

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 2899 Session of  
2006

INTRODUCED BY YEWCIC, TANGRETTI, DeWEESE, CALTAGIRONE, CRAHALLA,  
DENLINGER, GEORGE, GOODMAN, HALUSKA, HENNESSEY, STAIRS,  
WANSACZ, CREIGHTON AND MARKOSEK, AUGUST 21, 2006

REFERRED TO COMMITTEE ON ENVIRONMENTAL RESOURCES AND ENERGY,  
AUGUST 21, 2006

AN ACT

1 Amending the act of July 20, 1979 (P.L.183, No.60), entitled "An  
2 act regulating the terms and conditions of certain leases  
3 regarding natural gas and oil," further providing for notice  
4 and surface-use agreements.

5 The General Assembly of the Commonwealth of Pennsylvania  
6 hereby enacts as follows:

7 Section 1. Sections 1 and 2 of the act of July 20, 1979  
8 (P.L.183, No.60), entitled "An act regulating the terms and  
9 conditions of certain leases regarding natural gas and oil," are  
10 amended to read:

11 Section 1. (a) A lease or other such agreement conveying  
12 the right to remove or recover oil, natural gas or gas of any  
13 other designation from lessor to lessee shall not be valid if  
14 such lease does not guarantee the lessor at least one-eighth  
15 royalty of all oil, natural gas or gas of other designations  
16 removed or recovered from the subject real property[.], except  
17 as provided in subsection (b).

18 (b) Where a surface owner is not entitled to royalties under

1 subsection (a) for the removal or recovery of methane gas or any  
2 other gas found in any coal formation, the following procedures  
3 shall apply:

4 (1) The notice and plat provided to surface owners  
5 pursuant to the filing of a permit application for a coal bed  
6 methane gas well under section 201 of the act of December 19,  
7 1984 (P.L.1140, No.223), known as the Oil and Gas Act, shall  
8 include all of the following:

9 (i) A plan of work and a description of the proposed  
10 location of the well and production-related horizontal  
11 boreholes, if present, as plotted on current topographic  
12 maps.

13 (ii) A statement citing deeds, leases, rights-of-way  
14 or other rights relating to the operator's access to the  
15 coal bed methane.

16 (iii) Information regarding required or recommended  
17 predrilling or prealteration surveys and other provisions  
18 relating to:

19 (A) protection of water supplies;

20 (B) well location restrictions;

21 (C) well site restoration; and

22 (D) casing, cementing or plugging of wells and  
23 production-related horizontal boreholes pursuant to  
24 the Oil and Gas Act.

25 (iv) A proposal for a surface-use agreement, which  
26 shall include all of the following provisions:

27 (A) Compensation for damage to the surface, for  
28 loss of agricultural production and income and lost  
29 land value. The amount of damages may be determined  
30 by any reasonable formula agreeable to the surface

1           owner and operator, and consideration may be given to  
2           the length of time during which the loss is  
3           sustained.

4           (B) Consideration of the surface owner's  
5           reasonable preferences regarding location of the  
6           well, which would not negatively impact production,  
7           as well as the location and maintenance of roads,  
8           fencing and equipment, which shall comply with the  
9           Oil and Gas Act and health and safety requirements of  
10          other applicable laws of this Commonwealth.

11          (C) An option for the surface owner to use gas  
12          provided by the operator without charge in lieu of  
13          part or all of the financial compensation due for  
14          damages described in clause (A).

15          (2) Compensation under subsection (b)(1)(iv)(A) or  
16          election of the option under subsection (b)(1)(iv)(C) does  
17          not relieve the operator of responsibilities under the Oil  
18          and Gas Act, including protection, contamination, loss or  
19          diminution of water supplies; well site restoration; and the  
20          casing, cementing or plugging of wells.

21          (3) If the surface owner and operator are unable to  
22          execute a surface-use agreement within 30 days of the notice  
23          provided under subsection (b)(1)(i), the following shall  
24          apply:

25                (i) The operator shall place in escrow in a  
26                financial institution approved by the surface owner an  
27                amount equal to the last best offer of compensation made  
28                by the operator to the surface owner; and the parties may  
29                apply to the court of common pleas in the judicial  
30                district in which the affected property is located for an

1       order establishing surface-use guidelines and reasonable  
2       compensation.

3       (ii) The department shall allow the operator to  
4       commence operations pursuant to an approved permit upon  
5       receipt of proof from the operator that:

6               (A) an amount equal to the last best offer of  
7               compensation for surface use and damages has been  
8               placed in escrow in a financial institution approved  
9               by the surface owner; and

10              (B) a monthly statement of escrowed funds shall  
11              be provided to the surface owner by first class mail,  
12              pending further negotiation or court order.

13       (4) If an operator fails to comply with a surface-use  
14       agreement, the surface owner may bring an action for  
15       enforcement in the court of common pleas in the judicial  
16       district in which the affected property is located.

17       (5) Notwithstanding 42 Pa.C.S. § 5527(b) (relating to  
18       six year limitation), a surface owner entitled to bring an  
19       action under this section must bring the action within two  
20       years after the damage has been discovered or should have  
21       been discovered through due diligence by the surface owner.

22       (6) Nothing in this section precludes a person from  
23       seeking other remedies allowed by the statute, common law,  
24       deed or contract; nor does this section diminish rights  
25       previously granted by statute, common law, deed or contract.  
26       This section does not vest the surface owner with title to  
27       oil, gas or coal bed methane interests which have been  
28       severed from the surface estate.

29       (7) This section does not apply to a written surface-use  
30       agreement in effect prior to the effective date of this

1 section.

2 (8) This section supersedes the ordinances and  
3 resolutions of political subdivisions dealing with the  
4 material regulated by this paragraph, in accordance with  
5 section 602 of the Oil and Gas Act.

6 (c) At the request of the surface owner, the department  
7 shall provide deviation surveys and other information available  
8 pursuant to the Oil and Gas Act, if available.

9 (d) As used in this section, the following words and phrases  
10 shall have the meanings given to them in this subsection:

11 "Coal bed methane." Gas which can be produced from a coal  
12 seam, a mined-out area or a gob well.

13 "Coal bed methane well." A hole or well, which is sunk,  
14 drilled, bored or dug into the earth, including horizontal  
15 boreholes, for the production of coal bed methane from a coal  
16 seam, a mined-out area or a gob well for consumption or sale.

17 The term does not include any of the following:

18 (1) A shaft, hole or well, which is sunk, drilled, bored  
19 or dug into the earth for core drilling or production of coal  
20 or water.

21 (2) A bore hole drilled or being drilled for the purpose  
22 of or to be used for degasifying coal seams if a condition in  
23 one of the following subparagraphs is met:

24 (i) The bore hole is:

25 (A) used to vent methane to the outside  
26 atmosphere from an operating coal mine;

27 (B) regulated as part of the mining permit  
28 pursuant to the act of June 22, 1937 (P.L.1987,  
29 No.394), known as The Clean Streams Law, and the act  
30 of May 31, 1945 (P.L.1198, No.418), known as the

1 Surface Mining Conservation and Reclamation Act; and

2 (C) drilled by the operator of the operating  
3 coal mine for the purpose of increased safety.

4 (ii) The bore hole is used to vent methane to the  
5 outside atmosphere pursuant to a federally funded or  
6 State-funded abandoned mine reclamation project.

7 "Department." The Department of Environmental Protection of  
8 the Commonwealth.

9 "Financial institution." Includes a bank, private bank, bank  
10 and trust company, savings association, savings bank, trust  
11 company, savings and loan association and building and loan  
12 association, whether organized or operated under Federal or  
13 State law.

14 "Surface owner." The owner of real property where a coal bed  
15 methane well is located or proposed to be located that is not  
16 entitled to royalties for the removal or recovery of the coal  
17 bed methane from the well.

18 Section 2. An oil, natural gas or other designation gas well  
19 or oil, natural gas or other designation gas lease which does  
20 not provide a one-eighth metered royalty shall be subject to  
21 such an escalation when its original state is altered by new  
22 drilling, deeper drilling, redrilling, artificial well  
23 stimulation, hydraulic fracturing or any other procedure for  
24 increased production, except in the case of coal bed methane  
25 wells subject to section (1)(b). A lease shall not be affected  
26 when the well is altered through routine maintenance or  
27 cleaning.

28 Section 2. The act is amended by adding a section to read:

29 Section 3.1. The provisions of this act shall not be  
30 construed to affect, limit or impair any enforcement action

1 taken by the department under the act of December 19, 1984  
2 (P.L.1140, No.223), known as the Oil and Gas Act, prior to the  
3 effective date of this section.

4       Section 3. This act shall take effect in 60 days.