

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 2414 Session of 2012

INTRODUCED BY SANTARSIERO, DERMODY, GEORGE, MATZIE, STURLA,
M. O'BRIEN, BRIGGS, FRANKEL, MURPHY, MUNDY, MAHER, FREEMAN,
BROWNLEE, STEPHENS, HANNA, STABACK, TRUITT, HORNAMAN,
CALTAGIRONE, MULLERY, DEAN, JOSEPHS, CARROLL, DeLUCA,
WILLIAMS, QUINN, ROEBUCK AND MARKOSEK, MAY 31, 2012

REFERRED TO COMMITTEE ON ENVIRONMENTAL RESOURCES AND ENERGY, MAY
31, 2012

AN ACT

1 Amending Title 58 (Oil and Gas) of the Pennsylvania Consolidated
2 Statutes, in development, further providing for well permits,
3 for comments by municipalities and storage operators, for
4 well location restrictions, for protection of water supplies,
5 for well reporting requirements, for bonding and for criminal
6 and civil penalties.

7 The General Assembly of the Commonwealth of Pennsylvania
8 hereby enacts as follows:

9 Section 1. Sections 3211(b), 3212.1(a.1) and (b), 3215(a),
10 (b) and (d), 3218(c) and (d), 3222(b.2), 3225(a)(1), 3255(a) and
11 (b) and 3256 of Title 58 of the Pennsylvania Consolidated
12 Statutes, added February 14, 2012 (P.L.87, No.13), are amended
13 to read:

14 § 3211. Well permits.

15 * * *

16 (b) Plat.--

17 (1) The permit application shall be accompanied by a
18 plat prepared by a competent engineer or a competent

1 surveyor, on forms furnished by the department, showing the
2 political subdivision and county in which the tract of land
3 upon which the well to be drilled, operated or altered is
4 located; a list of municipalities adjacent to the well site;
5 the name of the surface landowner of record and lessor; the
6 name of all surface landowners and water purveyors whose
7 water supplies are within 1,000 feet of the proposed well
8 location or, in the case of an unconventional well, within
9 [3,000] 4,200 feet from the vertical well bore; the name of
10 the owner of record or operator of all known underlying
11 workable coal seams; the acreage in the tract to be drilled;
12 the proposed location of the well determined by survey,
13 courses and distances of the location from two or more
14 permanent identifiable points or landmarks on the tract
15 boundary corners; the proposed angle and direction of the
16 well if the well is to be deviated substantially from a
17 vertical course; the number or other identification to be
18 given the well; the workable coal seams underlying the tract
19 of land upon which the well is to be drilled or altered and
20 which shall be cased off under section 3217 (relating to
21 protection of fresh groundwater and casing requirements); and
22 any other information needed by the department to administer
23 this chapter.

24 (2) The applicant shall forward by certified mail a copy
25 of the plat to the surface landowner; the municipality in
26 which the tract of land upon which the well to be drilled is
27 located; each municipality within [3,000] 4,200 feet of the
28 proposed unconventional vertical well bore; the
29 municipalities adjacent to the well; all surface landowners
30 and water purveyors, whose water supplies are within 1,000

1 feet of the proposed well location or, in the case of an
2 unconventional well, within [3,000] 4,200 feet of the
3 proposed unconventional vertical well bore; storage operators
4 within [3,000] 4,200 feet of the proposed unconventional
5 vertical well bore; the owner and lessee of any coal seams;
6 and each coal operator required to be identified on the well
7 permit application.

8 * * *

9 § 3212.1. Comments by municipalities and storage operators.

10 * * *

11 (a.1) Storage operators.--A storage operator located within
12 [3,000] 4,200 feet of a proposed unconventional vertical well
13 bore may submit written comments to the department describing
14 circumstances which the storage operator has determined should
15 be considered by the department in rendering its determination
16 on the unconventional well permit. A comment under this
17 subsection must be submitted to the department within 15 days of
18 the receipt of the plat under section 3211(b). The storage
19 operator shall simultaneously forward a copy of its comments to
20 the permit applicant and all other parties entitled to a copy of
21 the plat under section 3211(b), who may submit a written
22 response. A written response must be submitted to the department
23 within ten days of receipt of the comments of the storage
24 operator.

25 (b) Consideration by department.--Comments and responses
26 under subsections (a) and (a.1) [may] shall be considered by the
27 department in accordance with section 3215(d) (relating to well
28 location restrictions).

29 * * *

30 § 3215. Well location restrictions.

1 (a) General rule.--Wells may not be drilled within 200 feet,
2 or, in the case of an unconventional gas well, [500] 1,200 feet,
3 measured horizontally from the vertical well bore to a building
4 or water well, existing when the copy of the plat is mailed as
5 required by section 3211(b) (relating to well permits) without
6 written consent of the owner of the building or water well.
7 Unconventional gas wells may not be drilled within [1,000] 3,000
8 feet measured horizontally from the vertical well bore to any
9 existing water well, surface water intake, reservoir or other
10 water supply extraction point used by a water purveyor without
11 the written consent of the water purveyor. [If consent is not
12 obtained and the distance restriction would deprive the owner of
13 the oil and gas rights of the right to produce or share in the
14 oil or gas underlying the surface tract, the well operator shall
15 be granted a variance from the distance restriction upon
16 submission of a plan identifying the additional measures,
17 facilities or practices as prescribed by the department to be
18 employed during well site construction, drilling and operations.
19 The variance shall include additional terms and conditions
20 required by the department to ensure safety and protection of
21 affected persons and property, including insurance, bonding,
22 indemnification and technical requirements. Notwithstanding
23 section 3211(e), if a variance request has been submitted, the
24 department may extend its permit review period for up to 15 days
25 upon notification to the applicant of the reasons for the
26 extension.]

27 (b) Limitation.--

28 (1) No well site may be prepared or well drilled within
29 100 feet or, in the case of an unconventional well, [300] 420
30 feet from the vertical well bore or [100] 200 feet from the

1 edge of the well site, whichever is greater, measured
2 horizontally from any solid blue lined stream, spring or body
3 of water as identified on the most current 7 1/2 minute
4 topographic quadrangle map of the United States Geological
5 Survey.

6 (2) The edge of the disturbed area associated with any
7 unconventional well site must maintain a [100-foot] 300-foot
8 setback from the edge of any solid blue lined stream, spring
9 or body of water as identified on the most current 7 1/2
10 minute topographic quadrangle map of the United States
11 Geological Survey.

12 (3) No unconventional well may be drilled within 300
13 feet of any wetlands greater than one acre in size, and the
14 edge of the disturbed area of any well site must maintain a
15 [100-foot] 300-foot setback from the boundary of the
16 wetlands.

17 [(4) The department shall waive the distance
18 restrictions upon submission of a plan identifying additional
19 measures, facilities or practices to be employed during well
20 site construction, drilling and operations necessary to
21 protect the waters of this Commonwealth. The waiver, if
22 granted, shall include additional terms and conditions
23 required by the department necessary to protect the waters of
24 this Commonwealth. Notwithstanding section 3211(e), if a
25 waiver request has been submitted, the department may extend
26 its permit review period for up to 15 days upon notification
27 to the applicant of the reasons for the extension.]

28 * * *

29 (d) Consideration of municipality and storage operator
30 comments.--The department [may] shall consider the comments

submitted under section 3212.1 (relating to comments by municipalities and storage operators) in making a determination on a well permit. [Notwithstanding any other law, no municipality or storage operator shall have a right of appeal or other form of review from the department's decision.]

* * *

§ 3218. Protection of water supplies.

* * *

(c) Presumption.--Unless rebutted by a defense established in subsection (d), it shall be presumed that a well operator is responsible for pollution of a water supply if:

(1) except as set forth in paragraph (2):

(i) the water supply is within 1,000 feet of an oil or gas well; and

(ii) the pollution occurred within six months after completion of drilling or alteration of the oil or gas well; or

(2) in the case of an unconventional well:

(i) the water supply is within [2,500] 4,200 feet of the unconventional vertical well bore; and

(ii) the pollution occurred within 12 months of the later of completion, drilling, stimulation or alteration of the unconventional well.

* * *

(d) Defenses.--To rebut the presumption established under subsection (c), a well operator must affirmatively prove any of the following:

(1) except as set forth in paragraph (2):

(i) the pollution existed prior to the drilling or alteration activity as determined by a predrilling or

prealteration survey;

(ii) the landowner or water purveyor refused to allow the operator access to conduct a predrilling or prealteration survey;

(iii) the water supply is not within 1,000 feet of the well;

(iv) the pollution occurred more than six months after completion of drilling or alteration activities; and

(v) the pollution occurred as the result of a cause other than the drilling or alteration activity; or

(2) in the case of an unconventional well:

(i) the pollution existed prior to the drilling, stimulation or alteration activity as determined by a predrilling or prealteration survey;

(ii) the landowner or water purveyor refused to allow the operator access to conduct a predrilling or prealteration survey;

(iii) the water supply is not within [2,500] 4,200 feet of the unconventional vertical well bore;

(iv) the pollution occurred more than 12 months after completion of drilling or alteration activities; or

(v) the pollution occurred as the result of a cause other than the drilling or alteration activity.

* * *

§ 3222. Well reporting requirements.

* * *

[(b.2) Trade secret or confidential proprietary information.--When an operator submits its stimulation record under subsection (b.1), the operator may designate specific

1 portions of the stimulation record as containing a trade secret
2 or confidential proprietary information. The department shall
3 prevent disclosure of a designated trade secret or confidential
4 proprietary information to the extent permitted by the act of
5 February 14, 2008 (P.L.6, No.3), known as the Right-to-Know Law
6 or other applicable State law.]

7 * * *

8 § 3225. Bonding.

9 (a) General rule.--The following shall apply:

10 (1) Except as provided in subsection (d), upon filing an
11 application for a well permit and before continuing to
12 operate an oil or gas well, the owner or operator of the well
13 shall file with the department a bond covering the well and
14 well site on a form to be prescribed and furnished by the
15 department. A bond filed with an application for a well
16 permit shall be payable to the Commonwealth and conditioned
17 upon the operator's faithful performance of all drilling,
18 water supply replacement, restoration and plugging
19 requirements of this chapter. A bond for a well in existence
20 on April 18, 1985, shall be payable to the Commonwealth and
21 conditioned upon the operator's faithful performance of all
22 water supply replacement, restoration and plugging
23 requirements of this chapter. The amount of the bond required
24 shall be in the following amounts and may be adjusted by the
25 Environmental Quality Board every two years to reflect the
26 projected costs to the Commonwealth of plugging the well:

27 (i) For wells with a total well bore length less
28 than 6,000 feet:

29 (A) For operating up to 50 wells, \$4,000 per
30 well, but no bond may be required under this clause

1 in excess of \$35,000.

2 (B) For operating 51 to 150 wells, \$35,000 plus
3 \$4,000 per well for each well in excess of 50 wells,
4 but no bond may be required under this clause in
5 excess of \$60,000.

6 (C) For operating 151 to 250 wells, \$60,000 plus
7 \$4,000 per well for each well in excess of 150 wells,
8 but no bond may be required under this clause in
9 excess of \$100,000.

10 (D) For operating more than 250 wells, \$100,000
11 plus \$4,000 per well for each well in excess of 250
12 wells, but no bond may be required under this clause
13 in excess of \$250,000.

14 (ii) For wells with a total well bore length of at
15 least 6,000 feet:

16 (A) For operating up to 25 wells, [\$10,000]
17 \$20,000 per well, but no bond may be required under
18 this clause in excess of [\$140,000] \$280,000.

19 (B) For operating 26 to 50 wells, [\$140,000]
20 \$280,000 plus [\$10,000] \$20,000 per well for each
21 well in excess of 25 wells, but no bond may be
22 required under this clause in excess of [\$290,000]
23 \$580,000.

24 (C) For operating 51 to 150 wells, [\$290,000]
25 \$580,000 plus [\$10,000] \$20,000 per well for each
26 well in excess of 50 wells, but no bond may be
27 required under this clause in excess of [\$430,000]
28 \$860,000.

29 (D) For operating more than 150 wells,
30 [\$430,000] \$860,000 plus [\$10,000] \$20,000 per well

for each well in excess of 150 wells, but no bond may be required under this clause in excess of [\$600,000] \$1,200,000.

* * *

§ 3255. Penalties.

(a) General violation.--A person violating a provision of this chapter commits a summary offense and, upon conviction, shall be sentenced to pay a fine of not more than [\$1,000] \$5,000 or to imprisonment of not more than 90 days, or both. Each day during which the violation continues is a separate and distinct offense.

(b) Willful violation.--A person willfully violating a provision of this chapter or an order of the department issued under this chapter commits a misdemeanor and, upon conviction, shall be sentenced to pay a fine of not more than [\$5,000] \$10,000 or to imprisonment of not more than one year, or both. Each day during which the violation continues is a separate and distinct offense.

* * *

§ 3256. Civil penalties.

In addition to other remedies available at law or in equity for a violation of this chapter, a regulation of the department, a departmental order or a permit condition, the department, after a hearing, may assess a civil penalty regardless of whether the violation was willful. The penalty shall not exceed [\$25,000] \$50,000 plus [\$1,000] \$2,000 for each day during which the violation continues or, in the case of a violation arising from the construction, alteration or operation of an unconventional well, [\$75,000] \$100,000 plus [\$5,000] \$10,000 for each day during which the violation continues. In

1 determining the amount, the department shall consider
2 willfulness of the violation, damage or injury to natural
3 resources of this Commonwealth or their uses, endangerment of
4 safety of others, the cost of remedying the harm, savings
5 resulting to the violator as a result of the violation and any
6 other relevant factor. When the department proposes to assess a
7 civil penalty, it shall notify the person of the proposed amount
8 of the penalty. The person charged with the penalty must, within
9 30 days of notification, pay the proposed penalty in full or
10 file an appeal of the assessment with the Environmental Hearing
11 Board. Failure to comply with the time period under this section
12 shall result in a waiver of all legal rights to contest the
13 violation or the amount of the penalty. The civil penalty shall
14 be payable to the Commonwealth and collectible in any manner
15 provided at law for collection of debts. If a violator neglects
16 or refuses to pay the penalty after demand, the amount, together
17 with interest and costs that may accrue, shall become a lien in
18 favor of the Commonwealth on the real and personal property of
19 the violator, but only after the lien has been entered and
20 docketed of record by the prothonotary of the county where the
21 property is situated. The department may transmit to the
22 prothonotaries of the various counties certified copies of all
23 liens. It shall be the duty of each prothonotary to enter and
24 docket the liens of record in the prothonotary's office and
25 index them as judgments are indexed, without requiring payment
26 of costs as a condition precedent to entry.

27 Section 2. This act shall take effect immediately.