



## **ANALYSIS: HB 1950, PN 3048**

February 10, 2012

### **General**

The legislation amends the Oil and Gas title of the Pennsylvania Consolidated Statutes, providing for an unconventional gas well fee and its administration, distribution, and allowable uses, regulating permitting for gas wells, regulating environmental matters relative to gas wells, reenacting relevant parts of the Oil and Gas Act, and providing for matters relating to municipal zoning and land use.

### **Impact Fee Authorization and Levy**

County governing bodies are empowered to levy an impact fee on unconventional gas wells (§2302(a)). Counties must do so by ordinance, in "language that is readily understandable by a layperson" and substantially in the form:

The county of (insert name) hereby imposes an unconventional gas well fee on each unconventional gas well spud in this county.

"Unconventional gas well", "fee", and "spud" are defined in the act (§2301) and should be included in the ordinance or adopted by reference.

### **Adoption and Failure to Adopt**

County action to adopt the ordinance must occur within 60 days of the effective date of the section (§2302(a.1)); the section is effective immediately upon signature by the Governor (Section 9, p. 174). Adoption is governed by the advertising and notice provisions of section 509 of the County Code. The county needs to take action only once; once levied, no additional action is required to reestablish or reaffirm the levy.

A county with unconventional gas wells that fails to adopt the fee is prohibited from receiving fee revenues and from receiving revenues from statewide initiatives (found later in the act) until the year following its levy of the fee (§2302(a.3)). Counties should determine whether they have any wells meeting the spud definition; the provision is apparently triggered by the presence of just one spud well.

Counties without spud wells are not compelled to levy the fee in order to receive distributions from the statewide initiatives.

While not specific, it appears that in any case where county action is not taken within 60 days of the effective date of the act, it can take action at a later date but the fee does not take effect until the following year. Clarification will be needed from the Public Utility Commission on

deadline dates for subsequent years. This will be applicable in particular to counties that have no spud wells in 2011 or 2012 but in which wells are spud in the future.

### **Municipal Option In Lieu of County Action**

Municipal governing bodies within a county that does not levy the fee may pass resolutions that have the effect of enacting the levy, following 60 days but no later than 120 days after the effective date of the law (§2302(a.4)). To do so, at least half of the municipalities, or municipalities representing at least 50% of the population of the county, must pass resolutions, and when either threshold is reached the fee takes effect county-wide. Once the threshold is reached the remaining municipalities should be encouraged to adopt the fee; those that do not are barred from the funds distribution (§2302(a.4)).

Note that municipal action, while having the effect of implementing the fee county-wide, does not levy the fee on the county's behalf. The non-levying county is still barred from receipt of both local fees and statewide initiatives until it has adopted the ordinance itself. Nor can the county piggyback on the municipal action to make the fee immediately effective for the county; for 2012 the county must act within 60 days.

The municipal resolution is in the 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.

### **Fee Assessment and Calculation**

The fee is levied against all unconventional gas wells spud ("the actual start of drilling of an unconventional gas well by a rig capable of drilling to total depth" §2301) within the Commonwealth, regardless of start date. For those commenced before 2011, they are assumed to be spud in 2011 for the purpose of determining the fee (§2302(b)). For counties that take action later than the initial year, spudding is assumed to have begun in the year prior to imposition of the fee for the purpose of determining the fee.

Because spudding is not synonymous with production, the fee is suspended if the well is capped or if after two years the well does not reach a production rate of 90,000 cubic feet of gas per day. The fee is reinstated when production resumes (or begins) at that level (§2302(b.1)), starting at the point at which it was suspended.

The fee applies to wells that are restimulated (§2302(d)); the well must have been spud at least ten years earlier, and must reach additional production of more than 90,000 cubic feet per day. Restimulation includes refracking, adding more laterals, or drilling deeper in the same bore hole. The restimulation restarts the fee schedule at year one.

### Fee Schedule

The fee is levied annually per unconventional gas well. Unconventional gas wells are defined as bore holes drilled for the purpose of production of gas (§ 2301), so each hole on a pad is counted separately for purposes of the fee. The fee is established as a sliding scale, with a duration of 15 years for each well (§2302(b)), coupled with a schedule based on the price of gas (see table, following). The fee schedule to be used is determined by the average price of natural gas for the prior calendar year (§2302(b)(6)), and the overall schedule is adjusted for inflation each year, starting in 2013 (§ 2302(c)). The fee for vertical unconventional wells is 20% of the rate for horizontal wells (§ 2302(f)), and ends after the tenth year.

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	\$15,000	\$20,000		
Years 11 - 15	\$5,000		\$10,000		
Total per well	\$190,000	\$240,000	\$310,000	\$330,000	\$355,000

### Fee Administration

The fee is administered by the Public Utility Commission (PUC). The county is to furnish notice to the PUC of its adoption of the ordinance (§2302(a.1)). In the first year, 2012, each producer is to submit payment and related documentation to the PUC by September 1 for production from 2011; in each subsequent year the fee and documentation is due by April 1 (§2303(b)) for the prior year. The PUC is entitled to provide for its administrative costs through a direct per spud assessment against each producer.

The Department of Environmental Protection (DEP) is to furnish the PUC with information to calculate and verify the fee (§2304). DEP is to furnish the information to the county, upon request, and is to supply monthly updates. DEP in turn must confirm that a producer is current in its payments before issuing a drilling permit (§2305).

The PUC is given full investigatory and audit prerogatives and responsibilities, can assess interest and penalties on any producer who is delinquent in payments (§2308), and can initiate a lien or enforcement order to compel compliance (§2309). The PUC can also assess a civil penalty (§2310).

### Fee Distribution

All fees collected are deposited in an Unconventional Gas Well Fund, to be administered by the PUC (§2314). All payments from the fund are to be made as delineated in the statute within three months after the fee due date (§2314(d); §2315(a.1)).

Off-the-top distributions include (all annual unless noted otherwise):

- 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

Following the off-the-top distribution, 60% of the remainder goes to county and municipal government, by formula (§2314(d)):

- 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.

There is an anti-windfall cap (§2314(e)) applied against municipalities (not counties), limiting shares to the greater of \$500,000 or 50% of the total budget for the prior year beginning with the 2010 budget, and adjusted for inflation.

The 40% state share (§2315) 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; funds are released by PennDOT on approval of a plan to repair an at-risk deteriorated bridge. Counties can submit either county-owned or municipally-owned bridge projects
- 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

### **Local Government Uses**

County and municipal governments receiving funds are authorized to use them for a variety of purposes (§2314(g)):

- Roadways, bridges, and public infrastructure
- Water, storm water, and sewer
- Emergency preparedness and public safety
- Environmental and recreation programs, including conservation districts, open space, and agricultural preservation
- Preservation and reclamation of water supplies
- Tax reductions, including homestead exclusion
- Availability of safe and affordable housing
- Records management, GIS, and information technology
- Delivery of social services
- Judicial services
- Deposit into capital reserve for use on projects permitted under this section
- Career and technology centers for training related to the oil and gas industry
- Local or regional planning initiatives under the Municipalities Planning Code

### **Reporting**

The PUC is to file a report annually with the chairs and minority chairs of the legislature's Appropriations and Environmental Resources and Energy committees (§2314(h)). The report includes a listing of all deposits and expenditures of the fund.

Counties and municipalities are to report annually to the PUC, on a form furnished by the PUC, listing the amount and use of funds for the prior calendar year (§2314(h)(2)). Each county and municipality is also to publish the report on its website.

### **Oil and Gas Lease Fund**

Allocations are made from the state Oil and Gas Lease Fund, applicable to wells on state-owned land, including a transfer to the Marcellus Legacy Fund for distribution to the Environmental Stewardship Fund of \$20M for 2013 and \$35M for 2014 and each year after, and a transfer to the Hazardous Sites Cleanup Fund of \$5M for 2015 and \$15M for 2016 and each year after.

### **Vehicle Fleet Conversion**

A three-year Natural Gas Energy Development Program is created (§2701 and following), funded with an allocation from the impact fee (see above). The program makes competitive grants available to commonwealth or municipal authorities, local transportation organizations, nonprofits, the Turnpike Commission, state-owned or state-related universities, or private companies for the purpose of purchasing or converting more than five eligible vehicles to natural gas usage. At least half of each year's allocation is reserved for local transportation agencies.

### **Well Permit Provisions**

Chapter 32, subchapter B (§3211 and following) provides for, among other things, well permitting and regulation, including setbacks, location restrictions, water management and protection of water supplies. Permits are administered by DEP. Notice of applications is to be furnished to host and potentially impacted municipalities, among others (§3211(b)), and municipalities may present comments (§3212.1), which "may" be considered by the department. The department's decision on those comments is not appealable by the municipality (§3215(d)) although other appeal rights are preserved. Other subject matter in the subchapter includes well capping, orphaned wells, abandoned wells, rebuttable presumptions on pollution, chemical disclosures, the relationship with coal operators, bonding, emissions, and others.

### **Site Restoration**

Operators must furnish and comply with erosion and sedimentation control plans (§3216) during drilling, and properly restore the well site within nine months of completion. Drilling supplies and equipment not needed for production is to be removed, although it may be stored on site with the written consent of the surface owner. An extension for restoration of up to two years is possible with DEP permission. Conservation districts are not mentioned as enforcement agencies, although there is an understanding that DEP can delegate to them.

### **Small Businesses**

Producers are to provide maximum practicable contracting opportunities for small businesses (§2316) as potential contractors, subcontractors, and suppliers, maintaining a non-discrimination policy and using the Department of General Services web site to identify certified diverse small businesses, including minority-owned, women-owned, and veteran-owned businesses.

### **Gathering Lines**

Owners and operators of gathering lines are required to comply with the Underground Utility Line Protection Law (§3218.5), commonly known as the One Call System, essentially requiring registration of the pipelines that carry the gas from a production facility to a transmission line.

## **Emergency Management**

DEP is permitted to enter into contracts (§3219.1) with well control specialists for disasters such as casing failure, blowout, fire and explosion. The department is to make information regarding the contracts available to county emergency management upon request. Counties retain emergency planning responsibility concurrent with the operator, including site-specific planning and addressing under [Act 9 of 2012](#) (SB 995).

## **Local Ordinances**

The state preempts local ordinances that are not adopted under the Municipalities Planning Code and the Flood Plain Management Act or are in conflict with this act, and provides that environmental acts are to be regulated by the State.

Statutory provisions supersede local zoning ordinances, allowing well and pipeline location assessment and oil and gas operations in all zoning districts if the well pad is at least 300 feet, and the wellhead is at least 500 feet, from an existing building. Compressor stations are permitted uses in agricultural and industrial zoning districts and are a conditional use in all other zones if located at least 750 feet from nearest existing building or 200 feet from the nearest lot line, and the noise level at the nearest property line does not exceed 60dbA. Processing plants are a permitted use in an industrial zone and are a conditional use in agricultural zones if located at least 750 feet from nearest existing building or 200 feet from the nearest lot line and the noise level at the nearest property line does not exceed 60dbA.

Municipalities are permitted to enact provisions that are not covered by the law. A procedure is established, comparable to ACRE, which allows an operator to ask the PUC to review a local ordinance to determine whether it allows for the reasonable development of oil and gas. The municipality itself may ask for predetermination to see if a proposed ordinance is in compliance with law. Should the PUC, Commonwealth Court or the Supreme Court determine that a local ordinance fails to provide for the reasonable development of oil and gas activities, the local government is ineligible to receive funds collected through the fee and remains ineligible until the local government adopts a local ordinance in accordance with the provisions of the law or court order.