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Spilman News Alert: Pa. Gov. Corbett Signs New Oil & Gas Legislation

On February 13, 2012, Pennsylvania Governor Tom Corbett signed [House Bill No. 1950](#) into law, approving major changes to the Pennsylvania Oil and Gas Act, most notably an impact fee on unconventional drilling operations. Along with the impact fee, the receipts of which will be distributed among local governments, state agencies and several new programs, the new legislation also increases the administrative powers of the Public Utility Commission ("PUC") and the Department of Environmental Protection ("DEP"). The following sets forth highlights of the new legislation.

Unconventional Gas Well Fee

While the legislation does not contain a severance tax sought by some groups, it does contain an impact fee on unconventional wells drilled in the Commonwealth. The legislation does not provide for a fee for conventional or shallow wells. The impact fee delegates numerous responsibilities to the county where the well is located, including whether or not that county will impose an impact fee. The governing body of a county containing spud unconventional gas wells may elect whether to impose a fee on each unconventional gas well spud in that county. A county electing to impose the fee must pass an ordinance within 60 days after the legislation becomes law. If the county does not pass an ordinance imposing the fee, it cannot share in the funds collected by the state. If the county elects not to impose the fee, the fee may still apply in that county if at least half of the municipalities within that county, or municipalities representing at least 50% of the population of the county, vote to impose the fee, and the fee will then be imposed on a county-wide level.

The fee will apply regardless of when the well was drilled. An unconventional well will be assessed an annual fee which will be based on the average price of natural gas and adjusted on a year-to-year basis. The legislation sets forth specific formulas for the fee for years one, two and three of the well's life, for years four through 10 and for years 11 through 15 of the well's life. For example, for the calendar year in which a well is spud, the fee could range from \$40,000 if the average annual price of natural gas is not more than \$2.25 to \$60,000 if the average annual price of natural gas is more than \$5.99. The fees are reduced in year two and in subsequent years - the fee in "year two" (which is defined as the calendar year following the year in which the well was spud) range from \$30,000 if the average annual price of natural gas is not more than \$2.25 to \$55,000 if the average annual price of natural gas is more than \$5.99. For years 11 through 15, if the average annual price of natural gas is below \$3.00, the fee for each of these years will be \$5,000, while if the average annual price of natural gas for this same period is greater than \$3.00, the fee for each of these years will be \$10,000.

The fee for a vertical unconventional well will be 20% of the fee

amounts set forth in the legislation. Also, if a spud unconventional gas well begins paying the fee but is subsequently capped or produces low quantities of natural gas within two years of paying the initial fee, then the fee shall be suspended. Beginning on January 1, 2013, the PUC shall annually adjust the fee amounts to reflect any upward changes in the Consumer Price Index for all urban consumers in Pennsylvania, New Jersey, Delaware, and Maryland.

If a county elects to charge an impact fee, the PUC will collect that fee. The fee will be deposited in the state treasury. The fee will be distributed to numerous agencies, departments, programs, counties and municipalities, with 60 percent of the fee earmarked to go to local governments and 40 percent to go to environmental initiatives statewide. The funds are designed to maintain and repair infrastructure, sewer and water systems; fund first responders; fund conservation programs; provide some tax relief and replenish local capital fund budgets.

Gas wells spud before 2011 shall be considered to have been spud in 2011 for purposes of imposing the fee.

Click [here](#) to read more about the new legislation, including information on payment of the unconventional gas well fee, increased DEP responsibilities, additional development regulations and local ordinances.

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