



## **Act 13 – Impact Fee Revenues Frequently Asked Questions**

*Revised February 2022*

# Act 13 – Impact Fee Revenues Frequently Asked Questions

## Table of Contents

|  |    |
|--|----|
| <a href="#"><u>Overview of Act 13</u></a> .....  | 3  |
| <a href="#"><u>Local Government Distributions</u></a> .....  | 5  |
| <a href="#"><u>Use of Local Government Unconventional Gas Well Fund</u></a> .....<br>(monies received by counties with spud wells) | 6  |
| <a href="#"><u>Local Government Unconventional Gas Well Fund Usage Reports</u></a> .....   | 7  |
| <a href="#"><u>Usage Reports – Paper Filing</u></a> .....  | 9  |
| <a href="#"><u>Usage Reports – Online Act 13 Reporting Website</u></a> .....   | 10 |
| <a href="#"><u>Statewide Allocations</u></a> .....   | 11 |
| <a href="#"><u>Legacy Fund – Open Space</u></a> .....  | 12 |
| <a href="#"><u>Legacy Fund – At-Risk Bridges</u></a> .....   | 13 |
| <a href="#"><u>Conservation Districts</u></a> .....  | 14 |

## **Overview of Act 13**

### **What is the distribution of funds from the impact fee, both locally and for statewide purposes?**

First, there are several annual distributions made from the impact fee revenues:

- County conservation districts: \$2.5M from fees collected for 2011; \$5M for 2012; \$7.5M for 2013; COLA adjustment 2014 and after. Half distributed equally among conservation districts, half distributed consistent with the Conservation District Fund Allocation Program
- Fish and boat commission for costs relating to review of permits to drill unconventional gas wells: \$1M
- PUC for costs to administer the law, including fees and local ordinance enforcement: \$1M
- DEP for administration of this act and enforcement of clean air and water acts: \$6M
- Pennsylvania Emergency Management Agency for response planning, training, and coordination relating to natural gas production: \$750,000
- Office of State Fire Commissioner for training and grant programs for first responders relating to natural gas production: \$750,000
- PennDOT for rail freight assistance: \$1M
- Deposit into the Marcellus Legacy Fund for distribution for the Natural Gas Energy Development Program: \$10M for 2011; \$7.5M for 2012; \$2.5M for 2013
- Housing Affordability and Rehabilitation Enhancement Fund to support projects or provide rental assistance in host counties with a requirement that at least 50% be available in fifth through eighth class counties: \$2.5M for 2011 and \$5M for each year after

After those distributions are made, 60% of the remainder goes to county and municipal governments, by formula:

- Host counties receive 36%, distributed pro rata based on the number of spud wells in the county relative to the number of spud wells statewide
- Host municipalities receive 37%, distributed pro rata based on the number of spud wells in the municipality relative to the number of spud wells statewide
- The remaining 27% is distributed among all municipalities in a host county. Half is distributed among host municipalities and non-host municipalities that are either contiguous with a host or are within five miles of a spud well, with half of that distributed on relative population and half based on relative road miles. The other half is distributed among all municipalities in the county, again half based on relative population and half based on relative road miles.

The remaining 40% is deposited in the Marcellus Legacy Fund, and is allocated:

- Commonwealth Financing Authority: 20% for grants for acid mine drainage, orphan or abandoned oil and gas well plugging, compliance with the Sewage Facilities Act, recreational projects, establishment of baseline water quality projects, watershed programs, and up to 25% for flood control projects
- Environmental Stewardship Fund: 10%
- Highway Bridge Improvement Restricted Account: 25%, to be distributed to all counties (not just shale gas counties) to fund replacement or repair of locally owned at-risk bridges; distribution is pro rata based on relative population, with a \$40,000 minimum payment
- Water and sewer projects: 25%, with half to the Pennsylvania Infrastructure Investment Authority and half to the H2O PA program
- Greenways, recreation, open space and comparable projects: 15%, to be distributed to all counties pro rata based on relative population with a \$25,000 minimum allocation
- Refining or processing facilities, Hazardous Sites Cleanup Fund: 5%, to the Department of Community and Economic Development for 2012, 2013, and 2014 for projects relating to refining or processing natural gas or oil; all funds after 2013 are allocated to the Hazardous Sites Cleanup Fund

**How much has been collected in impact fee revenues?**

In collection year 2020 (distributed in early July 2021), \$146,254,725 was collected from operators.

## ***Local Government Distributions***

### **When will counties receive their local impact fees from the PUC?**

By law, operators must submit fees to the PUC by April 1 each year, and the funds are to be distributed to the counties and municipalities within three months after the fee is due. The PUC has generally been releasing allocation lists in mid-June, with distribution around July 1.

### **Where can a county find out what its local distribution of impact fee revenues is?**

An overall breakdown of revenue distribution between state agencies, county governments, local municipalities and the Marcellus Shale Legacy Fund is available on [CCAP's Act 13 web page](#), as is a breakdown of distributions of local government revenues. This information can also be found on PUC's [Act 13 web site](#) by clicking on the Reports tab, then County and Municipality Disbursement. To view only county data, select "True" for Exclude Municipality Data.

Questions regarding impact fee distributions should be directed to [ra-Act13@pa.gov](mailto:ra-Act13@pa.gov).

### **If a county feels that the well count reported by DEP is inaccurate compared to local observations, how should that be handled?**

Counties can view the PUC's Act 13 unconventional wells spud report, based on all spud reports that DEP has submitted to the PUC, [here](#). A county, municipality or oil and gas operator who disagrees with any of the data that appears on a spud report that DEP supplied to the PUC should contact DEP via e-mail at [ra-epoilandgas@pa.gov](mailto:ra-epoilandgas@pa.gov). The interested party will be contacted by DEP to discuss the matter and, if necessary, the Department will correct or update its database and report this information to the PUC.

## ***Use of Local Government Unconventional Gas Well Fund (monies received by counties with spud wells)***

### **Are counties permitted to encumber or budget the funds prior to their distribution?**

The PUC has expressed the viewpoint that these are permissible. From 2013 and forward, payment will be received in early July and can be applied to expenditures incurred throughout the calendar year.

### **If a county does not expend impact fee funds in a particular calendar year, can it place the funds in the capital reserve category to expend in future years?**

Yes, capital reserve is one of the categories that is explicitly enumerated in Act 13. Note that this should be established as a dedicated capital reserve fund, inasmuch as the act requires that future expenditure of these funds be for purposes enumerated in the act.

### **Can a county commit funds to a capital reserve account and move it around later, as long as the use of those funds falls within one of the allowable categories?**

Unless a county has a pre-identified project that it plans to reimburse, it seems reasonable that the way a county would commit the funds in a particular year is to put in its capital reserve account. Under Act 13, there does not appear to be a timeframe in which that reserve has to be spent.

### **What considerations should counties make in determining whether a project falls under one of the allowable uses?**

Under Act 13, there is a list of broadly defined allowable uses. The PUC role with the fund is as a reporting body and not a regulatory body, so it is not going to further narrow or define that list, recognizing that the legislature left those uses purposefully broad to account for the differences among counties in terms of impacts, even within a particular category.

### **Can impact fee revenues be used to eliminate a need to raise real estate taxes to meet rising expenses, or for tax reductions?**

Under Act 13, tax reduction is an appropriate and allowable use.

### **May a county inquire with the PUC whether a use might be allowable?**

While a county may make any inquiry it chooses, in the context of the fund the PUC is a reporting agency and not a regulatory body and so will likely refrain from making a judgment unless it is very obvious that a project does not fit in a category. The Commission will give broad deference to what the legislature put in place, and ultimately it will be the county's responsibility to seek legal advice from its own solicitor as warranted, and to defend the use of the funds for a particular purpose if challenged. PUC does not intend to audit or challenge local uses, but may refer third party questions to the Auditor General's or Attorney General's office.

## ***Local Government Unconventional Gas Well Fund Usage Reports***

**The PUC reporting form indicates that all Local Government Unconventional Gas Well Fund monies are to be reported in a particular category; must a county still report funds which were not expended or “used” at the time of the report?**

Yes. All monies received must be accounted for and the total amount reported must be the same as the amount received by the county. The PUC will not include a county's information in its system unless it receives an accurately completed report by the annual deadline.

**How should a county report Local Government Unconventional Gas Well funds that are being saved for future use and have not technically been “used” at the time of the report?**

Act 13 states that the form for the usage report must set forth that the funds received were “committed” to a specific project or use, and the PUC advises that local governments report any funds which are encumbered for a particular use in the appropriate usage category, even if the funds have not been expended at the time the report is submitted to the PUC. All other funds that have not been otherwise expended or encumbered in a given year should be reported as a capital reserve “usage.”

**What sort of detail will the PUC be looking for in the financial reporting?**

The form, which is available on the [Act 13 page](#) of the CCAP website, is fairly straightforward. PUC is gathering the information to meet its requirements to report to the administration and General Assembly, and will not be looking for any documentation to accompany the form. However, counties and municipalities should have for their own purposes the financial reporting and record keeping they need to justify their expenditures, similar to what they might do currently for grants or other funding sources. Counties are encouraged to work with their auditors and other financial personnel for recommendations on appropriate record keeping.

**Which funds should a county report on its usage report?**

As indicated, all Local Government Unconventional Gas Well Funds received in a particular calendar year must be reported on the county's usage report to the PUC in the subsequent year (i.e., all Local Government Unconventional Gas Well Funds received in 2021 must be reported on the usage report submitted in 2022). Again, if a county intends to carry these funds over to a subsequent year and has not otherwise encumbered the funds for a use that falls within a different category, those funds should be listed as a “usage” in the capital reserve category.

Any funds received by a county from the Marcellus Legacy Fund for open space purposes or at-risk bridges should not be reported on the usage report submitted to the PUC.

**If a county reported Local Government Unconventional Gas Well Funds as a “capital reserve” usage in one calendar year and then uses those capital reserve funds in a subsequent calendar year, is any further reporting on the usage required to be made to the PUC?**

No. For instance, if a county reported that it put \$100,000 of the funds it received in 2021 into capital reserve on the report submitted to the PUC in April 2022, and later spent those funds on

a housing project, no further reporting to the PUC is required to reflect the shift between usage categories. The usage report reflects only the use of a single year's distribution, regardless of which year's funds were actually expended during that same year.

**Are there any requirements that a county has to send a letter from an auditor with its report?**

There will be no auditing requirement from the PUC, as there is no such function given to them under Act 13. If there is a question regarding impact fee expenditures, it would most likely be raised by some third party to the county, or by an auditor or even the state Auditor General's office, rather than the PUC.

**When are Local Government Unconventional Gas Well Fund usage reports due to the PUC from counties and municipalities?**

Usage reports are to be filed with the PUC on or before April 15 in the year following the receipt of funds (i.e., for funds received in 2021, the reports will be due on or before April 15, 2022).

**The report has a blank for "calendar year reporting." What year should counties put in that blank?**

For funds received in 2021, for which the reports will be due in 2022 as noted above, the report is for calendar year 2020 (the production year against which the fees were actually levied).

**Since the PUC makes the usage information available on its public website, must a county still post its usage report on its website?**

Yes. Act 13 specifically requires, in section 2314(h)(2), that all local governments annually publish their usage reports on the county or municipality's publicly accessible Internet website. This can be a copy of the paper report submitted to the PUC, or if the local government has submitted its usage report through the Act 13 Reporting website, a printout of that submission. Merely posting the link to the Reports page on the PUC website would not meet this criteria.

**If a county does not have spud wells, must it fill out the usage report, or would it go to the other agencies directly for information about reporting the statewide funding?**

The usage report applies just to counties and municipalities with spud wells, and only those counties receiving funds from the PUC for having spud unconventional gas wells are required to report. Note that impact fee funds received under other categories or grants may require separate reports, with different reporting requirements, from the agency distributing the funding.



## ***Usage Reports – Paper Filing***

### **Where can counties obtain a paper copy of the usage report?**

The paper report in Word format can be found at:

- [http://www.puc.state.pa.us/filing\\_resources/issues\\_laws\\_regulations/act\\_13\\_impact\\_fee\\_.asp](http://www.puc.state.pa.us/filing_resources/issues_laws_regulations/act_13_impact_fee_.asp) under Important Deadlines, or
- <http://www.pacounties.org/GR/Pages/Act13.aspx> under Local Government Unconventional Gas Well Fund Usage Reports

### **How do local governments submit a paper copy of the usage report?**

Paper reports can be emailed to the PUC at [RA-Act13-Fiscal@pa.gov](mailto:RA-Act13-Fiscal@pa.gov) or faxed to 717-783-8052.

### **If a county needs to amend a paper report, may it do so and how?**

Yes, a county may amend a paper report by completing a new form and either emailing or faxing it to the PUC, with a note indicating that the report is an amendment of a previously filed report and the date of the amendment. Note that amendments must also be submitted prior to the April 15 deadline for the information to be entered by the PUC in its system.

## ***Usage Reports – Online Act 13 Reporting Website***

### **How do counties use the online Act 13 Reporting system to submit their usage reports?**

The online reporting system can be found at <https://www.act13-reporting.puc.pa.gov>, then clicking Login at the top of the page. Detailed directions are available at <https://www.act13-reporting.puc.pa.gov> by clicking Local Government User's Guide on the right side of the page.

### **If a county does not have its 8 digit user ID and password to log in to the Act 13 Reporting website, how may it obtain this information?**

Counties may contact Vicki White, victwhite@pa.gov at the PUC, or by calling 717-783-6806 for assistance.

### **Must counties use the online Act 13 Reporting website to submit their usage reports?**

No. Counties may still submit a paper copy of their usage reports if they choose to do so, but should only submit either a paper report or an online report, not both.

### **If a county needs to amend a usage report submitted through the online Act 13 Reporting website, may it do so and how?**

Yes, a county may amend an online report by logging into the system, completing the report in its entirety again, and saving the new information. This will immediately make the amended information available to the PUC and on the PUC's public website. Note that amendments must also be submitted prior to the April 15 deadline.

## ***Statewide Allocations***

### **For the various statewide allocations, does impact fee funding go to all counties or just to those counties with impacts?**

While the bulk of the funding is allocated to host counties and their municipalities, all 67 counties are for the most part eligible for the statewide allocations (some distribution formulas under Act 13 may allow additional consideration for impacted counties, such as those for conservation district funding). Further, if a county is receiving local impact fee revenues from the PUC, it is still eligible to apply or receive distributions from the statewide allocations on top of that.

### **How will the county allocations, including impact fee allocations and allocations for housing, at-risk bridges, environmental/recreation, and other Legacy Fund programs be distributed?**

Impact fee counties will receive their impact fee local revenues directly from the PUC, and all counties will receive their environmental/recreation Legacy Fund allocations directly from the PUC, typically in conjunction with the distribution of local impact fee monies. PennDOT will make the allocation of at-risk bridge funds directly to each county on or around August 1 each year. The amount of funding the county receives from other agencies for statewide distributions, including their timing and disbursal methodology, will be handled directly by those agencies.

## ***Legacy Fund – Open Space***

### **How can a county use the revenues it receives from the Marcellus Legacy Fund for open space purposes?**

Under Section 2315 of Act 13, revenues from the Marcellus Legacy Fund for open space may be used 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 may be used to acquire lands for recreational or conservation purposes and land damaged or prone to drainage by storms or flooding.” Counties should use the language of the statute to determine whether a project fits within those parameters.

It is the opinion of the state Department of Agriculture that counties *may* use Marcellus Legacy Fund for open space for purchasing easements through the Pennsylvania Farmland Preservation Program.

### **Are there separate reporting requirements for these funds?**

There is not a separate reporting requirement for these funds; however, the use of the funds will be reflected in a county’s local audit in the same way as any other state funds, and counties may want to consider referencing the statutory language when it votes a resolution appropriating these funds.

## ***Legacy Fund – At-Risk Bridges***

### **Has a determination been made on how the at-risk bridge funding will be administered?**

The funding depositing in the Highway Bridge Improvement Restricted Account in the Motor License Fund is designated by the Act for use in the replacement or repair of locally owned, at-risk, deteriorated bridges. The distribution is in accordance on the Act's statutory formula which is proportional based on a county's relative population, with no county receiving less than \$40,000. Distributions are expected to take place each year as close to September 1 as possible. The 2017 distribution is posted on CCAP's [Act 13 page](#).

PennDOT and CCAP worked together to define an "at-risk deteriorated bridge" as one that is structurally deficient or is posted with weight restrictions. Counties, at their discretion, would be permitted to apply the funds to any bridge project on the county Transportation Improvement Plan (TIP), including both county and municipal bridges. Although the Act requires PennDOT approval for projects undertaken with the funds, the agency considers using the funds for TIP projects as satisfying the Act's at-risk requirements (all TIP bridges are structurally deficient) and as having acquired PennDOT approval (the TIP is already approved by PennDOT). Each county should work with its respective Metropolitan or Rural Planning Organization (MPO/RPO) to plan the use of its allocated Act 13 Impact Fee funds on the bridges included on the TIP. All projects should also utilize the Linking Planning and NEPA process.

### **How will counties receive the funding from PennDOT?**

Funds will be released from the Highway Bridge Improvement Restricted Account to individual counties, and should be deposited into a special account at the county for this purpose, not commingled with county liquid fuels funds.

## ***Conservation Districts***

### **Has a determination been made on how the Act 13 funds earmarked for conservation districts will be distributed?**

Under Section 2314 of Act 13, half of the impact fees that are dedicated to conservation districts in any given year must be divided equally among all conservation districts for any use consistent with the Conservation District Law. The other half will be distributed by the State Conservation Commission in a manner consistent with the Conservation District Law and the provisions of the State Conservation Committee's Conservation District Fund Allocation Program (CDFAP) Statement of Policy.

Distribution formulas for the impact fees collected in CY2017 were approved by the Commission on July 18, 2018. As per the statute, half of these funds will be distributed as a "block grant" payment from the PUC to all districts (approximately \$58,712 per district).

The other half of the funds will be distributed among several areas. Half will be used to supplement the Conservation District Fund Allocation Program (CDFAP) line item appropriations for "traditional" programs, including District Management positions, first Erosion and Sedimentation technicians, and Agricultural Conservation Technicians (approximately \$26,329 per county). The other half will go to districts impacted by shale gas drilling, consisting of a base grant of \$15,000 for counties with wells, and the remainder based on the per average well count from 2013-2017 (approximately \$1,416 per well).

A spreadsheet indicating allocations by county can be found on the [Act 13 page](#) of the CCAP website. Note that these decisions on Act 13 funding for conservation districts apply *only* to the current (FY 2020-2021) distribution; decisions regarding future allocations will be determined by the Commission at a later date.

### **How can the Act 13 funds earmarked for conservation districts be used? Are there separate reporting requirements for these funds?**

The funds distributed as "block grant" payments may be used for any use consistent with the Pennsylvania Conservation District Law. The State Conservation Commission has approved a list of example eligible expenses under the Conservation District Law, which includes, but is not limited to, staff salaries, office maintenance, administrative costs, program or activity administration, installing best management practices, and providing technical services and assistance. A district may request a determination from the Commission regarding whether a particular item is an eligible expense.

Conservation districts are required to justify the use of funds distributed as general Administrative Assistance Grants to the Commission for eligible administrative expenses under the Conservation District Fund Allocation Program Statement of Policy.

Districts receiving additional funds on the basis of having wells drilled have the option to use these funds toward any "traditional" CDFAP allocations (District Manager, first Erosion and

Sedimentation technicians, Agricultural Conservation Technicians, general administrative assistance, agricultural land preservation program administration and special projects. Funds may be used for additional management or technical positions where funds are available and allowable under the CDFAP Statement of Policy.