



# Planning Perspectives

A Newsletter from the York County Planning Commission

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Please be aware that the zoning provisions of Act 13 are presently being challenged in court. Therefore, we urge municipalities to be aware of impending implementation deadlines as noted below, but caution municipalities against taking immediate action. Future action recommendations will be forthcoming.

## ***Act 13 of 2012 Oil and Gas Act Amendment***

*by Terry Ruby*

On February 14, 2012, Governor Tom Corbett signed Act 13 of 2012 into law. Act 13 amends the Oil and Gas Act of 1984 to allow for the enactment of a county impact fee on unconventional gas wells. The law also provides local ordinance standards relating to oil and gas operations.

As noted above, Act 13 allows counties with unconventional gas wells, referred to as “host” counties, to adopt an ordinance to collect an impact fee on each well. Presently, more than 55 of Pennsylvania’s 67 counties are underlain with Marcellus Shale formations and home to numerous unconventional gas wells.



The remaining counties, which includes York County, are referred to as “non-host” counties. However, with increased technology and further research, it is possible that the future could bring unconventional gas well drilling to some of these non-host counties.

***Ok, so there are no unconventional gas wells in York County. How does this legislation impact my municipality?***

Act 13 **supercedes and preempts** (1) local ordinances that are not adopted in accordance with the PA Municipalities Planning Code (MPC) and the Floodplain Management Act and (2) local ordinances that are in direct conflict with Act 13. As such, the statutory provisions set forth in Chapters 32 (Relating to Development) and 33 (Local Ordinances Relating to Oil and Gas Operations) of the Act, which are designed to provide for the reasonable development of oil and gas operations throughout the Commonwealth, supersede local zoning, subdivision/land development and other local ordinances to the extent that they regulate oil and gas operations.

Oil and gas operations is a very broad term. As defined in Act 13, such operations range from well location assessments and impoundment areas used exclusively for oil and gas operations to the construction, installation, use, maintenance and repair of oil and gas pipelines, natural gas compressor stations, and natural gas processing plants or facilities, as well as the construction, installation, use, maintenance, and repair of all equipment directly associated with the activities

According to Act 13, municipalities have 120 days from the effective date of Chapter 33 (now August 9, 2012) to amend existing ordinances that regulate oil and gas operations to comply with the Act. This results in a deadline of December 7, 2012, to be in compliance with Chapter 33.

listed above. With regard to York County, the activity that is currently most prevalent is the construction, installation, use, maintenance and repair of oil and gas pipelines. However, compressor stations and processing plants/facilities are also potential uses.

***Thus, what actions does my municipality need to undertake?***

1. If your municipality has enacted any ordinances that regulate oil and gas operations, including but not limited to, zoning and subdivision/land development ordinances, such ordinances **must** be reviewed and, if necessary, amended to be consistent with Chapter 33 of Act 13.

**OR**

2. If your municipality has an existing zoning ordinance that does **not** currently address oil and gas operations, the ordinance, or any other applicable ordinance, **should** be amended to incorporate the provisions set forth in Chapter 33 of Act 13. Since Act 13 preempts local ordinances, incorporating the provisions will assure awareness of the requirement and protect the municipality from a potential challenge.

In order to allow for the reasonable development of oil and gas operations and to ensure the uniformity of local ordinances throughout the Commonwealth, Chapter 33 requires the following:

**Permitted Uses**

- **Well and pipeline location assessment operations**, including seismic testing and related activities, shall be permitted as a use by right in all zoning districts.



- **Oil and gas operations**, with the exception of activities at impoundment areas, including compressor stations and processing plants, shall be permitted as a use by right in all zoning districts.

When such oil and gas operations are located in a residential district:

1. the outer edge of the well pad shall be at least 300 feet from any existing building;
2. the wellhead shall be at least 500 feet from any existing building; and
3. all other oil and gas operations, other than pipelines, access roads and security facilities, shall be at least 300 feet from any existing building.

Oil and gas operations **may** be prohibited or permitted only by a conditional use in residential districts if:

1. the outer edge of the well pad **cannot** be placed at least 300 feet from any existing building; and
2. The wellhead **cannot** be placed at least 500 feet from any existing building.

- **Impoundment Areas** used for oil & gas operations shall be permitted as a use by right in all zoning districts, provided the edge of the impoundment area is at least 300 feet from any existing building.

- **Natural Gas Compressor Stations** shall be permitted as a use by right in all agricultural and industrial districts, and as a conditional use in all other zoning districts, provided:

1. the compressor station is located at least 750 feet from the nearest existing building; or 200 feet from the nearest lot line, whichever is greater, unless waived by the owner of the nearest building or adjoining lot; and

2. the noise level at the nearest property line does not exceed 60dbA or the federally mandated standard, whichever is less.

- **Natural Gas Processing Plants** shall be permitted as a use by right in all industrial districts and as a conditional use in agricultural districts, provided:

1. the processing plant is located at least 750 feet from the nearest existing building or 200 feet from the nearest lot line, whichever is greater unless waived by the owner of the building or adjoining lot; and

2. the noise level at the nearest property line does not exceed 60dbA or the federally mandated standard, whichever is less.

### Dimensional and Supplementary Provisions

- Conditions, requirements or limitations imposed on the construction of oil and gas operations shall not be more stringent than those imposed on other industrial uses in the municipality.
- Conditions, requirements or limitations imposed on the heights of structures, screening and fencing, lighting, or noise related to oil and gas operations shall not be more stringent than those imposed on other industrial uses or other land development with the zoning district where the oil and gas operations are located.
- Setback distances set forth in Chapters 32 and 33 of Act 13 shall not be increased.
- If not regulated by Chapters 32 or 33 of the Act, setback distances from structures or other features may be imposed on oil and gas operations provided they are no more stringent than those imposed on other industrial uses within the municipality.
- Conditions or limitations shall not be imposed on subterranean operations or hours of operation of compressor stations or processing plants.
- Conditions or limitations shall not be imposed on hours of operation for the drilling of oil and gas

wells or the assembly and/or disassembly of drilling rigs.

- Restrictions on vehicular access routes for overweight vehicles shall be limited to those as authorized under 75 Pa.C.S. (related to vehicles) or the MPC.

### Review Period by Municipality

- The review period for **permitted uses** shall not exceed 30 days for complete submissions.
- The review period for **conditional uses** shall not exceed 120 days for complete submissions.

### Definitions

The following terms are defined in Act 13 and consideration should be given to including them in your ordinance(s), as applicable, for purposes of interpretation and enforcement:

- **Building** - An occupied structure with walls and a roof within which individuals live or customarily work.
- **Oil and Gas Operations** - The term includes the following:
  1. Well location assessment, including seismic operations, well site preparation construction, drilling, hydraulic fracturing and site restoration associated with an oil or gas well of any depth;
  2. Water and other fluid storage or impoundment areas used exclusively for oil and gas operations;
  3. Construction, installation, use, maintenance and repair of:
    - oil and gas pipelines;
    - natural gas compressor stations; and,
    - natural gas processing plants or facilities performing equivalent functions; and

4. Construction, installation, use, maintenance and repair of all equipment directly associated with activities specified in paragraphs 1, 2, and 3, to the extent that:

- the equipment is necessarily located at or immediately adjacent to a well site, impoundment area, oil and gas pipeline, natural gas compressor station or natural gas processing plant; and
- the activities are authorized and permitted under the authority of a federal or Commonwealth agency.

- ***Unconventional Gas Well*** - a bore hole drilled or being drilled for the purpose of, or to be used for, the production of natural gas from an unconventional formation.

***If my municipality proposes an ordinance amendment or new ordinance addressing oil and gas operations, how do I know whether it conforms to Act 13?***

If a municipality is not sure whether any proposed ordinance complies with the requirements of Act 13, it may ask the Public Utility Commission (PUC), in writing, to review a proposed local ordinance to

determine if it allows for the reasonable development of oil and gas operations in accordance with the requirements of the MPC and Chapters 32 and 33 of Act 13. The PUC has 120 days to offer an advisory opinion, which cannot be appealed.

***What if my municipality does not amend its ordinance(s)?***

- **It may not be eligible to receive any impact fees that were levied by counties that host unconventional wells.** A portion of the Commonwealth's share of funds will be deposited into the Marcellus Legacy Fund and allocated for a variety of projects, including, but not limited to: highway bridge improvements; water and sewer; greenways, recreation and open space; watershed programs; flood control projects; and environmental stewardship. With regard to funds for highway bridge improvement projects and greenways, recreation and open space projects, a portion of the allocated funds will be distributed to all counties, based on a formula. Funds allocated for other projects may be available to local governments through a grant program.
- **It could be challenged as being in violation of Act 13** and subject to fees and costs associated with a court action.

***Planning Perspectives*** is a newsletter created by the staff of the York County Planning Commission. It covers current topics of interest in the field of Urban and Regional Planning. If you have a suggested topic for future issues, please contact Felicia Dell at 771-9870.