

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL
No. 2213 Session of 2010

INTRODUCED BY GEORGE, McILVAINE SMITH, BELFANTI, BRADFORD, CALTAGIRONE, CARROLL, COHEN, CONKLIN, D. COSTA, DeWEESE, GOODMAN, GRUCELA, HORNAMAN, JOHNSON, JOSEPHS, LEVDANSKY, MAHONEY, MUNDY, M. O'BRIEN, SCHRODER, SIPTROTH, K. SMITH, STURLA, THOMAS, YOUNGBLOOD AND YUDICHAK, JANUARY 20, 2010

REFERRED TO COMMITTEE ON ENVIRONMENTAL RESOURCES AND ENERGY, JANUARY 20, 2010

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 the definition of "department," for protection
18 of fresh groundwater, for casing requirements and for
19 protection of water supplies; providing for hydraulic
20 fracturing chemicals disclosure; further providing for
21 bonding and for well plugging funds; preempting certain local
22 ordinances; and further providing for local ordinances.

23 The General Assembly of the Commonwealth of Pennsylvania

24 hereby enacts as follows:

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

1 Oil and Gas Act, is amended to read:

2 Section 103. Definitions.

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

6 * * *

7 "Department." The Department of Environmental [Resources]
8 Protection of the Commonwealth.

9 * * *

10 Section 2. Section 207 of the act is amended by adding a
11 subsection to read:

12 Section 207. Protection of fresh groundwater; casing
13 requirements.

14 * * *

15 (e) The department shall inspect each permitted well drilled
16 in the Marcellus Shale formation, during the phases of siting,
17 drilling, casing, cementing, completing, altering and
18 stimulating. The department shall allocate an appropriate
19 portion of the well permit fees to fund the inspection and may
20 increase the permit fees to meet an increase in the inspection
21 costs.

22 Section 3. Section 208(c) and (d) of the act are amended to
23 read:

24 Section 208. Protection of water supplies.

25 * * *

26 (c) Unless rebutted by one of the five defenses established
27 in subsection (d), it shall be presumed that a well operator is
28 responsible for the pollution or the diminution of a water
29 supply that is within [1,000] 2,500 feet of the oil or gas well,
30 where the pollution occurred within six months after the
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1 completion of drilling or alteration of such well.

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(d) In order to rebut the presumption of liability established in subsection (c), the well operator must affirmatively prove one of the following five defenses:

(1) The pollution [existed] or the diminution prior to the drilling or alteration activity as determined by a predrilling or prealteration survey.

(2) The landowner or water purveyor refused to allow the operator access to conduct a predrilling or prealteration survey.

(3) The water supply is not within [1,000] 2,500 feet of the well.

(4) The pollution or the diminution occurred more than six months after completion of drilling or alteration activities.

(5) The pollution or the diminution occurred as the result of some cause other than the drilling or alteration activity.

* * *

Section 4. The act is amended by adding a section to read:

Section 208.1. Hydraulic fracturing chemicals disclosure.

(a) Notwithstanding a trade secret claim, a well operator utilizing the hydraulic fracturing process to extract natural gas from the Marcellus Shale formation shall disclose to the department the complete list of the chemicals and chemical compounds used in the fracturing fluid products. The list shall include the Chemical Abstract Service registry number for each constituent chemical, the concentration of each constituent chemical and the formula for each chemical compound. The department shall publish the list on its Internet website.

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(b) If the natural gas well operator fails to comply with

the requirements of section 208(c) and (d), the department may
not issue any permit to the operator and shall revoke an
existing natural gas well permit issued to the operator.

Section 5. Sections 215(a), 601(a) and 602 of the act,
amended July 2, 1992 (P.L.365, No.78), are amended to read:

Section 215. Bonding.

(a) (1) Except as provided in subsection (d) hereof, upon
filing an application for a well permit and before continuing
to operate any oil or gas well, the owner or operator thereof
shall file with the department a bond for the well and the
well site on a form to be prescribed and furnished by the
department. Any such bond filed with an application for a
well permit shall be payable to the Commonwealth and
conditioned that the operator shall faithfully perform all of
the drilling, water supply replacement, restoration and
plugging requirements of this act. Any such bond filed with
the department for a well in existence on the effective date
of this act shall be payable to the Commonwealth and
conditioned that the operator shall faithfully perform all of
the water supply replacement, restoration and plugging
requirements of this act. The amount of the bond required
shall be in the amount of [\$2,500] \$150,000 per well for any
Marcellus Shale well utilizing hydraulic fracturing process
and \$12,000 per well for at least two years following the
effective date of this act, after which time the bond amount
may be adjusted by the Environmental Quality Board every two
years to reflect the projected costs to the Commonwealth of
performing well plugging.

(2) In lieu of individual bonds for each well, an owner

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or operator may file a blanket bond, on a form prepared by

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the department, covering all of its wells in Pennsylvania as
3 enumerated on the bond form. A blanket bond shall be in the
4 amount of [\$25,000] \$240,000 for at least two years following
5 the effective date of this act, after which time the bond
6 amount may be adjusted by the Environmental Quality Board
7 every two years to reflect the projected costs to the
8 Commonwealth of performing well plugging. No blanket bond is
9 available for wells drilled in the Marcellus Shale formation.

10 (3) Liability under such bond shall continue until the
11 well has been properly plugged in accordance with this act
12 and for a period of one year after filing of the certificate
13 of plugging with the department. Each bond shall be executed
14 by the operator and a corporate surety licensed to do
15 business in the Commonwealth and approved by the secretary.
16 The operator may elect to deposit cash, certificates of
17 deposit or automatically renewable irrevocable letters of
18 credit from financial institutions chartered or authorized to
19 do business in Pennsylvania and regulated and examined by the
20 Commonwealth or a Federal agency which may be terminated at
21 the end of a term only upon the financial institution giving
22 90 days prior written notice to the permittee and the
23 department or negotiable bonds of the United States
24 Government or the Commonwealth, the Pennsylvania Turnpike
25 Commission, the General State Authority, the State Public
26 School Building Authority or any municipality within the
27 Commonwealth, or United States Treasury Bonds issued at a
28 discount without a regular schedule of interest payments to
29 maturity, otherwise known as Zero Coupon Bonds, having a
30 maturity date of not more than ten years after the date of

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1 purchase and at such maturity date having a value of not less

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than \$25,000, with the department in lieu of a corporate
3 surety. The cash deposit, certificate of deposit, amount of
4 such irrevocable letter of credit or market value of such
5 securities shall be equal at least to the sum of the bond.
6 The secretary shall, upon receipt of any such deposit of
7 cash, letters of credit or negotiable bonds, immediately
8 place the same with the State Treasurer, whose duty it shall
9 be to receive and hold the same in the name of the
10 Commonwealth, in trust, for the purpose for which such
11 deposit is made. The State Treasurer shall at all times be
12 responsible for the custody and safekeeping of such deposits.
13 The operator making deposit shall be entitled from time to
14 time to demand and receive from the State Treasurer, on the
15 written order of the secretary, the whole or any portion of
16 any collateral so deposited, upon depositing with him, in
17 lieu thereof, other collateral of the classes herein
18 specified having a market value at least equal to the sum of
19 the bond, and also to demand, receive and recover the
20 interest and income from said negotiable bonds as the same
21 becomes due and payable. Where negotiable bonds, deposited as
22 aforesaid, mature or are called, the State Treasurer, at the
23 request of the owner thereof, shall convert such negotiable
24 bonds into such other negotiable bonds of the classes herein
25 specified as may be designated by the owner. Where notice of
26 intent to terminate a letter of credit is given, the
27 department shall give the operator 30 days' written notice to
28 replace the letter of credit with other acceptable bond
29 guarantees as provided herein and, if the owner or operator
30 fails to replace the letter of credit within the 30-day
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1 notification period, the department shall draw upon and

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convert such letter of credit into cash and hold it as a collateral bond guarantee.

* * *

Section 601. Well plugging funds.

(a) All fines, civil penalties, permit and registration fees collected under this act are hereby appropriated to the Department of Environmental [Resources] Protection to carry out the purposes of this act.

* * *

Section 602. Local ordinances.

Except with respect to ordinances adopted pursuant to the act of July 31, 1968 (P.L.805, No.247), known as the Pennsylvania Municipalities Planning Code, and the act of October 4, 1978 (P.L.851, No.166), known as the Flood Plain Management Act, all local ordinances and enactments purporting to regulate oil and gas well operations regulated by this act are hereby preempted and superseded to the extent the ordinances and enactments regulate the method of oil and gas well operations. No ordinances or enactments adopted pursuant to the aforementioned acts shall contain provisions which impose conditions, requirements or limitations on [the same features] the method of oil and gas well operations regulated by this act or that accomplish the same purposes as set forth in this act. The Commonwealth, by this enactment, hereby preempts and supersedes the regulation of oil and gas wells as herein defined to the extent the ordinances and enactments regulate the method of oil and gas well operations. Nothing in this act shall affect the traditional power of local government to regulate other aspects of oil and gas activities such as the time and the place of

operations through local ordinances and enactments.

Section 6. This act shall take effect in 60 days.

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COMMENT ON HB 2213, PN 3106

SPONSOR: Representative George

DATE: February 17, 2010

SUMMARY: HB2213 amends the existing Oil and Gas Act to provide further protection of surface land and water supplies from natural gas drilling activities.

COMMENT:

1. Requiring inspection by the Department of Environmental Protection (DEP)

The provision would require DEP to inspect during each phase of siting, drilling, casing, cementing, completing, altering, and stimulating. Although the current DEP guidelines recommend inspectors to inspect all phases of drilling activities, such inspection is not required. Inspection is crucial, especially in the beginning when the gas well penetrates the geologic layer near any ground water table. The provision would allow DEP to charge fees on the operators to recover the inspection costs.

2. Extending the rebuttable presumption

The provision would extend the rebuttable presumption of the operator's liability to include cases of water supply diminution in addition to water supply pollution. It would also extend the area covered by the presumption to 2,500 feet from 1,000 feet. This provision corrects an oversight that would not cover cases of water-supply diminution caused by drilling.

3. Requiring disclosure of drilling chemicals

This provision would require the operator to disclose the identity of the chemicals used, as indicated by their Chemical Abstract Service (CAS) numbers. Although DEP has Material Safety Data Sheets (MSDS) on the chemicals that are used, not all MSDSs reveal all CAS numbers for the constituent chemicals. The CAS number is critical in facilitating a water contamination test. The provision would also require disclosure of the chemical concentrations and formulas, which would allow for a more effective contamination test.

4. Upgrading the bond amount

The current bond amount specified in the statute is outdated and does not reflect the actual cost of restoring abandoned well sites. The provision attempts to upgrade the amount to reflect the cost of restoration. This provision may be amended to reflect the more accurate information that has become available after the bill was introduced, indicated as follows:

Shallow well: \$10,000

Marcellus well: Vertical -- \$75,000; Horizontal -- \$90,000

Coalbed Methane (Turkey Foot): \$65,000

Vertical Coal well: \$50,000

Conservation well: \$100,000

Trenton black river well: \$125,000

5. Reaffirming the role of the state and the local government

This provision codifies the current caselaw, which holds that state law preempts local regulations related to substantive aspects of drilling activities, such as the method of drilling, but the local government may regulate other aspects of drilling activities that fall within its traditional zoning powers, such as the hours of operation.

6. Possible additions

Additional provisions to further protect our water and land are contemplated:

- (a) Prohibiting the Department of Environmental Protection to issue an Erosion and Sediment permit without conducting a technical review of its application.
- (b) Prohibiting the siting of a gas well on flood plains.
- (c) For temporary storage of "flowback" wastewater, requiring the use of a dual liner system with a leak detection system; currently, a single liner without a leak detection system is used.
- (d) Requiring the operator to submit to the Department of Environmental Protection a quarterly report detailing how it disposed of the flowback wastewater.
- (e) Increasing the time period in which the presumption of contamination of a water supply occurred due to drilling from 6 months to 12 months.
- (f) Requiring the operator to submit to the Department of Environmental Protection the list of specific drilling chemicals used at each individual well site.

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**HOUSE OF REPRESENTATIVES
DEMOCRATIC COMMITTEE**

BILL ANALYSIS

BILL NO: HB2213 PN3106

SPONSOR: Representative George

COMMITTEE: Environmental Resources and Energy

DATE: February 2, 2010

PROPOSAL/EXECUTIVE SUMMARY: This bill provides for the inspection of permitted well sites within the Commonwealth, updates existing rebuttable presumption language, requires the disclosure of hydraulic fracturing chemicals used within the Marcellus formation, increases existing bonding requirements and reaffirms the traditional roles of the state and local government with respect to regulating oil and gas operations.

EXISTING LAW: *The Oil and Gas Act* of December 19, 1984 (P.L.1140, No. 223)

ANALYSIS: This bill requires the Department of Environmental Protection, (DEP) to inspect all permitted well sites throughout each phase of the well's lifecycle including; siting, drilling, casing, cementing, completion, alteration and stimulation. Currently, inspection is not mandatory, but discretionary.

The bill also amends the existing rebuttable presumption language by extending an operator's liability radius to 2,500 feet from 1,000 feet and includes the diminution of water supplies as a cause of action in addition to pollution.

This bill would also require the disclosure of all fracturing chemicals and their relative concentrations for all wells utilizing hydraulic fracturing within the Marcellus formation, and it requires DEP to put this information on its website. Failure to comply with the disclosure requirement will result in the denial or revocation of the operator's well permit for the site in question.

Additionally, this bill would increase the bonding requirements to \$150,000 per well for all wells in the Marcellus Shale formation and \$12,000 for all other wells. The bill also increases the required amount of blanket bonds for traditional wells to \$240,000 and eliminates blanket bonds for Marcellus Shale wells.

Lastly, this bill would preempt all local ordinances purporting to regulate oil and gas well operations to the extent that they regulate the method of oil and gas operations while affirming the traditional zoning powers of local governments as they relate to oil and gas operations.

EFFECTIVE DATE: This act will take effect in 60 days.

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