

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 1156 Session of
2009

INTRODUCED BY GEORGE, BELFANTI, CONKLIN, FRANKEL, GOODMAN,
GRUCELA, HALUSKA, HORNAMAN, JOSEPHS, KORTZ, MUNDY, MYERS,
PETRARCA, SIPTROTH, SOLOBAY, THOMAS, VITALI, WALKO AND
WANSACZ, MARCH 31, 2009

REFERRED TO COMMITTEE ON ENVIRONMENTAL RESOURCES AND ENERGY,
MARCH 31, 2009

AN ACT

1 Preserving the uses and value of surface lands of this
2 Commonwealth from damage to the lands from coal bed methane
3 extraction or production; requiring disclosure statements as
4 to the impacts on surface lands of proposed coal bed methane
5 gas wells and related facilities to be provided to landowners
6 and tenants; providing for the jurisdiction of courts in the
7 enforcement thereof; regulating the installation and
8 operation of coal bed methane gas wells and related
9 facilities; regulating the impact of the installation of coal
10 bed methane gas wells and related facilities on surface lands
11 and waters; placing responsibilities on landowners and
12 occupiers; and imposing duties upon the Department of
13 Environmental Protection.

14 The General Assembly of the Commonwealth of Pennsylvania
15 hereby enacts as follows:

16 Section 1. Short title.

17 This act shall be known and may be cited as the Coal Bed
18 Methane Gas Drilling Rights Act.

19 Section 2. Definitions.

20 The following words and phrases when used in this act shall
21 have the meanings given to them in this section unless the
22 context clearly indicates otherwise:

1 "Coal bed methane gas." Any fluid, either combustible or
2 noncombustible, which is produced in a natural state from coal
3 seams within the earth and which maintains a gaseous or rarified
4 state at standard temperature of 60 degrees Fahrenheit and
5 pressure 14.7 PSIA, any by-product gas or any mixture of gases.

6 "Coal bed methane gas operations" or "operations." Any
7 activities affecting land or water sources, no matter how
8 slight, that are associated with coal bed methane gas
9 exploration or production, including, but not limited to, the
10 construction, installation, maintenance or removal of coal bed
11 methane gas wells. The construction, installation, maintenance
12 or removal of pipelines and equipment for coal bed methane gas
13 or water, installation, maintenance and removal of all access or
14 service roads, installation, maintenance or removal of coal bed
15 methane gas production or storage equipment and facilities,
16 rework of coal bed methane gas wells, plugging of coal bed
17 methane gas wells, actions taken to reclaim well sites and road
18 and pipeline rights-of-way.

19 "Department." The Department of Environmental Protection of
20 the Commonwealth.

21 "Person." Any natural person, association, partnership,
22 corporation, political subdivision or agency of the Federal or
23 State government or other legal entity.

24 "Reclaim." To restore any portion of land affected by coal
25 bed methane gas operations to the same or substantially similar
26 condition that existed prior to coal bed methane gas operations,
27 or as otherwise agreed to in a memorialized agreement between
28 the operator and the land owner or tenants.

29 "Surface." The uppermost portion of the earth's crust,
30 including the land and aquatic features.

1 "Surface owner." A person who holds legal or equitable title
2 to the surface of a parcel of real property.

3 "Surface use and compensation agreement." An agreement,
4 written, signed and notarized, between a surface owner and an
5 operator stipulating the location of proposed coal bed methane
6 gas wells, access roads and any other uses of the surface during
7 coal bed methane gas exploration and production. A coal bed
8 methane gas operation lease agreement entered into by a surface
9 owner and an operator, which pays the surface owner at least a
10 one-eighth royalty on coal bed methane gas extracted from areas
11 under the surface of the surface owner's real property, shall be
12 deemed a surface use and compensation agreement for the purposes
13 of this act.

14 "Tenant." A person who occupies a parcel of real property
15 belonging to the surface owner in subordination to the surface
16 owner's title and with the owner's assent, express or implied.

17 "Water sources." Any and all rivers, streams, creeks,
18 rivulets, impoundments, ditches, watercourses, storm sewers,
19 lakes, dammed water, ponds, springs or all other bodies of
20 surface water, or parts thereof, whether natural or artificial,
21 within or on the boundaries of the surface owner.

22 "Well." A borehole drilled or being drilled for the purpose
23 of, or to be used for, producing, extracting or injecting any
24 coal bed methane gas or other liquid related to coal bed methane
25 gas production or storage, including brine disposal, but
26 excluding boreholes drilled to produce potable water to be used
27 as such. The term does not include a borehole drilled or being
28 drilled for the purpose of, or to be used for, systems of
29 monitoring, producing or extracting gas from solid waste
30 disposal facilities, as long as the wells are subject to the act

1 of July 7, 1980 (P.L.380, No.97), known as the Solid Waste
2 Management Act, and do not penetrate a coal seam. The term also
3 does not include a borehole drilled or being drilled for the
4 purpose of, or to be used for, degasifying coal seams if the
5 following conditions are satisfied:

6 (1) (i) the borehole is used to vent coal bed methane
7 to the outside atmosphere from an operating coal mine and
8 the coal bed methane is not then collected and used for
9 any commercial purpose;

10 (ii) the borehole is regulated as part of the mining
11 permit pursuant to the act of June 22, 1937 (P.L.1987,
12 No.394), known as The Clean Streams Law, and the act of
13 May 31, 1945 (P.L.1198, No.418), known as the Surface
14 Mining Conservation and Reclamation Act; and

15 (iii) the borehole is drilled by the operator of the
16 operating coal mine for the purpose of increased safety;
17 or

18 (2) the borehole is used to vent coal bed methane to the
19 outside atmosphere pursuant to a Federally funded or State-
20 funded abandoned mine reclamation project.

21 "Well operator" or "operator." The person designated as the
22 well operator or operator on the permit application or well
23 registration. Where a permit or registration was not issued, the
24 term shall mean any person who owns, manages, leases, controls
25 or possesses any coal bed methane gas well or any person who
26 locates, drills, operates, alters or plugs any coal bed methane
27 well or reconditions any such well with the purpose of
28 production therefrom. In cases where a well is used in
29 connection with the underground storage of coal bed methane gas,
30 the term also means a "storage operator."

1 Section 3. Applicability.

2 The protections of this act shall apply to all surface lands
3 within this Commonwealth, whether publicly or privately owned,
4 and the leasehold interests of tenants on any such lands to the
5 extent any damage or any diminution in value to the tenant's
6 leasehold improvements result from oil or gas operations.

7 Section 4. Duties of operators.

8 (a) Duties.--Except to the extent otherwise provided in a
9 surface use and compensation agreement duly executed by a
10 surface owner and an operator, where coal bed methane gases are
11 not leased for extraction from the surface owner by the operator
12 in a lease paying at least a one-eighth royalty to the surface
13 owner, an operator shall timely:

14 (1) Compensate fully the surface owner for all injuries
15 incurred, including:

16 (i) Lost income or expenses incurred as a result of
17 being unable to dedicate land occupied by the gas
18 producer's operations, or to which access is prevented by
19 such operation, to the uses to which it was dedicated
20 prior to commencement of the operations as measured from
21 the date the operator first enters upon the land until
22 the date all reclamation is completed.

23 (ii) The market value of crops destroyed, damaged or
24 prevented from reaching market.

25 (iii) All damage to a water supply in use prior to
26 the commencement of the permitted activity.

27 (iv) The cost of repair or replacement of personal
28 or real property damages by activities by or on behalf of
29 the operator.

30 (v) The diminution in value of the surface lands and

1 other property, including both the surface lands actually
2 disturbed and any adjacent surface lands, the market
3 value of which is diminished by the presence of the well
4 and the surface disturbance and other appurtenances,
5 during the operator's use thereof for coal bed methane
6 gas production and related operations.

7 (2) Reclaim entirely the surface affected by oil or gas
8 operations within nine months of the cessation of extracting
9 coal bed methane gas from any well on a surface owner's tract
10 of land.

11 (b) Exception.--An operator shall not be responsible for
12 negotiating or allocating compensation between the surface owner
13 and any tenant, except that an operator shall compensate fully
14 any tenant of the surface owner for any diminution in value of
15 leasehold improvements, made by the tenant, damaged as a result
16 of the operator's coal bed methane gas operations.

17 Section 5. Notice of operations and surface use and
18 compensation agreement.

19 (a) Notice of proposed activity.--Prior to initial entry
20 upon a tract of land for activities that will not disturb the
21 surface, including inspections, staking, surveys, measurements
22 and general evaluations of proposed routes and sites for coal
23 bed methane gas operations, the operator shall provide at least
24 15 business days' notice by certified mail to the surface owner
25 of each tract on which the operator proposes any such activity
26 as well as a statement citing deeds, leases, rights-of-way,
27 easements and other rights relating to the operator's right of
28 access thereto.

29 (b) Notice of application.--Prior to submission of any
30 application for a permit to the department under section 201 of

1 the act of December 19, 1984 (P.L.1140, No.223), known as the
2 Oil and Gas Act, and no less than 45 days before first entering
3 the surface of the land to conduct any coal bed methane gas
4 operations thereon, an operator shall, by certified mail,
5 provide the surface owner with notice of the scope and extent of
6 all planned operations, through and including the plugging and
7 removal of wells and the removal of pipelines, other equipment
8 and access roads. Copies of this notice shall also be sent to
9 surface owners within a one-half mile radius of each proposed
10 well site. Every notice shall include all of the following:

11 (1) Topographical and underground maps of the relevant
12 areas, permits and any materials submitted by the operator to
13 obtain permits to enable the surface owner to evaluate the
14 effects that the operations might have on that owner's lands.

15 (2) A copy of this act and a copy of the Oil and Gas
16 Act.

17 (3) The name, address, telephone number and, if
18 available, facsimile number and electronic mail address of
19 the operator and the operator's authorized representative.

20 (4) Information regarding required or recommended
21 predrilling surveys and other provisions relating to:

22 (i) protection of water sources;

23 (ii) well location restrictions; and

24 (iii) casing, cementing and plugging plans for wells
25 and production-related horizontal boreholes pursuant to
26 the Oil and Gas Act.

27 (5) A proposed written surface use and compensation
28 agreement addressing, to the extent known, the following:

29 (i) Placement, specifications, maintenance and
30 design of well pads, gathering pipelines, water or brine

1 pipelines, storage facilities for water or coal bed
2 methane gas, compressor stations, transmission pipelines,
3 pump stations, meter pits and roads to be constructed and
4 any and all other facilities of every type to be
5 constructed and utilized either temporarily or
6 permanently for operations.

7 (ii) Proposed frequency of all ingress and egress
8 across or under the surface of the land for operations,
9 including pipelines, and the routes for same.

10 (iii) Construction, maintenance and placement of all
11 pits used or planned for operations.

12 (iv) Extent of use and impoundment of water on the
13 surface of the land.

14 (v) Removal and restoration of the species of plant
15 life existing prior to commencement of any operations on
16 areas to be impacted by those operations.

17 (vi) Surface water drainage changes.

18 (vii) Plans and actions to limit and effectively
19 control storm water runoff and sedimentation and erosion,
20 topsoil storage and road steepness, side slope, drainage
21 structures and their frequency.

22 (viii) Control and management of noise, weeds,
23 sewage disposal, dust, traffic, trespass, litter and any
24 other interference with the surface owner's or tenant's
25 use and enjoyment of the surface.

26 (ix) Interim and final proposals to reclaim the
27 surface.

28 (x) Plans or actions to be undertaken to minimize
29 damages to the surface.

30 (xi) Operator indemnification for injury to persons

1 or properties other than that of the surface owner when
2 caused by the operations.

3 (xii) All efforts an operator will take to restrict
4 access to the surface owner's land by third parties
5 utilizing the operator's access roads and rights-of-way.

6 (xiii) Specifications for the revegetation of the
7 well site, pits, disposal areas, access roads, pipelines
8 and other facilities or uses associated with the well
9 work, road surfaces, soil preparation, temporary seed
10 species and permanent seed species.

11 (xiv) Particular specifications for maintenance at
12 all times of existing roads used by the surface owner
13 that the operator proposes to utilize, including, without
14 limitation, gating appliance specifications, locations
15 and gating practices.

16 (xv) An offer of compensation for damages to the
17 surface brought about in whole or in part by operations.

18 (6) A plat that shall show the tract of land upon which
19 each well is to be located, the name of the surface landowner
20 of record and lessor, if any, the name of all surface
21 landowners or water purveyors whose water supplies are within
22 one-half mile of the proposed well location, the name of the
23 owner of record and operator of all known underlying workable
24 coal seams, if any, the acreage in the tract to be drilled,
25 the proposed location of each well determined by survey, the
26 courses and distances of such location from two or more
27 permanent identifiable points or landmarks on the tract
28 boundary corners, the proposed angle and direction of such
29 well, if the well is to deviate substantially from the
30 vertical course, the number or other identification to be

1 given the well, the workable coal seams, if any, underlying
2 the tract of land upon which the well is to be drilled or
3 altered, which are cased off in accordance with section 207
4 of the Oil and Gas Act. The plat shall also include the
5 location of all water sources, placement of well pads,
6 gathering pipelines, water pipelines, storage facilities for
7 oil, gas or water, all compressor stations, meter pits and
8 pump stations and roads to be constructed for coal bed
9 methane gas operations, placement of all pits and equipment
10 used or planned, use and impoundment of water on the surface
11 of the land.

12 (c) Address.--The notice required by this section shall be
13 sent to the surface owner at the address shown by the property
14 tax records at the time the notice is given. If the property tax
15 records for the county or the records in the recorder's office
16 for the county where the property is located disclose that the
17 land's legal title and equitable title are not held by the same
18 person, notice shall be given to both the holder of legal title
19 and to the holder of equitable title at the addresses shown by
20 the records of the property tax records at the time the notice
21 is given.

22 (d) Owner's option.--Upon receipt of the notice required by
23 subsection (b) the surface owner may:

24 (1) accept the proposed surface use and compensation
25 agreement within 45 days of receipt; or

26 (2) reject the proposed surface use and compensation
27 agreement and enter into a surface use and compensation
28 agreement that sets forth the rights and obligations of the
29 parties.

30 (e) Presumed receipt.--If correctly addressed to the record

1 owner of the surface, notices to the surface owners required by
2 this act shall be deemed to have been received 15 days after
3 mailing by certified mail.

4 (f) Waiver.--A surface use and compensation agreement may
5 not waive damages for breach of the agreement, or for pollution
6 of water sources or supplies, for negligence or failure to
7 perform tasks in a workmanlike manner consistent with best
8 practices in the field of coal bed methane gas production or for
9 unforeseen damages.

10 Section 6. Entry without surface use compensation agreement.

11 (a) Filing of application.--If, after 45 days from the date
12 on which a surface owner receives notice under section 5(b), no
13 surface use and compensation agreement has been executed by the
14 operator and surface owner, the operator may file applications
15 for permits with the department for the coal bed methane gas
16 wells and related facilities proposed to be located on the
17 surface owner's property after depositing a surety, bond, letter
18 of credit from a banking institution or certificate of deposit
19 with a Pennsylvania surety company or financial institution for
20 the benefit of a surface owner in the amount equal to 120% of
21 the operator's best compensation offer as to each coal bed
22 methane gas production facility's location or at least \$25,000
23 per production facility's location. The surety bond letter,
24 letter of credit, cash or certificate of deposit shall only be
25 released by the surety company or financial institution back to
26 the operator if:

27 (1) the surface owner provides an affidavit that
28 compensation for use of or damages to his land have been paid
29 in full to him;

30 (2) the surface owner and the operator have executed a

1 surface use and compensation agreement or otherwise agreed
2 that the surety should be released;

3 (3) there has been a final resolution of the judicial
4 appeal in any action for damages brought by the surface owner
5 and any awarded damages have been paid; or

6 (4) all coal bed methane gas wells on the surface
7 owner's land have been plugged and abandoned in accordance
8 with law, all production and support facilities have been
9 removed and the operator has not conducted oil or gas
10 operations on the surface owner's property for a period of
11 four years.

12 (b) Blanket surety bond.--When a coal bed methane gas well
13 operator proposes to operate more than one coal bed methane gas
14 well, instead of posting the bond required in subsection (a),
15 that operator may at the operator's election post a blanket
16 surety bond, letter of credit from a banking institution or a
17 certificate of deposit with a Pennsylvania surety company or
18 financial institution in the sum of \$500,000 subject to the
19 following criteria:

20 (1) the surety company or financial institution shall
21 hold the corporate surety bond, letter of credit or
22 certificate of deposit for the benefit of the surface owner
23 and shall ensure that such security is in a form readily
24 payable to a surface owner awarded damages in an action
25 brought under this act;

26 (2) the bond, letter of credit, cash or certificate of
27 deposit shall remain in full force and effect as long as the
28 operator continues coal bed methane gas operations in this
29 Commonwealth;

30 (3) the bond, letter of credit, cash or certificate of

1 deposit shall not be released until six years after the
2 operator has deposited with the surety company or financial
3 institution a certified statement from the department that,
4 according to its records, the operator is not an operator of
5 record of any well in this Commonwealth and does not hold any
6 outstanding permits to drill coal bed methane gas wells
7 within this Commonwealth; and

8 (4) in the event that, pursuant to a judgment, all or a
9 portion of the bond, letter of credit or certificate of
10 deposit has been used to pay a surface owner, the operator
11 shall immediately post additional security so that the total
12 amount posted equals \$500,000 and, if the operator does not
13 post the additional security, the surety or financial
14 institution shall publish notice to that effect in a paper of
15 general circulation in each county of the state in which coal
16 bed methane gas is produced and the department is prohibited
17 from issuing permits to any operator posting a blanket surety
18 bond, letter of credit from a banking institution or
19 certificate of deposit under subsection (b) where the
20 operator shall let the amount of security fall below
21 \$500,000.

22 Section 7. Restriction on issuance of permits for wells.

23 The department shall not issue new permits or renew existing
24 permits for coal bed methane gas wells where the operator
25 thereof is not complying with the terms of this act, but may do
26 so once the operator demonstrates to the department that the
27 operator is again in compliance with this act.

28 Section 8. Damages.

29 (a) Civil action.--Any person having an interest which is or
30 may be adversely affected by any violations of the provisions of

1 this act may commence a civil action either to compel compliance
2 with the terms of this act or to seek damages for any injury to
3 the property of that person resulting from such a breach of the
4 provisions of this act or both. Any other provision of the law
5 to the contrary notwithstanding, the courts of common pleas
6 shall have jurisdiction over and venue in such actions as set
7 forth in the Pennsylvania Rules of Civil Procedure concerning
8 actions in assumpsit.

9 (b) Fees and costs.--In an action brought to enforce the
10 provisions of this act or the terms of a surface use and
11 compensation agreement to this act, if a court finds that
12 compensation is owed under section 4, the court may also award
13 the prevailing party attorney fees and costs if:

14 (1) the operator conducted operations without providing
15 notice as required by section 5(b);

16 (2) the operator conducted operations without a surface
17 use and compensation agreement and before either depositing
18 or maintaining a bond or other surety as required by section
19 6;

20 (3) the operator conducted operations outside the scope
21 of a surface use and compensation agreement and, when
22 entering into the agreement, knew or should have known that
23 the operations would be conducted outside the scope of the
24 agreement; or

25 (4) the surface owner failed to exercise good faith in
26 complying with the provisions of this act or the terms of a
27 surface use and compensation agreement.

28 Section 9. Protection of water supplies.

29 (a) Operator.--Any coal bed methane gas well operator who
30 affects a public or private water supply by pollution or

1 diminution shall restore or replace the affected supply with an
2 alternate source of water adequate in quantity or quality for
3 the purposes served by the supply.

4 (b) Owner or purveyor.--Any landowner or water purveyor
5 suffering pollution or diminution of a water supply as a result
6 of the drilling, alteration or operation of a coal bed methane
7 gas well may so notify the department and request that an
8 investigation be conducted. Within ten days of such
9 notification, the department shall investigate any such claim
10 and shall, within 45 days following notification, make a
11 determination. If the department finds that the pollution or
12 diminution was caused by the drilling, alteration or operation
13 activities or if it presumes the well operator responsible for
14 pollution under subsection (c), then it shall issue such orders
15 to the well operator as are necessary to assure compliance with
16 subsection (a). Such orders may include orders requiring the
17 temporary replacement of a water supply where it is determined
18 that the pollution or diminution may be of limited duration.

19 (c) Presumption.--Unless rebutted by one of the five
20 defenses established in subsection (d), it shall be presumed
21 that a well operator is responsible for the pollution of a water
22 supply that is within 1,000 feet of the coal bed methane gas
23 well where the pollution occurred within six months after the
24 completion of drilling or alteration of the well.

25 (d) Rebutting presumption.--In order to rebut the
26 presumption of liability established in subsection (c), the well
27 operator must affirmatively prove one of the following five
28 defenses:

- 29 (1) The pollution existed prior to the drilling or
30 alteration activity as determined by a predrilling or

1 prealteration survey.

2 (2) The landowner or water purveyor refused to allow the
3 operator access to conduct a predrilling or prealteration
4 survey.

5 (3) The water supply is not within 1,000 feet of the
6 well.

7 (4) The pollution occurred more than six months after
8 completion of drilling or alteration activities.

9 (5) The pollution occurred as the result of some cause
10 other than the drilling or alteration activity.

11 (e) Certified laboratory.--Any operator electing to preserve
12 its defenses under subsection (d) (1) or (2) shall retain the
13 services of an independent certified laboratory to conduct the
14 predrilling or prealteration survey of water supplies. A copy of
15 the results of any such survey shall be submitted to the
16 department and the landowner or water purveyor in a manner
17 prescribed by the department.

18 (f) Other remedies.--Nothing in this act shall prevent any
19 landowner or water purveyor who claims pollution or diminution
20 of a water supply from seeking any other remedy that may be
21 provided at law or in equity.

22 Section 10. Remedies not exclusive.

23 The remedies provided by this act are not exclusive and do
24 not preclude a person from utilizing any other remedies allowed
25 by statute, common law, deed or contract.

26 Section 11. Emergency situations.

27 Notwithstanding any provisions of this act to the contrary,
28 no notice, surface use and compensation agreement or bond shall
29 be required in emergency situations with regard to any
30 activities which the department shall order a surface owner or

1 tenant to allow the operator or others to undertake to protect
2 the public health and safety or the environment.

3 Section 12. Local regulation.

4 Nothing contained in this act shall be construed to limit or
5 prevent cities of any class, townships of either class or
6 boroughs from adopting local ordinances limiting how and where
7 coal bed methane wells and their attendant facilities may be
8 installed, pursuant to their governmental powers to protect the
9 health, safety and welfare of landowners and residents of a
10 municipality or to minimize damage to lands located therein.

11 Section 13. Severability.

12 The provisions of this act are severable. If any provision of
13 this act or its application to any person or circumstance is
14 held invalid, the invalidity shall not affect other provisions
15 or applications of this act which can be given effect without
16 the invalid provision or application.

17 Section 30. Effective date.

18 This act shall take effect immediately.