



Water Resources Education Network
a project of the League of Women Voters of PA Citizen Education Fund

<http://wren.palwv.org> & www.sourcewaterpa.org

WREN Winter 2012 Water Policy News

SPOTLIGHT: Act 13 of 2012 Oil and Gas Act Amendments

[Act 13 of 2012](#), amending the Oil and Gas Act of the Pennsylvania Consolidated Statutes (better known as HB 1950) was signed into law by Governor Corbett on Feb. 14, 2012. Some provisions went into effect immediately. Others become effective on April 14, 2012. As stated by the PA State Association of Boroughs, ***"This legislation will have significant impacts upon municipal land use and its regulations."*** The law provides for an impact fee, completely overhauls the 1984 PA Oil and Gas Act, and provides local ordinance standards. Areas outside the 55-county Pennsylvania Marcellus Shale formation - such as suburbs of southeastern Pennsylvania - may also be affected since the law limits municipal authority over the industry's "downstream" compressor stations and pipelines that bring gas to consumers.

Act 13 allows PA counties to pass ordinances within 60 days of the effective date of the Act (April 14, 2012) imposing an impact fee on unconventional gas well producers. Municipal governing bodies within a county that do not levy the fee may pass resolutions to compel the county to enact the levy, following 60 days (April 15, 2012) but no later than 120 days (June 13, 2012) provided at least half the municipalities approve it, or municipalities representing at least 50% of the population of the county pass resolutions. Counties that do not pass an ordinance imposing a fee are prohibited from receiving funds until they pass an ordinance imposing a fee.

Act 13 specifically empowers the Pennsylvania Public Utility Commission ("PUC") to administer the collection of impact fees and disbursement. The law also contains specific language about how funds are to be distributed for local and state purposes, with 60% to impacted local governments, and 40% for statewide initiatives. The PUC was also designated to review ordinances at the request of a county or municipality as well as complaints filed by a well operator or other party aggrieved by a local ordinance.

Municipalities are encouraged to provide comment on permit applications describing the local conditions or circumstances which the municipality deems necessary for the department to consider for proper evaluation of the permit. Although the new law increases setbacks from water wells, buildings, streams, and wetlands, and generally prohibits well sites in floodplains, it also allows DEP to waive such setbacks, such as Section 3215 (a) and (b) and 3215(f). Section 3212.1 allows municipalities to submit comments on well permit applications, but under section 3215(d), the DEP is under no obligation to consider those comments, and municipalities are barred from appealing well permits. Under 3215(e)(2), when a well permit is appealed based on conditions that the DEP has included in the permit, the DEP (under regulations that are required to be promulgated by the Environmental Quality Board) will have the burden of proving *"that the conditions were necessary to protect against a probable harmful impact of the public resources."*

The following information was copied from PA State Association of Township Supervisors webpage and is provided here as it relevant to funds available for conservation initiatives, water, stormwater and sewer infrastructure, etc.: <http://www.psats.org/newsarchive.php>

Act 13 Impact fee details

Counties in the Marcellus Shale region have until April 16 to enact an ordinance to levy the impact fee. If a county chooses not to enact an ordinance, a majority of the municipalities, or municipalities representing 50 percent of the county's population, will have until June 13 to vote to impose the fee, which will be collected by

the Pennsylvania Public Utility Commission. The fee is based on the price of natural gas for the prior year and levied on each producing well for 15 years on a sliding scale. The fee for 2011 is expected to be \$50,000 per well.

Townships should note that the impact fee will be levied on all wells currently in the ground that produce more than 90,000 cubic feet per day and will not be levied on small stripper wells. Wells drilled before January 1, 2012, must pay the first year's fee to the PUC by **September 2012**. After that, the fee will be collected by April 1 of each year and levied on wells drilled into the Marcellus Shale and below, including the Utica Shale. The legislation prohibits drillers from passing the impact fee onto leaseholders.

After funding for conservation districts and state agencies is taken out (approximately \$23 million for 2011 and 2012), 60 percent of the remaining revenues will be allocated to local governments impacted by natural gas activity. Of this, 36 percent will be distributed to host counties based on the number of wells; 37 percent to host municipalities based on the number of wells; and 27 percent to host and nonhost municipalities in host counties. Host municipalities can expect to receive more than \$9,500 per well beginning in December 2012 for those drilled before the beginning of this year. (Note: This figure does not include the 27-percent allocation for host and nonhost municipalities in host counties, which is expected to total more than \$24 million for 2011.)

The remaining 40 percent of the impact fee revenues will be allocated as follows:

- 20 percent to the Commonwealth Financing Authority;
- 25 percent for highway and bridge improvements;
- 10 percent to the Environmental Stewardship Fund;
- 25 percent for water and sewer projects;
- 15 percent for greenways and open space preservation; and
- 5 percent to the state Department of Community and Economic Development.

All municipalities are eligible for these funds. They may use impact fee revenues to:

- build and maintain roads, bridges, and infrastructure;
- improve water, stormwater, and sewer systems;
- develop emergency preparedness and public safety initiatives and environmental programs, including those for open space, floodplain management, and agricultural preservation;
- preserve and reclaim surface and subsurface waters;
- reduce taxes; initiate affordable housing projects;
- improve records management and local or regional planning; and
- create a capital reserve fund.

Municipal allocations will be capped at \$500,000 annually or at 50 percent of its prior year budget, whichever is greater. Municipalities must submit an annual report to the PUC that documents that the funds were used for allowable purposes.

Zoning ordinance details

Act 13 clarifies that municipalities must allow the reasonable development of oil and gas and may not regulate the same features of oil and gas well operations that are controlled by the commonwealth. While municipalities may continue to use local land use and floodplain ordinances to regulate where natural gas drilling and related activities take place, these ordinances must now allow the following:

- Well and pipeline location assessments; oil and gas operations (in residential districts, the well pad must be at least 300 feet AND the wellhead must be at least 500 feet from an existing building); and

impoundments (only if the outer edge is at least 300 feet from the nearest building) as permitted uses in all zoning districts.

- Compressor stations as permitted uses only in agricultural and industrial zoning districts and as conditional uses in all other zoning districts if they are at least 750 feet from the nearest existing building or 200 feet from the nearest lot line and the noise level at the nearest property line does not exceed 60dbA.
- Processing plants as permitted uses only in industrial zoning districts and as conditional uses only in agricultural zoning districts if they are at least 750 feet from the nearest existing building or 200 feet from the nearest lot line and the noise level at the nearest property line does not exceed 60dbA.

Municipalities may continue to impose conditions on the height, screening, fencing, lighting, and noise of permanent oil and gas operations that are the same as those imposed on other industrial uses or other land development within the same zoning district.

The act also states that operators must apply for and receive permits from the municipality's zoning officer or equivalent official before conducting oil and gas well operations. In addition, well operators may ask the PUC to review an ordinance and determine if it allows the reasonable development of oil and gas. Municipalities may also ask the PUC for a predetermination to ensure a proposed ordinance complies with the law.

If the PUC, Pennsylvania Commonwealth Court, or the state Supreme Court determine that a local ordinance does not allow the reasonable development of oil and gas activities, the municipality will be ineligible for impact fee funds and will remain ineligible until it adopts an ordinance that complies with the act.

Environmental Safeguards Summary (from Act 13 of 2012: Fact or Fiction Webinar 2/28/12 conducted by PA Local Government Training Partnership)

- New protections benefit both zoned and non-zoned communities.
- Addresses unconventional gas wells and shallow conventional wells.
- Requires applicants to identify plat with location of well, municipalities adjacent to site, names of surface landowners and water purveyors.
 - Municipalities to receive copies of plat
- Empowers municipalities to comment on permit applications.
- Requires DEP to weigh impact of proposed well on public resources.
- Requires 24-hour notice before drilling occurs.
- Increased setbacks from natural gas wells:
 - By 250% from buildings and wells to 500 feet
 - By 500% from public drinking water sources to 1,000 feet
 - By 300% from springs or other bodies of water to 300 feet
 - Prohibited within 300 feet of any wetland that is at least one acre
- Rebuttable presumption for contamination of public and private water supplies substantially increased from 1,000 feet for 6 months to 2,500 feet for 12 months.
- Well bonding requirements strengthened.
- Containment methods required on well sites.
- DEP may regulate chemicals or hazardous materials on site.
- Water quality and quantity replacement standards consistent with Safe Drinking Water Act.
- Permits expire after one year.
- Surface landowners may object to applications.
- Colorado hydraulic fracturing disclosure law included.
- DEP to regulate wastewater transportation.
- Enhanced requirements for well completion report data and transparency.
- Oil and gas wastewater treatment facility operators must be insured.

- Production, inspection, and cleanup activity reports must be posted online.
- Civil fine for violations of this chapter tripled from \$25,000 plus \$1,000 for each continuing day of violation to \$75,000 plus \$5,000 for each continuing day.
- Counties and municipalities may initiate court actions to restrain violations of the act.

ACT 13 CHAPTER 32 - Environmental Highlights

Note: the information below was received via Penn State Cooperative Extension, and is believed to be a general summary of the major environmental provisions. However, WREN does not intend this summary to provide legal advice; please consult the Act 13 legislation or an attorney for authoritative information. As noted above, while the new law increases previous setbacks from water wells, buildings, streams, and wetlands, and generally prohibits well sites in floodplains, it also allows for waivers of setbacks by DEP.

Notification

- Increases notification requirements from **1,000** feet to **3,000** feet for unconventional wells.
- Requires notification for the host municipality and adjacent municipalities.
- Requires notification for any gas storage operator within **3,000** feet of the proposed unconventional well.
- Unconventional well operators shall provide the department **24 hours' notice** prior to:
 - Cementing all casing strings;
 - Conducting pressure tests of the production casing;
 - Stimulation of a well;
 - Abandoning or plugging the well.

Denial of Permit

- The department may further deny a permit if the operator:
 - Is in continuing violation and the likely result of the violation is an unsafe operation or environmental damage.
 - Fails to pay the impact fee.
- Requires the unconventional operator to obtain a department-approved water management plan, which includes a reasonable written plan to reuse water that will be used to hydraulically fracture the well. Water withdrawals associated with plans must:
 - Not adversely affect the quantity or quality of the water;
 - Protect and maintain the designated and existing uses of water sources;
 - Not cause adverse impact to water quality in the watershed.
- The department shall consider and may deny or condition a well permit based on the impacts to sources used for public drinking water supplies.

Comments by Municipalities

- Allows host municipalities of a proposed unconventional well to submit written comments to the department describing the local conditions or circumstances which the municipality deems necessary for the department in considering a permit.
- The department may consider any comments or responses it receives in its review of a permit application.

Well Location Restrictions

- Increases the setback distance from an unconventional well and an existing building or existing water well from **200** feet to **500** feet.
- Increases the setback distance from an unconventional well and a blue line stream, spring or body of water identified on the most current 7 ½ minute topographic map from **100** feet to **300** feet from the vertical well bore or 100 feet from the edge of the well pad, whichever is greater.

- Increases the distance an unconventional well may not be drilled within any wetlands greater than one acre in size from **100** feet to **300** feet.
- Restricts an unconventional well from being located within **1,000** feet of a public water supply source defined in the Safe Drinking Water Act.
- The department may establish additional protective measures for the storage of hazardous chemicals or material intended to be used on the well drilling site within **750** feet of any such stream, spring, body of water or wetland.
- Prohibits preparation of a well site or drilling of a well within any floodplain if the site will have:
 - A pit or impoundment containing drill cuttings, flowback water, produced water or hazardous materials, chemicals or wastes within the floodplain.
 - A tank containing hazardous materials, chemicals, condensate, wastes, flowback or produced water within the floodway.
 - A waiver may be granted only upon the approval of a plan identifying the additional measures, facilities or practices to be employed, which the department shall impose those terms and conditions on the waiver necessary to protect the waters of this Commonwealth.
 - All tanks within the flood fringe will have adequate flood proofing in accordance with the National Flood Insurance Program standards.
- Boundaries of floodplains will be identified on maps and flood insurance studies provided by FEMA.
- Setback provisions will not apply to a well proposed to be drilled on an existing well site for which at least one well permit has been issued prior to the effective date of this section.
 - Nothing in the setback provisions section shall alter or abridge the terms of any contracts, mortgages or other agreements entered into prior to the effective date of this section.

Protection of Water Supplies

- Requires a well operator who affects a public or private water supply by pollution or diminution to replace the water supply with a source that meets the applicable water quality standards consistent with the Safe Drinking Water Act.
- Creates a single statewide toll-free number for reported cases of water supply contamination.
- Requires DEP to post on its publically accessible website any confirmed case of subterranean water supply contamination resulting from hydraulic fracturing.
- DEP will ensure that facilities which seek a national Pollutant Discharge Elimination System permit for the purpose of treating and discharging wastewater from oil and gas activities is operated by a competent and qualified individual.

Presumption

- Increases the distance an operator drilling an unconventional well is presumed responsible for pollution of a water supply from **1,000** feet to **2,500** feet if pollution occurred within **12** months after stimulation or alteration of the well.
- An operator must provide written notice to a landowner or water purveyor indicating that the rebuttable presumption may be void if the landowner or water purveyor refuse to allow the operator to access to conduct a pre-drilling or pre-alteration survey.

Containment

- Requires well pad sites to be designed and constructed to prevent spills to the ground surface or spills off the well site. Containment practices shall meet all of the following:
 - Be instituted during both drilling and hydraulic fracturing operations;
 - Be sufficiently impervious and able to contain spilled materials;
 - Be compatible with the waste material or waste stored within the containment.

- Containment systems will be used when the following are stored:
 - Drilling mud
 - Hydraulic oil
 - Diesel fuel
 - Drilling mud additives
 - Hydraulic fracturing additives
 - Hydraulic fracturing flowback
- Containment areas must be sufficient size to hold the volume of the largest container stored in the area plus 10%.

Notice to Public Drinking Water Suppliers

- Requires DEP to notify a public drinking water system of any spill the department investigated that may affect their water supply.

Transportation Regulations

- Requires the department to adopt regulations regarding record keeping on transporting, processing and treatment or disposal of wastewater from unconventional wells and requires the operator to maintain those records for 5 years.
- Recordkeeping requirements include:
 - Number of gallons of wastewater fluids produce during drilling, stimulation or alteration of a well;
 - Name of person or company that transported wastewater fluids;
 - Location where wastewater fluids were disposed of or transported and volumes disposed of at the location;
 - Method of disposal.

Corrosion Control Requirements

- Requires owners and operators of gathering lines to comply with corrosion control requirements within the Underground Utility Line Protection Law.

PA One Call

- Requires gathering lines to comply with One Call.
 - Does not impact the conventional lines.

Well Control Emergency Response

- Department may enter into contracts with well control specialists to provide adequate response services in the event of a well control emergency.
- Well control specialists under contract with the department shall be immune from civil liability for good faith actions, except for breach of contract, intentional tort or gross negligence.

Reporting Requirements

- Requires each unconventional well operator to file semi-annual report specifying the amount of production from each well.

Air Containment Emissions

- An owner or operator of a facility conducting natural gas operations including development, production, transmission and processing shall submit to the department a source report identifying and quantifying actual air contaminant emissions from any air contamination source.

Collection of Hydraulic Fracturing Components Data

- Incorporates the Colorado hydraulic fracturing component disclosure requirement, which generated broad support from environmental groups and industry.

- Further requires the stimulation record the operator reports to include:
 - A descriptive list of chemical additives.
 - Percent by volume of each chemical additive.
 - A list of chemicals in the material safety data sheet.
 - Percent by volume of each chemical list in the material date safety sheets.
 - Total volume of the base fluid.
 - A list of water sources used under the approved management plan and the volume of water used.
 - The pump rates and pressure used in the well.
 - The total volume of recycled water used.
- In addition, the disclosure would require the operator to:
 - Submit information to FracFocus.org, which would allow the public to search and sort PA chemical disclosure information by geographic area, chemical ingredient, chemical abstract service number, time period and operator.
 - Disclose specific identity and amount of any chemicals claimed to be a trade secret to any health professional who requests the information for health related circumstances.
- Prevents the department from disclosing any confidential information to the extent permitted under Right-to-Know Law, or other Federal or State law.

Enforcement Orders

- Allows DEP to order a well capped if the decision was made to suspend or revoke the permit if the likely result of the violation is an unsafe operation or environmental damage.
- Authorizes DEP to revoke a permit for any well in continuing violation of state law if the likely result of the violation is an unsafe operator or environmental damage.
- Revocation shall be in writing and state the specific reasoning.
- An operator will have 30 days to appeal to the EHB.

Well Control Emergency Response Cost Recovery

- A person liable for a well control emergency is responsible for all response costs incurred by the department.

Inspection Reports

- The department will post the inspection reports on its publicly accessible internet website to include the nature and description of violation, operator's written response, status of violation and the remedial steps taken by the operator or the department to address the violation.

Penalties

- Criminal
 - Increases the fine paid from \$300 to \$1,000.
- Civil Penalties
 - Increases the fine for unconventional wells from \$25,000 plus \$1,000 for each continuing day of violation to \$75,000 plus \$5,000.
 - Authorizes the department, rather the EHB, to assess civil penalties

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Local Ordinances Relating to Oil and Gas Operations

- Allows an operator or any person having the right to royalty payments under a lease of oil and gas mineral rights to request the PUC to review a local ordinance to determine whether it allows for the reasonable development of oil and gas.
- The determination of the PUC shall become part of the record before the court.

- A local ordinance must:
 - Allow well and pipeline location assessment operations conducted in accordance with all applicable Federal and State laws and regulations relating to the storage and use of explosives throughout every local government.

Oil and Gas Operations Related to other Industrial Activity

- Impose conditions, requirements or limitations on oil and gas operations that are no more stringent than those imposed on construction activities for other land development within the zoning district where the oil and gas operations are situated.

Height, Setbacks, Screening and Fencing, Lighting and Noise

- Impose conditions, requirements or limitations on the height of permanent structures, setbacks from property lines, screening and fencing, lighting and noise restrictions that are no more stringent than those imposed on industrial uses or what is allowed within the local government or set forth in state statute or regulations.

Review Period

- Have a review period of 30 days for complete submissions or that exceeds 120 days for conditional uses.

Oil and Gas Operations (other than compressor stations, impoundment areas and processing plants)

- Authorize oil and gas operations, other than compressor stations, impoundment areas and processing plants, as a permitted use in all zoning districts.
 - May be prohibited or permitted as a conditional use in residential districts should the local government determine that no well site can be placed so that a well head will be at least 500 feet from an existing building.
 - All of the following apply in a residential district:
 - A well site may not be located so that the outer edge of a well pad is closer than 300 feet from an existing building.
 - Oil and gas operations, other than the placement, use and repair of oil and gas pipelines, water pipelines, access roads or security facilities, may not take place within 300 feet of an existing building.

Impoundments

- Authorize impoundment areas as a permitted use in all zoning districts, provided that the edge of any impoundment area is not to be located closer than 300 feet from an existing building.

Compressor Stations

- Authorize natural gas compressor stations as a permitted use in agriculture and industrial zoning districts and as a conditional use in all other zoning districts, if the natural gas compressor building is:
 - Located 750 feet or more from the nearest existing building or 200 feet from the nearest lot line, whichever is greater, unless waived by the owner of the building or adjoining lot.

NOTE: The information provided above is intended for public awareness purposes only, and is not intended to provide legal advice; please consult the legislation or an attorney for more details.

For additional Information:

To download the 174 page Act 13 legislation, [click here>>](#).

Learn More

Archive of Webinar by the PA State Association of Boroughs - February 22, 2012: ***HB 1950 & Its Impact on PA Municipalities***, is [available here](#). For copy of powerpoint on ***Act 13 of 2012: Fact or Fiction – Truth about Act 13 Explained*** conducted by the PA Local Government Training Partnership, [click here>>](#).

[WREN](#) provides source water protection information to assist with education about protection of public water supplies at www.sourcewaterpa.org website.

The **League of Women Voters of Pennsylvania** has put together helpful [Study Guides](#) for people looking to educate themselves with all aspects of Marcellus Shale. Study Guide Topics include:

[Study Guide I -- From the Ground to the Customer](#)

[Study Guide II -- The Environmental Impact](#)

[Study Guide III -- Its Economic Impact](#)

[Study Guide IV -- Taxing Natural Gas Extraction from the Marcellus Shale](#)

[Study Guide V -- Regulation and Permitting of Marcellus Shale Drilling](#)

To follow the League's work on Marcellus Shale issues, [check out its Marcellus Shale topic page](#).

And join their conversation on the "[Straight Scoop](#)" [Facebook page](#) -- home to the latest shale news and a platform to share concerns and experiences.

Penn State has created The Marcellus Center for Outreach and Research (MCOR) at

<http://marcellus.psu.edu/> The Marcellus Center for Outreach and Research (MCOR) is Penn State's education and research initiative on unconventional gas plays.

WEBINARS

Thursday, March 15, 2012 1:00 pm – 2:15 pm: "Municipalities' Roles, Water Use and Protections."

Presenters: Charles Abdalla, Penn State professor of agricultural and environmental economics, and Peter Wulfhorst, Extension educator based in Pike County, who specializes in economic and community development.

Webinar URL: <https://breeze.psu.edu/pscems/> To access the webinar, you must have a Penn State User ID. If you do not have a Friends of Penn State account, you will be prompted to register for one when you go to <https://breeze.psu.edu/pscems/> before gaining access to the presentation. If you forget your ID or password, go to <https://fps.psu.edu/finduser/>

March 15, 2012 7:00 pm – 8:30 pm: "What the Public Needs to Know about the New Shale Gas Impact Fee: Act 13" will be presented for the general public. An overview of the new impact fee and how the new law affects local land use regulation. Presenters: Dr. Timothy W. Kelsey, Ph.D., Economic & Community Development, Penn State Extension and Stanford M. Lembeck, AICP, Pennsylvania Municipal Planning Education Institute (PMPEI)

will share what this Act means to you. To register for the webinar, go to <https://meeting.psu.edu/naturalgaswebinars/>

March 22, 2012 7:00 – 8:30 pm: "What Local Officials Need to Know about the New Shale Gas Impact Fee: Act 13" geared to local officials and other community members. Presenters: Ross Pifer, Director of the Agricultural Law Resource & Reference Center with Dickinson Law School, Penn State University and Jerry Walls, AICP, Professional Planner and Retired Executive Director - Lycoming County Planning Commission will discuss possible impacts of Act 13 to municipalities and items to consider. To register for the webinar, go to

<https://meeting.psu.edu/naturalgaswebinars/>