled that the administrative agency with authority over deep well spacing gave no explanation or justification for allowing the wells to be drilled within 1,000 feet of each other. The judge remanded the case back to the Oil and Gas Conservation Commission to take testimony and provide findings of fact for making a decision on how far apart the wells should be spaced.

"Surface owners are also pleased with this part of the Judge's ruling," said McMahon. "There is no justification for allowing wells to be that close together. Some real science should be applied to the Oil and Gas Conservation Commission's decision making process."

"Unfortunately, this ruling does not cover the new horizontal wells that are currently being drilled to develop the Marcellus Shale," said McMahon. "And for vertical wells, after they log the well, they plug the bottom and say it is a "shallow" well. Statutory "shallow" wells are governed by the "rule of capture" so they can be drilled as close together and as close to a boundary lines as the driller wants them, unless a coal owner objects. The "rule of capture" allows wells drilled on one landowner to produce gas lying under his neighbors without paying for it. What will help surface owners now, and just about every other party involved, is a statutory change to allow forced pooling of all horizontal wells, and all other wells too."

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