

Pennsylvania Passes Comprehensive Amendments to Oil and Gas Laws

Pennsylvania legislation imposes impact fees on natural gas wells, restricts local regulation of drilling operations, and strengthens environmental requirements.

February 14, 2012

On February 13, Governor Tom Corbett signed House Bill 1950, amending Title 58 (Oil and Gas) of the Pennsylvania Consolidated Statutes. This legislation, most of which will become effective on April 13, imposes a drilling “impact fee” and preempts local environmental regulation of oil and gas operations. It also strengthens requirements for permitting and expands disclosure requirements for fracking chemicals and reporting obligations. Fracking, or hydraulic fracturing, is a technique that uses water mixed with chemicals and sand to pump deep into shale layers to extract gas.

Impact Fee

The legislation authorizes an impact fee on “unconventional gas wells.” An “unconventional gas well” is one that is drilled into a geologic formation that requires fracking, multilateral well bores, or other techniques to produce gas at economic rates or volumes. The impact fee is based on several factors, including when the well is spud (i.e., when the physical drilling begins), the year of the well, and the average price of natural gas. The Public Utility Commission (PUC) may adjust the fee based on the Consumer Price Index.

The revenue generated from the impact fees will go to counties and municipalities that have adopted resolutions imposing an impact fee and to various state agencies. It will also be used to fund environmental cleanup, infrastructure repair, and economic development programs. Counties will have until April 13 to adopt resolutions imposing the impact fee.

Impact fees must be paid annually to the PUC, and the Pennsylvania Department of Environmental Protection (DEP) is prohibited from issuing a permit to drill an unconventional gas well unless the operator has paid all fees owed. Producers may not make payment of the impact fee an obligation or liability of the landowner or leaseholder, and any provision in an existing or future agreement that does so is void as a matter of public policy. If, after three years, a well does not produce natural gas in quantities greater than 90,000 cubic feet per day, the fee on that well will be suspended.

The legislation resolves uncertainty regarding the extent of local authority over oil and gas operations by specifically preempting and superseding local regulation of those aspects of oil and gas operations regulated by state and federal environmental laws. Local governments may still enact local zoning and

land use regulations under the state’s Municipalities Planning Code, 53 P.S. § 10101 et seq., but these ordinances must provide for reasonable development of oil and gas resources and cannot treat oil and gas operations any differently than other industrial operations. The PUC is authorized to issue advisory opinions on the legality of such ordinances to local governments, and anyone aggrieved by the enactment or enforcement of such ordinances may request a formal determination on the validity of the ordinance from the PUC. If the PUC or an appellate court determines that the local ordinance is invalid, the local government is prohibited from receiving impact fees until it repeals or modifies the ordinance.

Environmental Protections

New or strengthened environmental protection requirements are contained in the legislation. Among other things, minimum setback distances for siting wells near water supply wells, existing buildings, streams, and wetlands are increased for unconventional gas wells, and notice of permit applications to drill unconventional wells must now be provided to property owners within a 3,000 foot radius of the well. DEP is required to inspect the well sites for compliance with erosion and sediment control requirements before drilling activities may commence. Well operators must provide 24-hour prior notice to DEP before cementing casing strings, conducting pressure tests of the production casing, stimulating a well, or abandoning/plugging a well. The legislation strengthens the current rebuttable presumption that an unconventional well operator is responsible for any pollution of a water supply within 1,000 feet of the well that occurs within six months of drilling by increasing the distance to 2,500 feet of the well and the time to one year from drilling.

Disclosure and Reporting Requirements

Disclosure requirements for fracking chemicals are also enhanced in the legislation. The reports filed by operators following well completion must include information on the identity, type, function, content, concentration, and volume of chemical additives used to stimulate the well. Well service providers, as well as chemical additive vendors, must also provide certain information to the operator not more than 60 days after commencement of fracking, and the operator must complete the chemical disclosure registry form and post it on the registry within 60 days of completing fracking. Trade secrets and proprietary information may be protected.

Operators of natural gas facilities—including wells, waste pits, processors, and compressors—must report air emissions at the sites, and records must be kept of the amount of wastewater produced during drilling, stimulation, or alteration of the well; the identity of the wastewater transporter; the amount of wastewater transported; and the manner and location of disposal.

Financial Assurance and Fines

The legislation substantially increases the amount of financial assurance for all gas wells. A “blanket bond” may be provided for all of an operator’s wells, with the amount determined by the number of wells operated (subject to a maximum of \$690,000 for each unconventional well).

Finally, the legislation increases fines for summary criminal violations from a maximum of \$300 per day per violation to a maximum of \$1,000 per day per violation, and civil penalties for violations by unconventional gas well operators to a maximum of \$75,000 plus \$5,000 per day per violation. DEP is also authorized to recover the costs of well control emergencies.

For more information about the legislation discussed in this LawFlash, please contact the following Morgan Lewis attorneys:

Washington, D.C.

Ronald J. Tenpas

202.739.5435

rtenpas@morganlewis.com

Harrisburg

Maxine M. Woelfling

717.237.5065

mwoelfling@morganlewis.com

Now Available: *Environmental eDeskbook*

This eDeskbook is designed to be an up-to-date reference tool for people encountering environmental issues and the regulatory framework established to protect the environment. The eDeskbook provides quick access to current contact information, articles, environmental regulations, noteworthy calendar items, and other environmental resource materials. View the *Environmental eDeskbook* at environmentaldeskbook.morganlewis.com.

About Morgan, Lewis & Bockius LLP

With 22 offices in the United States, Europe, and Asia, Morgan Lewis provides comprehensive transactional, litigation, labor and employment, regulatory, and intellectual property legal services to clients of all sizes—from global Fortune 100 companies to just-conceived startups—across all major industries. Our international team of attorneys, patent agents, employee benefits advisors, regulatory scientists, and other specialists—nearly 3,000 professionals total—serves clients from locations in Beijing, Boston, Brussels, Chicago, Dallas, Frankfurt, Harrisburg, Houston, Irvine, London, Los Angeles, Miami, New York, Palo Alto, Paris, Philadelphia, Pittsburgh, Princeton, San Francisco, Tokyo, Washington, D.C., and Wilmington. For more information about Morgan Lewis or its practices, please visit us online at www.morganlewis.com.

This LawFlash is provided as a general informational service to clients and friends of Morgan, Lewis & Bockius LLP. It should not be construed as, and does not constitute, legal advice on any specific matter, nor does this message create an attorney-client relationship. These materials may be considered **Attorney Advertising** in some states. Please note that the prior results discussed in the material do not guarantee similar outcomes.

© 2012 Morgan, Lewis & Bockius LLP. All Rights Reserved.