



ACT 13 OF 2012 – THE UNCONVENTIONAL GAS WELL IMPACT FEE FREQUENTLY ASKED QUESTIONS

1. WHAT IS ACT 13 – THE UNCONVENTIONAL GAS WELL IMPACT FEE?

Signed into law Feb. 14, 2012, Act 13 of 2012 amends Title 58 (Oil and Gas) of the Pennsylvania Consolidated Statutes (Act 13 of 2012). It provides for the imposition of an unconventional gas well fee (also called a drilling impact fee). The law mandates that the fee is disbursed to local and state entities for the purposes specifically outlined in the law.

2. WHAT IS AN UNCONVENTIONAL GAS WELL?

The law defines unconventional gas well as a bore hole drilled or being drilled in the production of natural gas from a geological shale formation (such as Marcellus Shale).

3. WHEN DOES ACT 13 GO INTO EFFECT?

Some provisions, including Chapter 23 (relating to the collection and disbursement of the impact fee), went into effect when Governor Corbett signed the law. Other provisions, including Chapter 33 (relating to local ordinances), will become effective on April 14, 2012.

4. WHAT COUNTIES ARE ELIGIBLE TO RECEIVE MONEY FROM THE UNCONVENTIONAL WELL IMPACT FEE?

A county may impose the fee if unconventional gas wells are located within its borders and if the county passes an ordinance imposing that fee within 60 days of the effective date of Chapter 23, or by April 14, 2012. However, because April 14, 2012, falls on a Saturday, the counties will have until April 16, 2012, to adopt an ordinance imposing an unconventional gas well fee.

5. WHAT IF THE COUNTY CHOOSES NOT TO PASS AN ORDINANCE IMPOSING A FEE?

A county that does not pass an ordinance imposing an unconventional gas well fee shall be prohibited from receiving funds. This prohibition shall remain in effect until the calendar year after a county passes an ordinance imposing a fee.

6. MY COUNTY OPTED NOT TO IMPOSE THE UNCONVENTIONAL GAS WELL FEE – IS THERE ANOTHER OPTION?

If a county chooses not to impose an unconventional gas well fee, municipalities may adopt resolutions to compel the imposition of a fee. At least 50 percent of the municipalities in the county or municipalities representing at least 50 percent of the county population must adopt resolutions that are then sent to the county and the PUC.

7. HOW LONG DO THE MUNICIPALITIES HAVE TO ACT IF THE COUNTY DOES NOT ENACT THE FEE?

Municipalities have 60 days after the county 60-day deadline (April 14, 2012) passes or June 13, 2012.

8. WHO DISTRIBUTES THE FEE?

The PUC is charged with distributing the fee.

9. HOW WILL FUNDS BE DIVIDED AMONG MUNICIPALITIES AND STATE INTERESTS?

After the distribution of money specifically earmarked in the law to offset the statewide impact of drilling, the law provides that 60 percent of the remaining funds go into funds to help the affected municipalities and 40 percent is provided for statewide initiatives.

10. MY LOCAL GOVERNMENT IS ELIGIBLE TO RECEIVE MONEY – WHAT CAN THEY USE IT TOWARDS?

The money from the fees is to be directed for local and state purposes specifically outlined in the law such as water, wastewater and road infrastructure maintenance and improvements; emergency preparedness; environmental programs; tax reductions; increased safe/affordable housing; employee training; or planning initiatives.

11. WHICH AGENCIES ARE RECEIVING MONEY TO ADDRESS STATEWIDE ISSUES?

County Conservation Districts and the following state agencies will receive money to address statewide issues: Fish and Boat Commission; Public Utility Commission; Department of Environmental Protection; Pennsylvania Emergency Management Agency; Office of State Fire Commissioner; and Department of Transportation.

12. TO WHOM ARE THE UNCONVENTIONAL GAS WELL FEES SUBMITTED?

The fee is submitted to the PUC. The Commission is considering the use of a third-party administrator to perform those duties in the short term.

13. WHO MUST PAY THE IMPACT FEE?

All producers with spud wells in 2011 must pay the fee. According to the law, “spud” refers to the actual start of drilling an unconventional gas well.

14. HOW WILL THE PUC KNOW WHICH WELLS TO ASSESS?

The state Department of Environmental Protection (DEP) will provide the PUC with lists of all unconventional wells.

15. WHEN IS THE IMPACT FEE DUE?

For 2012, unconventional well fees are due by Sept. 1. Unconventional well fees are due by April 1 beginning in 2013.

16. ARE THERE OTHER FEES ASSOCIATED WITH THE DRILLING OF UNCONVENTIONAL GAS WELLS?

Producers may be required to pay an annual administrative fee not to exceed \$50 per spud well. The first payment is due Sept. 1, 2012, with payment due April 1 beginning in 2013.

17. WHAT DOES THE MONEY FROM THE ANNUAL ADMINISTRATIVE FEE GO TOWARD?

The administrative fee is to offset implementation and direct costs of the PUC. Any costs incurred by the PUC above the \$50 administrative fee may be assessed on all producers in proportion to the number of wells owned.

18. HOW IS THE UNCONVENTIONAL GAS WELL FEE CALCULATED BY THE PUC?

The law was very specific on how the fee would be calculated. The law says the PUC will impose a fee for each horizontal unconventional gas well from year one to year 15 based upon the average annual price of natural gas in the calendar year when the fee is imposed.

Vertical unconventional gas wells would pay 20 percent of the established fee for calendar years in which the well is producing more than 90,000 cubic feet of gas per day.

The law also provides a fee schedule for wells that do not produce natural gas in quantities greater than those of a stripper well (90,000 cubic feet per day) and re-stimulated wells.

19. WILL THE FEE AMOUNT EVER CHANGE?

Besides changing to reflect the average annual price of natural gas, the law says fee amounts may be adjusted to reflect upward changes in the Consumer Price Index for the preceding 12 months. Notice of a fee change must be published in the Pennsylvania Bulletin.

20. WHAT IF A PRODUCER DOES NOT PAY THE FEE?

The PUC may assess civil penalties on producers who fail to pay the fee of up to \$2,500 per violation. PUC action must be brought within three years of the offense. Interest of 5 percent each month (not to exceed 25 percent in the aggregate) also may be assessed on late fees.

21. CAN A FAILURE OF A PRODUCER TO PAY THE IMPACT FEE AFFECT OTHER STATE PERMITS FOR DRILLING?

Yes – The PUC is required to provide the DEP with information necessary to determine that the applicant has paid all fees owed. DEP may not issue a drilling permit to a producer that is delinquent on fees. Also, DEP must suspend existing drilling permits until the fee is paid, unless the producer has a pending appeal.

22. WHAT ABOUT LOCAL GOVERNMENTS WITH ORDINANCES ALREADY IN EFFECT DEALING WITH DRILLING?

The law preempts local ordinances with respect to the development of oil and gas operations.

23. CAN A LOCAL GOVERNMENT ADOPT AN ORDINANCE REGULATING DRILLING?

Yes, so long as the local ordinance regulating oil and gas operation allows for the reasonable development of oil and gas resources.

24. WHAT IF A LOCAL GOVERNMENT IS UNSURE IF THE LANGUAGE IN AN ORDINANCE REGULATING OIL AND GAS OPERATIONS IS IN ACCORDANCE WITH THE NEW LAW?

Prior to enacting an ordinance regulating oil and gas operations, local governments may come to the PUC for an advisory opinion on whether the proposed ordinance may violate any state law.

25. HOW LONG WILL IT TAKE TO RECEIVE AN ADVISORY OPINION FROM THE PUC ABOUT A PROPOSED ORDINANCE?

The PUC has 120 days from the request for review to issue an advisory opinion on the proposed ordinance.

26. WHAT IF A RESIDENT OR GAS PRODUCER HAS AN ISSUE WITH A LOCAL ORDINANCE REGULATING OIL AND GAS OPERATIONS?

Any resident of the municipality or gas producer who is aggrieved by the local ordinance may request the PUC to review the local ordinance to determine whether it violates state law. The PUC will not accept requests for review until those provisions of the law go into effect or April 16, 2012.

27. HOW LONG WILL IT TAKE FOR THE PUC TO ISSUE A DETERMINATION WHEN ASKED TO REVIEW A LOCAL GOVERNMENT'S ORDINANCE REGULATING OIL AND GAS OPERATIONS?

The PUC has 120 days to make a determination on the request.

28. DO AGGRIEVED PARTIES HAVE ANY OPTIONS IF THEY DISAGREE WITH THE PUC'S DETERMINATION OF WHETHER A LOCAL GOVERNMENT ORDINANCE REGULATING OIL AND GAS OPERATIONS VIOLATES STATE LAW?

Yes. An aggrieved party who is not satisfied with the PUC's determination may file a petition for review with Commonwealth Court.

29. IS THE PUC THE ONLY OPTION FOR RAISING OBJECTIONS ABOUT A LOCAL ORDINANCE REGULATING OIL AND GAS OPERATIONS?

No – The aggrieved person may bring an action in Commonwealth Court to invalidate or enjoin enforcement of a local ordinance. If the PUC previously made a determination, that determination by the PUC becomes part of the record before Commonwealth Court.

30. WHAT HAPPENS IF THE LOCAL ORDINANCE REGULATING OIL AND GAS OPERATIONS IS FOUND TO VIOLATE THE LAW?

If the PUC, Commonwealth Court or Supreme Court determines that a local ordinance violates state law, the local government will be ineligible to receive any funds. The local government remains ineligible until it amends or repeals its local ordinance.

FOR FURTHER INFORMATION, CONTACT THE PUBLIC UTILITY COMMISSION:

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