

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 1865 Session of
2011

INTRODUCED BY SCHRODER, CREIGHTON, GRELL, GROVE, HESS, MUSTIO,
SACCONE AND SWANGER, SEPTEMBER 26, 2011

REFERRED TO COMMITTEE ON ENVIRONMENTAL RESOURCES AND ENERGY,
SEPTEMBER 26, 2011

AN ACT

1 Providing for an unconventional well impact fee; establishing
2 the Marcellus Shale Impact Fund and the Marcellus Shale
3 Roadway Repair Account; and imposing penalties.

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
8 Unconventional Well Impact Fee 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 "Account." The Marcellus Shale Roadway Repair Account.

14 "County." A county of the second A, third, fourth, fifth,
15 sixth, seventh or eighth class.

16 "Department." The Department of Environmental Protection of
17 the Commonwealth.

18 "Eligible environmental costs." The costs incurred by the

Commonwealth for remediating environmental impacts resulting from natural gas production from unconventional wells. The term includes costs incurred by the Commonwealth for remediating any of the following resulting from natural gas production from unconventional wells:

(1) Potable or nonpotable water contamination or diminution.

(2) Erosion and sedimentation problems.

(3) Soil contamination.

(4) Hazardous material spills.

(5) Damages to plant or wildlife habitat beyond that covered by an operator's drilling permit.

(6) Pipeline impacts.

(7) Any impact for which fines and penalties were assessed to pay for remediation efforts.

"Eligible transportation costs." The costs incurred by the Commonwealth or one of its municipalities for remediating transportation impacts resulting from natural gas production from unconventional wells. The term includes costs incurred by the Commonwealth for remediating any of the following resulting from natural gas production from unconventional wells:

(1) Roadway resurfacing.

(2) Roadway reconstruction.

(3) Roadway repair.

(4) Bridge reconstruction or repair.

(5) Traffic controls.

(6) Signage.

(7) Any transportation impacts remediated under the Department of Transportation's road posting and bonding program.

1 "Fee." The unconventional well impact fee established under
2 section 3(a).

3 "Fund." The Marcellus Shale Impact Fund.

4 "Municipality." A county, city, borough, incorporated town
5 or township.

6 "Natural gas." A fossil fuel consisting of a mixture of
7 hydrocarbon gases, primarily including methane and possibly
8 including ethane, propane, butane, pentane, carbon dioxide,
9 oxygen, nitrogen and hydrogen sulfide and other gas species. The
10 term includes natural gas from oil fields known as associated
11 gas or casing head gas, natural gas fields known as
12 nonassociated gas, coal beds, shale beds and other formations.
13 The term does not include coal bed methane.

14 "Operator." A person who engages or continues within this
15 Commonwealth in the business of severing natural gas for sale,
16 profit or commercial use. The term does not include a person who
17 severs natural gas from a storage field.

18 "Pipeline impacts." Impacts such as leaks, explosions,
19 contaminations, erosion and sedimentation problems or damage to
20 public or private property resulting from the construction or
21 maintenance of pipelines, including gathering lines and
22 intrastate or interstate transmission lines.

23 "Unconventional well." A bore hole drilled or being drilled
24 for the purpose of or to be used for producing oil or gas from a
25 geological formation existing below the base of the Elk
26 Sandstone or its geologic equivalent stratigraphic interval
27 where oil or gas generally cannot be produced at economic flow
28 rates or in economic volumes except by vertical or horizontal
29 well bores stimulated by hydraulic fracture treatments or by
30 using multilateral well bores or other techniques to expose more

1 of the formation of the well bore. The term includes wells for
2 which drilling activities have commenced or production
3 operations have begun.

4 Section 3. Unconventional well impact fee.

5 (a) Establishment.--Beginning January 30, 2012, and each
6 year thereafter, an operator shall pay a fee on each
7 unconventional well owned or operated.

8 (b) Calculation.--

9 (1) The department shall calculate the unconventional
10 well impact fee annually based on the formula under paragraph
11 (2).

12 (2) The department shall calculate the fee by using a
13 formula which adds the total eligible environmental costs
14 from the prior calendar year and the total eligible
15 transportation costs from the prior calendar year, as
16 determined by the Department of Transportation, divided by
17 the total number of unconventional wells operated within this
18 Commonwealth in the prior calendar year.

19 (3) Each county conservation district shall assess any
20 pipeline impacts and determine remediation costs to the
21 Commonwealth or its municipalities and to owners of real
22 property in the county and shall submit the remediation costs
23 to the department to be used in calculating the
24 unconventional well impact fee.

25 (4) Money collected as a result of the fee shall be
26 deposited into the fund.

27 (c) Plugged wells.--An operator shall not be required to pay
28 the fee on any unconventional wells in which production has
29 ceased and the unconventional well is plugged in accordance with
30 section 210 of the act of December 19, 1984 (P.L.1140, No.223),

1 known as the Oil and Gas Act.

2 (d) Duties of municipalities.--On or before September 30 of
3 each year, municipalities shall submit a detailed list of
4 impacts to their respective transportation infrastructure,
5 including impacts to highways, roadways or bridges or other
6 transportation problems resulting from the drilling of
7 unconventional wells in the prior calendar year, to the
8 Department of Transportation to be used in calculating the fee
9 under subsection (b).

10 Section 4. Return and payment.

11 (a) General rule.--An operator shall file a certificate with
12 the department which shall include a list by municipality of the
13 total number of unconventional gas wells owned by the operator
14 for the reporting period of the previous year. The operator
15 shall submit the amount of the unconventional well impact fee
16 due at the time the certificate is submitted.

17 (b) Filing.--

18 (1) Except as provided under paragraph (2), the
19 certificate required under subsection (a) shall be filed with
20 the county in which the well is located within 30 days
21 following the end of a reporting period.

22 (2) The operator may submit the unconventional well
23 impact fee due on a quarterly basis on a schedule approved by
24 the department.

25 (c) Deadline.--The unconventional well impact fee shall be
26 due on the date prescribed under subsection (b) and shall be
27 delinquent if not remitted to the department by that date.

28 Section 5. Penalties.

29 (a) Untimely certificate.--An operator who willfully fails
30 to file a timely certificate shall be assessed an administrative

1 fine equal to 100% of the unconventional gas well impact fee
2 liability required to be reported on the certificate.

3 (b) Fraudulent certificate.--Any operator, with intent to
4 defraud the Commonwealth, who willfully makes or causes to be
5 made a certificate required under this act which is false shall,
6 upon finding by the department, be ordered to pay an
7 administrative fine of not more than 100% of the liability.

8 (c) Fines and costs.--

9 (1) Except as provided under subsection (a), an operator
10 shall be ordered to pay a fine of not more than \$50,000 and
11 costs of prosecution for any of the following:

12 (i) Willfully failing to timely remit the
13 unconventional gas well impact fee to the department.

14 (ii) Willfully failing or neglecting to timely file
15 a certificate or report required under this act.

16 (iii) Refusing to timely pay a penalty or interest
17 imposed or provided for under this act.

18 (iv) Willfully failing to preserve the operator's
19 books, papers and records as directed by the department.

20 (v) Refusing to permit the department or its
21 authorized agents to examine its books, records or
22 papers.

23 (vi) Knowingly making any incomplete, false or
24 fraudulent certificate or report required under this act.

25 (vii) Preventing or attempting to prevent the full
26 disclosure of the amount of the unconventional gas well
27 impact fee due.

28 (viii) Providing the department with a false
29 statement as to the payment of the unconventional gas
30 well impact fee with respect to any pertinent facts.

1 (ix) Making, uttering or issuing a false or
2 fraudulent statement required under this act.

3 (2) The penalties imposed under this section shall be in
4 addition to other penalties imposed by law.

5 (3) All fines received by the department under this act
6 shall be deposited in the Environmental Stewardship Fund.

7 Section 6. Records.

8 (a) Recordkeeping.--

9 (1) Every operator liable for the collection and
10 remittance of the fee shall keep records, render statements,
11 file certificates and comply with department rules and
12 regulations.

13 (2) Whenever it is necessary, the department may require
14 an operator, by notice served upon the operator, to file
15 certificates, render statements or keep records as the
16 department deems sufficient to show whether the operator is
17 liable to pay the unconventional gas well impact fee.

18 (b) Records.--Every operator responsible for the submittal
19 of the fee shall maintain records, statements and other
20 instruments as the department may prescribe by regulation.

21 (c) Examinations.--The department or any of its authorized
22 agents may:

23 (1) Examine the books, papers and records of any
24 operator in order to verify the accuracy and completeness of
25 the unconventional gas well impact fee submitted or reported.

26 (2) Require the preservation of all books, papers and
27 records for any period deemed proper by it for five years
28 from the end of the calendar year to which the records
29 relate.

30 (3) Examine any operator, under oath, concerning any

1 matter relating to the enforcement or administration of this
2 act and may compel the production of books, papers and
3 records and the attendance of all persons, whether as parties
4 or witnesses, whom it believes to have knowledge of relevant
5 matters.

6 (d) Duties of operators.--Every operator shall provide the
7 department or its agent with the means, facilities and
8 opportunity for examinations and investigations under this
9 section.

10 (e) Unauthorized disclosure.--

11 (1) Any information gained by the department as a result
12 of any certificate, examination, investigation, hearing or
13 verification required or authorized under this act shall be
14 confidential or in accordance with proper judicial order or
15 as otherwise provided by law.

16 (2) Any person who unlawfully divulges information
17 required to be kept confidential under this act shall, upon
18 conviction, be sentenced to pay a fine of not more than
19 \$1,000 and costs of prosecution.

20 Section 7. Marcellus Shale Impact Fund.

21 The Marcellus Shale Impact Fund is established as a special
22 fund within the State Treasury. Except for section 5(c)(3), all
23 payments received by the department under this act shall be
24 deposited in the fund. Any unused money in the fund shall remain
25 in the fund and any interest earned by the fund shall remain in
26 the fund. The money in the fund shall only be used in accordance
27 with section 9.

28 Section 8. Marcellus Shale Roadway Repair Account.

29 The Marcellus Shale Roadway Repair Account is established as
30 a restricted account within the General Fund. Any unused money

1 in the account shall remain in the account and any interest
2 earned by the account shall remain in the account. The money in
3 the account shall only be used in accordance with section 9(c).
4 Section 9. Allocations and transfers.

5 (a) Allocation.--An amount equal to the total eligible
6 environmental costs is allocated to the department to be used to
7 remediate any environmental impacts related to drilling
8 unconventional wells in this Commonwealth. A minimum of 5% of
9 the annual receipts shall remain in the fund for emergency
10 environmental impact remediation related to unconventional well
11 natural gas production. County conservation districts shall
12 assist the department in remediating pipeline impacts.

13 (b) Transfer.--On July 1 of each calendar year, the
14 Secretary of the Budget shall transfer an amount equal to the
15 total costs to the Commonwealth and its municipalities for
16 eligible transportation costs for the prior calendar year, as
17 determined by the Department of Transportation, from the fund to
18 the account.

19 (c) Grant program.--The Department of Transportation shall
20 make available a minimum of 25% of the funds in the account
21 through a grant program to counties and municipalities within
22 this Commonwealth for the maintenance and repair of highways,
23 roadways and bridges or transportation problems determined by
24 the Department of Transportation to have been impacted by or
25 caused by the process of drilling unconventional wells and may
26 use up to 70% of the account for maintenance and repair of
27 State-owned or interstate highways, roadways and bridges or
28 transportation problems determined by the Department of
29 Transportation to have been impacted by or caused by the process
30 of drilling unconventional wells. A minimum of 5% of the annual

transfer under subsection (b) shall remain in the account for emergency transportation impact remediation related to unconventional wells natural gas production.

Section 10. Annual reports.

(a) Requirement.--On February 1 of each year, the department and the Department of Transportation shall each submit to the Governor and the General Assembly an annual report of projects and services provided by money from the fund for the prior year. The annual report shall include the following:

(1) The total amount in the fund and the account.

(2) The total amount expended from the fund and the account.

(3) The location and description of each project.

(4) The total project costs.

(b) Internet.--Each department shall publish and maintain the annual report on its publicly accessible Internet website. The annual reports required under this section may be submitted to the Governor and the General Assembly by electronic mail.

Section 11. Regulations.

The department and the Department of Transportation are authorized to promulgate regulations to effectuate the provisions of this act.

Section 12. Expiration.

(a) Notice.--The Secretary of the Commonwealth shall, upon the effective date of an act authorizing a severance tax on each unconventional well producing gas in this Commonwealth, submit for publication in the Pennsylvania Bulletin notice of that fact.

(b) Date.--This act shall expire on the date of the publication of the notice under subsection (a).

1 Section 40. Effective date.

2 This act shall take effect in 60 days.