

## IMPACT FEE CAUCUS UPDATE

### CHAPTER 23

#### Shale Impact Fee

- The fee is intended for unconventional wells, and would not impact the traditional shallow gas industry.

#### Fee Schedule

- The fee schedule would begin when the operator starts to spud the well. If the well does not produce above 90mcf after 3 years, the well would no longer pay the schedule until production increases over 90mcf.
  - “Spud” means the actual start of drilling of an unconventional gas well by a rig capable of drilling to total depth.
- The fee is an annual fee dependent on the price of gas during the year of production. The annual fee is set in statute.
- The total well fee if gas price is between \$3 and \$5 dollars is \$310,000 over 15 years. This fee is reduced if the price of gas is below \$3 and is increased if the price of gas is above \$5.
- The fee would also be subject to the CPI beginning in 2013 and thereafter.

#### Stripper Well

- Non-producing wells producing less than 90,000 cubic feet of gas per day are not subject to the fee.

#### Vertical Well

- 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.

#### Re-stimulated and Reopened Wells

- Requires the producer who reopens or re-stimulates a previously capped well or unconventional gas well and places the well back into production to be reinstated into the fee schedule.

#### Royalty Owner Protections

- Does not allow an operator to make the fee on the extraction of natural gas an obligation or liability of the landowner or leaseholder.

#### County Authorization and Municipal Override

- Counties will authorize the imposition of the fee within 90 days after the effective date of this act by passing an ordinance.

- The fee is authorized by each county in the shale region by resolution. If a county declines to authorize the fee, half of the municipalities (by population or number of municipalities) may elect to authorize the fee.
- Counties or municipalities which do not approve the fee will not receive their designated shares.
  - The prohibition of receiving funds shall remain in effect until a county passes an ordinance to implement the fee and the prohibition will expire and funds may be received for the calendar year following the passage of the ordinance.

#### Permit Prohibition

- The department will not issue permits to an operator until all fees owed have been paid to the commission.

#### Collection

- PUC will collect and distribute the fee.

#### Distribution

- Oil and Gas Lease Fund transfers to:
  - **DCNR**
    - \$65,000,000 in 2012 and ever year thereafter for everyday operations.
  - **Marcellus Legacy Fund** for Environmental Stewardship Fund and HSCA.
    - \$20,000,000 in 2013
    - \$35,000,000 in 2014
    - \$40,000,000 in 2015
    - \$50,000,000 in 2016 and every year thereafter.

#### Impact Fee Distribution

- **Conservation Districts**
  - \$2,500,000 for 2011
  - \$5,000,000 for 2012
  - \$7,500,000 for 2013
    - Beginning in 2014 and every year thereafter, the allocation will be subject to a price index.
- **Pennsylvania Fish and Boat Commission**
  - \$1,000,000 annually for costs relating to the review of applications for well permits.
- **Public Utility Commission**
  - \$1,000,000 annually for fee and zoning administrative costs.
- **Department of Environmental Protection**
  - \$6,000,000 annually for the enforcement of this chapter and oversight and enforcement of acts relating to clean air and clean water .

- **Pennsylvania Emergency Management Agency**
  - \$750,000 annually for emergency response planning, training and coordination related to natural gas production.
- **Office of State Fire Commissioner**
  - \$750,000 annually for development, delivery and sustainment of training programs for first responders and the acquisition of specialized equipment for emergency response relating to natural gas production,
- **Pennsylvania Department of Transportation**
  - \$1,000,000 annually for Rail Freight Assistance.
- **Local Government Initiatives**
  - 60% of the fee is allocated to local governments impacted by natural gas activity, further distributed (as proposed by local government associations):
    - 36% to host counties
    - 37% to host municipalities
    - 27% to host & non-host municipalities in host counties
  - Uses of funds include:
    - Emergency preparedness and public safety.
    - Road, bridge and infrastructure projects.
    - Water, storm water and sewer systems and other environmental projects.
    - Records management, IT.
    - Tax reductions.
    - Preservation and reclamation of surface and subsurface waters and water supplies.
    - Projects that increase the availability of affordable housing.
    - Delivery of social services.
    - Judicial services.
    - Career and technical centers for training of workers.
    - Career and technological centers for training of workers in the oil and gas industry.
    - Local or regional planning initiatives under the Pennsylvania Municipal Planning Code.
  - Pennsylvania Housing Finance Agency
    - \$2,500,000 for 2011 and \$5,000,000 for 2012 and every year thereafter to be used in counties hosting active unconventional wells.
    - No less than 50% of the funds available will be used in 5<sup>th</sup>, 6<sup>th</sup>, 7<sup>th</sup> and 8<sup>th</sup> class counties.
  - The amount allocated to each municipality shall not exceed the greater of \$500,000 or 50% of the budget for the prior fiscal year beginning with 2010 budget year and continued every year thereafter, adjusted for inflation.

- Remaining money will be deposited in the PHFA local housing fund.
- All counties and municipalities receiving funds from the account are required to submit reports to the commission that sets forth the amount and use of the funds.
  - The reports will be published annually on the county or municipality's publicly accessible website.
- **Statewide Initiatives**
  - **40%** allocated for state wide 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 funds dedicated to the CFA will be used for flood control projects.
    - **10% to the Environmental Stewardship Fund.**
      - ESF would receive additional money through the Oil and Gas Lease Fund beginning in 2013.
    - **25% to the Highway Bridge Improvement Restricted Account** in the Motor License Fund to counties to be distributed to fund the cost of the replacement or repair of locally owned at-risk deteriorated bridges.
      - Formula based on county population.
      - Each county will receive a minimum of \$40,000.
      - PennDOT will release the funds upon approval of a plan submitted by the county or municipality to repair at-risk deteriorated bridges.
        - Counties of the first or second class may submit a plan to use funds for bridges owned by a public transportation authority.
    - **25% for Water and sewer projects** distributed 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.

- Formula based on county population.
- Each county shall receive a minimum of \$25,000.
  
- **5% to DCED** in 2011, 2012 and 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** in 2014 and every year thereafter
  - HSCA would receive additional money through the Oil and Gas Lease Fund beginning in 2015.

#### Expiration of the Fee

- The fee shall expire upon the imposition of a severance tax.

#### Diverse Business Participation

- Unconventional gas well producers must:
  - Fully comply with the Commonwealth's contract compliance policy regarding nondiscrimination.
  - Notify the Department of General Service's Bureau of Minority and Women Business Opportunities of contracting opportunities from diverse businesses.
  - Use or obtain the Bureau of Minority and Women Business Opportunities' assistance in using the Department of General Services' Internet website to identify certified diverse businesses as potential sources for Marcellus Shale opportunities.
  - Utilize DGS's available source list of veteran-owned small businesses.
  
- DGS will submit an annual report to Senate and House State Government Committees on the utilization of diverse business participation in the Marcellus Shale gas extraction industry.

### **CHAPTER 27**

#### **Natural Gas Energy Development Program**

- **Natural Gas Development Program** will receive funds through the Marcellus Legacy Fund in the following amounts:
  - \$10,000,000 for fiscal year 2012-2013.
  - \$7,500,000 for fiscal year 2013-2014.
  - \$2,500,000 for fiscal year 2014-2015.
  
- Eligible applicants include:
  - Commonwealth Authority

- Municipal Authority
  - Pennsylvania Turnpike Commission
  - Local transportation organization
  - Nonprofit entity
  - State-owned or state-related university
  - Company
- 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 pounds.
    - Bi-fuel vehicles that are fleet vehicles.
  - Eligible applicants must provide or demonstrate all of the following:
    - Have a plan to convert five or more fleet vehicles into eligible vehicles, which will be financially viable within four years.
    - Provide a statement of the projected usage of natural gas.
    - Cost of the project.
    - Source and amount of any funds to be contributed by the eligible applicant.
    - Intent to maintain operations for not less than six years.
    - Whether the project includes utilization of a natural gas fueling facility accessible to the public
  - Grants are to not cover 50% or more of the incremental purchase cost.
  - The grant is limited so that it will not exceed \$25,000 for each fleet vehicle.
  - DEP will provide an annual report to the Chairman and minority Chairman of the Senate and House Appropriations Committee including a list of all grants approved during the previous fiscal year, including the amount of the grant and a description of the project and the estimated domestic energy benefits to date for all projects receiving funding during that time.
  - DEP may not use more than 1% of the funds for program administration.

## **CHAPTER 32**

### **Environmental Safeguards**

#### **Notification**

- Increases notification requirements from *1,000* feet to *3,000* feet for unconventional wells.
- Requires notification for the host municipality and adjacent municipalities.
- Requires notification for any gas storage operator within *3,000* feet of the proposed unconventional 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 a well;
- Abandoning or plugging the well.

#### Denial of Permit

- The department may further deny a permit if the operator:
  - Is in continuing violation and the likely result of the violation is an unsafe operation or environmental damage.
  - Fails to pay the impact fee.
- Requires the unconventional operator to obtain a department-approved water management plan, which includes a reasonable written plan to reuse water that will be used to hydraulically fracture the well. 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.
- The department shall consider and may deny or condition a well permit based on the impacts to sources used for public drinking water supplies.

#### Comments by Municipalities

- Allows host municipalities of a proposed unconventional well to submit written comments to the department describing the local conditions or circumstances which the municipality deems necessary for the department in considering a permit.
- The department may consider any comments or responses it receives in its review of a permit application.

#### Well Location Restrictions

- Increases the setback distance from an unconventional well and an existing building or existing water well from **200** feet to **500** feet.
- Increases the setback distance from an unconventional well and a blue line stream, spring or body of water identified on the most current 7 ½ minute topographic map from **100** feet to **300** feet from the vertical well bore or 100 feet from the edge of the well pad, whichever is greater.
- Increases the distance an unconventional well may not be drilled within any wetlands greater than one acre in size from **100** feet to **300** feet.
- Restricts an unconventional well from being located within **1,000** feet of a public water supply source defined in the Safe Drinking Water Act.
- The department may establish additional protective measures for the storage of hazardous chemicals or material intended to be used on the well drilling site within **750** feet of any such stream, spring, body of water or wetland.
- Prohibits preparation of a well site or drilling of a well within any floodplain if the site will have:
  - A pit or impoundment containing drill 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.

- A waiver may be granted only upon the approval of a plan identifying the additional measures, facilities or practices to be employed, which the department shall impose those terms and conditions on the waiver necessary to protect the waters of this Commonwealth.
  - All tanks within the flood fringe will have adequate flood proofing in accordance with the National Flood Insurance Program standards.
- Boundaries of floodplains will be indentified on maps and flood insurance studies provided by FEMA.
- Setback provisions will not apply to a well proposed to be drilled on an existing well site for which at least one well permit has been issued prior to the effective date of this section.
  - Nothing in the setback provisions section shall alter or abridge the terms of any contracts, mortgages or other agreements entered into prior to the effective date of this section.

#### Protection of Water Supplies

- Requires a well operator who affects a public or private water supply by pollution or diminution to replace the water supply with a source that meets the applicable water quality standards consistent with the Safe Drinking Water Act.
- Creates a single statewide toll-free number for reported cases of water supply contamination.
- Requires DEP to post on its publically accessible website any confirmed case of subterranean water supply contamination resulting from hydraulic fracturing.
- DEP will 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.

#### Presumption

- Increases the distance an operator drilling an unconventional well is presumed responsible for pollution of a water supply from **1,000** feet to **2,500** feet if pollution occurred within **12** months after stimulation or alteration of the well.
- An operator must provide written notice to a landowner or water purveyor indicating that the rebuttable presumption may be void if the landowner or water purveyor refuse to allow the operator to access to conduct a pre-drilling or pre-alteration survey.

#### Containment

- Requires well pad sites to be designed and constructed to prevent spills to the ground surface or spills off the well site. 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 systems will be used when the following are stored:
  - Drilling mud
  - Hydraulic oil
  - Diesel fuel

- Drilling mud additives
- Hydraulic fracturing additives
- Hydraulic fracturing flowback
- Containment areas must be sufficient size to hold the volume of the largest container stored in the area plus 10%.

#### Notice to Public Drinking Water Suppliers

- Requires DEP to notify a public drinking water system of any spill the department investigated that may affect their water supply.

#### Transportation Regulations

- Requires the department to adopt regulations regarding record keeping on transporting, processing and treatment or disposal of wastewater from unconventional wells and requires the operator to maintain those records for 5 years.
- Recordkeeping requirements include:
  - Number of gallons of wastewater fluids produce during drilling, stimulation or alteration of a 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.

#### Corrosion Control Requirements

- Requires owners and operators of gathering lines to comply with corrosion control requirements within the Underground Utility Line Protection Law.

#### PA One Call

- Requires gathering lines to comply with One Call.
  - Does not impact the conventional lines.

#### Well Control Emergency Response

- 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.

#### Reporting Requirements

- Requires each unconventional well operator to file semi-annual report specifying the amount of production from each well.

#### Air Containment Emissions

- An owner or operator of a facility conducting natural gas operations including development, production, transmission and processing shall submit to the department a

source report identifying and quantifying actual air contaminant emissions from any air contamination source.

#### Collection of Hydraulic Fracturing Components Data

- Incorporates the Colorado hydraulic fracturing component disclosure requirement, which generated broad support from environmental groups and industry.
- Further requires the stimulation record the operator reports to include:
  - A descriptive list of chemical additives.
  - Percent by volume of each chemical additive.
  - A list of chemicals in the material safety data sheet.
  - Percent by volume of each chemical list in the material date safety sheets.
  - Total volume of the base fluid.
  - A list of water sources used under the approved management plan and the volume of water used.
  - The pump rates and pressure used in the well.
  - The total volume of recycled water used.
- In addition, the disclosure would require the operator to:
  - Submit information to FracFocus.org, which would allow the public to search and sort PA chemical disclosure information by geographic area, chemical ingredient, chemical abstract service number, time period and operator.
  - Disclose specific identity and amount of any chemicals claimed to be a trade secret to any health professional who requests the information for health related circumstances.
- Prevents the department from disclosing any confidential information to the extent permitted under Right-to-Know Law, or other Federal or State law.

#### Enforcement Orders

- Allows DEP to order a well capped if the decision was made to suspend or revoke the permit if the likely result of the violation is an unsafe operation or environmental damage.

#### Well Bonding

- Increases the well bonding requirements, which are currently established at \$2,500/well or a \$25,000 blanket bond.
- Increases well bonding requirements for wells with a total well bore length *less than 6,000 feet* to:
  - Up to 25 wells
    - \$4,000 per well
    - A bond may not exceed \$35,000
  - 51-150 wells
    - \$35,000 plus \$4,000 per well for each well in excess of 50 wells.
    - A bond may not exceed \$60,000
  - 151-250 wells
    - \$60,000 plus \$4,000 for each well in excess of 150 wells
    - A bond may not exceed \$100,000
  - 250 + wells

- \$100,000 plus \$4,000 for each well in excess of 250 wells
  - A bond may not exceed \$250,000
- Increases well bonding requirements for wells with a total well bore length *of 6,000 feet or greater* to:
  - Up to 25 wells
    - \$10,000 per well, not to exceed \$140,000.
  - 26-50 wells
    - \$140,000 plus \$10,000 per well for each well in excess of 25 wells, not to exceed to \$290,000.
  - 51-150 wells
    - \$290,000 plus \$10,000 per well for each well in excess of 50 wells, not to exceed \$430,000.
  - 150+ wells
    - \$430,000 plus \$10,000 per well for each well in excess of 150 wells, not to exceed \$600,000.
- Bond amounts may be adjusted every 2 years by the EQB.

#### Enforcement Orders

- 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 operator or environmental damage.
- Revocation shall be in writing and state the specific reasoning.
- An operator will have 30 days to appeal to the EHB.

#### Well Control Emergency Response Cost Recovery

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

#### Inspection Reports

- The department will post the inspection reports on its publicly accessible internet website to include the nature and description of violation, operator's written response, status of violation and the remedial steps taken by the operator or the department to address the violation.

#### Penalties

- Criminal
  - Increases the fine paid from \$300 to \$1,000.
- Civil
  - Increases the fine for unconventional wells from \$25,000 plus \$1,000 for each continuing day of violation to \$75,000 plus \$5,000.
  - Authorizes the department, rather the EHB, to assess civil penalties

## Chapter 33

### Local Ordinances Relating to Oil and Gas Operations

- Allows an operator or any person having the right to royalty payments under a lease of oil and gas mineral rights to request the PUC to review a local ordinance to determine whether it allows for the reasonable development of oil and gas.
- The determination of the PUC shall become part of the record before the court.
- **A local ordinance must:**

#### Well and Pipeline

- Allow well and pipeline location assessment operations conducted in accordance with all applicable Federal and State laws and regulations relating to the storage and use of explosives throughout every local government.

#### Oil and Gas Operations Related to other Industrial Activity

- Impose conditions, requirements or limitations on oil and gas operations that are no more stringent than those imposed on construction activities for other land development within the zoning district where the oil and gas operations are situated.

#### Height, Setbacks, Screening and Fencing, Lighting and Noise

- Impose conditions, requirements or limitations on the height of permanent structures, setbacks from property lines, screening and fencing, lighting and noise restrictions that are no more stringent than those imposed on industrial uses or what is allowed within the local government or set forth in state statute or regulations.

#### Review Period

- Have a review period of 30 days for complete submissions or that exceeds 120 days for conditional uses.

#### Oil and Gas Operations (other than compressor stations, impoundment areas and processing plants)

- Authorize oil and gas operations, other than compressor stations, impoundment areas and processing plants, as a permitted use in all zoning districts.
  - May be prohibited or permitted as a conditional use in residential districts should the local government determine that no well site can be placed so that a well head will be at least 500 feet from an existing building.
  - All of the following apply in a residential district:
    - A well site may not be located so that the outer edge of a well pad is closer than 300 feet from an existing building.
    - Oil and gas operations, other than the placement, use and repair of oil and gas pipelines, water pipelines, access roads or security facilities, may not take place within 300 feet of an existing building.

### Impoundments

- Authorize impoundment areas as a permitted use in all zoning districts, provided that the edge of any impoundment area is not to be located closer than 300 from an existing building.

### Compressor Stations

- Authorize natural gas compressor stations as a permitted use in agriculture and industrial zoning districts and as a conditional use in all other zoning districts, if the natural gas 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.
  - Does not exceed a noise standard of 60dbA at the nearest property line or the applicable standard imposed by Federal law, whichever is lesser.

### Processing Plants

- Authorize natural gas processing plants as a permitted use in industrial zoning district and as conditional use in agricultural zoning districts, if the natural gas processing plant 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.
  - Does not exceed a noise standard of 60dbA at the nearest property line or the applicable standard imposed by Federal law, whichever is lesser.

### Vehicle Access Routes

- Impose restrictions on vehicular access routes for overweight vehicles only as authorized under 75 Pa.C.S. or the MPC.

### Hours of Operation

- Does not attempt to impose limits or conditions on subterranean operations or hours of operations of compressor stations and processing plants or hours of operation for the drilling of oil and gas wells or the assembly and disassembly of drilling rigs.

### Setbacks

- My not increase setback distances set forth in Chapter 32 or this chapter. A local ordinance may impose setback distances that are not regulated by or set forth in Chapter 32 or this chapter if the setbacks are no more stringent than those for other industrial uses within the geographic boundaries of the local governments.
- This will apply to the enforcement of local ordinances existing on the date of this section and to the enactment or enforcement of local ordinances on or after the effective date.

- A municipality may, prior to the enactment of a local ordinance, request the commission to review a proposed local ordinance to issue an opinion on whether it violates the MPC, this chapter or Chapter 32.
  - The PUC will advise in writing within 120 days of receiving the request whether or not the Attorney General determines that the local ordinance provides for the reasonable development of oil and gas and provide a copy to the affected local government.
- 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 shall be immediately ineligible to receive funds collected through the fee and will remain ineligible until the local government adopts a local ordinance in accordance of this subchapter.

### **Technical Revisions and Repeals**

- Further clarifies that the application of regulations and statues adopted by the Commonwealth will be the exclusive method by which any requirements may be imposed on any feature, aspect or process of oil and gas operations on oil and gas deposits on national forest lands.
- Within 90 days of the effective date of the section, the Department of Transportation shall issue a statement of policy, effective upon publication in the Pennsylvania Bulletin, adopting an appropriate methodology to provide letters of local determination that identify particular vehicles, routes or uses as local in nature. The Department of Transportation may determine that hauling related to unconventional oil and gas development is excluded from local traffic status based on its disproportionate and qualitatively different impact upon highways and bridges. The methodology shall allow for exemptions related to at-risk industry sectors in this Commonwealth.
  - The methodologies and procedures shall remain in effect until December 31, 2015.
  - For purposes of this section, an “at-risk industry” shall mean an industry in this Commonwealth which has experienced a reduction in total employment of 20% or more since 2002 or that demonstrate other evidence of economic decline as determined by the department in consultation with the Department of Labor and Industry..
- The Energy Executive of the Governor shall consult with the Department of Environmental Protection, the Pennsylvania Public Utility Commission, local government organizations, natural gas industry representatives, conservationists, and other affected entities on the issue of pipeline placement for natural gas gathering lines.
  - The Energy Executive of the Governor shall submit a report to the General Assembly within one year of the effective date.