MARCELLUS SHALE

Report of the Committee of Conference
House Bill 1950

OVERVIEW

Amends Title 58 Pa.C.S. (Oil and Gas) to consolidate the Oil and Gas Act (Act 223 of 1984); to establish the Natural Gas Energy Development Program; to provide for enhanced environmental protections for the development of unconventional natural gas resources; to authorize the imposition, collection and distribution of an impact fee on the development of unconventional natural gas resources and to provide for municipal ordinances and zoning standards related to oil and gas development.

SECTION 1

TITLE 58 (OIL AND GAS)

PART II
OVERSIGHT AND DEVELOPMENT

CHAPTER 23 – DRILLING IMPACT FEE

§2301 – Definitions (*key*)

- Average annual price of natural gas – *NY Mercantile Exchange price, as reported by the Wall Street Journal for the last trading day of each calendar month*
- Commission – *Public Utility Commission*
- Department – *Department of Environmental Protection*
- Fee – *unconventional gas well fee*
- Qualifying county – *county which has adopted an ordinance related to the fee*
- Qualifying municipality – *municipality which has adopted an ordinance related to the fee or is located in a qualifying county*
- Spud – *actual start of drilling*
- Stripper well – *unconventional gas well incapable of producing more than 90,000 cubic feet of gas per day*

- Unconventional formation - *geological shale formation below the base of the Elk Sandstone or its geologic equivalent where natural gas cannot be produced except by horizontal or vertical well bores stimulated by hydraulic fracture treatments*
- Unconventional gas well – *well drilled into an unconventional formation*
- Vertical gas well – *an unconventional gas well which is not intentionally deviated from its vertical linear bore*

<u>§2302 – Unconventional gas well fee</u>

- Governing body of a county with spud unconventional gas wells may elect whether to impose a fee on each unconventional gas well spud in the county
- County electing to impose fee shall pass an ordinance within 60 days of the effective date of the chapter
- Specifies the language of the county ordinance imposing the fee
- Governing bodies of municipalities may compel the imposition of the fee
- County that does not pass an ordinance imposing a fee shall be prohibited from receiving funds under the local distribution share
- Prohibition shall remain in effect until a county passes an ordinance imposing a fee
- Should a county not adopted an ordinance imposing a fee, within 60 days after the conclusion of the 60 days afforded to the county, if at least half the municipalities, or municipalities representing at least 50% of the population, of the county adopt resolutions electing to impose a fee, the fee shall be imposed
- Gas wells spud before 2011 shall be considered to have been spud in 2011 for purposes of imposing fee
- Fee shall be based upon year of well and average price of natural gas as follows:

Year	$0-2.25	$2.26-2.99	$3.00-4.99	$5-5.99	$6 or higher
1	$40,000	$45,000	$50,000	$55,000	$60,000
2	$30,000	$35,000	$40,000	$45,000	$55,000
3	$25,000	$30,000	$30,000	$40,000	$50,000
4	$10,000	$15,000	$20,000	$20,000	$20,000
5	$10,000	$15,000	$20,000	$20,000	$20,000
6	$10,000	$15,000	$20,000	$20,000	$20,000
7	$10,000	$15,000	$20,000	$20,000	$20,000
8	$10,000	$15,000	$20,000	$20,000	$20,000
9	$10,000	$15,000	$20,000	$20,000	$20,000
10	$10,000	$15,000	$20,000	$20,000	$20,000
11	$5,000	$5,000	$10,000	$10,000	$10,000
12	$5,000	$5,000	$10,000	$10,000	$10,000
13	$5,000	$5,000	$10,000	$10,000	$10,000
14	$5,000	$5,000	$10,000	$10,000	$10,000
15	$5,000	$5,000	$10,000	$10,000	$10,000

- Beginning January 1, 2013 the PUC shall annually adjust the fee to reflect any upward changes in the Consumer Price Index for all Urban Consumers for the Pennsylvania, New Jersey, Delaware and Maryland area in the preceding 12 months.
- If a well that begins paying the fee does not produce gas in quantities greater than those of a stripper well within 3 years, the fee shall be suspended.
- The fee shall be reinstated when the well produces gas in quantities greater than those of a stripper well, and resume at the previously scheduled fee amount
- Annual adjustment shall only take effect if the total number of wells spud increases from the prior year.
- Re-stimulated wells shall resume paying the first year of the fee:
    - The re-stimulation occurs following the tenth year after being spud and
    - The re-stimulation results in an increase of more than 90,000 cubic feet of gas per day
- Fee payments shall cease upon certification to DEP that the well has ceased production and been plugged.
- A vertical unconventional gas well shall pay a fee in the amount of 20% of the fee established for unconventional gas wells.
- A vertical unconventional gas well shall only pay a fee if it is producing in quantities greater than those of a stripper well.

<u>§2303 – Administration</u>

- The fee shall be due by April 1st each year, commencing in 2013.
- The fee for calendar year 2011 shall be due by September 1, 2012.
- Producer shall submit a report with fee due. Report shall include:
    - Number of spud wells in each municipality within each county that has imposed a fee
    - Date that each well was spud or ceased production
- PUC may impose an annual fee of $50 per well for costs to administer chapter.
- PUC shall estimate total expenditures to administer chapter, and subtract revenue received from $50 annual fee. PUC may assess any difference on all producers in proportion to the number of wells owned. Producers shall pay assessment within 30 days.
- By June 30th of each year, PUC shall estimate total expenditures to administer the chapter and assess producers in proportion to the number of wells owned.

§2304 – Well information

- Within 14 days of the effective date of this section, DEP shall provide the PUC, and upon request, a county, with a list of all spud unconventional gas wells that have received a drilling permit.
- The list shall be updated and provided to the PUC on a monthly basis.
- A producer subject to a fee shall notify the PUC within 30 days of the following:
    - Spudding of an unconventional gas well
    - Initiation of production at an unconventional gas well
    - Removal of unconventional gas well from production

§2305 – Duties of Department

- DEP shall confirm whether an applicant has paid all fees owed for an existing well prior to issuing a drilling permit
- No permit may be issued if any fees which are not in dispute have not been paid
- The PUC shall provide DEP with information necessary to determine that the applicant has paid all fees owed

§2306 – *Reserved*

§2307 – Commission

- The PUC shall have the authority to make all inquiries and determinations necessary to calculate and collect the fee imposed under this chapter
- PUC may issue a notice of amount due if not paid in full
- PUC may challenge the amount of fee paid within three years after the due date of the producer report required under this chapter
- An assessment may be made at any time if a producer fails to file a required report or files a false or fraudulent report

§2308 – Enforcement

- Interest may be assessed on any delinquent fee
- A penalty of 5% each month shall be assessed if a producer fails to file a required report, not to exceed 25% in the aggregate
- The PUC shall send a written notice of deficiency if a producer fails to make a timely payment of the fee, and provide notice to DEP
- Fines, fees, interest and penalties shall be collectible as authorized by law. Failure to pay the required fee shall be a judgment in favor of the Commonwealth.
- Commonwealth shall transmit certified copies of the judgment to the prothonotaries of the county where the property is situated.

§2309 – Enforcement orders

- The PUC may issue orders as necessary to enforce this chapter
- Producers which fail to diligently comply with a PUC order shall be guilty of contempt

§2310 – Administrative penalties

- The PUC may assess civil penalties not to exceed $2,500 per violation
- PUC shall consider the willfulness of the violation
- Each violation for each separate day and each violation of the chapter shall constitute a separate offense
- Actions must be brought by PUC within 3 years of the violation

§2311 – *Reserved*

§2312 – Recordkeeping

- Producers shall keep records, make reports and comply with PUC regulations

§2313 – Examinations

- The PUC shall:
    - Have access to books, papers and records of any producer to verify the accuracy and completeness of a report filed by a producer
    - Require the preservation of all relevant books, papers and records for up to 3 years
    - Examine any employee of a producer under oath concerning the fee or enforcement of the chapter
    - Compel the production of books, papers and records
    - Not disclose, except for official purposes, information obtained from a producer as required under the chapter

§2314 – Distribution of fee

- Creates the Unconventional Gas Well Fund within the State Treasury for the deposit of all fees imposed under this chapter.
- Funds shall be allocated as follows:
    - Conservation Districts
        - $2.5 million from 2011 fees
        - $5 million from 2012 fees
        - $7.5 million annually from fees collected thereafter

        - Amount of fees transferred shall increase by the percentage increase in the Consumer Price Index
        - Funds shall be distributed as follows:
            - 50% equally to all conservation districts
            - 50% consistent with Conservation District Law and State Conservation Commission's Conservation District Fund Allocation Program-Statement of Policy
    - Fish and Boat Commission
        - $1 million from 2011 fees and each year thereafter for the review of permit applications related to unconventional gas wells
    - Public Utility Commission
        - $1 million from 2011 fees and each year thereafter for administration of this chapter and Chapter 33 (relating to local ordinances relating to oil and gas operations)
    - Department of Environmental Protection
        - $6 million from 2011 fees and each year thereafter for administration of this act and enforcement of acts relating to clean air and clean water
    - Pennsylvania Emergency Management Agency
        - $750,000 from 2011 fees and each year thereafter for emergency response planning, training and coordination related to natural gas production from unconventional wells
    - Office of State Fire Commissioner
        - $750,000 from 2011 fees and each year thereafter for the development, delivery and sustainment of training and grant programs for first responders and the acquisition of specialized equipment for response to emergencies relating to natural gas production from unconventional wells
    - Department of Transportation
        - $1 million from 2011 fees and each year thereafter for rail freight assistance
    - Transfers to Marcellus Shale Legacy Fund for Natural Gas Energy Development Program
        - $10 million for 2011
        - $7.5 million for 2012
        - $2.5 million for 2013
- All agencies receiving funds shall submit an annual report by December 31st to the Secretary of the Budget and the Senate and House Appropriations Committees.
- Following distribution above, sixty (60%) of revenues remaining in the Fund are appropriated to qualifying counties and qualifying municipalities for authorized purposes.
- Within three months of the fee due date, the PUC shall distribute the 60% of revenues as follows:
    - Housing Affordability and Rehabilitation Enhancement Fund, as follows:
        - $2.5 million from 2011 fees
        - $5 million from 2012 fees and each year thereafter

- Funds shall be used to increase availability of quality, safe, affordable housing for low and moderate-income individuals or families and for rental assistance in counties where unconventional wells are located
- No less than 50% of funds shall be used in 5th, 6th, 7th and 8th class counties

- Counties and municipalities (*after distribution to the Housing Affordability and Rehabilitation Enhancement Fund*), as follows:
  - 36% to qualifying counties with unconventional gas wells
  - 37% to qualifying municipalities with unconventional gas wells
  - 27% to qualifying municipalities in a county with unconventional gas wells, as follows:
    - 50% to municipalities with unconventional gas wells or within five linear miles of such a municipality
    - 50% to each municipality within the county
  - Amounts allocated to a municipality shall not exceed the greater of $500,000 or 50% of the total budget of the municipality for the prior fiscal year beginning in 2010 and adjusted for inflation. Any remaining money shall be deposited by the PUC in the Housing Affordability and Rehabilitation Enhancement Fund
  - <u>Use of funds by counties and municipalities shall be limited to the following purposes associated with unconventional natural gas production:</u>
    - Construction, reconstruction, maintenance and repair of roadways, bridges and public infrastructure
    - Water, storm water and sewer systems, including construction, reconstruction, maintenance and repair
    - Emergency preparedness and public safety, including law enforcement and fire services, hazardous material response, 911, equipment, acquisition and other services
    - Environmental programs, including trails, parks and recreation, open space, flood plain management, conservation districts and agricultural preservation
    - Preservation and reclamation of surface and subsurface waters and water supplies
    - Tax reductions, including homestead exclusions
    - Projects to increase the availability of safe and affordable housing to residents
    - Records management, geographic information systems and information technology
    - Delivery of social services
    - Judicial services
    - Deposit into a county or municipality's capital reserve fund if the funds are used solely for an authorized purpose

        - Career and technical centers for training of workers in the oil and gas industry
        - Local or regional planning initiatives under the Pennsylvania Municipalities Planning Code
    - The PUC shall prepare an annual report by December 31, 2012 and September 30th each year thereafter and submit to the Senate and House Appropriations Committees and the Senate and House Environmental Resources and Energy Committees listing all deposits and expenditure of the Fund
    - All counties and municipalities receiving funds shall submit an annual report to the PUC. The annual report shall also be published on the county or municipality's Internet website
- Distribution of funds is contingent on availability of funds. If sufficient funds are not available, the PUC shall disburse funds on a pro rata basis

<u>§2315 – Statewide initiatives</u>

- Establishes the Marcellus Legacy Fund
- Following distributions in §2314(c), (c.1) and (c.2) , forty (40%) of revenues remaining in the Fund shall be deposited into the Marcellus Legacy Fund and distributed by the PUC within six months of the fee due date, as follows:
    - <u>Commonwealth Financing Authority</u>
        - 20% for grants for the following:
            - acid mine drainage, abatement and cleanup, with priority for projects which recycle and treat water for use in drilling operations
            - Orphan or abandoned oil and gas well plugging
            - Compliance with the Pennsylvania Sewage Facilities Act
            - Planning, acquisition, development and repair of greenways, recreational trails, open space, parks and beautification projects
            - Programs to establish baseline water quality data on private water supplies
            - Watershed programs and related projects
            - Up to 25% of funds may be utilized for flood control projects
    - <u>Environmental Stewardship Fund</u>
        - 10% for distribution to the Departments of Agriculture, Conservation and Natural Resources, Environmental Protection and the Pennslvania Infrastructure Investment Authority for authorized uses
    - <u>Highway Bridge Improvement Restricted Account</u>
        - 25% to be distributed to fund replacement or repair costs associated with locally owned at-risk deteriorated bridges. Funds shall be distributed to counties proportionally based on population

- Pennsylvania Infrastructure Investment Authority
  - 12.5% to be used in accordance with the Pennsylvania Infrastructure Investment Authority Act
- Commonwealth Financing Authority – H2O PA Program
  - 12.5% to be used in accordance with the H2O PA Act
- Counties
  - 15% for the planning, acquisition, development, rehabilitation and repair of greenways, recreational trails, open space, natural areas, community conservation and beautification projects, community and heritage parks and water resource management. Funds shall be distributed to counties proportionally based on population
- Remaining balance
  - 5% to DCED for 2011, 2012 and 2013 for projects related to a facility to liquefy or refine natural gas or convert natural gas to ethane, propane or a similar substance
  - After 2013, to the Hazardous Sites Cleanup Fund

- Restriction on use of funds:
  - Funds shall not be used for purposes of public education, outreach not directly related to project implementation, communications, lobbying or litigation
  - Funds may not be used for land acquisition unless written consent of the county and municipality where the land is situated is obtained
- DEP and DCNR shall review project applications as requested by the Commonwealth Financing Authority and provide recommendations on the priority of funding projects

§2316 – Small business participation

- Producers shall provide maximum practicable contracting opportunities for diverse small businesses, including minority, women and veteran-owned businesses.
- Producers shall do the following:
  - Maintain a policy prohibiting discrimination in employment and contracting based on gender, race, creed or color
  - Use the Department of General Services' Internet database to identify certified diverse small businesses
  - Respond to a survey conducted by the Department of General Services
  - Survey shall be sent to all producers within one year to report the producers' efforts to provide maximum practicable contracting opportunities related to unconventional natural gas extraction for diverse, small business participation
  - The Department of General Services shall compile the results of the survey and compile an annual report, which shall be submitted to the State Government Committees of the Senate and House of Representatives no later than 150 days after the survey is disseminated to producers.

§2317 – Applicability

- This chapter shall not negate or limit the responsibilities of any producer under this title, 74 Pa.C.S. (relating to transportation) or 75 Pa.C.S. (relating to vehicles)

§2318 – Expiration

- This chapter shall expire upon publication of notice of imposition of a severance tax on unconventional gas wells in the Commonwealth.

CHAPTER 25 – OIL AND GAS LEASE FUND

§2501 – Definitions

- Department – *Department of Conservation and Natural Resources*

§2504 – Appropriation of Money

- All money paid into the fund is appropriated on a continuing basis to DCNR to carry out the purposes of the chapter.

§2505 – Funds

- Funds appropriated to DCNR under the Fiscal Code shall be distributed prior to other allocations.
- The following amounts shall be transferred to the Marcellus Legacy Fund:
  - $20 million in 2013
  - $35 million in 2014 and each year thereafter
- The following amounts shall be transferred to the Hazardous Sites Cleanup Fund:
  - $5 million in 2015
  - $15 million in 2016 and each year thereafter

CHAPTER 27 – NATURAL GAS ENERGY DEVELOPMENT PROGRAM

§2701 – Definitions (*key*)

- Bi-Fuel Vehicle – *vehicle propelled in part by compressed natural gas and diesel or gasoline fuel*
- Department – *Department of Environmental Protection*
- Eligible Applicant – *Commonwealth or municipal authority, Turnpike Commission, Local Transportation Organization, nonprofit entity, state-owned or state related university or company*
- Eligible vehicles includes the following:

    - Dedicated compressed natural gas vehicles at least 14,000 pounds
    - Dedicated liquefied natural gas vehicles at least 14,000 pounds
    - Bi-fuel vehicles
- Incremental Purchase Cost – *excess cost of a CNG, LNG or bi-fuel vehicle over price for a gasoline or diesel fuel motor vehicle, or to retrofit such vehicle*
- Local Transportation Organization – *political subdivision, public transportation, port or redevelopment authority, nonprofit entities providing public transportation*

<u>§2702 – Assistance</u>

- Allocates the following for grants under the program established in §2703:
    - $10 million in FY 2012-2013
    - $7.5 million in FY 2013-2014
    - $2.5 million in FY 2014-2015
- 50% of funds shall be dedicated to grants for local transportation organizations
- Any remaining funds not awarded in a fiscal year shall be made available to eligible applicants in subsequent years

<u>§2703 – Program</u>

- Establishes the Natural Gas Energy Development Program
- Funds shall be used for grants to eligible applicants who meet the following criteria:
    - Plan to convert 5 or more eligible vehicles, which will be financially viable within 4 years
    - Statement of projected use of natural gas
    - Cost of project
    - Source and amount of any matching funds
    - Intend to maintain operations in the Commonwealth for not less than 6 months
    - Registering all purchased vehicles within the Commonwealth
    - Utilization of federal funds where available
    - Whether the project includes utilization of a natural gas fueling facility accessible to the public
- DEP shall promulgate guidelines to do the following:
    - Restrict grants to no more than 50% of the incremental cost
    - Restrict grants to no more than $25,000 per eligible vehicle
    - Require annual reporting on amount of natural gas used by bi-fuel vehicles
- DEP may use no more than 1% of funds received for program administration
- DEP shall submit an annual report by October 1st each year to the Senate and House Appropriations Committee on projects funded and domestic energy benefits realized

<u>§2704 –Expiration</u>

- This chapter shall expire December 31, 2016

PART III
UTILIZATION

CHAPTER 32 – DEVELOPMENT

§3201 – Scope of chapter

This chapter relates to oil and gas.

§3202 – Declaration of Purpose (*Existing*)

- Permit optimal development of oil and gas resources consistent with the protection of the health, safety, environment and property of citizens
- Protect the safety of personnel and facilities employed in resource development
- Protect the safety and property rights of persons residing in areas where resource development occurs
- Protect the natural resources, environmental rights and values secured by the Pennsylvania Constitution

§3203 – Definitions *(new definitions)*

- Additive
- Chemical
- Chemical disclosure registry
- Chemical family
- Water management plan
- Department
- Health professional
- Hydraulic fracturing chemical
- Natural gas liquids

Oil and gas operations
Secretary
Unconventional formation
Unconventional well
Water management plan
Water purveyor
Water source
Well control specialist

§3211 – Well permits *(new provisions)*

- Increases notice distance of unconventional well permit applications from 1,000 feet to 3,000 feet
- In addition to landowners, water purveyors, coal owners and operators, notice shall also be provided to host municipality and adjacent municipalities
- Extends ability of department to deny a permit for being in continuing violation of the act or other acts administered by the department to an applicant's parent or subsidiary corporation
- Permits may be denied for failure to pay the impact fee or failure to submit a water management plan that does not include a reuse plan for fluids that will be used to hydraulically fracture the well

- Unconventional well operators shall provide the department 24 hours' notice prior to:
    - Cementing all casing strings;
    - Conducting pressure tests of the production casing;
    - Stimulation of well;
    - Abandoning or plugging of well
- The Environmental Quality Board may adopt regulations for the permitting and operation of abandoned and orphan wells
- An unconventional well operator must have a department-approved water management plan. Water withdrawals associated with plans must:
    - Not adversely affect the quantity or quality of the water;
    - Protect and maintain the designated and existing uses of water sources;
    - Not cause adverse impact to water quality in the watershed
- Water withdrawal criteria shall be presumed to be achieved if the proposed withdrawal has been approved and is operated in accordance with conditions established by the Susquehanna River Basin Commission; Delaware River Basin Commission or the Great Lakes Commission, as applicable.
- Compliance with a department-approved water management plan shall be considered a condition of an unconventional well permit.

§3212.1 – Comments by municipalities and storage operators *(new section)*

- Municipalities where an unconventional well is proposed to be drilled may submit written comments to the department describing the local conditions or circumstances which the municipality determines should be considered by the department.
- Storage operators within 3,000 feet of an unconventional well bore may submit written comments to the department describing circumstances which the storage operator determines should be considered by the department.
- Comments shall be submitted within 15 days of receipt of the notice of the plat to the department as well as anyone else entitled to receive notification of the well permit.
- Written responses to a municipality or storage operator's comments shall be submitted within 10 days of receipt of comments.
- The department may consider any comments or responses it receives in its review of a permit application.
- This section shall not extend the department's time period for its review of a permit application.

§3215 – Well location restrictions *(new provisions)*

- Extends setback distance for unconventional wells from 200 feet to 500 feet from existing buildings or water wells
- Establishes 1,000 foot setback for an unconventional well from a water supply extraction point used by a water purveyor, unless authorized by the water purveyor

- The department shall grant a variance from the distance restriction if the department determines that additional terms and conditions of the permit will ensure the safety and protection of affected persons and property. Current law also authorizes a waiver.
- Extends setback distance for unconventional wells from 100 feet to 300 feet from any stream, spring, body of water or wetland greater than 1 acre in size.
- Unconventional well site pads must also maintain a setback of 100 feet from the edge of disturbance and any stream, spring, body of water or wetland greater than 1 acre in size.
- The department shall grant a variance from the distance restrictions upon approval of a plan and additional permit terms and conditions which identify additional measures, facilities or practices to be employed to protect the waters of the Commonwealth.
- Expands list of "public resources" to be considered in permit reviews to include sources used for public drinking water supplies
- Authorizes the department to establish additional protective measures for the storage of hazardous chemicals and materials to be used on an unconventional well site within 750 feet of a stream, spring or body of water.
- Requires the Environmental Quality Board to develop by regulation criteria for the following:
    - For the department to utilize for conditioning a well permit based on its impacts to public resources and for ensuring optimal development of oil and gas resources and respecting property rights of oil and gas owners
    - For appeal to the Environmental Hearing Board of a permit containing conditions imposed by the department. The department shall have the burden of proving that the conditions were necessary to protect against a probable harmful impacts of the public resources.
- Prohibits preparation of a well site or drilling of a well within any floodplain if the site will have:
    - A pit or impoundment containing drilling cuttings, flowback water, produced water or hazardous materials, chemicals or wastes within the floodplain
    - A tank containing hazardous materials, chemicals, condensate, wastes, flowback or produced water within the floodway
- Authorizes a waiver to floodplain restrictions only upon approval of a plan identifying the additional measures, facilities or practices to be employed. The department shall impose terms and conditions on the waiver necessary to protect the waters of the Commonwealth. All tanks located within the flood fringe shall have adequate floodproofing in accordance with the National Flood Insurance Program standards and accepted engineering practices.
- Boundaries of floodplains shall be as indicated on maps and flood insurance studies provided by the Federal Emergency Management Agency.
- New well location restrictions shall not apply to the following:
    - A well proposed for an existing well site for which at least one well permit has been issued prior to effective date of this section

- Nothing shall alter and abridge the terms of any contract, mortgage or other agreement entered into prior to the effective date of this section.

§3216 – Well site restoration *(new provisions)*

- Current 9 month well site restoration requirement may be extended by the department for an additional 2 years upon a determination of the following:
    - The extension will result in less earth disturbance, increased water reuse or more efficient development of the resource; or
    - Site restoration cannot be achieved due to adverse weather conditions or a lack of essential fuel, equipment or labor
- If a demonstration is made that an extension will result in less earth disturbance, increased water reuse or more efficient development of the resource, the operator shall do all of the following:
    - Provide a site restoration plan that provides for the following:
        - Timely removal or fill of all pits used to contain fluids or industrial wastes;
        - Removal of all drilling supplies and equipment not needed for production;
        - Stabilization of the well site, including post-construction storm water management best management practices; or
        - Other measures to minimize accelerated erosion and sedimentation
    - Provide for returning portions of the site not occupied by production or equipment to approximate original contours capable of supporting pre-drilling existing uses

§3218 – Protection of water supplies *(new provisions)*

- Requires restored or replaced water supplies affected by oil and gas development to meet water quality standards established by the Pennsylvania Safe Drinking Water Act, or pre-existing water quality standards, whichever is greater.
- DEP shall establish a toll-free telephone number for reporting cases of water contamination. The telephone number shall be provided on permit notifications and the department's Internet website.
- DEP shall publish on its website confirmed cases of water supply contamination resulting from hydraulic fracturing.
- DEP shall ensure that facilities which seek a National Pollutant Discharge Elimination System permit for the purpose of treating and discharging wastewater from oil and gas activities is operated by a competent and qualified individual.
- Increases the distance and duration of rebuttable presumption that an unconventional well operator is responsible for pollution of a water supply as follows:
    - From 1,000 feet to 2,500 feet of the water supply; and

- From 6 months to 12 months after the later of well completion, drilling, stimulation or alteration.

- An operator must provide written notice to a landowner or water purveyor indicating that the rebuttable presumption may be void in the landowner or water purveyor refuses to allow the operator access to conduct a pre-drilling or pre-alteration survey.

§3218.1 – Notification to public drinking water systems *(new section)*

- Upon notification of a spill, the department shall, after investigation, notify any public drinking water facility that could be affected about the event. Notification shall contain a brief description of event and any expected impact on water quality.

§3218.2 – Containment for unconventional wells *(new section)*

- Requires unconventional well pad sites to be designed and constructed to prevent spills to the ground surface or off the well pad area. Containment practices shall meet all of the following:
  - Be instituted during both drilling and hydraulic fracturing operations;
  - Be sufficiently impervious and able to contain spilled materials;
  - Be compatible with the waste material or waste stored within the containment.
- Containment plan shall be submitted to the department and describe any equipment to be kept onsite to prevent a spill from leaving the well pad.
- Containment systems shall be used wherever any of the following are stored:
  - Drilling mud
  - Hydraulic oil
  - Diesel fuel
  - Drilling mud additives
  - Hydraulic fracturing additives
  - Hydraulic fracturing flowback
- Containment areas must be of sufficient size to hold the volume of the largest container stored in the area plus 10%.

§3218.3 – Transportation records regarding wastewater fluids *(new section)*

- A well operator that transports wastewater fluids must do the following:
  - Maintain records of fluids transported for 5 years;
  - Make records available to the department upon request.
- Recordkeeping requirements shall include the following:
  - Number of gallons of wastewater fluids produced during drilling, stimulation or alteration of well;
  - Name of person or company that transported wastewater fluids;
  - Location where wastewater fluids were disposed of or transported and volumes disposed of at the location;
  - Method of disposal.

§3218.4 – Corrosion control requirements *(new section)*

- All buried metallic pipelines shall be installed and placed in operation in accordance with federal corrosion protection requirements.
- Permanent aboveground and underground tanks must comply with applicable corrosion control requirements of the department's storage tank regulations.
- For all other buried metallic structures, including well casings, the Environmental Quality Board shall promulgate regulations setting forth methods of determining the need for corrosion protection.
- Corrosion control procedures must be carried out under the direction of a qualified person.
- A pipeline operator must be in compliance with this section by the date the pipeline goes into service.

§3218.5 – Gathering lines *(new section)*

- Owners and operators of gathering lines shall comply with the Underground Utility Line Protection Law (*PA One Call*).
- Gathering line means a pipeline used to transport natural gas from a production facility to a transmission line.

§3219.1 – Well control emergency response *(new section)*

- The department may enter into contracts with well control specialists to provide adequate response services in the event of a well control emergency.
- Well control specialists under contract with the department shall be immune from civil liability for good faith actions, except for breach of contract, intentional tort or gross negligence.

§3222 – Well reporting requirements *(new provisions)*

- Extends semiannual production report requirements to all unconventional wells. Current law is limited to gas produced from the Marcellus Shale formation.
- Expands contents of well completion reports, to include the following:
    - A stimulation record, which at a minimum must contain the following:
        - Pump rates, pressures, total volume used to stimulate a well
        - List of chemicals used to stimulate a well;
        - Volume of water used and identification of water sources used;
        - Depth at which potable aquifers are encountered.
    - A well operator may designate specific portions of stimulation record as containing a trade secret or confidential proprietary information. The department shall prevent disclosure of certain information to extent permitted under the Right-to-Know Law.

- Whether methane was encountered in other than a target formation;
- The country of origin and manufacture of steel products used in well construction

- The operator shall arrange to provide a list of the chemical constituents of the chemical additives used to hydraulically fracture a well, by name and chemical abstract service number to the department upon written request.

<u>§3222.1 – Hydraulic fracturing chemical disclosure requirements</u> *(new section)*

- Section is applicable to hydraulic fracturing of unconventional wells.
- Service provider and vendor shall provide all required information to the operator not more than 60 days after commencement of hydraulic fracturing.
- Within 60 days following conclusion of hydraulic fracturing, operator shall complete the chemical disclosure registry form and post on the registry in a format that does not link chemicals to their respective hydraulic fracturing additive.
- Operator must indicate any information specified by the vendor, service provider or operator as a trade secret or confidential proprietary information, and a signed, written statement to that affect shall be submitted.
- Information submitted to DEP or posted to the registry shall be a public record unless entitled to protection as a trade secret or confidential proprietary information.
- By January 1, 2013 DEP shall determine if the registry allows for the search and sorting of Pennsylvania chemical disclosure information by geographic area, chemical ingredient, chemical abstract number, time period and operator. If not, DEP shall investigate the feasibility of making this information available on DEP's website
- Vendors, service providers or operators shall not be responsible for any inaccuracy in information that was submitted to them by another party.
- Specific identity and amount of chemicals shall be identified to any health professional who requests in writing for a valid reason, or a verbal acknowledgement by the health care professional that the information will not be used except for a health need.
- A vendor, service provider or operator shall not be required to disclose chemicals it was not aware of or were not intentionally added to the stimulation fluid, or occur incidentally.
- A vendor, service provider or operator shall not be required to disclose trade secrets or confidential proprietary information.
- Nothing shall prevent DEP, a public health official, an emergency manager or a responder to a spill, release or complaint from a person who may have been aggrieved by the spill or release from obtaining information needed upon written request.
- DEP shall prevent disclosure of trade secrets or confidential proprietary information pursuant to the Right to Know Law or other applicable state law.
- Nothing in this section shall be construed to reduce or modify the disclosure requirements for conventional well operators contained in 25 PaCode Ch. 78 Subch. E (relating to well reporting).

§3225 – Bonding *(new provisions)*

- Increases well bonding requirements, which are currently established at $2,500/well or $25,000/blanket bond.
- Bond amounts established based on well bore length and number of wells operated, as follows:
    - For wells with total well bore length less than 6,000 feet:
        - For up to 50 wells - $4,000/well not to exceed $35,000
        - For 51-150 wells - $35,000 plus $4,000/well not to exceed $60,000
        - For 151-250 wells - $60,000 plus $4,000/well not to exceed $100,000
        - For more than 250 wells - $100,000 plus $4,000/well not to exceed $250,000
    - For wells with total well bore length 6,000 feet or greater:
        - For up to 25 wells - $10,000/well not to exceed $140,000
        - For 26-50 wells - $140,000 plus $10,000/well not to exceed $290,000
        - For 51-150 wells - $290,000 plus $10,000/well not to exceed $430,000
        - For more than 150 wells - $430,000 plus $10,000/well not to exceed $600,000
- Bond amounts may be adjusted every 2 years by the Environmental Quality Board

§3227 – Air contaminant emissions *(new section)*

- An owner or operator of a facility conducting natural gas operations shall submit to the department a source report identifying and quantifying actual air contaminant emissions from any air contamination source.
- The report for 2011 shall be submitted to DEP on a schedule determined by DEP. Each year thereafter, the report shall be submitted by March 1 for contaminant emissions during the preceding calendar year.

§3253 – Enforcement orders *(new provisions)*

- Authorizes DEP to revoke a permit for any well in continuing violation of state law if the likely result of the violation is an unsafe operation or environmental damage
- Revocation shall be in writing and state the specific reasoning
- An operator shall have 30 days to appeal to the Environmental Hearing Board

§3254.1 – Well control emergency response cost recovery *(new section)*

- A person liable for a well control emergency is responsible for all responses costs incurred by the department.

§3256 – Criminal penalties *(new provisions)*

- Increases penalties for criminal violations from up to $300 to up to $1,000.

§3256 – Civil penalties *(new provisions)*

- Increases civil penalties for unconventional gas well operators from $25,000 plus $1,000/day to $75,000 plus $5,000/day.
- Authorizes DEP, instead of Environmental Hearing Board, to assess civil penalties.

§3258 – Inspection and production of materials, witnesses, depositions and rights of entry *(new provisions)*

- An operator may not commence drilling activities until the department has conducted an inspection of the unconventional well site after the installation of erosion and sediment control measures.

§3262 – Inspection reports *(new section)*

- The department shall post inspection reports on its Internet website. Reports shall include:
  - Nature and description of violations
  - Operator's written response to violation, if available
  - Status of violation
  - Remedial steps taken by operator or department to address violations

CHAPTER 33 – LOCAL ORDINANCES RELATING TO OIL AND GAS OPERATIONS

§ 3301 – Definitions

- Building
- Commission
- Environmental acts
- Local government
- Local ordinance
- Municipalities Planning Code
- Oil and Gas Operations
- Permitted use

§ 3302 – Oil and gas operations regulated by Chapter 32

- Supersedes all local ordinances purporting to regulate oil and gas operations, except with respect to zoning ordinances adopted pursuant to the Pennsylvania Municipalities Planning Code and the Flood Plain Management Act.
- Preempts local ordinances adopted pursuant to the Pennsylvania Municipalities Planning Code from regulating matters regulated in Chapter 32 or any other technical aspects of oil and gas operations.
- Consistent with existing Oil and Gas Act.

§ 3303 – Oil and gas operations regulated by environmental acts

- Preempts and prohibits local ordinances which purport to regulate the environmental aspects of oil and gas operations.
- Declares that environmental laws are of Statewide concern and are within the sole authority of the State to regulate.

§ 3304 – Uniformity of local ordinances

- All local ordinances regulating oil and gas operations must allow for the reasonable development of oil and gas resources.
- A local ordinance:
    - Shall allow well and pipeline location assessment operations, including seismic operations;
    - May not impose conditions, requirements or limitations on the construction of oil and gas operations that are more stringent than those imposed on construction activities for other industrial uses within the geographic boundaries of the local government;
    - May not impose conditions, requirements or limitations on the heights of structures, screening and fencing, lighting or noise relating to permanent oil and gas operations that are more stringent than those imposed on other industrial uses or other land development within the particular zoning district where the oil and gas operations are situated within the local government;
    - Shall have a review period for permitted uses that does not exceed 30 days for complete submissions or 120 days for conditional uses;
    - Shall authorize oil and gas operations, other than activities at impoundment areas, compressor stations and processing plants, as a permitted use in all zoning districts;
    - May prohibit wells or well sites, or permit only as a conditional use, within a residential district where a well site cannot be placed so that the wellhead is at least 500 feet from an existing building. The following shall apply in a residential district:

        - A well site may not be located so that the outer edge of the well pad is closer than 300 feet from an existing building;
        - Oil and gas operations, except the placement, use and repair of pipelines, access roads or security facilities, may not take place within 300 feet of an existing building.
    - Shall authorize impoundment areas as a permitted use in all zoning districts, provided that the edge of any impoundment shall not be located closer than 300 feet from an existing building;
    - Shall authorize natural gas compressor stations as a permitted use in agriculture and industrial zoning districts and as a conditional use in all other districts, if the compressor building is located 750 feet or more from the nearest existing building or 200 feet from the nearest lot line, whichever is greater, unless waived by the owner of the building or adjoining lot and the noise level does not exceed 60 dbA at the nearest property line or the applicable standard imposed by federal law, whichever is less;
    - Shall authorize natural gas processing plants as a permitted use in industrial zoning districts and as a conditional use in agricultural zoning districts, if the processing plant is located 750 feet or more from the nearest existing building or 200 feet from the nearest lot line, whichever is greater, unless waived by the owner of the building or adjoining lot and the noise level does not exceed 60 dbA at the nearest property line or the applicable standard imposed by federal law, whichever is less;
    - Shall impose restrictions for vehicular access routes for overweight vehicles only as authorized under 75 PA.C.S. or the Municipalities Planning Code;
    - May not impose limits or conditions on subterranean operations or house of operation of compressor stations and processing plants or house of operation for the drilling of oil and gas wells or the assembly and disassembly of drilling rigs;
    - May not increase setback distances set forth in Chapter 32 or this chapter. Local ordinance may impose setback distances that are not regulated or set forth in Chapter 32 or this chapter provided that those setbacks are no more stringent than those for other industrial uses within the geographic boundaries of the local government.

<u>§ 3305 –Commission</u>

- A local government may, prior to enactment of an ordinance, request the PUC to review the proposed ordinance to advise whether it may violate state law.
- The PUC shall issue its opinion within 120 days of receiving a request. An opinion shall be advisory in nature and not subject to appeal.
- An owner or operator of an oil or gas operation, or a person residing within the geographic boundaries of the local government, who is aggrieved by a local ordinance may request the PUC to review a local ordinance to determine whether it violates state law.

- The PUC shall make its determination within 120 days of receiving a request for a determination.
- An order shall be subject to de novo review by Commonwealth Court. A petition for review must be filed within 30 days or receipt of the PUC's order.
- Opinions and orders shall not be subject to the following:
    - 2 Pa.C.S. Chapter 5, Subchapter A (relating to practice and procedure of Commonwealth agencies)
    - 65 Pa.C.S. Chapter 7 (relating to Sunshine Law)
    - 66 Pa.C.S. Chapter 3, Subchapter B (relating to Public Utility Commission, Investigations and Hearings)
- The PUC shall have the authority to employee individuals, issue orders and promulgate regulations and employ other individuals as necessary to carry out the provisions of this chapter.
- The PUC may issue temporary regulations prior to January 1, 2013, to be effective for no more than 2 years.

<u>§ 3306 – Civil actions</u>

- Any person who is aggrieved by the enactment or enforcement of a local ordinance which violates state law may bring an action in Commonwealth Court to invalidate or enjoin a local ordinance that violates state law.
- An aggrieved person may proceed without first obtaining review by the PUC.
- The determination of the PUC shall become part of the record before the court.

<u>§ 3307 – Attorney fees and costs</u>

- The court may do the following:
    - Order a local government to pay reasonable attorney fees and costs if the local government enacted or enforced a local ordinance with willful or reckless disregard for state law;
    - Order a plaintiff to pay reasonable attorney fees and costs if the action brought by the plaintiff was frivolous or was brought without substantial justification in claiming that the local ordinance violates state law.

<u>§ 3308 – Ineligibility</u>

- If the PUC, Commonwealth Court or Supreme Court determines that a local ordinance violates state law, the local government enacting or enforcing the local ordinance shall be immediately ineligible to receive any funds collected under Chapter 23 (relating to drilling impact fee). The local government shall remain ineligible until it amends or repeals its local ordinance.

§ 3309 – Applicability

- This chapter applies to the enforcement of local ordinances existing on the effective date of this chapter and the enactment or enforcement of local ordinances on or after the effective date of this chapter.
- A municipality that has already enacted a local ordinance pertaining to oil and gas operations shall have 120 days from the effective date of this chapter to review and amend its ordinance to be in compliance with the act.

CHAPTER 35 – RESPONSIBILITY FOR FEE

§ 3501 – Declaration of policy

- Enactment of this chapter is an exercise of the authority of the Commonwealth to safeguard the vital interests of its citizens
- This chapter is intended to advance the public purpose of ensuring entities responsible for the impacts of unconventional oil and gas well development are solely responsible for payment of impact fees.

§ 3502 – Prohibition

- A producer may not make a fee an obligation of a landowner, leaseholder or other person

§ 3503 – Existing agreements

- Any provision of an existing agreement which violates § 3502 is declared to be illegal and contrary to public policy and shall be null and void

§ 3504 – Future agreements

- Any provision of a future agreement which violates §3502 is declared to be illegal and contrary to public policy and shall be null and void

MISCELLANEOUS (REPEALS AND CONTINUATIONS)

SECTION 2

- Appropriates $250,000 to the Public Utility Commission for fiscal year 2011-2012 for costs associated with implementation of this act.

SECTION 3

- The Oil and Gas Act is repealed (Act 223 of 1984).

SECTION 4

- The addition of Chapter 32 is a continuation of the Oil and Gas Act.

SECTION 5

- The addition of Chapter 23 (Drilling Impact Fee) shall apply to all oil and gas deposits and development activities subject to the jurisdiction of the Commonwealth.
- The application of regulations and statutes adopted by the Commonwealth shall be the exclusive method and means by which any requirements may be imposed on any feature, aspect or process of oil and gas operations conducted on national forest lands.

SECTION 6

- It is not the legislative intent of the General Assembly to change, repeal or otherwise affect any of the provisions of the Coal and Gas Resource Coordination Act (Act 214 of 1984).

SECTION 7

- Within 90 days of the effective date of the act, PENNDOT shall issue a statement of policy adopting an appropriate methodology to provide letters of determination of local traffic for local at-risk industries to permit travel on roads utilized by trucks associated with unconventional oil and gas development.
- Methodology shall allow for exemption from PENNDOT regulations relating to travel on roads with a posted weight limit for haulers related to an at-risk industry.
- Exemptions and related requirements shall remain in effect until December 31, 2015.
- At-risk industry shall mean an industry which has experienced a reduction in total employment of 20% or more since 2002.

SECTION 8

- The Energy Executive of the Governor shall consult with the Department of Environmental Protection, Public Utility Commission, local government organizations, natural gas industry representatives, conservationists and others on the issue of pipeline placement for natural gas gathering lines in Pennsylvania.
- Energy Executive shall submit a report to the General Assembly within one year of the effective date of this section.

SECTION 9

Effective dates:

- The addition of Chapter 23 to 58 Pa.C.S. shall take effect immediately;
- Sections 6, 7 and 9 shall take effect immediately;
- The remainder of the act shall take effect in 60 days.