

Governor Enacts Law Creating Orphan Well Plugging Grant Program

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On November 3, 2022, then-Pennsylvania Governor Tom Wolf signed House Bill 2528 into law as Act 136 of 2022. The Act, effective January 3, 2023, amended Pennsylvania law to create the Orphan Oil and Gas Well Plugging Grant Program and bring the program into compliance with the requirements for the use of federal funding for well plugging. Among the significant amendments, the Act requires that no less than 20% of the funds allocated from the federal Infrastructure Investment and Jobs Act, Pub. L. No. 117-58, 135 Stat. 429 (2021), be made available for plugging conventional oil and gas wells (unless funds remain uncommitted six months prior to any deadline for recapture of the funds by the federal government, in which case they may be used for other purposes). 58 Pa. Cons. Stat. Ann. § 2811(a). The Act also increases the maximum grant amounts from \$10,000 to \$40,000 (or the actual cost, whichever is less) for wells up to 3,000 feet deep and from \$20,000 to \$70,000 (or the actual cost, whichever is less) for wells deeper than 3,000 feet. *Id.* § 2822(b).

The Act includes additional criteria an applicant must submit to the Pennsylvania Department of Environmental Protection (PADEP) to be considered a qualified well plugger (e.g., a demonstration that the applicant has access to the necessary equipment, materials, resources, and services required to plug wells). *Id.* § 2824(a). A qualified well plugger must also attest that (1) it will provide necessary documentation to allow PADEP to demonstrate it is complying with funding allocation requirements, and (2) each well plugged by the qualified well plugger will be plugged in accordance with applicable requirements. *Id.* § 2825(b).

The Act also requires that PADEP allow Pennsylvania companies of any size to bid on well plugging contracts. *Id.* § 3271.1. To qualify, any such company must be headquartered or have its main offices in Pennsylvania and conduct at least 50% of its business activities in the commonwealth. *Id.* Alternatively, other companies may qualify as “Pennsylvania companies” if they subcontract the work to subcontractors selected through a competitive bidding process that gives priority to subcontractors, when possible, that satisfy the location and business activity thresholds described above. *Id.* These requirements do not prohibit PADEP from accepting bids from or awarding contracts to companies that are not “Pennsylvania companies” if taking such action is not otherwise prohibited. *Id.*

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