Pennsylvania’s Oil & Gas Amendments: A Discussion of the Impacts and Next Steps

A Web Broadcast Video Presentation

by

Shale Industry Team

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PA PUC

The New Marcellus Shale Superman?
Pa PUC

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- Act 13—Pa Oil and Gas Act Amendments
  - Chapter 23—Administration of Unconventional Gas Well Fee
  - Chapter 33—Review of Local Ordinances Relating to Oil and Gas Operations
- Act 127—Gas and Hazardous Liquids Pipeline Act
Chapter 23
Unconventional Gas Well Fee

- **County Obligations**
  - May, but need not, impose fee
  - Must pass resolution within 60 days
  - Local municipalities may compel within 120 days

- **Amount of Fee: 2011—at $4.03, $50,000**
  - Flat fee, per well, dependent on average annual price of natural gas during year of production
  - 15-year sliding scale, based on year spud
  - No fee unless you win
    - Nonproducing wells
    - Cessation
    - Restimulation
Chapter 23
Unconventional Gas Well Fee

- Producer Obligations
  - Annual report and payment of fee
    - Due September 1, 2012 for calendar year 2011
    - Due April 1 each year thereafter
  - 30 day (after calendar month) reporting requirement for
    - Spudding
    - Initiation of production
    - Removal of well from production
- Royalty Owner Protection
  - May not make the fee an obligation or liability of the landowner or leaseholder
Chapter 23
Unconventional Gas Well Fee

- PUC Obligations
  - Calculation and collection
  - Enforcement
    - No new permits unless fees are paid
    - Suspension of permit for well in question
    - Interest
    - Late fee of 5%, per month
    - Up to $2,500 per day civil penalty
    - Judgment lien
    - Enforcement orders and contempt
Chapter 33
Local Ordinances

- Preemption
  - §33O2—local regulation of oil & gas operations
    - Restatement of old §6O2
    - Not intended to change or affect judicial construction of old §6O2—see Huntley & Huntley, Inc. v. Borough Council of Oakmont, 600 Pa. 2O7 (2009)
  - §33O3—local regulation of environmental aspects of oil & gas operations
Chapter 33
Local Ordinances

- **Uniformity**
  - Municipalities must allow oil & gas operations in all zoning districts with narrow exceptions
  - 120 days from effective date of chapter to bring their ordinances into compliance
Chapter 33
Local Ordinances

- Zoning Challenges
  - Advisory opinions from Pa PUC
    - 120 day turnaround
  - Review of legality by Pa PUC
    - No administrative hearing, no Public Meeting
    - 120 day turnaround
    - If invalidated, municipality becomes ineligible to receive funds from fees
  - Direct challenge in Commonwealth Court
    - Award of attorneys’ fees
CHAPTER 32
Pennsylvania’s New Hydraulic Fracturing Chemical Disclosure Requirements
Applicability

- Hydraulic fracturing chemical disclosure requirements apply to hydraulic fracturing of unconventional wells
- Conventional well operators’ disclosure obligations not modified by the amendment
Required Disclosures

- Well service providers and chemical additive vendors must provide information to operator not more than 60 days after fracking begins.
- Operator must complete chemical disclosure registry form and post it on registry within 60 days of completing fracking.
CBI Protection

- Chemical additive vendor, service provider or operator can claim that information is trade secret/confidential ("CBI")
- Operator must indicate this on chemical disclosure registry form
- Vendor, service provider or operator shall submit signed, written statement that record contains CBI
Public Record

- Information submitted to DEP or posted to registry is public record unless entitled to protection as CBI
- DEP shall prevent disclosure of CBI pursuant to PA Right-to-Know-Law (Act of February 14, 2008, P.L.6, No.3)
CBI Protection Loopholes

- Disclosure of CBI permitted to:
  - Health professionals who execute confidentiality agreement and provide written statement of need for information
  - Health professional determining that a medical emergency exists
- Loophole seemingly covers plaintiff medical experts
THE BREAKFAST OF LAWYERS
CBI Protection Loopholes

- Disclosure of CBI permitted by DEP, public health officials, emergency managers and spill responders to persons “directly and adversely affected or aggrieved by the spill or release”
- Such disclosures shall NOT be a public record
CHAPTER 32
Amendments to the Permitting, Bonding, and Environmental Requirements
“These new regulations will fundamentally change the way we get around them.”
Chapter 32
Well Permits

- Notices to Municipalities and Landowners Required for Well Permit Applications Extended to 3,000 Feet for Unconventional Wells
- Permits may be Denied for Continuing Violations by the Applicant’s Parent or Subsidiary
- Water Management Plans Required for Drilling or Hydraulic Fracture Stimulation
Chapter 32
Well Permits

- Municipalities May Submit Comments to DEP Regarding Permit Applications
- Well Location Restrictions Have Been Expanded
- Environmental Quality Board Must Issue Regulations for DEP to Use in Evaluating: Impact to Public Resources and Respecting Property Rights of Oil and Gas Owners
Chapter 32

Well Site Restoration Plan Requirements

- Time Periods Designated After Well Drilling or Plugging Although Extensions May Be Provided
- Restoration Activities Must be in Compliance with Clean Streams Law
Chapter 32


- Alternate Water Source to be Provided Where Impact Exists
- Investigations to be Conducted by DEP Upon Request
- Rebuttable Presumption of Liability Established for Unconventional Wells for Contamination to 2,500 Feet from the Water Supply
Chapter 32
Other Requirements

- Containment Plans Required for Spills
- Transportation Records for Wastewater
- Civil Penalties
Chapter 32
Corrosion Control

- All buried metallic pipelines shall be installed and placed in operation in accordance with federal corrosion protection requirements.
- Permanent aboveground and underground tanks must comply with applicable corrosion control requirements of the DEP’s storage tank regulations.
- For all other buried metallic structures, including well casings, the Environmental Quality Board shall promulgate regulations setting forth methods of determining the need for corrosion protection.
- Corrosion control procedures must be carried out under the direction of a qualified person.
- A pipeline operator must be in compliance with this section (58 P.S. § 3218.4) by the date the pipeline goes into service.
Chapter 32
Gathering Lines

- Owners and operators of pipelines used to transport natural gas from a production facility to a transmission line (i.e., “gathering lines”) are required to comply with the Underground Utility Line Protection Law.
Chapter 32

Well Control Emergency Response

- The DEP 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 DEP will enjoy immunity from liability for good faith actions taken to meet contractual obligations, but will not be so immune for claims of contractual breach, intentional tort or gross negligence.
Chapter 32

Well Reporting Requirements

- Unconventional well operators must file a semiannual production report
- All well operators must maintain a record of each well drilled; each must file a well record within 30 days of drilling and a completion report within 30 days of completion
- The completion report must include the stimulation record, which must state:
  - The chemical additives in the stimulation fluids, and the trade name, vendor and a brief descriptor of the intended use or function of each
  - The chemicals intentionally added to the stimulation fluid, and the maximum concentration, in percent by mass, of each
  - The total volume of the base fluid.
  - A list of water sources used and the volume of water used, including the total volume of recycled water used
  - The pump rates and pressure used in the well
Chapter 32
Well Reporting Requirements

- A well operator may designate certain portions of the stimulation record as containing trade secret or confidential proprietary information. The DEP shall prevent disclosure of that information to the extent permitted under Pennsylvania’s Right-to-Know Law.

- The well record must state:
  - Whether methane was encountered in other than a target formation
  - The country of origin and manufacture of steel products used in well construction

- Within certain specified time frames, the DEP may request that well operators provide additional data or material, including drill cuttings, core samples, and standard industry logs, charts, or analyses.
Chapter 27

Encouraging the Use of Vehicles Powered by CNG & LNG.
Chapter 27

The Natural Gas Energy Development Program

- The law creating this program, 58 P.S. §§ 2701-2704, becomes effective on 4/14/2012 and expires on 12/31/2016.
- By providing $20 million in competitive grants over the next three fiscal years, this Program seeks to encourage the utilization of compressed natural gas (CNG) or liquefied natural gas (LNG) as the fuel source in vehicles having a gross vehicle weight rating of ≥ 14,000 pounds.
Chapter 27
The Natural Gas Energy Development Program

Eligible Applicants:
- A Commonwealth authority
- A municipal authority
- The Pennsylvania Turnpike Commission
- A local transportation organization (i.e., a political subdivision, public transportation authority, port authority, redevelopment authority, nonprofit entity directly or indirectly providing public transportation service or nonprofit entity of public transportation providers)
- A nonprofit entity
- A State-owned or State-related university
- An entity doing business in Pennsylvania and subject to tax under 72 P.S. §§ 7301-7412, 7601-07
Chapter 27
The Natural Gas Energy Development Program

- Grants Available from the Marcellus Legacy Fund:
  - $10 million in FY 2012-2013
  - $7.5 million in FY 2013-2014
  - $2.5 million in FY 2014-2015
  - In each of these three fiscal years, 50% of the funds will be allocated to local transportation organizations
  - Any funds not awarded in a fiscal year will be made available to eligible applicants in subsequent years
Chapter 27

The Natural Gas Energy Development Program

- The Grant Application Must Include:
  - A plan to purchase or convert 5 or more vehicles fueled by CNG or LNG, which plan must be financially viable within 4 years and must include the new construction of an, or utilization of an existing, natural gas fueling station
  - A statement of projected use of natural gas “and how the project will increase use of domestic natural gas in this Commonwealth”
  - The cost of the project
  - The source and amount of any contributed funds
  - The intent to maintain operations in Pennsylvania for not less than 6 years
  - The intent to register the CNG or LNG vehicles in Pennsylvania
  - The utilization of available federal funds
  - Whether the project includes utilization of a natural gas fueling facility accessible to the public
The Natural Gas Energy Development Program

- The DEP will administer this program and “determine which projects will best utilize and promote the use of domestically produced natural gas in this Commonwealth.”

- Among other things, the DEP’s guidelines must:
  - Restrict each grant to no more than 50% of the vehicle’s incremental cost (the excess over the price for a gasoline or diesel fuel motor vehicle of a similar model)
  - Restrict each grant to no more than $25,000 per vehicle
  - Require annual reporting on the amount of natural gas used by vehicles propelled in part by CNG
Q & A

And now it’s your turn.

We welcome your questions and comments.
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