PENNSYVLANIA IMPACT FEE

OVERVIEW OF FEE IMPOSITION

The PA Statute leaves the imposition of the impact fee up to the local county in which a spud unconventional well exists. If the county declines to pass such an ordinance, municipalities in the county can compel the imposition of the fee. Based on some informal discussions, this formulation – an impact fee mandated by state statute but imposed by counties and municipalities was a function of compromise and politics. Likely any impact fee imposed in NC would be imposed simply by state statute [in fact, I believe that municipalities could not impose a fee without GA approval]. So that very complicated framework from the PA statute would not be transferrable to NC.

The fee is annual, per well and graduated, based on the price of natural gas and the year in which the well was spud. Based on those factors, the fee is between $10,000 and $60,000 and then adjusted for inflation (CPI). The fee is suspended for wells not in production two years after paying the initial fee.

The fee, along with a report detailing the number of spud unconventional wells of a producer in each municipality in each county and the date each well was spud or ceased production, is due to the Pennsylvania Public Utilities Commission between September 1 and April 1 each year. [Decision point in NC – NCUC or DENR? – would think DENR more germane]

The Commission can impose an annual fee of $50 per spud unconventional gas well to cover the costs of the Commission to administer and enforce the fee and once costs are determined, a "true up" can be imposed on each producer. The Department of Environmental Protection must refuse to issue a permit to drill a new well to producers who are not paid up.

By statute a producer may not make the fee an obligation, indebtedness or liability of a landowner, leaseholder or other person in possession of real property upon which the removal or extraction occurs.

OVERVIEW OF FEE DISTRIBUTION

All fees go into the "Unconventional Gas Well" fund.

Specified amounts are distributed first to:

county conservation districts ($2.5 million in 2011, $5 m in 2012, $7.5 m in 2013 and then adjusted for inflation).

Pennsylvania Fish and Boat Commission - $1m for review of applications for permits to drill

Public Utility Commission - $1 m for administering the fee and other requirements

Department of Environmental Protection - $6 m for enforcement of acts relating to clean air and clean water

Pennsylvania Emergency Management Agency - $750,000 for emergency response, training and coordination related to natural gas production from unconventional wells

Office of Sate Fire Commissioner - $750,000 for development, delivery, sustainment of training and grant programs for first responders and need equipment

Department of Transportation - $1m for rail freight assistance

Housing Affordability and Rehabilitation Enhancement Fund - $2.5 in 2011, $5 m in 2012 and each year thereafter for increasing the availability of quality, safe, affordable housing for low-income and moderate-income persons or families in counties where producing unconventional gas wells are located.

Then funds are distributed to the Marcellus Legacy Fund for distribution to the DEP's Natural Gas Energy Development Program [need details, title 58 Ch. 27] - $10m in 2011, $7.5 m in 2012 and $2.5 m in 2013.

All agencies receiving funds must report annually on the disbursement of those funds.

After those funds, then 60% of the annual funds remaining are distributed to counties and municipalities (capped at $500,000 (adjusted for inflation) per municipality) for the express purpose of costs associated with natural gas production from unconventional wells:

- Roads
- Water, storm water, sewer systems
- Emergency preparedness and public safety
- Environmental programs including trails, parks, 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
- Social services
- Judicial services
- Capital reserve funds related to any of these items
- Career and technical centers for workers in oil and gas industry
- Local or regional planning initiatives

The final 40% of the remaining funds after first specified distributions are to be distributed to the Marcellus Legacy Fund, appropriate to the PAPUC and redistributed to:

20% to the Commonwealth Financing Authority for grants to eligible applicants for various projects related to things such as reclamation, orphan or abandoned wells, greenways or other recreation space, baseline water quality for private water supplies, watershed programs.

10% to the Environmental Stewardship Fund

25% to the Highway ridge Improvement Restricted Account in the Motor License Fund (for deteriorated bridge repair or replacement)

25% for water and sewer projects (with further breakdown specified)

15% for the planning acquisition development, rehabilitation and repair of grenways, recreational trails etc. Funds distributed by county.

5% to the Department of Community and Economic Development for specified purposes.

OTHER FEES IMPOSED BY PA STATUTE

1. Permit Fee – tied to cost of administering the development program plus a $50 surcharge for the Abandoned Well Plugging Fund and a $200 surcharge for the Orphan Well Plugging Fund.
2. Bonding – A bond covering the well and well site must be submitted with the application for a well permit. Liability under the bond continues until the well has been properly plugged for a period of one year after filing certificate of plugging. The amount of the bond varies based on well bore length and amount of wells operated
    a. Less than 6,000 feet
        i. and less than 50 wells - $4,000 per well capped at total of $35,000
        ii. and between 51 and 100 wells - $3,500 per well plus $4,000 per well in excess of 50 wells, capped at a total of 60,000
        iii. and between 151 and 200 wells, $60,000 plus $4,000 per well for each well in excess of 150 wells, caped at a total of $100,000
        iv. and more than 250 wells, $100,000 plus $4,000 per well for each well in excess of 250 wells, capped at $250,000
    b. At least 6,000 feet
        i. For operating up to 25 wells, $10,000 per well, capped at $140,000
        ii. For operating between 26 and 50 wells, $140,000 plus $10,000 per well in excess of 25 wells, capped at $290,000
        iii. For operating 51 – 150 wells, $290,000 plus $10,000 per well, capped at $430,000
        iv. For operating more than 150 wells, $430,000 plus $10,000 per well for each well in excess of 150, capped at $600,000
3. Well control response emergency – person liable for well control response emergency is responsible for all response costs incurred by the Department of Environmental Protection

Penalty section for violations of the Development Chapter are imposed – both criminal and civil.
Criminal - up to $1,000 per day and up to 90 days imprisonment unless willful, then $5,000 per day and up to one year imprisonment.
Civil – with respect to unconventional wells, $75,000 plus $5,000 for each day during which the violation continues.