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## Municipal Newsletter

Winter 2012

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### Amendments to Oil and Gas Act Relative to Local Governments

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With the growing employment of Marcellus shale drilling as a more practical means for obtaining natural gas, proving it is more than a temporary fad, legislation has been passed in Pennsylvania (Act 13-2012) in March of this year amending the Oil and Gas Act (58 P.S. §601.101 *et seq.*), accounting for this new practice. Certain provisions of the legislation are covered by different state agencies. Of particular concern for municipalities are Chapter 23 of the Act, which affords for the imposition of an unconventional gas well fee (or drilling impact fee) and Chapter 33, which manages local ordinances imposing conditions, requirements or limitations on oil or gas operations. These Chapters of the Act are the responsibility of the Pennsylvania Public Utility Commission ("PUC").

Unconventional gas wells, the matter of interest for Chapter 23 of the Act, are defined in §2301 as a "bore hole drilled or being drilled for the purpose of or to be used for the production of natural gas from an unconventional formation". The fee for unconventional gas wells is based on the average price of natural gas on a scale beginning at \$40,000.00 and decreasing in varied increments over a period of fifteen (15) years.

Individual counties containing unconventional gas wells in their borders are permitted to impose a fee, provided they pass an ordinance levying such a fee by April 16, 2012. Such an ordinance should include exact language stating:

The county of (Name of the County) hereby imposes an unconventional gas well fee on each unconventional gas well spud in this county as authorized in Title 58.

Should the ordinance be passed, the county must notify PUC with an official filing by the April 23, 2012 deadline. Understandably, those counties that choose not to adopt such an ordinance are ineligible for any monies relative to that calendar year, though they may be eligible in the future under the condition an ordinance is adopted regarding this issue.

If there are municipalities in counties that opted not to adopt such an ordinance, municipalities are allowed the op-

portunity to override the county's decision in this regard and, provided they satisfy the required conditions, allow for the fee to cover the entire county. To do this, municipalities need to adopt resolutions compelling the imposition of a fee. However, fifty percent (50%) of the total municipalities of the county representing fifty percent (50%) of the total population of the county must adopt resolutions by June 13, 2012. Otherwise, the county and its respective municipalities lose out, and the municipalities will have no chance in the future to capitalize on this opportunity.

Tentatively, as with counties, municipalities must notify PUC with an official filing, though the deadline is June 20, 2012. Also like counties, the municipalities must have specific language to their resolution stating:

The (Name of Municipality) in the county of (Name of County) hereby imposes an unconventional gas well fee on each unconventional gas well spud in this county as authorized in Title 58.

It should be noted, a spud, according to §2301 of the Act, is "The actual start of drilling of an unconventional gas well."

The PUC collects the monies for the impact fee and deposits it in the Unconventional Gas Well Fund at the State Treasury, beginning the year the actual drilling of the unconventional well began. However, the counties (or the municipalities for their county) who have satisfied the conditions for the impact fee do not receive the funds automatically. First, all monies collected are distributed to different entities throughout the state to offset the impact of drilling for whom they have been reserved per the Act. These entities include county conservation districts, Fish and Boat Commission, Pennsylvania Emergency Management Agency, the Office of the State Fire Commissioner, the Pennsylvania Department of Transportation, and the Housing Affordability and Rehabilitation Enhancement Fund.

Afterwards, the remaining 60% of the monies obtained from the fee are distributed as follows:

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36% of the amount go to the host county (based on a particular mathematical formula);

37% of the amount in the host municipality of the host county (based on a particular mathematical formula); and

27% of the amount (based on a particular mathematical formula) to all municipalities of the host county.

Monies received by the county/municipalities can only be spent on specific projects, particularly water, wastewater and road maintenance and repair, social service delivery, emergency preparedness, environmental programs, tax reductions, increased safe and affordable housing, employee training and/or planning initiatives. (The Act specifies what these restrictions entail.)

The 27% of the 60% of monies to the eligible municipalities is not to exceed \$500,000.00 or 50% of the total budget for the prior fiscal year, whichever is higher, and continuing every year afterwards.

The other 40% is to be deposited in a state fund known as the Marcellus Legacy Fund relative to statewide initiatives with potential local impacts and value.

As with any other money received from the State, the qualifying municipalities tentatively need to submit a "Municipal Budget Report by July 6, 2012 and an Impact Fee Disbursement Report for each calendar year, which will be due the 15th of April.

Briefly, pursuant to Chapter 33 of the Act, which the

PUC also oversees, concerns the definition of oil and gas operations and directs local ordinances to allow for the reasonable development of oil and gas resources. PUC maintains the duties for reviewing the local municipal ordinances. Local governments may request PUC to review their ordinances, in which case, the agency has 120 days to provide an advisory opinion and answer a request for review to a resident or producer. Per §2301 of the Act, a producer is any

person or its subsidiary, affiliate or holding company that holds a permit or other authorization to engage in the business of severing natural gas for sale, profit or commercial use from an unconventional gas well in this Commonwealth. The term shall not include a producer that severs natural gas from a site used to store natural gas that did not originate from the site.

In addition, Chapter 33 of the Act allows filings directly with the Commonwealth Court to invalidate a local ordinance on oil and natural gas drilling, with no statutory deadline for a court action.

Finally, the municipalities are tentatively required by the Statute to review and amend any existing ordinances relative to oil and natural gas drilling by August 13, 2012. Any local government with ordinances in violation of the Act are ineligible to receive impact fee funds. However, once the violating ordinance is amended or repealed in accordance with the Act, the local governments are eligible, provided the proper filings are made.