
THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 275 Session of
2009

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ORIE, MUSTO, KASUNIC, O'PAKE, YAW, COSTA, M. WHITE, WARD AND
BOSCOLA, FEBRUARY 19, 2009

REFERRED TO ENVIRONMENTAL RESOURCES AND ENERGY, FEBRUARY 19,
2009

AN ACT

1 Establishing the Coal Methane Review Board to resolve disputes
2 between property owners over the location of coal bed methane
3 wells and access roads.

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

6 Section 1. Short title.

7 This act shall be known and may be cited as the Coal Bed
8 Methane Well Dispute Resolution Act.

9 Section 2. Definitions.

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

13 "Alternative dispute resolution." The procedure for dispute
14 resolution provided in this act.

15 "Board." The Coal Bed Methane Review Board established in
16 section 4.

17 "Coal bed methane." Gas which can be produced from a coal

1 seam, a mined-out area or a gob well.

2 "Coal bed methane well." A hole or well which is sunk,
3 drilled, bored or dug into the earth for the production of coal
4 bed methane from a coal seam, a mined-out area or a gob well for
5 consumption or sale. The term includes a horizontal borehole.

6 The term does not include any of the following:

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

10 (2) A borehole drilled or being drilled for the purpose
11 of or to be used for degasifying coal seams if a condition in
12 one of the following subparagraphs is met:

13 (i) The borehole is:

14 (A) Used to vent methane to the outside
15 atmosphere from an operating coal mine.

16 (B) Regulated as part of the mining permit under
17 the act of June 22, 1937 (P.L.1987, No.394), known as
18 The Clean Streams Law, and the act of May 31, 1945
19 (P.L.1198, No.418), known as the Surface Mining
20 Conservation and Reclamation Act.

21 (C) Drilled by the operator of the operating
22 coal mine for the purpose of increased safety.

23 (ii) The borehole is used to vent methane to the
24 outside atmosphere under a federally funded or
25 Commonwealth-funded abandoned mine reclamation project.

26 (3) A well or borehole drilled in a coal seam from
27 within an underground coal mine for the production of coal
28 bed methane. This paragraph includes a well or borehole
29 connected to a well or borehole which is sunk, drilled or dug
30 from the surface.

1 "Department." The Department of Environmental Protection of
2 the Commonwealth.

3 "Permit." A well permit issued pursuant to the act of
4 December 19, 1984 (P.L.1140, No.223), known as the Oil and Gas
5 Act.

6 "Secretary." The Secretary of Environmental Protection of
7 the Commonwealth.

8 "Surface owner." A person who owns any of the following
9 interests in the surface upon which a coal bed methane well or
10 associated access road may be constructed:

- 11 (1) A fee interest.
- 12 (2) An interest for life.
- 13 (3) A remainder interest.

14 The term does not include:

- 15 (1) The Federal or State Government or any agency or
16 political subdivision thereof.
- 17 (2) A person who is entitled to royalties for removal or
18 recovery of coal bed methane.
- 19 (3) A person who owns a lease, easement, right-of-way,
20 license, privilege or other similar interest in the surface.

21 "Well operator." A person who has filed or who is required
22 to file for a permit under the act of December 19, 1984 (P.L.
23 1140, No.223), known as the Oil and Gas Act.

24 Section 3. Legislative purpose and intent.

25 It is the purpose of this act to establish an alternative
26 procedure to court action for consideration and resolution of
27 objections to the location of certain coal bed methane wells or
28 roads associated with those wells to be constructed on surface
29 lands and to modify the procedure for review of permit
30 applications to the extent necessary to allow for the procedure

1 for alternative dispute resolution.

2 Section 4. Coal Bed Methane Review Board.

3 (a) Establishment.--There is established the Coal Bed
4 Methane Review Board.

5 (b) Members.--The following shall apply:

6 (1) The board shall consist of the following members:

7 (i) One member appointed by the Governor from a list
8 of three individuals submitted by the Pennsylvania Farm
9 Bureau.

10 (ii) One member appointed by the Governor from a
11 list of three individuals prepared jointly by the
12 Pennsylvania Oil and Gas Association, the Independent Oil
13 and Gas Association of Pennsylvania and the Pennsylvania
14 Coal Association.

15 (iii) One member appointed by the Governor who is an
16 individual with expertise in petroleum geology or
17 petroleum engineering with at least three years of
18 experience in practice in Pennsylvania who is appointed
19 from a list of three individuals prepared jointly by the
20 deans of the College of Agricultural Sciences and the
21 College of Earth and Mineral Sciences of The Pennsylvania
22 State University.

23 (2) The lists required by paragraph (1) shall be
24 submitted to the Governor within 30 days of the effective
25 date of this section, and the Governor's appointments shall
26 be made within 90 days of the effective date of this section.

27 (3) Upon occurrence of a vacancy, the appropriate entity
28 shall submit a new list within 30 days of the vacancy, and
29 the Governor shall make an appointment within 30 days of
30 receipt of the list.

1 (c) Terms.--The term of appointment of a board member shall
2 be three years or until a successor is duly appointed. A board
3 member may be appointed for successive terms.

4 (d) Support.--The department shall provide administrative
5 and clerical support to the board as requested.

6 (e) Purpose.--The purpose of the board shall be to consider
7 objections and attempt to reach agreement on or determine a
8 location for the coal bed methane well or access road.

9 (f) Compensation.--Members of the board shall be compensated
10 at the appropriate per diem rate based on the prevailing formula
11 administered by the Commonwealth, but not less than \$150 per
12 day, plus all reasonable expenses incurred while performing
13 their official duties. Compensation shall be adjusted annually
14 by the secretary to account for inflation based on the rate of
15 inflation identified by the Consumer Price Index published by
16 the United States Department of Labor. The individual member may
17 waive his right to all or part of the compensation set forth in
18 this subsection.

19 Section 5. Procedures.

20 (a) Notification.--A well operator who intends to drill a
21 coal bed methane well or construct an access road associated
22 with a coal bed methane well shall provide written notification
23 to the surface owner in the manner prescribed in section 201(b)
24 of the act of December 19, 1984 (P.L.1140, No.223), known as the
25 Oil and Gas Act. The notification shall also include the
26 following statement on a form provided by the department in at
27 least twelve-point print:

28 Right to Participate in Alternative Dispute Resolution

29 You have the right to have your objections to the well

30 operator's proposed location of the well or of the access

1 road associated with the well heard and decided by the
2 three-member Coal Bed Methane Review Board, created under
3 the act of , 2009 (P.L. , No.), known as
4 the Coal Bed Methane Well Dispute Resolution Act. You may
5 participate with or without a lawyer in any conference
6 session the board may hold to hear your objections.

7 Important: To exercise this right, you must file your
8 objections in writing with the Coal Bed Methane Review
9 Board through the Department of Environmental Protection
10 at:

11 (Address)

12 (City, State, Zip)

13 within fifteen (15) days of the date you received this
14 notification. Otherwise, you will be considered to have
15 waived this right to resolve your objections through the
16 Coal Bed Methane Review Board. Your objection may be
17 filed in person or by certified mail.

18 (b) Filing of written objections.--A surface owner who
19 intends to invoke alternative dispute resolution shall file
20 written objections to the well operator's proposed location for
21 coal bed methane well or access road with the board within 15
22 days of the date of receipt of the written notification and plat
23 described in subsection (a). The written objections may indicate
24 an alternative location at which the proposed coal bed methane
25 well could be drilled or the access road could be located to
26 overcome the objections. If no objections are filed in the time
27 prescribed in this subsection, the department shall accept an
28 application from the operator and proceed to issue or deny the
29 permit, provided the department shall not accept a permit
30 application unless the applicant demonstrates that the

1 notification requirements of subsection (a) have been satisfied.

2 (c) Conference.--If objections are filed by a surface owner
3 pursuant to subsection (b), an employee of the department
4 responsible for receiving such objections on behalf of the board
5 shall, within two days, notify the operator and the board of the
6 objections, and the board shall fix a time and place for holding
7 the dispute resolution conference and shall notify the surface
8 owner and well operator of the time and place where the
9 conference will be held. The conference shall be scheduled to
10 commence not more than ten business days from the date of
11 service of the objections on the well operator, provided,
12 however, that, if the board cannot be fully convened for a
13 conference within this time, the conference shall be scheduled
14 to commence on the earliest reasonable date in which the board
15 can be fully convened, but no later than 15 business days from
16 the date of the service of the objections on the well operator.
17 For purposes of this section, the term "fully convened" shall
18 mean the participation of all three members of the board. The
19 conference shall be held at the applicable regional or district
20 office of the department closest to the tract which is the
21 subject of the objection. The board may use, and the department
22 shall provide, clerical assistance and the use of regional or
23 district offices for the board in conducting conference
24 sessions.

25 (d) Proceedings.--At the conference the well operator and
26 surface owner or owners as are present or represented shall
27 consider the objections and attempt to agree upon a location for
28 the coal bed methane well or access road. The board may hold
29 more than one conference session. The conference shall be
30 completed within ten business days of the date that the

1 conference is originally commenced. However, the board, in its
2 sole discretion, may extend the time for completion of the
3 conference by an additional five business days, and the parties
4 to the conference may extend the time for completion of the
5 conference to a date mutually agreed upon. Any agreement reached
6 at the conference shall be consistent with the requirements of
7 the Oil and Gas Act and shall be reduced to writing by the board
8 and submitted to the department within ten business days of the
9 date that the conference is completed. Upon receipt of notice
10 that the board's conference resulted in a mutual agreement
11 between the operator and the surface owner, the department shall
12 accept an application with a plat showing the agreed-upon
13 location of the well from the operator and shall proceed to
14 issue or deny the permit. If the parties to the conference
15 before the board fail to agree upon a location of the coal bed
16 methane well or access road or if only the party requesting
17 review participates in the conference, the board shall make a
18 determination in writing establishing a location of the coal bed
19 methane well or access road that, in the judgment of the
20 majority of the board, will cause only those surface impairments
21 that are reasonably necessary for purposes of extracting the
22 underlying coal bed methane. Issuance of the written
23 determination shall be made within ten business days of the date
24 of completion of the conference and shall be served on the date
25 of issuance by certified mail upon the surface owner, the well
26 operator and the department. Failure by the board to issue a
27 written determination within the prescribed period of ten
28 business days shall be deemed a final determination by the board
29 to affirm the location of the well or access road proposed by
30 the well operator. Within 15 business days of the date of

1 completion of the conference, the board shall issue a written
2 statement setting forth findings of fact and reasons in support
3 of its determination and shall serve copies of the written
4 statement by certified mail upon the surface owner, the well
5 operator and the department. Failure by the board to issue the
6 written statement of findings of fact and reasons in support of
7 its determination within the prescribed period of 15 business
8 days shall not preclude an aggrieved person from exercising the
9 right of appeal to a court of common pleas as provided under
10 subsection (f). If no appeal of the board's determination is
11 filed under subsection (f), the department shall accept an
12 application with a plat showing the location of the well as
13 determined by the board from the operator and shall proceed to
14 issue or deny the permit.

15 (e) Determination.--Any determination by the board, made
16 under subsection (d), shall be binding on the department. The
17 board's determination shall not limit or otherwise affect the
18 department's regulatory authority under the Oil and Gas Act, the
19 act of June 22, 1937 (P.L.1987, No.394), known as The Clean
20 Streams Law, or any other applicable law administered by the
21 department.

22 (f) Appeal.--Any person aggrieved by a determination of the
23 board issued under subsection (d) shall have the right, within
24 15 days of receipt of the written or final determination, to
25 appeal the determination to the court of common pleas in the
26 judicial district in which the affected property is located. A
27 copy of the appeal shall be served upon all the parties to the
28 conference. The board or the department shall not be a party to
29 the appeal. The court shall hold a hearing on the appeal within
30 30 days of filing of the appeal and shall render its decision in

1 the appeal within 60 days of filing of the appeal. In any
2 appeal, the only issue to be determined by the court is whether
3 the location of the disputed well or access road, as the case
4 may be, determined by the board, will cause only those surface
5 impairments that are reasonably necessary for purposes of
6 extracting the underlying coal bed methane. If the court agrees
7 that the board's determination meets this standard, it shall
8 affirm the board's determination. If the court determines that
9 the board's determination does not meet this standard, it shall
10 issue an order indicating the location of the disputed well or
11 access road, as the case may be, that, in the opinion of the
12 court, will cause only those surface impairments that are
13 reasonably necessary for purposes of extracting the underlying
14 coal bed methane. Upon issuance of an order by the court, the
15 department shall accept an application from the operator and
16 shall proceed to issue or deny the permit.

17 Section 6. Ordinances and resolutions superseded.

18 This act supersedes the ordinances and resolutions of
19 political subdivisions dealing with material regulated by this
20 act.

21 Section 7. Enforcement actions.

22 The provisions of this act shall not be construed to affect,
23 limit or impair any enforcement action taken by the department
24 under the act of December 19, 1984 (P.L.1140, No.223), known as
25 the Oil and Gas Act.

26 Section 8. Other remedies.

27 Nothing in this act precludes a person from seeking other
28 remedies allowed by statute, common law, deed or contract, nor
29 does this act diminish or alter rights previously established or
30 granted by statute, common law, deed or contract.

1 Section 9. Notification.

2 The department shall publish a notice in the Pennsylvania
3 Bulletin when all initial members of the board established in
4 section 4 have been appointed.

5 Section 10. Effective date.

6 This act shall take effect as follows:

7 (1) Section 5 shall take effect upon publication of the
8 initial notice under section 9.

9 (2) The remainder of this act shall take effect
10 immediately.