



Overview of Impact Fee Act

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Act 13 – Impact Fee Legislation

- Signed into law Feb. 14, 2012
- Unconventional Gas Well Impact Fee Act
- Imposes drilling impact fee on producers with spud unconventional gas wells
- Provides for distribution of the fee to local and state government for specific purposes

PUC's Responsibilities

- Collection and Disbursement:
 - Collect fees from producers by September 1, 2012 and by April 1 of each year thereafter
 - Disburse fees to state/local government by December 1, 2012 and by July 1 of each year thereafter
- Review of Proposed/Existing Local Ordinances
 - Issue advisory opinions on proposed local ordinances
 - Issue orders pursuant to requests for review of existing local ordinances

Calculation of Fees

- Fee for each producer is based on:
 - 15-year fee schedule in the law that is based on average annual price of natural gas
 - Adjusted to reflect upward changes in consumer price index if total number of unconventional wells spud in a given year exceeds the number in the prior year
 - In 2012, fee was:
 - \$50,000 per horizontal well
 - \$10,000 per vertical well
 - Number of spud (drilled) unconventional gas wells for prior calendar year
 - Self-reported by producers and compared by PUC to database maintained by Department of Environmental Protection (DEP)

Fee Distribution

- Fees collected in 2012: Over \$204 million
- Law earmarks about \$25.5 million for state agencies to offset the statewide impact of drilling
- After earmarks:
 - 60% of the remaining funds goes to counties and municipalities
 - 40% for statewide initiatives with potential local impacts and value

State Allocation – “Off The Top”

The Unconventional Gas Well Fund

Program/Department	Year 1
County Conserv. Districts/State Conserv. Comm.	\$2,500,000
Pennsylvania Fish & Boat Commission	\$1,000,000
Public Utility Commission (PUC)	\$1,000,000
Dept. of Environmental Protection (DEP)	\$6,000,000
PA Emergency Management Agency (PEMA)	\$750,000
Office of State Fire Commissioners	\$750,000
PA Dept. of Transportation (PennDOT)	\$1,000,000
Natural Gas Energy Development (NDEP)	\$10,000,000
Housing Affordability & Rehab Enforcement Fund	\$2,500,000
TOTAL	\$25,500,000

Local Government Distribution

- 60% of the remainder is distributed as follows:
 - 36% to counties with wells
 - 37% to municipalities with wells
 - 27% to municipalities in counties with wells
 - 50% to municipalities that host, contiguous with or within 5 linear miles of municipalities with wells
 - 50% to all municipalities within the county

County Distribution

- All 35 counties eligible for fees timely adopted ordinances
- Amount for each county is determined using formula that:
 - Divides number of spud wells in county by number in the Commonwealth, and
 - Multiplies resulting percentage by amount available for distribution

Distribution to Municipalities With Wells

- Amount for each municipality is determined by using formula that:
 - Divides the number of wells in the municipality by number in the Commonwealth, and
 - Multiplies resulting percentage by amount available for distribution

Distribution To Municipalities In Counties With Wells

- Amount for distribution to eligible municipalities within each county determined by using formula that:
 - Divides number of wells in county by number in the Commonwealth, and
 - Multiplies resulting percentage by amount available for distribution

Distribution To Municipalities In Counties With Wells (cont'd)

- 50% goes to host, contiguous with or located within five linear miles:
 - One-half is distributed using a formula that:
 - Divides population of eligible municipality by total population of eligible municipalities within county, and
 - Multiplies resulting percentage by amount allocated
 - One-half is distributed using formula that:
 - Divides highway mileage of eligibility municipality by total highway mileage of eligible municipalities within county, and
 - Multiplies resulting percentage by amount allocated

Distribution To Municipalities In Counties With Wells (cont'd)

- 50% goes to each municipality in county:
 - One-half is distributed using a formula that:
 - Divides population of municipality by total population of county, and
 - Multiplies resulting percentage by amount allocated
 - One-half is distributed using formula that:
 - Divides highway mileage of municipality by total highway mileage of county, and
 - Multiplies resulting percentage by amount allocated

Caps on Local Government Distribution

- Amount allocated to local governments shall not exceed \$500,000 or 50 percent (whichever is higher) of the total budget for the prior fiscal year for eligible municipalities
- Beginning with 2010 budget year, adjusted annually to reflect next year's budget and any upward changes in Consumer Price Index

Status of Local Government Disbursements

- 10/15 – Posted on PUC’s website projected amounts and initiated process for disbursement
 - 1455 checks for total of \$117 million
- 10/25 – Received inquiry from municipality that led to discovery of error
 - 5 linear mile municipalities had not been included
 - Share for eligible municipalities within affected counties had to be recalculated
 - E.g. – Williamsport is getting \$300,000 more and other eligible municipalities in Lycoming County are getting less

Status of Local Government Disbursements (cont'd)

- 10/26 – Stopped Treasury from mailing all checks, except 4 that were inadvertently sent
 - 2 were correct, 1 was underpaid and will receive a supplemental check, and 1 was overpaid and has returned the check (correct amount will be resent)
- 10/26-10/31 – Double and triple checked all calculations which led to discovery of a potential problem with well locations
 - GPS data for some wells did not match locations in DEP's database

Status of Local Government Disbursements (cont'd)

- 11/1 – DEP changed some locations using GPS data for well pads rather than where well goes
- 11/1 - PUC made changes in distribution amounts to reflect updated well locations, which resulted in some municipalities receiving more and some less
 - For each well that moved to a different municipality, it was a \$9,000 difference
- 11/1 – County checks were mailed

Status of Local Government Disbursements (cont'd)

- 11/2 – Checks were mailed to approximately 675 municipalities whose amounts were not affected by either issue requiring recalculation
- 11/2 – Checks were mailed to 127 municipalities who are due to receive more than original amount; supplemental checks will be sent on 11/16
- 11/2 – Letters sent to approximately 655 municipalities explaining recalculations, telling them amount of lower payment and noting that checks will be sent on 11/16
- 11/16 – All remaining checks will be sent
- Note: Amount affected by errors was less than $\frac{1}{2}$ of 1% of available funds for distribution

Information on PUC's Website

- www.puc.pa.gov – Act 13 page
 - Act 13
 - Overall Breakdown of Impact Fee Money
 - Local Government Impact Fee Distributions
 - Unconventional Gas Wells Subject to the Fee
 - Impact Fee Payments
 - Fee Schedule
 - PUC Orders and Secretarial Letters
- Coming soon!
 - Program used to calculate distributions

Eligible Use of Funds

- Section 2314(g) of the law sets forth 13 categories for eligible use of funds by counties and municipalities
- Written broadly to local governments flexibility in the use of these funds

Categories of Eligible Uses

- Construction, reconstruction, maintenance and repair of roadways, bridges and public infrastructure
- Water, storm water and sewer systems, including construction, reconstruction, maintenance and repair
- Emergency preparedness and public safety, including law enforcement and fire services, hazardous material response, 911, equipment acquisition and other services
- Environmental programs, including trails, parks and recreation, open space, flood plain management, conservation districts and agricultural preservation

Categories of Eligible Uses

- Preservation and reclamation of surface and subsurface waters and water supplies
- Tax reductions, including homestead exclusions
- Projects to increase the availability of safe and affordable housing to residents
- Records management, geographic information systems and information technology
- Delivery of social services

Categories of Eligible Uses

- Judicial services
- For deposit into the county or municipality's capital reserve fund if the funds are used solely for a purpose set forth in this subsection
- Career and technical centers for training of workers in the oil and gas industry
- Local or regional planning initiatives under the act of July 31, 1968 (P.L.805, No.247), known as the Pennsylvania Municipalities Planning Code (MPC)

Any Additional Guidance

- Law provides no further guidance regarding the use of these funds
- PUC has no authority to advise local governments on the appropriate use of funds
- PUC does not plan to issue an order regarding appropriate use of these funds
- Local governments should consult solicitors for any other guidance that is needed

Local Government Reporting

- Counties and municipalities receiving funds (Unconventional Fund/60% share) are required to annually report information to the PUC
- Report must set forth that the funds received were committed to a specific project or use as authorized in Section 2314(g)
 - Form is on PUC's website as Attachment D – Unconventional Gas Well Fund Usage Report
 - Reports are due on April 15
- Reports must be published on the county's or municipality's website

Marcellus Legacy Fund

- Remaining 40% creates the Marcellus Legacy Fund
- Distributed as follows:
 - Commonwealth Financing Auth. 20%
 - Environmental Stewardship Fund 10%
 - Highway Bridge Improvement Fund 25%
 - PennVEST and H2O Program 25%
 - Environmental Initiatives 15%
 - Department of Comm. Econ. Dev. 5%

Marcellus Shale Legacy Fund County Opportunities

- Highway Bridge Improvement – for cost or replacement or repair of locally owned at-risk deteriorated bridges
 - Need to apply to PennDOT
 - Amount of eligibility depends on population
 - Minimum amount per county is \$40,000
- Water and Sewer Projects
 - Need to apply to Commonwealth Financing Authority (H2O PA Act)
- Greenways, Recreation Trails, Open Space, Nature Areas
 - Minimum amount per county is \$25,000
- Funds may not be used for public relations, communications, lobbying or litigation

Review of Local Ordinances

- Act 13, Chapter 33:
 - Says all local ordinances “must allow for the reasonable development of oil and gas resources”
 - Prior to enactment of local ordinance, municipality may request PUC to review and issue advisory opinion
 - PUC has 120 days to advise whether ordinance violates provisions of Act 13 or Municipalities Planning Code
 - Opinion is advisory and not subject to appeal

Review of Local Ordinance (cont'd)

- Requests for review may be submitted by owner or operator of oil and gas operation or resident of local government who claims to have been aggrieved by enactment or enforcement of ordinance
 - PUC has 120 days to issue order
 - Order is subject to de novo review on appeal to Commonwealth Court
- These requests for review may be filed directly with Commonwealth Court to invalidate a local ordinance
- Municipality is ineligible for funds if PUC or Court issues order finding ordinance in violation of law

Legal Challenges to Act 13

- On July 26, 2012, Commonwealth Court ruled that the section of the law (Section 3304) dealing with uniformity of local ordinances is unconstitutional and enjoined PUC action
 - An appeal of this Commonwealth Court decision is currently pending in the Pennsylvania Supreme Court
- On August 22, 2012, the PUC issued a Secretarial Letter indicating that it would begin reviewing ordinances but only to determine compliance with other parts of Act 13 and MPC
- On October 25, 2012, Commonwealth Court issued an order directing the Commission to refrain from all activity involving the review of ordinances

Process for Advisory Review

§ 3305(a)

- Proposed ordinance must be submitted to PUC
 - PUC will also give courtesy advice on existing ordinances
- Must be filed with Secretary's Bureau
- Must include:
 - Entire ordinance
 - Designation of section of the ordinance in potential conflict
- May also include explanation as to why there may be a conflict with MPC or Chapters 23, 32 or 33

Process for Advisory Opinion

§ 3305(a)

- PUC must respond with a written advisory opinion in 120 days for proposed ordinance
- Opinions are non-binding and advisory
- Not subject to appeal – PUC ruling not considered a Commission Order
- Municipalities do not lose the ability to receive impact fee monies as the result of an advisory opinion that the ordinance does not comply

Process for Requests for Review

§ 3305(b)

- Owners/operators of oil or gas operations or a person within the boundaries of a municipality
- Party must be aggrieved
- PUC must issue an order in 120 days
- Request for Review:
 - Name and address of local government
 - Copy of ordinance
 - Identify part of ordinance in conflict with Chapter 23, 32, 33 or MPC

Process for Requests for Review

§ 3305(b)

- Answers from local governments will be permitted within 20 days
- Commission order to be issued in 120 days
- Ruling from PUC, Commonwealth Court or Supreme Court determining that a local ordinance violates state law means the local government is ineligible to receive any funds
- Local government remains ineligible until it amends or repeals its local ordinance or it receives an order on appeal that reverses the original finding of unlawfulness

Producers' Obligations

- Pay impact fee and report number of wells to PUC by April 1 (starting in 2013)
- Notify PUC on monthly basis of spudding of unconventional gas well, initiation of production at well and removal of well from production
- Pay assessments to PUC to fund program
- Keep records and reports, which are available to PUC upon request
- Comply with PUC Orders

PUC's Enforcement Authority

- To enforce provisions relating to producers' obligations, PUC may:
 - Make all inquiries and determinations necessary to calculate and collect impact fee
 - Issue demand for payment of unpaid impact fee
 - Challenge amount of fee paid (up to 3 years)
 - Assess interest on delinquent fees
 - Assess civil penalties not to exceed \$2,500 per violation – each day is separate violation

PUC's Enforcement Authority (cont'd)

- Further, the PUC shall:
 - Impose penalty on producers for untimely payments of fees; 5% per month up to 25%
 - Notify DEP that a producer has failed to pay fee
 - Permit will be suspended by DEP unless producer has a pending appeal related to payment of fee
 - File proceeding with Commonwealth Court against producer that fails to comply PUC order

Summary

- Since passage of law in February, PUC has been actively involved in implementation
- PUC has met all milestones on a timely basis
- PUC will continue to be transparent about fee payments and disbursements
- Check out the Act 13 page on the website at the following link:

http://www.puc.state.pa.us/filing_resources/issues_laws_regulations/act_13_impact_fee.aspx

How to Contact the PUC

- **Secretary's Bureau (official filing)**
 - 717-772-7777
 - P.O. Box 3265, Harrisburg, PA 17105
- **eFiling (official filing)**
 - Log onto www.puc.pa.gov
 - Click on eFiling (on left)
- **PUC Law Bureau (informal inquiries only)**
 - (717) 787-5000
- **ra-Act13@pa.gov (informal inquiries only)**
 - Filings cannot be made at this email address – informational emails to this address only