



ACT 13 OF 2012 – THE UNCONVENTIONAL GAS WELL IMPACT FEE FREQUENTLY ASKED QUESTIONS

WHAT IS ACT 13 – THE UNCONVENTIONAL GAS WELL IMPACT FEE?

Signed into law Feb. 14, 2012, Act 13 of 2012 (Act 13 or Act) amends Title 58 (Oil and Gas) of the Pennsylvania Consolidated Statutes. It provides for the imposition of an unconventional gas well fee (also called an impact fee). The Act also mandates how the impact fee is disbursed to local and state entities and the purposes for which impact fee funds may be spent.

WHAT IS AN UNCONVENTIONAL GAS WELL?

Act 13 defines an unconventional gas well as a bore hole drilled or being drilled in the production of natural gas from a geological shale formation (such as Marcellus Shale).

WHO MUST PAY THE IMPACT FEE AND HOW IS THE FEE DETERMINED?

All producers with spud wells in the Commonwealth must pay the fee. The fee paid by each producer is determined by a multi-year fee schedule that is based on the average price of natural gas. The fees can also be adjusted to reflect upward changes in the Consumer Price Index if the total number of unconventional wells spud in a given year exceeds the number in the prior year.

WHAT AGENCY IS RESPONSIBLE FOR COLLECTING AND DISTRIBUTING THE FEE?

The Pennsylvania Public Utility Commission (PUC) is charged with collecting and distributing the fee.

WHEN IS THE IMPACT FEE DUE?

Producers must pay the impact fee to the PUC annually by April 1.

ARE THERE OTHER FEES ASSOCIATED WITH THE DRILLING OF UNCONVENTIONAL GAS WELLS?

Producers also may be required to pay an annual administrative fee not to exceed \$50 per spud well. This administrative fee also is due annually by April 1.

WHAT DOES THE MONEY FROM THE ANNUAL ADMINISTRATIVE FEE GO TOWARD?

The administrative fee is to offset implementation and direct costs of the PUC. Under the Act, any costs incurred by the Commission above the \$50 administrative fee may be assessed on all producers in proportion to the number of wells owned.

HOW WILL THE COMMISSION KNOW WHICH WELLS TO ASSESS?

The Pennsylvania Department of Environmental Protection (DEP) provides the Commission with lists of all unconventional wells.

WHO IS ELIGIBLE TO RECEIVE MONEY FROM THE UNCONVENTIONAL WELL IMPACT FEE?

Act 13 provides for the imposition of an impact fee by county ordinance (or municipalities may compel the imposition of an impact fee). A county may adopt an ordinance imposing the fee if unconventional gas wells are located within its borders. A county that does not pass an ordinance imposing a fee is prohibited from receiving funds. This prohibition shall remain in effect until a county passes an ordinance imposing a fee. At this point, all effected counties have passed an ordinance imposing the fee.

HOW WILL FUNDS BE DIVIDED AMONG MUNICIPALITIES, COUNTIES AND STATE INTERESTS?

From the impact fees collected, Act 13 earmarks about \$25.5 million “off the top” for state agencies to offset the statewide impact of drilling. Additionally, for the first 3 years of the program, a fixed amount “off the top” is distributed to the Marcellus Legacy Fund. After the \$25.5 million distribution to state agencies and the fixed distribution to the Marcellus Legacy Fund, the remainder of the fees collected is distributed as follows:

- *60 percent to the Unconventional Gas Well Fund*
 - ◆ *These funds are distributed to counties and municipalities with wells.*
 - ◆ *These funds must be used for the 13 purposes set forth in Section 2314(g) of the Act.*
 - ◆ *The Unconventional Gas Well Fund Usage Report outlines the purposes for which counties and municipalities must commit the use of these funds. This form must be submitted to the Commission annually by April 15.*
- *40 percent to the Marcellus Legacy Fund*
 - ◆ *15 percent of the Marcellus Legacy Fund is distributed by the Commission to all counties, regardless of whether the county has wells located within its borders, to be used for certain environmental initiatives, as set forth in Section 2315(a.1)(5) of the Act.*
 - *Counties ARE NOT required to report the expenditure of these funds to the Commission.*
 - ◆ *Other funds making up the Marcellus Legacy Fund include, but are not limited to the Highway Bridge Improvement Fund and the Environmental Stewardship Fund.*

MY COUNTY OR MUNICIPALITY IS ELIGIBLE TO RECEIVE MONEY – WHAT CAN THEY USE IT TOWARDS?

The counties and municipalities receiving money from the Unconventional Gas Well Fund are required to spend the money in one of 13 categories:

- ◆ *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*
- ◆ *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*
- ◆ *The delivery of social services*
- ◆ *Judicial services*
- ◆ *Deposit into the municipality’s capital reserve fund if the funds are used solely for a purpose set forth in Act 13 of 2012*
- ◆ *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*

HOW DO COUNTIES AND MUNICIPALITIES REPORT THE EXPENDITURE OF THEIR UNCONVENTIONAL GAS WELL FUNDS?

Counties and municipalities receiving funds from the Unconventional Gas Well Fund must submit the Unconventional Gas Well Fund Usage Report to the Commission annually by April 15. The total amount of funds reported on this form is only applicable to funds distributed from the Unconventional Gas Well Fund. Counties MUST NOT include any funds received from the Marcellus Legacy Fund on this form.

HOW DO COUNTIES AND MUNICIPALITIES REPORT THE USE OF UNCONVENTIONAL GAS WELL FUNDS THAT HAVE NOT YET BEEN SPENT?

All funds received from the Unconventional Gas Well Fund for any given year MUST BE placed into one or more of the 13 categories listed on the Unconventional Gas Well Fund Usage Report form, regardless of whether the funds have been spent. Funds DO NOT NEED TO BE SPENT, BUT RATHER ONLY COMMITTED to one of the 13 purposes included on the form. As such, the amount entered on Line 14 of the Unconventional Gas Well Fund Usage Report labeled "Total Fund Usage" must equal the "Total Amount of Funds Received."

HOW DO COUNTIES AND MUNICIPALITIES THAT HAVE NOT COMMITTED OR USED THE UNCONVENTIONAL GAS WELL FUNDS FOR SPECIFIC PURPOSES COMPLETE THE UNCONVENTIONAL GAS WELL FUND USAGE REPORT?

Counties and municipalities that have not committed or used their Unconventional Gas Well Funds for a specific purpose or use for any given year may report their funds in Line 11 of the form, which accounts for funds placed in capital reserve accounts/funds. Please note that only funds for the current year should be reported on the Unconventional Gas Well Fund Usage Report form. As such, funds placed in a capital reserve fund for a previous year, but spent on a specific project in a subsequent year, do not need to be reported to the Commission again.

HOW CAN COUNTIES DETERMINE FROM WHICH FUND THEY RECEIVED MONEY?

Checks distributed by the Commission to counties include the total amount of funds distributed from both the Unconventional Gas Well Fund and the Marcellus Legacy Fund. As such, counties must visit the Local Government Impact Fee Distribution Page to determine the amount of money that came from each fund for expenditure and reporting purposes. Select the reporting year for which you are filing, then click view report.

ARE THERE LIMITATIONS ON THE AMOUNT OF IMPACT FEES COUNTIES AND MUNICIPALITIES CAN RECEIVE?

Act 13 caps the amount of impact fee funds municipalities may receive from the Unconventional Gas Well Fund. This cap DOES NOT apply to counties. The cap is the greater of \$500,000 or 50 percent of the municipality's total budget for the prior fiscal year beginning with the 2010 budget year. These caps may be adjusted to reflect upward changes in the Consumer Price Index (CPI). Municipalities must submit both their 2011 and 2012 Municipality Approved Budget Report Forms to the Commission by March 1, 2013. In subsequent years, only the prior year's Municipality Approved Budget Report Form will be due. For example, the Municipality Approved Budget Report Form for 2013 is due to the Commission by March 1, 2014, and so forth. Municipalities that fail to properly file their Municipality Approved Budget Report Form will be limited to a \$500,000 CPI adjusted maximum distribution from the Unconventional Gas Well Fund.

WE HAVE REVIEWED MY CALCULATION FOR THE ACT 13 FUNDS AND THE HIGHWAY MILES THAT YOU USED FOR THE CALCULATION IS LESS THAN WHAT WE SHOW FOR MY HIGHWAY MILES. WE ALSO GET FUNDS FROM PENNDOT LIQUID FUELS FOR ACT 32 "TURNBACK MILES". WHY ARE THESE MILES NOT INCLUDED IN THE CALCULATION?

As defined in Act 13, the calculation for highway miles is based on the number of miles of public roads and streets most recently certified by the Department of Transportation as eligible for distribution of liquid fuels funds under the Act of June 1, 1956 (1955 P.L. 1944, No.655), referred to as the Liquid Fuels Tax Municipal Allocation Law. The miles reported to the Commission by PennDOT that was used in the calculation was miles as of Dec. 31, 2011. Act 32 is separate and distinct from the Act of 1956 and as such, the Act 32 turnback miles are not to be included in the calculation.

WHICH AGENCIES ARE RECEIVING MONEY TO ADDRESS STATEWIDE ISSUES?

County Conservation Districts and the following state agencies will receive money to address statewide issues: Fish and Boat Commission; Public Utility Commission; Department of Environmental Protection; Pennsylvania Emergency Management Agency; Office of State Fire Commissioner; and Department of Transportation.

WHO MUST PAY THE IMPACT FEE?

All producers with spud wells must pay the fee. According to the law, "spud" refers to the actual start of drilling an unconventional gas well.

HOW IS THE UNCONVENTIONAL GAS WELL FEE CALCULATED BY THE PUC?

Under the Act, the law was very specific on how the fee would be calculated based upon the average price of natural gas for the year. The law says the PUC will impose a fee for each horizontal unconventional gas well from year one to year 15 based upon the average annual price of natural gas in the calendar year when the fee is imposed.

Vertical unconventional gas wells pay 20 percent of the established horizontal well fee for calendar years in which the well is producing more than 90,000 cubic feet of gas per day during any calendar month.

Under the Act, wells that do not produce natural gas in quantities greater than those of a stripper well (90,000 cubic feet per day) do not pay the fee.

WHAT IF A PRODUCER DOES NOT PAY THE FEE?

The PUC may assess civil penalties on producers who fail to pay the fee of up to \$2,500 per violation. PUC action must be brought within three years of the offense. Interest of 5 percent each month (not to exceed 25 percent in the aggregate) also may be assessed on late fees.

CAN A FAILURE OF A PRODUCER TO PAY THE IMPACT FEE EFFECT OTHER STATE PERMITS FOR DRILLING?

Yes – The PUC is required to provide the DEP with information necessary to determine that the applicant has paid all fees owed. DEP may not issue a drilling permit to a producer that is delinquent on fees. Also, DEP must suspend existing drilling permits until the fee is paid, unless the producer has a pending appeal.

FOR FURTHER INFORMATION, CONTACT THE PUBLIC UTILITY COMMISSION:

WRITE

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