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The Dickinson  
School of Law

Agricultural Law Resource and Reference Center

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# Pennsylvania Law Governing Natural Gas Exploration

# Pennsylvania's Oil and Gas Laws

- 58 P.S. §§ 1-701.7
  - Chapter 1: Oil and Gas Wells
  - Chapter 2: Test of Illuminating Oil
  - Chapter 5: Interstate Conservation Compact
  - **Chapter 7: Oil and Gas Conservation Law**
  - Chapter 8: Underground Storage Act
  - Chapter 9: Pennsylvania Used Oil Recycling Act
  - Chapter 10: Coal and Gas Resource Coordination Act
  - **Chapter 11: Oil and Gas Act**
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# Pennsylvania Oil and Gas Act

- **Organization of Oil and Gas Act**
  - Chapter 1: Preliminary Provisions
  - Chapter 2: General Requirements
  - Chapter 3: Underground Gas Storage
  - Chapter 4: Eminent Domain
  - Chapter 5: Enforcement and Remedies
  - Chapter 6: Miscellaneous Provisions

# Preliminary Provisions

- **Declaration of Purpose – Section 102**
  - Permit optimal development . . . consistent with protection of health, safety, environment, and property;
  - Protect safety of employees and facilities;
  - Protect safety and property of those near development; and
  - Protect natural resources

# General Requirements

- **Permitting Requirements – Section 201**
  - **DEP permit is required prior to drilling.**
  - **Notice must be provided to:**
    - **Surface owner;**
    - **Surface landowner or water purveyors who have water supply within 1000 feet of proposed well location; and**
    - **Owner / operator of underlying coal seams.**

# General Requirements

- **Permit Objections – Section 202**
  - **Surface owner has right to object to permit.**
  - **Objection must be filed with DEP within 15 days of receipt of notice and plat.**
    - **Objection can be based upon improper location of well or inaccurate information in permit application.**
  - **Coal mine owner / operator also has 15 days to file objection.**

# General Requirements

- **Permitting Requirements – Section 201**
  - **DEP has 45 days to issue permit.**
    - Time period can be extended for additional 15 days.
  - **Permit can be rejected due to:**
    - Issuance of permit would violate law;
    - Incomplete application;
    - Unresolved objection from coal mine;
    - Improper bonding;
    - Violations on other wells.

# General Requirements

- **Permitting Requirements – Section 201**
  - Well must be drilled as indicated on permit application.
  - Permit generally expires after one year if drilling does not occur.
  - Permit remains in force until the well is plugged.
  - Permit cannot be transferred without DEP approval.



# General Requirements

- **Well Locations Restrictions – Section 205**
  - **Wells cannot be drilled:**
    - Within 200 feet from building or water well;
    - Within 100 feet from spring, stream, body of water, or wetland larger than one acre.
  - **Waiver or variance can be granted from distance requirements.**
    - DEP may impose conditions to protect people, property, and waters.
  - **DEP is to consider impact of well on public resources when granting permit.**

# General Requirements

- **Bonding Requirements – Section 215**
  - Bond must be obtained after submitting permit application but before drilling.
  - Bond is conditioned upon faithfully performing all of the drilling, water supply replacement, restoration, and plugging requirements of the Act.
  - Failure to comply with Act causes forfeiture of bond funds to Well Plugging Restricted Revenue Account.

# General Requirements

- **Ground Water Protection – Section 207**
  - **Casing is required when:**
    - **Drilling through fresh water strata;**
    - **Certain coal seams.**
  - **Brines must be disposed of in compliance with Clean Streams Law.**

# General Requirements

- **Protection of Water Supplies – Section 208**
  - Well operator must restore or replace a water supply that is polluted or diminished.
  - **Presumption of Liability**
    - Well is presumed to have caused pollution or diminution of water supply located within 1000 feet of well.
    - Presumption can be rebutted by performing a predrill test of water supply.
    - Presumption also is rebutted if landowner refuses permission to perform a predrill test.

# General Requirements

- **Reporting Requirements – Section 212**
  - **Completion report must be filed within 30 days of the completion of drilling.**
  - **Annual report containing production data must be filed with DEP.**
    - **Report is kept confidential for five years.**
  - **DEP has authority to request industry logs and other information.**

# General Requirements

- **Well Site Restoration – Section 206**
  - **Surface estate must be restored from disturbances caused by drilling activities.**
  - **Well operator must follow erosion and sediment control plan at all times during drilling.**
  - **Equipment must be removed and well site restored within nine months of completion of activity.**
    - **Time period can be extended for six months**
    - **Equipment can be stored on-site with landowner permission.**

# General Requirements

- **Registration Requirements – Section 203**
  - Unpermitted wells must be registered with DEP.
  - Abandoned wells are to be reported to DEP so that well can be considered as an orphan well.

# General Requirements

- **Plugging Requirements – Section 210**
  - Plugging stops the “vertical flow of fluids or gas within the well bore.”
  - Well must be plugged prior to abandonment.
  - Operator must provide DEP with notice of plugging to afford DEP with the opportunity to be present at time of plugging.



# General Requirements

- **Coal Operator Responsibilities – Section 214**
  - Coal operators who are removing coal within 500 feet of well must file maps with DEP.
  - Generally, coal operators can remove coal up to 150 feet from well after notifying DEP.

# Underground Gas Storage

- **General Gas Storage Reservoir Operations – Section 303**
  - Operators must attempt to locate all wells drilled into the reservoir.
  - All known wells must be plugged and reconditioned.

# Underground Gas Storage

- **Reporting Requirements for Gas Storage Operations – Section 301**
  - Storage operators with a reservoir within 10,000 feet of a coal mine must file maps with DEP.
  - All storage operators must provide DEP with municipality in which their reservoir is located.
    - DEP may request maps detailing the specific boundaries of reservoir.

# Underground Gas Storage

- **Reporting Requirements for Coal Mine Operations – Section 302**
  - Coal mine owners / operators must file a map with DEP.
  - A coal mine that has been pierced by a well must file a map with DEP each year.
  - Coal mines have notice and reporting obligations if their mines come within 10,000 or 2,000 feet from a gas storage reservoir.

# Underground Gas Storage

- **Inspection of Facilities and Records – Section 305**
  - Coal mines and gas storage operators can inspect records and facilities of the other.
  - Parties can request additional information from the other party (Section 306).

# Eminent Domain – Section 401

- **Limited Right of Eminent Domain for Gas Storage Reservoir**
  - **Cannot be exercised until:**
    - **Original recoverable oil or gas reserves have been depleted by at least 80%; and**
    - **Condemnor has acquired right to store gas underlying at least 75% of proposed storage area.**

# Enforcement and Remedies

- **Conferences – Section 501**
  - Any party “having a direct interest in the subject matter” may request that DEP convene a conference.
  - DEP representative shall be at conference.
  - Any agreement reached at conference shall be effective unless rejected by DEP within 10 days after conference.

# Enforcement and Remedies

- **Enforcement Orders – Section 503**
  - DEP has authority to suspend or revoke permit for violations of Act or other law such as Clean Streams Law.
  - DEP must provide written notice prior to suspension or revocation
  - Operator can request conference prior to determination and appeal to Environmental Hearing Board within 30 days after determination.



# Enforcement and Remedies

- **Restraining Violations – Section 504**
  - **DEP can pursue injunction before:**
    - **Court of Common Pleas**
    - **Commonwealth Court**
  - **Injunction can be sought to stop or prevent violation of Act.**

# Enforcement and Remedies

- **Criminal Penalties – Section 505**
  - **A violation is a summary offense.**
    - Fine not more than \$300
    - Imprisonment not more than 90 days
  - **A willful violation is a misdemeanor offense.**
    - Fine not more than \$5,000
    - Imprisonment not more than one year
  - **Each day is considered to be a separate offense.**

# Enforcement and Remedies

- **Civil Penalties – Section 506**
  - Environmental Hearing Board can impose penalty up to \$25,000 plus \$1,000 per day of continued violation.
  - The amount of the penalty depends upon:
    - Wilfullness of violation
    - Damage to natural resources
    - Endangerment of safety
    - Cost of remedying harm
    - Savings resulting to person

# Miscellaneous Provisions

- **Local Ordinances – Section 602**
  - “[A]ll local ordinances and enactments purporting to regulate oil and gas well operations regulated by this act are hereby superseded. No ordinances or enactments adopted pursuant to the aforementioned acts shall contain provisions which impose conditions, requirements or limitations on the same features of oil and gas well operations regulated by this act or that accomplish the same purposes as set forth in this act.”

# **Proposed Amendments** **to the Oil and Gas Act**

- **2007-2008 Proposed Legislation**
  - **House Bill 2227**
    - Provide compensation for surface damage caused by oil and gas exploration.
  - **House Bill 2533**
    - Proposing enactment of the Surface Owners' Protection Act, which would provide for duties of oil and gas well operators, for notice of operations and surface use compensation agreement, for restriction on issuance of permits, for attorney fees, and for emergency situations.

# Proposed Amendments to the Oil and Gas Act

- **2007-2008 Proposed Legislation**
  - **House Bill 2741**
    - **Provide for bonding and well-plugging funds.**

# Proposed Amendments to the Oil and Gas Act

- **2009-2010 Proposed Legislation**
  - **HB 473**
    - Proposing amendments to the Oil and Gas Act that would add definitions and secure compensation for surface damage
  - **HB 808**
    - Proposing amendments to the Oil and Gas Act that would further provide for bonding and well plugging funds

# **Proposed Amendments** **to the Oil and Gas Act**

- **2009-2010 Proposed Legislation**
  - **HB 934**
    - **Proposing amendments to the Oil and Gas Act that would provide for secured meters and further well reporting requirements**
  - **SB 297**
    - **Proposing amendments to the Oil and Gas Act that would provide additional well reporting requirements.**



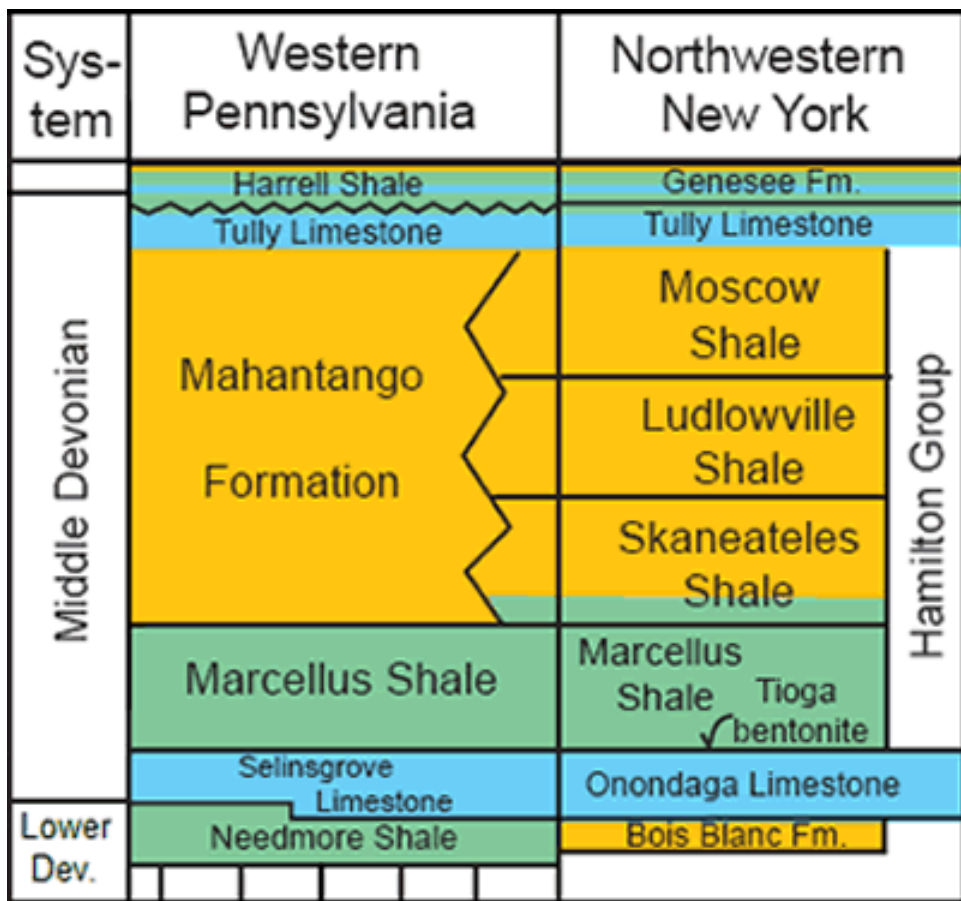
# Oil and Gas Conservation Law

- **Declaration of Purpose**
  - “[F]oster, encourage, and promote the development, production, and utilization” of Pennsylvania’s oil and gas resources;
  - Prevent the waste of oil and natural gas;
  - Permit the Commonwealth to “realize and enjoy the maximum benefit of these natural resources.”
  - Impractical to include shallow wells

# Oil and Gas Conservation Law

- **Application – Section 3**
  - **OGC Law applies to all land within Pennsylvania.**
  - **The following wells are excluded from OGC Law:**
    - **Those that do not penetrate the Onondaga horizon;**
    - **Those that are less than 3,800 feet where the Onondaga horizon is closer than 3,800 from surface;**
    - **Those drilled prior to OGC Law;**
    - **Those for use in storage reservoir.**

# The Oil and Gas Conservation Law and the Marcellus Shale



The Oil and Gas Conservation Law does not apply to wells that *do not* penetrate the Onondaga horizon, meaning *wells drilled into the Marcellus Shale are not covered by this law.*

→ Depth of Marcellus Shale  
 → Depth of Onondaga Horizon

Image by: Robert Milici and Christopher Swezey, 2006, Assessment of Appalachian Basin Oil and Gas Resources: Devonian Shale–Middle and Upper Paleozoic Total Petroleum System. Open-File Report Series 2006-1237. United States Geological Survey.

# Oil and Gas Conservation Law

- **Prohibition of Waste – Section 4**
  - **Physical waste**
    - Allowing gas, oil, or water to migrate to a different stratum
    - Drowning a stratum
    - Unnecessary loss of oil or gas at the surface
  - **Inefficient spacing of wells**

# Oil and Gas Conservation Law

- **Well Spacing – Section 7**
  - **Definition of pool:**
    - “an underground reservoir containing a common accumulation or oil and gas, or both, not in communication laterally or vertically with any other accumulation of oil or gas.”

## Well Spacing

- **When a well is drilled into, or below, the Onondaga horizon, those “directly and immediately affected by the drilling” of the well can apply to DEP for a well spacing order.**

# Well Spacing

- **Process to Establish Spacing Order**
  - Notice of hearing
  - DEP holds public hearing
  - DEP will render determination within 45 days.

# Well Spacing

- **Spacing Order**
  - **DEP will establish a “unit” representing the area in which a well can efficiently and economically extract natural gas.**
  - **The units within a pool generally will have uniform sizes and shapes.**
  - **The order will cover all land believed to be in the pool.**



# Well Spacing

- **Spacing Order**
  - **DEP will consider the following factors:**
    - **Surface topography and individual property lines;**
    - **Proposed well spacing plans;**
    - **Depth of production;**
    - **Characteristics of the producing formation;**
    - **Other geologic and scientific data.**

# Well Spacing

- **Spacing Order**
  - **DEP will set a minimum distance that a well must be located from a unit boundary.**
  - **Under some circumstances, an operator may be permitted to drill a well outside prescribe distance, but production of well may be limited.**

# Oil and Gas Conservation Law

- **Integration of Interest in Spacing Units – Section 8**
  - Multiple owners within a spacing unit may voluntarily integrate their separate parcels to develop natural gas within spacing unit.
  - If voluntary agreement is not reached, an operator can apply for an integration order.
    - DEP will conduct public hearing after notice.
    - DEP can issue “just and reasonable” order.

# Oil and Gas Conservation Law

- **Penalties – Section 12**
  - **Violations are punishable by:**
    - A fine ranging from \$500 to \$5,000;
    - Imprisonment not more than six months.
  - **Each day is considered to be a separate offense.**

# Oil and Gas Conservation Law

- **Enforcement – Section 14**
  - **DEP can pursue injunctive relief to prevent or stop violations.**

# Oil and Gas Conservation Law and Marcellus Shale

- **Until further legislation is passed, drilling into the Marcellus Shale will remain exempt from the unitization and spacing provisions of the OGC Law.**

# **Proposed Amendments to the Oil and Gas Conservation Law**

- **2007 – 2008 Session**
  - **House Bill 2453**
    - Proposing amendments to the Oil and Gas Conservation Law, 58 P.S. §§ 401-419, to make the law applicable to Marcellus Shale wells.
- **2009 – 2010 Session**
  - **House Bill 977**
    - Reintroduction of House Bill 2453.

# Dormant Oil and Gas Act

- **Enacted by legislature in 2005.**
- **Permits development when all owners cannot be located.**



# Dormant Oil and Gas Act

- **Purpose – Section 2**
  - “to facilitate the development of subsurface properties by reducing the problems caused by fragmented and unknown or unlocatable ownership of oil and gas interests”
  - “to protect the interests of unknown or unlocatable owners of oil and gas”
  - “It is not the purpose of this act to vest the surface owner with title to oil and gas interests that have been severed from the surface estate.”

# Dormant Oil and Gas Act

- **Creation of Trust – Section 4**
  - Any person with interest in oil and gas may petition Court of Common Pleas to declare a trust for benefit of unknown owners.
  - Petitioner must make diligent effort to locate owners.
  - Court will appoint financial institution as trustee for unknown owners.

# Dormant Oil and Gas Act

- **Administration of Trust – Section 5**
  - All payments due to the unknown owner(s) shall be made to trustee.
  - Trust shall remain in force until unknown owners have been identified.
  - Funds held in trust are subject to provisions in Fiscal Code relating to unclaimed and abandoned property.

# Dormant Oil and Gas Act

- **Responsibility of Lessee – Section 6**
  - Lessee who pays income to trustee shall not be liable for additional claims by unknown owners.

# Coal and Gas Resource Coordination Act

- **Requires coordination of coal mine and gas well operators**
- **Applies to all gas wells that penetrate a workable coal seam**
- **Provides for the establishment of a panel to make recommendations to DEP regarding well site locations**
- **Provides for plugging requirements of wells that penetrate coal mines**



## The Agricultural Law Resource and Reference Center is a collaboration between:

- Penn State Dickinson School of Law
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- Pennsylvania Department of Agriculture

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