

“What keeps you up at night?”

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Marcellus Shale Region Counties and Municipalities Must Respond Quickly to Act 13

By Carl B. Everett

SUMMARY

Newly enacted Act 13 authorizes counties to collect impact fees, but they must act quickly.

On February 14, 2012, Governor Corbett signed H.B. 1950, now referred to as “Act 13” of 2012. Much of the 174-page statute pertains to operational aspects of well development under new Chapter 32 of the Oil and Gas Act. However, Act 13 also authorizes an impact fee on wells drilled in the Marcellus Shale and other “unconventional” geologic formations and strictly limits local control of drilling-related activities. These latter aspects are subject to very tight deadlines that will require prompt action by county commissioners and local officials if they are to take full advantage of new funding opportunities.

Act 13 creates a two-tier system for impact fee imposition. At the top are counties, who are given 60 days from enactment to pass an ordinance saying: “The County of (insert name) hereby imposes an unconventional gas well fee on each nonconventional gas well spud in this county.” (The term “spud” is defined to mean the actual start of drilling of an unconventional gas well). Counties must first notify the Public Utility Commission (“PUC”) and give public notice of their intent to adopt the ordinance.

If a county does not adopt an ordinance within 60 days of the effective date (i.e. by April 14, 2012), it shall be prohibited from receiving funds from the fee until the calendar year following the adoption. Thus, counties need to move expeditiously to protect their ability to receive funds in the current year. In many counties commissioners only meet twice a month and agenda items must be published in advance. Commissioners will need guidance from their respective solicitors, and it is conceivable that many counties will miss the deadline.

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The second tier comes into play when the county misses its deadline. If a county fails or refuses to impose the unconventional gas well fee, the municipalities of the county may compel the imposition of a fee by adopting resolutions saying: “The (insert name of municipality) in the county of (insert name) hereby resolves to have the county impose an unconventional gas well fee on each unconventional gas well in the county.” If at least half of the municipalities located in a county or municipalities representing at least 50 percent of the population of the county adopt such resolutions within the period between April 14 and 120 days after February 14 (i.e. by June 13), the fee shall take effect. The municipalities in a county that does not adopt an ordinance and which do not adopt a resolution are prohibited from receiving funds. Also, the county will remain ineligible for funds unless it passes an ordinance.

Act 13 expressly supersedes all local ordinances purporting to regulate oil and gas operations regulated by Chapter 32 (the new provisions relating to drilling-related activities). Local governments that enacted an ordinance relating to oil and gas operations prior to

Act 13’s passage have 120 days to review and, if necessary, amend the ordinance to meet the new requirements.

For more detail about Act 13 and how it affects unconventional oil and gas drilling in Pennsylvania, please see http://www.saul.com/media/site_files/3075_OilGas020912_v5.pdf.

This Alert was written by Carl B. Everett, a member of the firm’s Oil and Gas Practice. Carl can be reached at 215.972.7171 or ceverett@saul.com. This publication has been prepared by the Oil and Gas Practice for information purposes only.

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