

Pennsylvania Impact Fee Summary

Overview

In February of this year, the Pennsylvania General Assembly passed an expansive amendment that recodified the state’s old Oil and Gas Act (58 Pa.C.S. §§601.101-601.605). Much of the amendment’s language, inserted via Chapter 32 (58 Pa.C.S. §§3201-3274), impacts unconventional natural gas drilling operations. The amendment provided for enhanced environmental protections for the development of unconventional natural gas resources; to authorize the imposition, collection and distribution of an impact fee on the development of unconventional natural gas resources and to provide for municipal ordinances and zoning standards related to oil and gas development. Governor Tom Corbett signed this amendment into law. The amendment is now Act 13 of 2012.

I. Impact Fee

Unconventional Gas Well Impact Fee

- The fee is an annual fee dependent on the price of gas during the year of production and is collected over a period of 15 years. Gas wells spud before 2011 are considered to have been spud in 2011 for purposes of imposing the fee. The fee schedule is as follows:

Year	\$0-2.25	\$2.26-2.99	\$3.00-4.99	\$5-5.99	\$6 or higher
1	\$40,000	\$45,000	\$50,000	\$55,000	\$60,000
2	\$30,000	\$35,000	\$40,000	\$45,000	\$55,000
3	\$25,000	\$30,000	\$30,000	\$40,000	\$50,000
4	\$10,000	\$15,000	\$20,000	\$20,000	\$20,000
5	\$10,000	\$15,000	\$20,000	\$20,000	\$20,000
6	\$10,000	\$15,000	\$20,000	\$20,000	\$20,000
7	\$10,000	\$15,000	\$20,000	\$20,000	\$20,000
8	\$10,000	\$15,000	\$20,000	\$20,000	\$20,000
9	\$10,000	\$15,000	\$20,000	\$20,000	\$20,000
10	\$10,000	\$15,000	\$20,000	\$20,000	\$20,000
11	\$5,000	\$5,000	\$10,000	\$10,000	\$10,000
12	\$5,000	\$5,000	\$10,000	\$10,000	\$10,000
13	\$5,000	\$5,000	\$10,000	\$10,000	\$10,000
14	\$5,000	\$5,000	\$10,000	\$10,000	\$10,000
15	\$5,000	\$5,000	\$10,000	\$10,000	\$10,000

Fee Adjustments

- Beginning January 1, 2013, the fee may be adjusted to reflect any upward changes in the Consumer Price Index, provided there is an increase in drilling activity over the previous calendar year.
- If a well does not produce natural gas in quantities greater than those of a stripper well (90,000 cubic feet per day) within three years, the fee is suspended.
- The fee is reinstated when the well produces gas in quantities greater than those of a stripper well and will resume on the fee schedule at the year in which it was suspended.
- A vertical unconventional gas well will pay 20% of the fee established for unconventional gas wells.
- A vertical unconventional gas well is only required to pay the fee for calendar years in which the well is producing more than 90,000 cubic feet of gas per day.

Local Option

- The governing body of a county with spud unconventional gas wells may elect to impose an impact fee by ordinance within 60 days of the effective date of this Act.
- If a county does not impose an impact fee, the governing bodies of municipalities may compel the imposition of an impact fee upon either of the following occurring:

- Half of the municipalities within the county adopt resolutions electing to impose an impact fee, or
- Municipalities representing at least 50% of the population of the county adopt resolutions electing to impose an impact fee.

Fee Administration

- The Pennsylvania Public Utility Commission (PUC) administers the collection of the fee.
- The fee is due by April 1st each year, commencing in 2013.
- The fee for calendar year 2011 is due by September 1, 2012.

Distribution of the Fee

Funds shall be distributed as follows:

- **Conservation Districts**
 - \$2.5 million from 2011 fees
 - \$5 million from 2012 fees
 - \$7.5 million annually from fees collected thereafter
- **Fish and Boat Commission**
 - \$1 million from 2011 fees and each year thereafter for the review of permit applications related to unconventional gas wells
- **Pennsylvania Utility Commission**
 - \$1 million from 2011 fees and each year thereafter for administration
- **DEP**
 - \$6 million from 2011 fees and each year thereafter for administration of the act and enforcement of clean air and clean water statutes
- **Pennsylvania Emergency Management Agency**
 - \$750,000 from 2011 fees and each year thereafter for emergency response planning, training and coordination related to natural gas production from unconventional wells
- **Office of State Fire Commissioner**
 - \$750,000 from 2011 fees and each year thereafter for the development, delivery and sustainment of training and grant programs for first responders and the acquisition of specialized equipment for response to emergencies relating to natural gas production from unconventional wells
- **Rail Freight Assistance**
 - \$1 million from 2011 fees and each year thereafter
- **Natural Gas Energy Development Program-to provide incentive funding for the use of natural gas**
 - \$10 million for 2011
 - \$7.5 million for 2012
 - \$2.5 million for 2013

Local Distribution of the Fee

Following the distribution above, 60% of revenues are appropriated to qualifying counties and qualifying municipalities including the following:

- **Pennsylvania Housing Finance Agency for the Housing Affordability and Rehabilitation Enhancement Fund**
 - \$2.5 million from 2011 fees
 - \$5 million from 2012 fees and each year thereafter
 - The funds shall be used to increase the availability of quality, safe, affordable housing for low and moderate-income individuals or families and for rental assistance in counties where unconventional wells are located.
- **Counties and Municipalities (after distribution of the Housing Affordability and Rehabilitation Enhancement Fund)**
 - 36% to qualifying counties with unconventional gas wells
 - 37% to qualifying municipalities with unconventional gas wells
 - 27% to qualifying municipalities in a county with unconventional gas wells as follows:
 - ✓ 50% to municipalities with unconventional gas wells or within five linear miles of such a municipality
 - ✓ 50% to each municipality within the county

- Amounts allocated to a municipality shall not exceed the greater of \$500,000 or 50% of the total budget of the municipality for the prior fiscal year beginning in 2010 and adjusted for inflation. Any remaining money shall be deposited by the PUC in the Housing Affordability and Rehabilitation Enhancement Fund.
- Use of funds by counties and municipalities are enumerated in the Act.

Distribution for Statewide Initiatives

A total of 40% of revenues shall be distributed as follows:

- **Commonwealth Financing Authority**
 - 20% for grants to be used for purposes enumerated in the Act
- **Environmental Stewardship Fund**
 - 10% for distribution to the Departments of Agriculture, Conservation and Natural Resources, Environmental Protection and the Pennsylvania Infrastructure Authority
- **Highway Bridge Improvement Restricted Account**
 - 25% to be distributed to fund replacement or repair costs associated with locally owned at risk deteriorated bridges.
- **Pennsylvania Infrastructure Investment Authority**
 - 12.5% to be used in accordance with Pennsylvania Infrastructure Investment Authority Act
- **Commonwealth Financing Authority – H2O PA Program**
 - 12.5% to be used in accordance with the H2O PA Act
- **Counties**
 - 15% 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 resources management. Funds shall be distributed to counties proportionally based on population.
- **Remaining Balance**
 - 5% to DCED for 2011, 2012 and 2013 for projects related to a facility to liquefy or refine natural gas or convert natural gas to ethane, propane or a similar substance. Thereafter, the money will go to the Hazardous Sites Cleanup Fund.

Oil and Gas Lease Fund

- Funds appropriated to the Department of Conservation and Natural Resources (DCNR) shall be transferred to the Environmental Stewardship Fund as follows:
 - \$20 million in 2013
 - \$35 million in 2014 and each year thereafter
- The following amounts shall be transferred to the Hazardous Sites Cleanup Fund:
 - \$5 million in 2015
 - \$15 million in 2016 and each year thereafter

II.Enhanced Environmental Safety Standards

Oil and Gas Act Amendments

- Well permits
 - Increases notice distance of unconventional well permit applications to 3,000 feet from 1,000 feet
 - In addition to landowners, water purveyors, coal owners and operators, notice shall be provided to host municipality and adjacent municipality
 - Unconventional well operators shall provide the DEP 24 hours' notice prior to:
 - ✓ Cementing all casing strings;
 - ✓ Conducting pressure tests of the production casing;
 - ✓ Stimulation of well;
 - ✓ Abandoning or plugging of well
 - An unconventional well operator must have a department approved water management plan. 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

Well Location Restrictions

- Extends setback distance for unconventional wells to 500 feet from existing buildings or water wells.
- Establishes 1,000 foot setback for an unconventional well from a water supply extraction point used by a water supplier, unless authorized by the water supplier.
- Extends setback distance for unconventional wells to 300 feet from any stream, spring, and body of water or wetland greater than 1 acre in size.
- Unconventional well site pads must maintain a 100 foot setback from the edge of the disturbance and any stream, spring, body of water or wetland greater than 1 acre in size.
- Authorizes the DEP to establish additional protective measures for the storage of hazardous chemicals and materials to be used on an unconventional well site within 750 feet of a stream, spring or body of water

Hydraulic Fracturing Chemical Disclosure Requirements-based on Colorado and Texas disclosure provisions

- Service provider and vendor shall provide all required information to the operator not more than 60 days after commencement of hydraulic fracturing.
- Within 60 days following conclusion of hydraulic fracturing, the operator shall complete the chemical disclosure registry form and post on FracFocus.
- Operator must indicate any information specified by the vendor, service provider or operator as a trade secret or confidential proprietary information and a signed written statement to that affect.
- Information submitted to the DEP or posted on FracFocus shall be a public record unless entitled to protection as a trade secret or confidential proprietary information.
- Specific identity and amount of chemicals shall be identified to any health professional who requests in writing for a valid reason or a verbal acknowledgement by the health care professional that the information will not be used except for a health need.

Bonding

Bond amounts established based on well bore length and number of wells operated as follows:

- For wells with total well bore length less than 6,000 feet:
 - Up to 50 wells - \$4,000/well not to exceed \$35,000
 - 51-150 wells - \$35,000 plus \$4,000/well not to exceed \$60,000
 - 151-250 wells - \$60,000 plus \$4,000/well not to exceed \$100,000
 - More than 250 wells - \$100,000 plus \$4,000/well not to exceed \$250,000
- For wells with total well bore length 6,000 feet or greater:
 - Up to 25 wells - \$10,000/well not to exceed \$140,000
 - 26-50 wells - \$140,000 plus \$10,000/well not to exceed \$290,000
 - 51-150 wells - \$290,000 plus \$10,000/well not to exceed \$430,000
 - More than 150 wells - \$430,000 plus \$10,000/well not to exceed \$600,000
- Bond amounts may be adjusted every two years by the Environmental Quality Board

III. Local Uniformity Provisions

- Supersedes all local ordinances purporting to regulate oil and gas operations, except with respect to zoning ordinances adopted pursuant to the Pennsylvania Municipalities Planning Code and the Flood Plain Management Act.
- Preempts local ordinances adopted pursuant to the Pennsylvania Municipalities Planning Code from regulating matters regulated in Chapter 32 of this Act or any other technical aspects of oil and gas operations.
- Consistent with existing Oil and Gas Act.
- Preempts and prohibits local ordinances which purport to regulate the environmental aspects of oil and gas operations.
- Declares that environmental laws are of Statewide concern and are within the sole authority of the State to regulate.
- All local ordinances regulating oil and gas operations must allow for the reasonable development of oil and gas resources.
- A local ordinance:
 - Shall allow well and pipeline location assessment operations, including seismic operations;

- May not impose conditions, requirements or limitations on the construction of oil and gas operations that are more stringent than those imposed on construction activities for other industrial uses within the geographic boundaries of the local government;
- May not impose conditions, requirements, limitations on the heights of structures, screening and fencing, lighting or noise relating to permanent oil and gas operations that are more stringent than those imposed on other industrial uses or other land development within the particular zoning district where the oil and gas operations are situated within the local government;
- Shall have a review period for permitted uses that does not exceed 30 days for complete submissions or 120 days for conditional uses;
- Shall authorize oil and gas operations, other than activities at impoundment areas, compressor stations and processing plants, as a permitted use in all zoning districts;
- May prohibit wells or well sites, or permit only as a conditional use, within a residential district where a well site cannot be placed so that the wellhead is at least 500 feet from an existing building. The following shall apply to 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, except the placement, use and repair of pipelines, access roads or security facilities, may not take place within 300 feet of an existing building.
- Shall authorize impoundment areas as a permitted use in all zoning districts, provided the edge of any impoundment shall not be located closer than 300 feet from an existing building;
- Shall authorize natural gas compressor stations as a permitted use in agriculture and industrial zoning districts and as a conditional use in all other district, if the 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 and the noise level does not exceed 60 dbA at the nearest property line or the applicable standard imposed by federal law, whichever is less;
- Shall authorize natural gas processing plants as a permitted use in industrial zoning districts and as a conditional use in agricultural zoning districts, if the processing plant 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 and the noise level does not exceed 60 dbA at the nearest property line or the applicable standard imposed by federal law, whichever is less;
- Shall impose restrictions for vehicular access routes for overweight vehicles only as authorized under 75 Pa.C.S. or the Municipalities Planning Code;
- May not impose limits or conditions on subterranean operations or hours of operation of compressor stations and processing plants or house of operation for the drilling of oil and gas wells or the assembly and disassembly of drilling rigs;
- May not increase setback distances set forth in Chapters 32 or 33 of this Act. Local ordinance may impose setback distances that are not regulated or set forth in Chapters 32 and 33 provided that those setbacks are no more stringent than those for other industrial uses within the geographic boundaries of the local government.