

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 1565 Session of 2011

INTRODUCED BY GEORGE, HANNA, SANTARSIERO, BOBACK, BRIGGS, V. BROWN, CALTAGIRONE, CARROLL, CONKLIN, D. COSTA, DEASY, DeLUCA, DePASQUALE, FABRIZIO, HARHAI, HESS, HORNAMAN, JOSEPHS, KORTZ, KULA, MAHONEY, MUNDY, MURPHY, MURT, M. O'BRIEN, PASHINSKI, REICHLEY, SCHRODER, STABACK, STURLA, VITALI, WAGNER AND WATSON, MAY 23, 2011

REFERRED TO COMMITTEE ON ENVIRONMENTAL RESOURCES AND ENERGY, MAY 23, 2011

AN ACT

1 Amending the act of December 19, 1984 (P.L.1140, No.223),
 2 entitled "An act relating to the development of oil and gas
 3 and coal; imposing duties and powers on the Department of
 4 Environmental Resources; imposing notification requirements
 5 to protect landowners; and providing for definitions, for
 6 various requirements to regulate the drilling and operation
 7 of oil and gas wells, for gas storage reservoirs, for various
 8 reporting requirements, including certain requirements
 9 concerning the operation of coal mines, for well permits, for
 10 well registration, for distance requirements, for well casing
 11 requirements, for safety device requirements, for storage
 12 reservoir obligations, for well bonding requirements, for a
 13 Well Plugging Restricted Revenue Account to enforce oil and
 14 gas well plugging requirements, for the creation of an Oil
 15 and Gas Technical Advisory Board, for oil and gas well
 16 inspections, for enforcement and for penalties," further
 17 providing for definitions; and providing for chemical
 18 analysis of recycled wastewater during storage, for chemical
 19 analysis of wastewater generated by oil and gas activities
 20 and for electronic tracking of wastewater from oil and gas
 21 activities.

22 The General Assembly of the Commonwealth of Pennsylvania
 23 hereby enacts as follows:

24 Section 1. The definition of "department" in section 103 of
 25 the act of December 19, 1984 (P.L.1140, No.223), known as the

1 Oil and Gas Act, is amended and the section is amended by adding
2 definitions to read:

3 Section 103. Definitions.

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

7 * * *

8 "Brine." Water with a total dissolved solid concentration of
9 35,000 milligrams per liter or greater.

10 * * *

11 "Department." The Department of Environmental [Resources]
12 Protection of the Commonwealth.

13 * * *

14 "Facility." A facility that treats, processes and discharges
15 wastewater into the waters of the Commonwealth. The term shall
16 include a wastewater treatment facility, municipal treatment
17 facility, industrial waste treatment facility, solid waste
18 management facility, sewage treatment facility and publicly
19 owned treatment works.

20 "Flowback water." A water mixture of fresh water, top hole
21 fluids, chemical additives, drilling muds, cuttings, formation
22 water, saline and brine water that is produced when the
23 hydraulic fracturing process is complete and the direction of
24 fluid flow reverses to the surface.

25 * * *

26 "Oil and gas activities." The term shall include fracturing,
27 production, field exploration, drilling or completion of natural
28 gas wells.

29 * * *

30 "Production water." Water present in unconventional shale

1 formations that flows through a well during oil and gas
2 production.

3 "Public water supplier." A person who owns or operates a
4 public water system.

5 * * *

6 "Unconventional shale formation." A shale formation that
7 typically produces natural gas through high volume hydraulic
8 fracturing or horizontal well bores or other unconventional
9 stimulation processes. The term shall include the Rhinestreet,
10 Burkett, Marcellus, Mandata and Utica Shale formations and any
11 other formations designated by the Department of Environmental
12 Protection.

13 "Wastewater." Water that is generated as a result of oil and
14 gas activities targeting unconventional shale formations. The
15 term shall include brine, saline, connate, flowback water and
16 production water.

17 "Water supply." A supply of water for human consumption or
18 use, or for agricultural, commercial, industrial or other
19 legitimate beneficial use.

20 "Waters of the Commonwealth." As defined in the act of June
21 22, 1937 (P.L.1987, No.394), known as The Clean Streams Law.

22 * * *

23 Section 2. Section 206(e) of the act is amended to read:
24 Section 206. Well site restoration.

25 * * *

26 (e) Restoration activities required by this act or in
27 regulations promulgated hereunder shall also comply with all
28 applicable provisions of The Clean Streams Law and shall comply
29 with the background standards for environmental cleanup pursuant
30 to section 302 of the act of May 19, 1995 (P.L.4, No.2), known

1 as the Land Recycling and Environmental Remediation Standards
2 Act.

3 Section 3. Section 208 of the act is amended by adding a
4 subsection to read:

5 Section 208. Protection of water supplies.

6 * * *

7 (a.1) A well operator shall notify the department and the
8 public water supplier or private water well owner within 24
9 hours of any possible pollution or contamination to the water
10 supply as a result of oil and gas activities taking place. The
11 public water supplier shall notify the public within 12 hours
12 after receipt of notice from the well operator. The public water
13 supplier shall notify the public through appropriate broadcast
14 media such as radio or television and through hand delivery of
15 notices to persons served by the public water supplier. The
16 content of the public notice shall contain all pertinent
17 information required pursuant to 25 Pa. Code § 109.411 (relating
18 to content of a public notice).

19 * * *

20 Section 4. The act is amended by adding sections to read:

21 Section 208.1. Chemical analysis of equipment and recycled
22 wastewater during storage.

23 (a) In addition to the wastewater source reduction strategy
24 required under 25 Pa. Code Ch. 95 (relating to wastewater
25 treatment requirements), a well operator shall perform a
26 chemical analysis on the following:

27 (1) All equipment used in the transporting of wastewater
28 to a facility or well site or storage of recycled wastewater.

29 (2) All recycled wastewater held in storage tanks and
30 holding ponds or transported through pipes to a well site for

1 reuse.

2 (b) The analysis shall be completed by a certified
3 laboratory and, at a minimum, test for chemicals, chemical
4 compounds, radioactive isotopes or decay products, including
5 Radium 226, Thorium, Radium 228, Uranium, Gross Alpha, Gross
6 Beta and Benzene. Testing shall also be conducted for glycols
7 and regulated volatile organic compounds, plus elements or
8 parameters specific to the formation and the chemicals utilized
9 in the hydraulic fracturing process.

10 (c) A well operator shall submit a copy of the analyses to
11 the department on forms prepared by the department and keep a
12 copy of the analyses at the well site.

13 Section 208.2. Chemical analysis of wastewater generated by oil
14 and gas activities.

15 (a) A facility that possesses or is seeking a National
16 Pollutant Discharge Elimination System permit, under 25 Pa. Code
17 Ch. 92a (relating to national pollution discharge elimination
18 system permitting, monitoring and compliance) shall perform a
19 detailed chemical analysis on all wastewater received that is
20 generated from oil and gas activities targeting unconventional
21 shale formations. The analysis shall be conducted by a certified
22 laboratory after treatment and prior to discharge into the
23 waters of the Commonwealth.

24 (b) The analysis shall include the following:

25 (1) Available information from material safety data
26 sheets or similar sources that may help characterize the
27 chemical composition of the wastewater.

28 (2) At a minimum, the levels of naturally occurring
29 radioactive materials such as Radium 226, Thorium, Radium
30 228, Uranium, Gross Alpha, Gross Beta and Benzene. Testing

1 shall be conducted for glycols and regulated volatile organic
2 compounds, plus elements or parameters specific to the
3 formation and the chemicals utilized in the hydraulic
4 fracturing process.

5 (3) Information gathered from testing for treatment
6 plant sludge and residuals for accumulation of trace elements
7 and radionuclides.

8 (4) A determination of whether the wastewater contains
9 hazardous waste as defined under 25 Pa. Code Ch. 261(a)
10 (relating to identification and listing of hazardous waste)
11 and 40 C.F.R. Part 261 (relating to identification and
12 listing of hazardous waste).

13 (5) A copy of the annual chemical analysis report
14 submitted by the generator of the wastewater to the
15 department pursuant to 25 Pa. Code Ch. 287.54 (relating to
16 chemical analysis of waste) and additional parameters that
17 are specific to the waste stream and as established during
18 the department's review and permitting process.

19 (c) A facility shall submit a copy of the analysis
20 determination and a record of the laboratory's quality control
21 procedures to the department on forms prepared by the
22 department.

23 (d) A record of the documents required under subsection (c)
24 shall be kept on the facility's premises and shall be available
25 to the department for inspection.

26 (e) All wastewater treated by a facility shall meet
27 applicable water quality standards consistent with the Clean
28 Water Act (Public Law 92-500, 33 U.S.C. § 1251 et seq.), the
29 Safe Drinking Water Act (Public Law 93-523, 21 U.S.C. § 349 and
30 42 U.S.C. §§ 201 and 300f et seq.) and the act of May 1, 1984

1 (P.L.206, No.43), known as the Pennsylvania Safe Drinking Water
2 Act.

3 (f) The department shall promulgate regulations necessary to
4 meet the requirements of this section.

5 Section 208.3. Electronic tracking of wastewater from oil and
6 gas activities.

7 Within 180 days of the effective date of this section, the
8 department shall establish an online electronic tracking system
9 for the reporting and tracking of storage, transportation and
10 disposal of wastewater from oil and gas activities targeting
11 unconventional shale formations. The tracking system shall be
12 readily accessible online by the department and the public, and
13 allow for tracking of the amount, type and location of all such
14 wastewater on a daily basis through the use of tracking numbers
15 unique to each transport unit. The tracking system shall require
16 all persons who generate, store, transport or dispose of such
17 wastewater to record and provide information to the tracking
18 system necessary to track the amount, type and location of all
19 such wastewater on a daily basis, from generation to ultimate
20 disposal.

21 Section 5. This act shall take effect in 60 days.