

ADMINISTRATIVE WATCH

ADDRESSING ENVIRONMENTAL, ENERGY AND NATURAL RESOURCE ISSUES



Babst Calland
Attorneys at Law

babstcalland.com

Pittsburgh, PA

Two Gateway Center
603 Stanwix Street
Sixth Floor
Pittsburgh PA 15222
412-394-5400
FAX 412-394-6576

State College, PA

Suite 302
330 Innovation Blvd.
State College, PA 16803
814-867-8055
FAX 814-867-8051

Sewell, NJ

380-A Tylers Mill Road
Sewell, NJ 08080
856-256-2495
FAX 412-586-1082

THE MARCELLUS SHALE ADVISORY COMMISSION'S REPORT TO THE GOVERNOR: Local Government Recommendations

The Governor's Marcellus Shale Advisory Commission recently presented its final Report, recommending legislative and regulatory reforms to mitigate impacts of the development of the Marcellus Shale in Pennsylvania. The following is a brief summary of several local government recommendations included in the Report.

Impact Fee. The uncompensated impacts of Marcellus Shale development on citizens and local governments have been the subject of much discussion and proposed legislation in Pennsylvania. For example, Senate Bill 1100, introduced in the Spring, proposes a base \$10,000 impact fee for all deep and shallow wells, to be collected and distributed by the Pennsylvania Public Utility Commission. While not endorsing this particular fee structure, the Report identified various impacts incurred by local governments, including costs associated with additional staff time and resources. These costs accrue for example, from increases in public meetings and hearings stemming from ordinance amendments, permit applications and code enforcement.

Report Recommendation: Enactment of or authorization to impose a fee to mitigate and compensate for local impacts, including increased demands on public safety personnel and agencies, conservation agencies, water and sewer infrastructure and land use planning agencies.

Land Use Regulations. The Report documents that at least 800 Pennsylvania municipalities and counties in the Marcellus Shale region have enacted zoning ordinances. These ordinances vary widely; while some do not regulate the industry to any significant degree, others attempt to ban it entirely. Dozens of ordinances fall between these extremes, including those that allow drilling and related uses as a conditional use or special exception. In these cases, each municipality requires the applicant to demonstrate compliance with its own particular set of conditions prior to approval. As a result, the industry must contend with literally hundreds of sets of varying local regulations when operating in Pennsylvania.

Report Recommendation: The imposition of any impact fee should be accompanied by appropriate statutory changes to ensure fair and consistent municipal regulation which does not unreasonably impede the development of natural gas.

Emergency Response. One of the primary responsibilities of municipalities is to provide emergency planning and response. When development of the Marcellus Shale began, very few local volunteers and first responders were trained to handle the types of emergencies associated with the industry. In order to provide the training necessary for these types of emergencies, the Office of the State Fire Commissioner under a contract with the Marcellus Shale Coalition, and the Pennsylvania Independent Oil and Gas Association, have funded and provided initial training for more than 2,416 first responders to date. However, this preparation is preliminary in nature, and requires follow-up training to assure complete preparedness by local emergency response providers.

Report Recommendation: Provide comprehensive training to local fire and emergency responders, focused on the unique situations presented by natural gas-related emergencies, and assist in the identification and acquisition of appropriate materials, through a program overseen and administered by the Office of the State Fire Commissioner.

Roadways. According to the Report, only 44,000 of the nearly 122,000 miles of roadways in Pennsylvania are state-owned, meaning that municipalities are responsible for the operation and maintenance of well over half of the roadways in the Commonwealth. Consequences resulting from the number and weight of vehicles necessary to develop the Marcellus Shale include broken and worn pavement, in addition to an increase in the number of vehicular accidents. Currently, the Vehicle Code authorizes local governments to mitigate these impacts by adopting roadway weight limits and by requiring road bonding and maintenance agreements. However, despite a marked increase in the mileage of weight-restricted roadways in Pennsylvania over the past two years, many roadways remain unrestricted with respect to weight. Currently, there is no mechanism to require decreased use or repair of these roadways at the state or local level. Furthermore, it is necessary to acknowledge that other industries also use these posted roads for heavy hauling and to distribute the costs associated with mitigation and repair fairly among all responsible parties.

Report Recommendation: The Pennsylvania Department of Transportation should identify a mechanism to properly invoice natural gas operators for costs incurred for inspections and improvements on non-posted roadways. Invoices must reflect actual costs apportioned to the industry utilizing engineering calculations based on traffic counts.

If you have any questions regarding the Report's findings and recommendations regarding local impacts, please contact Blaine A. Lucas at 412-394-5657 or blucas@babstcalland.com or Krista Staley at 412-394-5406 or kstaley@babstcalland.com.