

Bill Setting Pennsylvania's Conventional Oil and Gas Bonding Levels Becomes Law

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On July 19, 2022, House Bill 2644, 2022 Pa. Legis. Serv. Act 2022-96 (Act 96), became law, without Pennsylvania Governor Tom Wolf's signature. The new law keeps Pennsylvania's oil and gas well bonding amounts at the current levels of \$2,500 per conventional well and \$25,000 for a blanket bond for multiple conventional wells. The blanket bond amount will increase by \$1,000 for every additional conventional well drilled six months after July 19, 2022, not to exceed \$100,000. However, the Pennsylvania Department of Environmental Protection (PADEP) will waive the \$1,000 increase for a new conventional well if the operator has plugged an orphan well at the operator's own expense. Other than the \$1,000 increase for blanket bonds, Act 96 precludes PADEP and the Environmental Quality Board (EQB) from raising bonding amounts for 10 years from the effective date. During this time, only the general assembly has such authority. Act 96 does not place a similar 10-year protection period on the adjustment of unconventional well bond amounts, allowing the EQB to adjust amounts every two years to reflect PADEP's projected well plugging costs. The EQB has been considering two petitions: one to increase well bonding amounts for conventional wells to \$38,000 per well and another to increase unconventional well bonding amounts to \$83,000 per well. Act 96's enactment effectively prevents the petitioned increase for conventional wells. See Vol. XXXVIII, No. 4 (2021) of this *Newsletter*.

In a formal statement published in the July 30, 2022, *Pennsylvania Bulletin*, Governor Wolf said he allowed Act 96 to become law, but had several concerns with the legislation, including: (1) the directive that federal Infrastructure Investment and Jobs Act (IIJA), Pub. L. No. 117-58, 135 Stat. 429 (2021), funds be deposited into the commonwealth's orphan well plugging fund, in apparent contravention of the IIJA's framework for administering funds; (2) that grant amounts are tied to well depths and not actual plugging costs; (3) the elimination of PADEP's authority to impose federally mandated requirements on recipients receiving plugging grants; and (4) the withdrawal of the EQB's authority to establish bonding amounts for conventional operations. See 52 Pa. Bull. 4229 (July 30, 2022).

Due to these concerns, Governor Wolf stated that PADEP is reviewing existing processes and procedures and will provide evaluations and recommendations on the following by September 1, 2022:

1. Evaluation of the conventional industry's recent record of compliance with reporting requirements and performance requirements under existing law.
2. Evaluation of using existing authority, including increased exercise of civil penalty authority and forfeiting conventional oil and gas well bonds and requiring submission of replacement bonds, as methods to deter and motivate conventional operators to address abandoned wells and violations of the applicable law.
3. Recommendations for increased scrutiny of conventional oil and gas operators' requests for regulatory inactive status approval and permit transfers, because these steps are often precursors to improper abandonment of wells.
4. Evaluation of using existing criminal provisions related to conventional oil and gas operations as a means of deterring and motivating conventional operators to address abandoned wells and violations of the applicable law.
5. Recommendations for regulatory reform to comprehensively regulate conventional drilling according to modern best practices and industry standards.

Id. at 4230.

Act 96 also requires PADEP to create a new initiative to provide grants to well plugging companies to maximize the volume of orphan wells being plugged. Grants of \$10,000 would be awarded for plugging wells less than 3,000 feet

deep, with grants of \$20,000 awarded for plugging wells more than 3,000 feet deep. Further, Act 96 exempts conventional wells drilled prior to April 1985 from bonding requirements. PADEP estimates a majority of the more than 110,000 active conventional oil and gas wells in Pennsylvania were drilled before April 1985.

Opponents of Act 96 claim that its passage potentially risks Pennsylvania's receipt of federal funding from the IIJA's conventional oil and gas well plugging program to plug abandoned and orphan oil and gas wells. Sierra Club, for example, which is one of the entities that filed a petition to increase conventional well bond amounts in Pennsylvania, claims that Pennsylvania may have to return already-allocated funding or may miss out on future funding because Act 96 precludes PADEP from following federal requirements for use of the funds. See Press Release, Sierra Club, "Pennsylvania Legislation Will Exacerbate Massive Oil and Gas Well Backlog and Mismanagement of Federal Funds" (July 19, 2022). In a statement to the *Pittsburgh Post-Gazette*, Governor Wolf's Press Secretary Elizabeth Rementer said that "[t]he administration is currently exploring the next steps to ensure the industry is held accountable in order to protect the environment and that we don't lose out on millions of dollars in federal funding for well plugging." Laura Legere, "As Pa. Faces 'Looming Crisis' of New Abandoned Wells, State Law Will Freeze Well Bonding Rates for a Decade," *Pittsburgh Post-Gazette* (July 19, 2022).

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