AAP ASSESSORS ASSOCIATION OF PENNSYLVANIA
AN AFFILIATE OF CCAP
P.O. Box 60769, Harrisburg, Pa 17106
PH. 717-526-1010

TESTIMONY ON CLEAN AND GREEN PRESENTED TO THE HOUSE AGRICULTURE AND RURAL AFFAIRS COMMITTEE

By Eric A. Brown, Chief Assessor Wyoming County

July 15th, 2008
Harrisburg, Pa

Good afternoon. My name is Eric Brown, and I am chief assessor for the county of Wyoming and have held that position for 23 years. The Assessors Association of Pennsylvania (AAP) as an affiliate of The County Commissioners Association, is a non-profit, non-partisan association providing education to all persons throughout Pennsylvania's 67 counties that deal with ad valorem valuations of real property, i.e. valuing property for the purpose of taxation.

Thank you for the opportunity to appear before you to present the our thoughts on various topics relating to the Clean and Green program including the legislation currently referred to this committee and issues involving the oil and gas leasing that has dominated much of the life of assessment offices over the last 1 ½ years. The production and harvesting of energy and fuels is a dominate issue worldwide and has reached significant levels in many parts of Pennsylvania. Legislation to help us uniformly address these issues as they relate to the Clean and Green Program is essential and should lead toward taxpayer relief and tax fairness.

I would like to begin with the oil and gas situation as it relates to Wyoming County and add information I have obtained pertaining to some of my surrounding counties.

The Clean and Green program, as is evident from my map, has a tendency to occupy the majority of land mass in rural counties.

Wyoming County has approximately 254,208 acres of land mass of which 147,283 acres are enrolled in Act 319, The Clean and Green program. This accounts for almost 58% of the total land mass in my county. Another 14% can be attributed to State Game Lands and a small amount attributed to Fish Commission owned properties.

Spurred by enormous projected yields of natural gas locked in the Marcellus Shale located in Northeastern Pennsylvania area, land leasing companies began their onslaught into our counties in 2006 and 2007 inundating our assessment and recorder of deeds offices to perform title searches of properties where landowners agreed to engage in a lease with those companies. 2007 and now 2008 have been particularly taxing to our offices in having adequate staffing and available computerized equipment to assist these individuals and still maintain our daily and monthly normal obligations. Projections for the remainder of 2008, 2009 and 2010 are looking as though there will be more companies arriving to do searches as more and more lands are being leased.

Wyoming, Susquehanna, Bradford, Wayne, Sullivan, Lackawanna, Luzerne, Lycoming and Columbia appear to be the prime targets at this time. Of course leasing lands for gas and oil is not something new to these areas—the 1950's and 60's were popular for having lands leased by companies. Sounding technology back then indicated that there was a substantial reserve of the gas and oil- however the drilling technology wasn't there to successfully harvest those reservoirs locked in the lateral veins of the shale layers.

The successes of horizontal drilling in Texas in the Barnette shale areas and the geologists predictions that the Marcellus shale may hold even more reservoirs of gas, leasing companies

began offering NEPA landowners $25 to $55 per acre as an upfront signing bonus with the real kicker being a 12.5% royalty to landowners within the 640 acre pooling area of any particular well. This is when landowners began signing—new found money and the possibility of royalties per acre that would be a dream.

These leases were not being recorded in the courthouses—companies were holding on to them for some reason- possibly to try to keep the signing bonus monies low for as long as possible.

The situations began to change with the arrival of some drilling rigs in Susquehanna County. Landowners were being lectured by stock brokerage companies as to the great wealth to be gained and encouraging landowners to sign. However it was realized that the initial drilling sites were to be close to existing gas transportation lines and those acreages were now more valuable to the leasing companies. Competition among the leasing companies created the increase in the signing bonus monies. Typical payments per acre now are in the $2500 to $3000 per acre for a five year lease range and the % royalties have gone up to 15% to 18%.

Those of us involved in administering the Clean and Green program are usually concerned with situations involving subdivision of lands enrolled in the Act or with physical activities that take place on these lands. Leasing of lands was common but most of the time those leases were not recorded and many times were handshake agreements solidified with the exchange of monies—these leases being for the use of land in producing agricultural crops and to some extent in the Northeast for the harvesting of non- fossil materials such as bluestone, topsoil, sand and gravel and shale.

Individual counties are many times put in the situation to make decisions that for lack of a better term may "stretch" the interpretation of certain rules and regulations especially when the "economics" of a county are concerned. A case in point is the bluestone industry in northeastern Pennsylvania. Wyoming County does not allow the addition of a stone quarry on lands after they are enrolled in Clean and Green. The result is a rollback and penalty on the entire tract as required by Clean and green rules and regulations. However we are lenient as far as allowing "exploration" permits to exist for one year without penalty to that land. Other counties where the bluestone industry is important economically only apply a rollback and penalty to the "permitted area", resulting in a more manageable payback amount. But as one quarryman said; "I can pay the full penalty with one load of stone", and we're referring to rollbacks and penalties in the $20,000.00 range and better.

Oil and gas leases have not been considered a violation in most Pa counties that have Clean and Green participation. Referring to the Clean and Green rules and regulations nothing is found to indicate clearly that this type of lease would result in a violation

unless drilling activity actually took place on an enrolled property. The decision was made to allow the leasing of the land to occur without a penalty of the Act. However it was to be strictly enforced that any movement on the land for the purpose of drilling would constitute a violation of the Clean and Green Act and the penalties would reflect the entire portion of the enrolled tract as outlined in the Pennsylvania farmland and Forest Land Assessment Act of 1974.

These decisions were based on the fact that, as my map shows, large percentages of land masses are enrolled in the Clean and Green.

The economic affect could be enormous to this area. The projected gas production from these wells range from 1.4 million cubic feet (cf) per day to a possible 4 million cf /day.
Using a production rate of 1.4 million cubic feet per day from one well and a current well-head price for the gas of $13.00 per thousand cu.ft., we find a potential of $18,200.00 revenue per well per day. If 15% is the gross royalty payment to landowners and the pooling area is 640 acres the revenue gained by the landowner(s) would be $4.27 per acre per day times 365 days indicates $1,558.55 gain per acre per year. A 100 acre farm could gain $155,855.00 per year.
These pooling areas will be adjusted as volumetric studies are performed giving the drillers a better handle on distances capable of being drilled horizontally and how far perpendicular can the gas be drilled from, etc.
Should the pooling areas drop to 320 acres then the potential gain could be $3113.00 per acre per day—the same 100 acre farm could now realize $311,345.00.

Economically this could be a huge positive impact to our area. Environmentally we are nervous. It takes 1 million gallons of water per well to "frack" the shale layers. Most of that water does not return to the surface to again become part of the hydrologic cycle and that water that does come back must be treated in specialized treatment facilities currently located in New York State and Indiana, Pennsylvania.

Many landowner groups have formed to develop leases more considerate of landowners' rights and include clauses requiring the gas companies to pay the Clean and Green rollbacks and resulting penalties caused as a result of the drilling operation.

As administers of the Clean and Green program and dealing with this situation of oil and gas leasing and drilling we are looking for support in how we for the most part have interpreted the Act, to give us some stability in this situation. Some western Pa counties consider the lease a violation of Act while a majority of the counties in NEPA consider a violation only when the land surface is disturbed creating a change in use not allowed by the Act 319 law.

Clean and Green has caused much consternation among those taxpayers that cannot take advantage of this reduction in assessment based on use values rather than market values.

Adding to this animosity is the fact that these landowners in Clean and Green could realize huge profits from their lands and not from agricultural production (signing bonuses paid to sign a lease), yet the burden of taxation is still shifted to those that are not getting any direct benefit from the Clean and Green program.

HB 1960 proposes a reimbursement to the taxing districts for the loss in 10% or more in revenue as a result of the Clean and Green enrollment. The Assessors Association is in favor of this bill and we feel it may relive some of the shifting of the tax burden.

The Pa Department of Agriculture issues new "use values" each year to be used by counties with Clean and Green enrollments. These values are to be used/changed each year by those counties unless a particular county elects to use their own values. The stipulation there is the values must be less than the new values provided by the Pa. Dept. of Agriculture. In general the Pa. Dept. of Agriculture "use-values" have not changed over the years as significantly as market values of the same lands thus creating the necessity to further shift the tax burden.

As a county elects to undergo a countywide revaluation the usual result is an enormous increase in the market value of all taxable real estate. This results in the taxing bodies reducing their millage rates to prevent, by statute, any windfall revenue gain the year immediately following a countywide revaluation.

However, since the "use values" do not increase anywhere near the proportion of the market values the amount of tax burden on those acres in Clean and Green is reduce significantly thus creating even more shift of the tax burden to those not receiving a direct monetary benefit from the program.

As an example:

In 1990 one acre of ground had a market value of $800 / acre. The total millage rate applied to this value to generate revenue was 70 mills. The revenue gain would be $56.00.

The Clean and Green use value of that same acre of ground would be $404.06 per acre. Applying the 70 mills to this value would generate $28.28 in revenue.

The county decides to do a revaluation of all real estate and that same one acre now has a market value of $2500. Since the county must produce the same amount of revenue as the year prior to implementing the value changes it must reduce the millage to 22.4 mills to generate the previous $56.

The new "use value" for that ground is now $450. Applying the 22.4 millage rate generates only $10.80 or a $17.48 reduction on that acre from the prior year or a 48% loss.

This demonstrates what can happen over a period of years to a county that is trying to keep their values in line with the current market. This could and will affect the amounts to be paid out of the general fund to that county in reimbursements from the loss of revenue based on "use values". We shouldn't discount the monies a county must expend just to administer this Act. The reimbursement outlined in HB 1960 would help offset some of those costs.

Landowners enrolled in the Clean and Green program usually realize huge reductions in their assessment and therefore their taxes. For the most part landowners wouldn't want to have their properties removed from the program unless they were going to create a violation through subdivision or change in use to something not authorized under the Act.(5490.2 Definitions). In those situations the Act already stipulates what is to happen and takes care of the situation appropriately without requiring a deadline for notification in the year prior to the change as proposed by HB 667.

The AAP doesn't feel the necessity for further legislation (as in HB 667) to define the roll of removal of a tract from the program as it is already well defined.

Legislation to allow a landowner to remove their property from Clean and Green because of a "statutory change increasing the total use value" does not appear to serve us well. There would need to be, in our opinion, a definition in that legislation that would allow removal from the Act without penalty only if the increase in the use value has rendered the purpose of the Act useless.

IN CONCLUSION

My purpose here this afternoon was to introduce to you my experiences from the administrative level involving major problems with the Clean and Green program.
Legislation to help us interpret procedures for administering the Clean and Green Program uniformly across this state in relation to energy production and the harvesting of energy sources is an important and necessary step.

As tax payer relief and tax fairness are at the forefront of most of our decisions legislation to enhance those efforts is welcomed and necessary.

Thank you for this opportunity and for listening to my concerns.

Respectfully submitted:

Eric A. Brown, Chief Assessor, Wyoming County