OIL AND GAS DRILLING IN PENNSYLVANIA

The Legal Aspects

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Oil & Gas in PA?

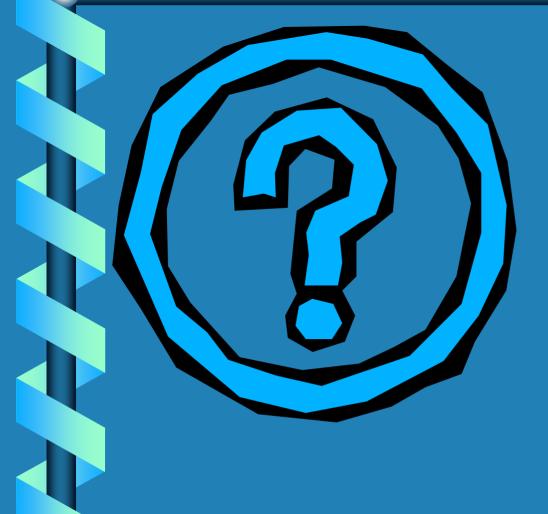
- Oil boom for U.S began in Titusville, PA in mid 1800's
- DEP regulates oil and gas drilling
- DEP issued permits:
 - 2005 6,094
 - 2006 7,394
 - 2007 7,304

PA has about 45,000 natural gas wells and 35,000 crude oil wells

(according to the Independent Oil and Gas Association in Pennsylvania)



The Oil & Gas Act



What can a Township do to protect itself?

PREEMPTION 58 P.S. §601.602

"Except with respect to ordinances adopted pursuant to ... the Pennsylvania Municipalities Planning Code, and ... the Flood Plain Management Act, all local ordinances and enactments purporting to regulate oil and gas well operations regulated by this act are hereby superseded."

PREEMPTION 58 P.S. §601.602

"No ordinances or enactments adopted pursuant to the aforementioned acts shall contain provisions which impose conditions, requirements or limitations on the same features of oil and gas well operations regulated by this act or that accomplish the same purposes as set forth in this act. The Commonwealth, by this enactment, hereby preempts and supersedes the regulation of oil and gas wells as herein defined."



Preemption in a nutshell ...

If a Township ordinance -

 regulates the same features

or accomplishes the same purpose

It is preempted by the Oil & Gas Act



Purposes of the Act:

 Optimal development of oil & gas resources in PA

Protect the safety gas/oil personnel

 Protect the safety and property rights of nearby residents

 Protect natural resources & the environment

What are the "features" of the Oil & Gas Act?

The Permit Process

58 P.S. §201

*No drilling or altering an existing well without a permit from DEP

*Permit application must include plat prepared by an engineer/surveyor

*Notice of application- copy of plat sent by certified mail to: *Surface landowner *All surface landowners or water purveyors w/ water supply within 1,000'

*Notice of drilling – 24 hours notice to: *DEP *Surface landowner *Local political subdivision

Well Location Restrictions 58 P.S. §205

- No wells within:
 - 200' from existing building or water
 Well (w/out consent of owner)

 100' from any stream, spring or body of water

- 100' from any wetlands > 1 acre

Well Site Restoration

58 P.S. §206

Erosion & sedimentation

- Plan pursuant to Clean Streams Law required
- E & S control measures during/after all earthmoving

W/in 9 months of completion of drilling

- Restore the well site
- Remove or fill all pits
- Remove all drilling supplies/equipment not needed for production

• W/in 9 months after plugging well

- Remove all production/storage facilities, equipment ...
- Restore the well site

Protection of Water Supplies 58 P.S. §208

 If drilling affects public or private water supply by pollution or diminution, well operator must restore or replace the water supply

If landowner suspects water supply affected, notify DEP → investigation





58 P.S. §209

Well casings and other safety devices required to prevent blowouts, explosions and fires

Reporting Requirements 58 P.S. §212

- File annual report with DEP: amount of production and status of well
 - Keep records of well analyses, logs, data, etc ... and file w/ DEP within 3 yrs after completion of well

BONDING

58 P.S. §215

Bond filed w/ DEP for well and well site

- Covers
 - Drilling
 - Water supply replacement
 - Restoration
 - Plugging requirements

• Liability for one year after well plugged



- Chapter 3 Underground Gas Storage
- Chapter 4 Eminent Domain
- Chapter 5 Enforcement and Penalties
 - Injunctions to restrain violation of act (DEP)
 - Criminal penalties
 - Civil penalties



• Nalbone v. Borough of Youngsville (522 A.2d 1173)

- Ordinance:

- Drilling is a conditional use
- Only allowed in Oil Production District

Court:

the ordinance was enacted to regulate land use which is the primary purpose of zoning. Therefore, not preempted by the Oil & Gas Act.

***However, after <u>Nalbone</u>, preemption statute amended to add the last two sentences of current statute

<u>Commonwealth v. Whiteford (884 A.2d 364)</u>

- Whiteford wanted to dig a gas well on his property
- Whiteford failed to secure a grading permit from municipality in violation of the Existing Structures Code
- Municipality filed a complaint with the district justice and ordered that Whiteford stop operations

COURT:

Not preempted under Oil & Gas Act since municipality not attempting to regulate an area subject to enforcement under the Act

<u>Great Lakes Energy Partners v. Salem Township</u> (931 A.2d 101)

 Ordinance: required permit to drill, regulated location, design and construction of access roads, transmission lines, well heads and procedure for surface owner complaints

COURT:

regulation of oil & gas "operations" is preempted by the Oil & Gas Act



 Oil Company wanted to drill well on property in residential district

Borough: need conditional use b/c commercial use in a residential district

COURT:

ordinance addressing location and districts for gas well is preempted by the Oil & Gas Act (§601.205)

Summary of Preempted Areas

- Permitting requirements
- Notice requirements
- Well location
- Well site restoration
- Protection of water supplies
- Safety precautions
- Reporting requirements
- Bonding for well site
- Enforcement of Act/penalties

What areas can be regulated by a Municipality?

- bonding of roads