

No. 30670—*State of West Virginia ex rel. James E. Lovejoy, et al. v. Michael O. Callaghan, Secretary, West Virginia Department of Environmental Protection, et al.*

FILED

January 6, 2003

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OF WEST VIRGINIA

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January 8, 2003

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OF WEST VIRGINIA

McGraw, Justice, dissenting:

By creating the “consent and easement” provision contained in W. Va. Code 22C-9-7(b)(4) our Legislature evidenced a desire to protect the rights of surface owners and to limit the ability of operators to drill or operate “deep well[s] for the production of oil or gas.” As Justice Albright suggests in his concurring opinion, this legislation reflects a complex balancing of competing interests. The opinion quotes in footnote 12 an administrative rule that makes this consent and easement provision inapplicable to so-called “test wells.” *See*, W. Va. C.S.R. 1-4.4(a).

What concerns me is the apparent ability of an oil or gas operator to ignore the “consent and easement” provision by simply declaring any deep well it wants to drill to be a “test well” and thus free itself from the legislatively created obligation to get the written consent of the surface owner. As the majority opinion notes in footnote 8, the well in question is apparently now a production well. The Legislature has declared that operators must obtain the consent of surface owners to drill or operate a deep production well. If oil and gas operators can get a permit for a “test well” without the consent of the surface owner and then

convert that “test well” into a production well, it seems that the Legislature’s will has been ignored.

Therefore, I respectfully dissent.