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## Latest News

### Governor Signs Historic Marcellus Shale Act

Wednesday February 15th, 2012

After three years of debate and months of intense negotiation, Gov. Tom Corbett signed Act 13 of 2012 (HB 1950) into law on February 14. The measure allows for a local impact fee on natural gas wells, imposes significant new environmental regulations on the industry, improves public safety standards, and clarifies how townships may use zoning to regulate drilling operations.

#### Where the funds will go

This act will provide much-needed revenue to host municipalities and neighboring communities, which may allocate the funds for a long list of current and future needs. In addition, the state's portion includes funding for programs that will benefit municipalities inside and outside of the Marcellus Shale region. These monies will be directed to the Environmental Stewardship Fund, water and sewer projects, open space preservation, transportation infrastructure, and grants to buy or convert vehicle fleets to natural gas.

#### Zoning and other impacts

Despite efforts to totally exempt the natural gas industry from all local ordinances, including those related to land use, road bonding, and sewage permitting, common sense prevailed. Restrictions have only been placed on townships' already limited ability to use land use ordinances to regulate the location of natural gas operations and their support activities.

The new act also imposes sweeping environmental reforms on the industry to protect water quality, increase well bonding requirements, disclose fracking additives, and much more.

### **Municipal benefits**

Act 13 benefits municipalities in the Marcellus Shale region by:

- empowering communities to participate in the well permit application process by commenting on local conditions or circumstances that the state Department of Environmental Protection should consider when rendering its decisions;
- requiring DEP to weigh the impact of a proposed well on public resources, including parks, rivers, and public drinking water supplies;
- requiring drillers to provide a 24-hour notice to the municipality before drilling begins;
- increasing the mandatory setbacks of natural gas wells from 200 feet to 500 feet from occupied structures and water wells and 1,000 feet from public drinking water sources;
- increasing the mandatory setback of a natural gas well from 100 feet to 300 feet from a spring or other body of water and prohibiting natural gas wells within 300 feet of any wetland that is at least one acre; and
- increasing the distance and duration of the rebuttable presumption for contamination of public and private water supplies from 1,000 feet for six months to 2,500 feet for 12 months.

Townships without zoning will particularly benefit from these safety enhancements and increased environmental protections, including the new mandatory setback from occupied buildings and the increased protection of public and private water supplies.

### **Impact fee details**

Counties in the Marcellus Shale region have until April 14 to enact an ordinance to levy the impact fee. If a county chooses not to enact an ordinance, a majority of the municipalities, or municipalities representing 50 percent of the county's population, will have until June 13 to vote to impose the fee, which will be collected by the Pennsylvania Public Utility Commission. The fee is based on the price of natural gas for the prior year and levied on each producing well for 15 years on a sliding scale. The fee for 2011 is expected to be \$50,000 per well.

Townships should note that the impact fee will be levied on all wells currently in the ground that produce more than 90,000 cubic feet per day and will not be levied on small stripper wells. Wells drilled before January 1, 2012, must pay the first year's fee to the PUC by September 2012. After that, the fee will be collected by April 1 of each year and levied on wells drilled into the Marcellus Shale and below, including the Utica Shale. The legislation prohibits drillers from passing the impact fee onto leaseholders.

After funding for conservation districts and state agencies is taken out (approximately \$23 million for 2011 and 2012), 60 percent of the remaining revenues will be allocated to local governments impacted by natural gas activity. Of this, 36 percent will be distributed to host counties based on the number of wells; 37 percent to host municipalities based on the number of wells; and 27 percent to host and nonhost municipalities in host counties. Host municipalities can expect to receive more than \$9,500 per well beginning in December 2012 for those drilled before the beginning of this year. (Note: This figure does not include the 27-percent allocation for host and nonhost municipalities in host counties, which is expected to total more than \$24 million for 2011.)

The remaining 40 percent of the impact fee revenues will be allocated as follows:

- 20 percent to the Commonwealth Financing Authority;
- 25 percent for highway and bridge improvements;
- 10 percent to the Environmental Stewardship Fund;
- 25 percent for water and sewer projects;
- 15 percent for greenways and open space preservation; and
- 5 percent to the state Department of Community and Economic Development.

All municipalities are eligible for these funds. They may use impact fee revenues to:

- build and maintain roads, bridges, and infrastructure;
- improve water, stormwater, and sewer systems;
- develop emergency preparedness and public safety initiatives and environmental programs, including those for open space, floodplain management, and agricultural preservation;
- preserve and reclaim surface and subsurface waters;
- reduce taxes; initiate affordable housing projects;
- improve records management and local or regional planning; and
- create a capital reserve fund.

Municipal allocations will be capped at \$500,000 annually or at 50 percent of its prior year budget, whichever is greater. Municipalities must submit an annual report to the PUC that documents that the funds were used for allowable purposes.

### **Zoning ordinance details**

Act 13 clarifies that municipalities must allow the reasonable development of oil and gas and may not regulate the same features of oil and gas well operations that are controlled by the commonwealth. While municipalities may continue to use local land use and floodplain ordinances to regulate where natural gas drilling and related activities take place, these ordinances must now allow the following:

- Well and pipeline location assessments; oil and gas operations (in residential districts, the well pad must be at least 300 feet AND the wellhead must be at least 500 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 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 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 and the noise level at the nearest property line does not exceed 60dbA.

Municipalities may continue to impose conditions on the height, screening, fencing, lighting, and noise of permanent oil and gas operations that are the same as those imposed on other industrial uses or other land development within the same zoning district.

The act also states that operators must apply for and receive permits from the municipality's zoning officer or equivalent official before conducting oil and gas well operations. In addition, well operators may ask the PUC to review an ordinance and determine if it allows the reasonable development of oil and gas. Municipalities may also ask the PUC for a predetermination to ensure a proposed ordinance complies with the law.

If the PUC, Pennsylvania Commonwealth Court, or the state Supreme Court determine that a local ordinance does not allow the reasonable development of oil and gas activities, the municipality will be ineligible for impact fee funds and will remain ineligible until it adopts an ordinance that complies with the act.

**For more information...**

[Click here to read the 174-page act.](#) You may also save the act as a PDF from this link.

**[Click here to register for "Natural Gas Impact Fee Act: Fact and Fiction," a webinar to be held on Thursday, Feb. 23, in three different sessions.](#)** The webinar is co-sponsored by the PA Local Government Training Partnership.

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