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Gas Leasing & Development

update

What Governor Corbett's Marcellus Shale Commission Report Means for Landowners

The much anticipated report of Governor Corbett's Marcellus Shale Advisory Commission (the "Report") was released on July 22, 2011. Action had been deferred on many issues relating to Marcellus Shale development pending completion of the Commission's report. The Governor has yet to comment on the report, but since he appointed the members of the Commission and many are officials in his administration, he is expected to support it.

The Commission's recommendations are just that; additional action is required in most instances in the form of legislation, in order for the recommendations to be implemented. In addition, in many instances the report's recommendations lack basic detail. As a result, the legislative session beginning in September will likely be quite busy with respect to Marcellus Shale issues.

The Report contains 96 recommendations divided into 4 sections:

- 1 INFRASTRUCTURE;
- 2 PUBLIC HEALTH, SAFETY AND THE ENVIRONMENT;
- 3 LOCAL IMPACT AND EMERGENCY RESPONSE; AND
- 4 ECONOMIC AND WORK FORCE DEVELOPMENT, WITH THE LARGEST COMPONENT RELATING TO ENVIRONMENTAL ISSUES.

Many of the environmental recommendations were proposed by the Pennsylvania DEP months ago and have strong support across the ideological spectrum.

The recommendations that have received the most attention relate to impact fees and forced pooling. Because Governor Corbett has often and clearly stated oppo-

sition to a severance tax, the recommendation in favor of an impact fee came as a surprise to many. No details are offered in the report with respect to the amount of the fee or how it would be assessed, but it is intended to address "uncompensated demonstrated impacts" on local communities of Marcellus Shale development. In addition, the report recommends that the fee be accompanied by statutory changes to "insure fair and consistent municipal regulation which does not unreasonably impede the development of natural gas." This is a fairly transparent quid pro quo whereby the gas industry agrees to an impact fee in return for assistance in dealing with the proliferation of local zoning requirements primarily in southwestern Pennsylvania.

The phrase "forced pooling" is not used in the Report; rather the recommendation is that Pennsylvania Oil and Gas Statutes be "modernized" to (1) include Marcellus Shale in existing gas conservation statutes, which currently cover only deeper formations; (2) account for horizontal drilling and hydraulic fracturing, the technologies that make extraction of gas from the Marcellus Shale and other deep formations possible; and (3) prevent the "waste" of natural gas. The effect of these recommended revisions would be to allow compulsory pooling within the Marcellus Shale.



The remainder of this article will summarize the aspects of the Report most likely to affect landowners in the Marcellus Shale region:

SETBACK REQUIREMENTS The Report recommends the expansion of several of the setback requirements in current law, including extension of (1) the pre-drilling requirement to notify landowners and water purveyors from 1,000 to 2,000 feet; (2) the operator's presumed liability for impaired water quality from 1,000 to 2,000 feet of a gas well; (3) the required distance from a private water well from 200 to 500 feet; and (4) the required distance from a well bore to a water body from 200 to 300 feet. These revisions would provide significant additional protection to landowners, although landowners would still be well served to negotiate appropriate location requirements specific to their property.

SITE WORK The Report includes several recommendations intended to provide additional information regarding individual wells and improved work practices. Well completion reports would be required to include pump rate, pressure, total volume of liquid injected and all hazardous chemical constituents used for hydraulic fracturing. Notice to DEP would be required when cementing, pressure testing and fracturing of wells occurred. DEP would also be required to (1) identify any regulatory obstacles to facilitate a recycling of flow back water; (2) review best management practices for construction and operation of well sites; and (3) conduct an engineering analysis of spill containment systems.

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EMERGENCY RESPONSE In order to address delays that have occurred when responding to spills at gas well sites, the Report recommends that gas well sites be assigned a 911 address and that operators be required to provide GPS coordinates for access roads and well sites, PEMA and DEP standardize emergency plans for well sites and a specialized team of emergency responders be established.

BONDS Probably the aspect of current Pennsylvania Gas Law that is most universally regarded as being antiquated is the bonding amount of \$2,500.00 per well or a blanket bond amount of \$25,000.00. The Report recommends an increase in the individual well amount to \$10,000.00 and an increase to \$250,000.00 for blanket bonds.

PERMITS The Report recommends the inclusion of new components in the permit application review process relating to areas

of high ecological value, including mitigation measures, threatened and endangered species and nearby natural features.

DEP ENFORCEMENT The Report recommends bolstering DEP's enforcement arsenal by substantially increasing penalty amounts, allowing suspension and revocation of permits for non-compliance and authorizing DEP to directly assess civil penalties, as is the case with other environmental statutes, rather than enforcement through the Environmental Hearing Board.

PIPELINES In order to facilitate construction of the pipelines necessary to get gas to market, the Report recommends one-stop permitting, greater use of general permits, elimination of redundant reviews and designation of a lead agency. Clearly many pipelines will be constructed in the coming years and many landowners will be approached with respect to granting rights-of-ways for pipelines.

*If you have any questions regarding the Report,
please feel free to call us at 215-661-0400.*

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