

ACT 13 of 2012
MARCELLUS SHALE LEGISLATION
(HB 1950, PN 3048)

Authorization, Imposition and Administration of Impact Fees

- The legislation authorizes each county in the Marcellus Shale region to adopt an ordinance imposing an impact fee on each unconventional gas well drilled (or “spud”) in the county. Each county will have until April 14, 2012 to adopt its ordinance.
- If a county adopts the ordinance, there is no requirement for the municipalities within that county to take any action in order to receive their share of the impact fee. If the county does not adopt the ordinance, the county will be ineligible to receive its share of the impact fee.
- If a county declines to adopt an ordinance imposing an impact fee, the municipalities in that county may force the county to impose an impact fee if: (1) at least half of the municipalities in the county; *or* (2) municipalities representing at least 50% of the county’s population adopt resolutions in support of an impact fee.
- The resolutions adopted by the municipalities shall be in the following form:

The (insert name) in the county of (insert name) hereby resolves to have the county impose an unconventional gas well fee on each unconventional gas well spud in the county.

- If the county does not adopt the ordinance, municipalities within the county must adopt resolutions to be eligible to receive their share of the impact fee. Resolutions may be adopted between April 15, 2012 and June 13, 2012.
- The impact fee applies to all unconventional gas wells drilled regardless of when drilling occurred. Therefore, wells drilled prior to enactment of the legislation will be considered to have been drilled the year before the imposition of the fee for purposes of determining the fee.
- An unconventional gas well is a well that is drilled below the base of the Elk Sandstone or its geologic equivalent rock layer using hydraulic fracturing procedures.
- Fees are based on unconventional gas wells producing at least 90,000 cfi per day.
- The fee is dependent on the price of gas during the year of production and is summarized as follows:

Year of Production	Average Gas Price				
	< \$2.25	\$2.25 - \$2.99	\$3.00 - \$4.99	\$5.00 - \$5.99	> \$5.99
Year 1	\$40,000	\$45,000	\$50,000	\$55,000	\$60,000
Year 2	\$30,000	\$35,000	\$40,000	\$45,000	\$55,000
Year 3	\$25,000	\$30,000	\$30,000	\$40,000	\$50,000
Years 4 - 10	\$10,000 per year	\$15,000 per year	\$20,000 per year		
Years 11 - 15	\$5,000 per year		\$10,000 per year		
Total per well	\$190,000	\$240,000	\$310,000	\$330,000	\$355,000

- If a well is capped or does not produce more than 90,000 cfi per day within two years after payment of the initial impact fee, the fee for that well will be suspended until the production increases to more than 90,000 cfi.
- The fee would be subject to the Consumer Price Index beginning in 2013 and thereafter and will be adjusted to the nearest \$100. The annual adjustment takes effect if the number of wells drilled for that year exceeds the number drilled in the prior year.
- The fee schedule will be reinstated if a producer reopens or re-stimulates a previously capped unconventional gas well and places the well back into production and the restimulation results in an increase of more than 90,000 cfi of gas per day during a calendar month.
- Vertical gas wells producing gas from an unconventional formation would pay 20% of the fee adjusted by price, and the fee schedule would last 10 years.
- The impact fees are due by September 1, 2012 for wells drilled before January 1, 2012, and by April 1, 2013 for wells drilled on or after January 1, 2012, and continuing every April 1 thereafter.
- Producers are required to submit payments and annual reports to the PUC.
- DEP is required to provide the PUC and counties, upon request, a list of all unconventional gas wells drilled.
- DEP is prohibited from issuing new permits to a producer to drill additional gas wells until all impact fees have been paid by the producer to the PUC.
- Producers are prohibited from making the impact fee an obligation or liability of a landowner or leaseholder.

Distribution of Impact Fees

- Provides for the creation of an Unconventional Gas Well Fund (UGWF) to be administered by the PUC.
- The PUC is to make annual appropriations from the UGWF to Conservation Districts, the Pennsylvania Fish and Boat Commission, the PUC, DEP, PEMA, PennDOT, and the Office of the State Fire Commissioner for their roles in administering and enforcing the act. The amount going to these agencies will be \$23 million for 2011 and 2012. These appropriations are made before any allocation is made to local governments.
 - For the years 2011-2013 a portion of the funds are to be deposited into the Marcellus Legacy Fund for distribution to DEP for the Natural Gas Energy Development Program.
- After the aforementioned annual transfers, 60% of the remaining funds from fees collected for the prior year will be allocated to local governments impacted by natural gas activity as follows:
 - 36% to host counties (Estimated to be \$32.6 million for 2011).
 - 37% to host municipalities (Estimated to be 33.5 million for 2011).
 - 27% to host & non-host municipalities in host counties (Estimated to be 24.4 million for 2011).
 - 50% to all municipalities in host county based on population and road mileage.
 - 50% to host and non-host municipalities (municipalities located within a host county that are contiguous to or within 5 linear miles of a spud well) based on population and road mileage.
 - The amount allocated to municipalities shall not exceed the *greater* of \$500,000 or 50% of the total budget for the prior fiscal year, beginning with the 2010 budget year, and continuing every year thereafter, adjusted to reflect upward changes in the CPI. Remaining funds will be deposited in the Housing Affordability and Rehabilitation Enhancement Fund for use in Marcellus Shale-impacted counties.
 - Municipalities may use the funds only for the following purposes:
 - Construction, reconstruction, maintenance and repair of roads, bridges, and infrastructure
 - Water, storm water and sewer systems
 - Emergency preparedness and public safety
 - Environmental programs, including trails, open space, flood plain management, conservation districts, and agricultural preservation
 - Preservation and reclamation of surface and subsurface waters
 - Tax reductions, including homestead exclusions

- Projects to increase the availability of safe and affordable housing
 - Records management and IT
 - Delivery of social services
 - Judicial services
 - Capital Reserve Fund
 - 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
- Counties and municipalities receiving funds are required to submit an annual report to the PUC showing that the uses of the funds were consistent with the list of uses permitted.
 - The report must be posted on the county or municipality's publicly accessible website.
- The remaining **40%** of funds are allocated for statewide initiatives through the Marcellus Legacy Fund:
 - **20% to the Commonwealth Financing Authority** for projects pertaining to:
 - Recycled acid mine drainage water for use in drilling operations
 - Orphaned or abandoned oil and gas well plugging
 - Planning acquisition, development, rehabilitation and repair of greenways, recreational trails, open space, parks and beautification projects
 - Sewage treatment
 - Programs to establish baseline water quality data on private water wells
 - Watershed programs and related projects
 - 25% of funding to CFA may be used for flood control projects
 - **25% to the Highway Bridge Improvement Restricted Account** in the Motor License Fund to be distributed to counties and municipalities upon submittal of a plan to the department to fund the cost of replacement and repair of locally owned at-risk deteriorated bridges. The allocation formula is based on county population.
 - **10% to the Environmental Stewardship Fund** - The ESF will receive additional money through the Oil and Gas Lease Fund beginning in 2013.
 - **25% for Water and Sewer Projects** – These funds will be divided evenly between PennVEST and the H2O PA program.
 - **15% to Environmental Initiatives** 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. The allocation formula is based on county population.

- **5% to DCED** for 2011-2013 to provide for the planning, development and construction of a facility to liquefy natural gas or convert natural gas to ethane, propane or similar substances. Any unused allocations would go to the Hazardous Sites Cleanup Fund.
- **5% to Hazardous Sites Cleanup Fund** beginning in 2014 and every year thereafter. HSCA would receive additional money through the Oil and Gas Lease Fund beginning in 2015.

Natural Gas Energy Development Program

- The legislation creates the *Natural Gas Development Program* for buying or converting vehicle fleets to natural gas which would receive a total \$20 million to spend over three years.
 - Eligible applicants are “local transportation organizations,” which include:
 - Commonwealth Authorities
 - Municipal Authorities
 - Pennsylvania Turnpike Commission
 - Local transportation organizations, which include political subdivisions and transportation, port and redevelopment authorities
 - Nonprofit entities
 - State-owned or state-related university
 - Companies
 - Eligible vehicles include dedicated compressed natural gas vehicles or liquefied natural gas vehicles that are fleet vehicles and have a gross vehicle weight rating of at least 14,000 and bi-fuel vehicles that are fleet vehicles.

Environmental Safeguards

- The increased environmental safeguards address unconventional gas wells, but also impact the shallow gas industry.
- The legislation requires applicants for conventional gas well permits to forward a copy of a plat showing, among other things, the tract of land upon which the well will be drilled, a list of municipalities adjacent to the well site, the names of surface landowners and water purveyors within 1,000 feet.
- For unconventional gas well permits the applicant shall forward a copy to the surface landowner, all municipalities within 3,000 feet of the proposed well bore, and all surface landowners and water purveyors within 3,000 feet of the proposed well bore.

- Municipalities may provide written comments to DEP pertaining to well permit applications. The municipalities may describe local conditions or circumstances which they have determined should be considered by DEP in rendering its determination.
- Surface landowners may object to permit applications on the basis that the well location will violate location restrictions or that the application is materially false.
- DEP may deny permits for following reasons: (1) the well site is in violation of the act; (2) the application is incomplete; (3) there are unresolved objections to the well location by coal mine owner or operator; (4) the bonding requirements have not been met; (5) the applicant or its affiliated companies are in violation of act, other statutes, regulations, etc.; and (6) the applicant failed to pay impact fees.
- DEP must consider the impact of the proposed well on public resources, including parks, game lands, forests, rivers, natural landmarks, habitats, historical and archaeological sites, and sources used for public drinking supplies in determining whether to issue a permit.
- Drillers must provide 24 hours' notice to DEP, the surface landowner, and the municipality that drilling will commence.
- Permits expire one year after issuance unless operations are commenced within the period and are pursued with due diligence or the permit is renewed. Permits may not be transferred without DEP's approval.
- The setbacks from occupied structures and water wells are increased from **200** feet to **500** feet and public drinking water sources to **1,000** feet.
- The setback distance from an unconventional well and a spring or body of water identified on the most current 7 ½ minute topographic map is increased from **100** feet to **300** feet. No unconventional wells may be drilled within 300 feet of any wetlands greater than one acre in size.
- The well bonding requirements are increased and strengthened. The amount of the bond may be adjusted to reflect the projected costs of plugging wells.
- Operators are required to use containment methods on well sites to be designed and constructed to prevent surface spills or spills that would be off the well pad area.
- DEP may establish additional protective measures for chemicals or hazardous material located on drilling sites.
- Water quality and quantity replacement standards are enhanced to meet applicable water quality standards consistent with the Safe Drinking Water Act.

- To better protect public and private water supplies, the distance and duration of rebuttable presumption for unconventional gas wells are expanded from **1,000 feet/6 months** to **2,500 feet/12 months**. If the rebuttable presumption applies, the operator shall provide a temporary water supply if the water user is without a readily available alternative source of water.
- The Colorado hydraulic fracturing components disclosure law is adopted.
- DEP is required to adopt regulations regarding the transportation of wastewater.
- Requirements for well completion report data collection and transparency are increased.
- Qualifications of oil and gas wastewater treatment facility operators must be insured.
- Online posting of reports on the amount of production, inspection reports, and cleanup activities is required.
- The civil fine for unconventional well violations is increased from **\$25,000 plus \$1,000** for each continuing day of violation to **\$75,000 plus \$5,000 for each continuing day**.
- Counties and municipalities may initiate court actions to obtain injunctions to restrain violations of Chapter 32 of the act or rules and regulations promulgated under Chapter 32 or to restrain a public nuisance or detriment to health.

Local Ordinances Relating to Oil and Gas Operations

- The act requires that municipalities must allow the reasonable development of oil and gas resources and may not regulate the same features of oil and gas operations that are controlled by the commonwealth. While municipalities may continue to adopt land use and floodplain ordinances, those ordinances must now allow the following:
 - Well and pipeline location assessments; oil and gas operations (*the wellhead must be at least 500 feet from an existing building and, in residential districts, the well pad must also be at least 300 feet from an existing building*); and impoundments (**only** if the outer edge is at least 300 feet from the nearest building) as permitted uses in all zoning districts.
 - Compressor stations as permitted uses *only* in agricultural and in industrial zoning districts and as conditional uses in all other zoning districts if they are at least 750 feet from the nearest existing building or 200 feet from the nearest lot line, whichever is greater, *and* the noise level at the nearest property line does not exceed 60dbA.
 - Processing plants as permitted uses *only* in industrial zoning districts and as conditional uses *only* in agricultural zoning districts if they are at least 750 feet from the nearest existing building or 200 feet from the nearest lot line,

whichever is greater, *and* the noise level at the nearest property line does not exceed 60dbA.

- Operators must provide written notice to and receive a permit from a zoning officer or equivalent official before conducting oil and gas operations.
- Municipalities may impose conditions on the construction of oil and gas operations that are the same as conditions imposed on other industrial uses within the municipality.
- Municipalities may impose conditions on heights, screening, fencing, lighting and noise relating to permanent oil and gas operations that are the same as conditions imposed on other industrial uses or other land development within the zoning district where the operations take place.
- Municipalities may impose restrictions on vehicular access routes for overweight vehicles as authorized under Title 75 and the MPC.
- Municipalities may restrict the hours of operation of well sites *except* during the drilling of wells and the assembly and disassembly of drilling rigs.
- Municipalities may impose setback distances that are not set forth in the act if the setbacks are no more stringent than those for other industrial uses within the municipality.
- Municipalities may enact provisions that are not covered by the act.
- Owners and operators of oil and gas operations, and residents aggrieved by the enactment or enforcement of a local ordinance, may request that the PUC review a local ordinance to determine whether it allows for the reasonable development of oil and gas and is in compliance with the act and the MPC (similar to ACRE process). Municipalities may appeal adverse decisions by the PUC to the Commonwealth Court.
- Municipalities may seek pre-enactment review of local ordinances by the PUC to determine whether they are in compliance with the act and the MPC.
- The act applies to the enforcement of local ordinances existing as of April 14, 2012 and to the enactment or enforcement of local ordinances on or after April 14, 2012.
- Municipalities have until August 12, 2012 to ensure that their local ordinances are in compliance.
- Municipalities that enact or enforce local ordinances with willful or reckless disregard for the MPC or this act may be subject to attorneys' fees in a court action to enjoin the enactment or enforcement of the local ordinance. Similarly, any party that challenges a local ordinance without substantial justification to do so will face the same risk.

- Should the PUC, Commonwealth Court or the Supreme Court issue an order that a local ordinance fails to provide for the reasonable development of oil and gas activities, the local government shall be ineligible to receive funds collected through the fee and will remain ineligible until the local government adopts a local ordinance in accordance with the provisions of the law or court order or the order is reversed on appeal.

Effective Date

- Signed February 14, 2012.
 - Impact fees become effective immediately.
 - Remainder of the act becomes effective April 14, 2012.