

TESTIMONY ON MARCELLUS SHALE LOCAL IMPACT

PRESENTED TO THE
SENATE MAJORITY POLICY COMMITTEE

BY

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Good afternoon. I am Douglas E. Hill, Executive Director of the County Commissioners Association of Pennsylvania. The CCAP is a non-profit, non-partisan association providing legislative and regulatory representation, education, research, insurance, technology, and other services on behalf of all of the Commonwealth's 67 counties.

I am pleased to appear before you today as part of the local government panel presenting remarks on Marcellus Shale development impacts.

By all estimates, the energy resource contained in Pennsylvania's Marcellus Shale formation has the potential to be one of the most significant since the Commonwealth's 19th century world dominance in energy production. It represents vast opportunities for jobs and local and regional economies, decreased reliance on outside energy sources, and a fresh outlook for many of our older and declining communities. Public and private sector leaders at all levels are eager to welcome and facilitate its development.

Yet exploitation of this resource is not without its pitfalls, and these concerns are exacerbated by an unprecedented rapid pace of exploration and development that has far exceeded the capacity of our state and local infrastructure and our regulatory structures.

Our Association membership has recognized and experienced both sides of this issue, and has adopted this resolution:

The Association supports action by the administration and General Assembly to broadly view and address issues associated with oil and gas exploration in order to minimize negative impacts on local communities, including water quality, water quantity, pipelines, maintenance of county and municipal roads and bridges, permitting, planning, and taxation.

Over the last several years, we have adopted coordinated strategies to address these and other emerging issues. We worked cooperatively with the Rendell administration, including multiple departments, we have developed joint policy with our counterpart local government groups, and we have met with governmental and private interests in other states. We have created an internal working group designed to help counties deal with local pressures caused by development, and we have cosponsored training programs aimed at the broad spectrum of individuals and groups in the communities impacted by exploration and development.

We worked with the Department of Agriculture, the Farm Bureau, the Assessors Association of Pennsylvania, and others to successfully achieve legislation (Acts 88 and 109 of 2010) that addresses treatment of Marcellus wells for Clean and Green purposes.

We have met with the industry and, in conjunction with last fall's attempt at a severance tax, were invited to meet with the Senate Republican Caucus staff work group on a comprehensive proposal. Parenthetically, we applaud your caucus for the diligence, scope, and inclusiveness of this effort and we express our disappointment that the legislative deliberation it anticipated never materialized.

While all of this represents progress, there are indeed many issues remaining to be addressed, some of which require legislative or regulatory action.

Infrastructure. While our counterparts on the panel will discuss this in more detail, we share concerns for infrastructure. The most visible impact is on township roads and county bridges, as developers bring construction equipment and supplies (especially stone for drilling pads and water import and waste water export) to and from the site. Existing bonding requirements are inadequate for township roads, and unavailable for county bridges. And this additional traffic creates previously unheard-of congestion on our smaller municipal roads and town streets.

An important infrastructure issue is adequacy of water supply and waste water treatment capacity, which we will discuss in a little more detail under the environmental heading.

Natural gas requires a pipeline system for delivery to market, installation of which has primarily short-term impacts on local highway systems as well as forest and agricultural lands. There is also limited ability to coordinate pipeline and compressor station locations with local planning needs, and a lack of regulatory oversight for gathering pipes.

Education. Educational infrastructure is catching up to industry demand. While Pennsylvania initially lacked sufficient workers trained for the types of positions required by the industry, our schools, colleges, and workforce development programs have instituted programs to help our citizens take advantage of these job opportunities. Still, for the most-skilled drilling positions most exploration companies rely on outside, out-of-state workers, with the local workforce providing support services in site preparation and related work. Even our secondary schools are seeing an impact, as workers relocate and temporary workers become permanent and bring with them young families.

Housing and Tourism. There are short term impacts on housing and on hotel stock. This is a two-sided coin: While the continued reliance on out-of-state workforce is a boon to landlords and hotel and motel operators, it can be problematic for local services, including traffic congestion and occasional law enforcement issues. It has greatly reduced the availability of affordable housing, affecting our marginal populations. It has even created intermittent problems for counties (and the Commonwealth) when transient stays exceed 30 days, and thus become “residents,” exempt from the county and state hotel taxes. Also, it affects the tourism industry by displacing capacity for tourists, with some spin-off downside effects for local attractions.

Human Services and Criminal Justice. While we do not believe there is any greater incidence of problematic behavior among out-of-state workers than among our resident population, their needs present different types of demands on the system. Unlike the resident population, a transient population has greater stresses in being in an unfamiliar location and without broader social and community supports. This makes prevention and intervention more difficult, and means that extended family and circles of friends are less available to provide aid. Counties see these impacts in children and youth, mental health, and domestic relations.

In the criminal justice system, the same lack of outlets and same lack of supports can increase problematic behavior and reduce our ability to find community alternatives. Additionally,

transient populations present particular difficulties for probation and parole. Based on interstate agreements out-of-state offenders fall under local supervision. And we increasingly have to deal with the complexities and costs of interstate warrants.

County Records Management. An unheralded infrastructure impact has been on county courthouse operations, specifically in the office of recorder of deeds. The rush to secure and record leases requires title search to determine whether the surface property owner also clearly holds the subsurface rights, and our recorders offices have been inundated with legal teams conducting these searches. Most of the Marcellus activity is in our smaller, more rural counties, all of which have limited staff and office capacity, and so most have been compelled to add staff and extend hours due to the volume. Some of the companies have stepped up and assisted these counties in digitizing their records systems.

Quality of Life. Increased traffic, pressure on local community resources, and issues as diverse as trespass, night lighting of operations, and 24-hour noise from drilling, fracking, and construction vehicles have been identified as short- and long-term impacts.

Land Owner Concerns. While we are not suggesting, and do not have any evidence of, any impropriety, many of our commissioners have expressed concern that land owners may not have the benefit of sufficient market and legal advice when making decisions to enter leases. A niche market has developed of brokers seeking to negotiate leases on behalf of landowners. Commissioners have relayed stories of “buyers’ remorse” as land owners who executed early leases think their deals were under-valued.

Environmental. There is much discussion about the quantity of water needed to extract the gas from the Marcellus Shale deposits. We do not profess expertise on the matter beyond noting that there is a sometimes-wide gulf between the estimates of the industry and the commonly held public perceptions. We will simply express concern that there is a potential for short-term deficiencies in available water supply in some areas, which can affect availability and quality for current users.

Similarly, we are concerned about disposal of waste brine generated from fracking operations, which based on its chemical content must be treated. Our systems are already under pressure due to higher permitting standards in most basins, yielding difficult alternatives of capacity expansion to absorb a potentially short-term need, or trucking waste water to remote locations with available capacity. These needs vary considerably from region to region within the state, and vary considerably based on the maturity of the industry in a given area.

Land disturbances, including well site development, access roads, and pipeline installation, can cause problems for habitat loss and fragmentation, invasive species control, and storm water run-off.

Last, there are concerns that development operations have the potential to yield air quality problems due to dust, and water quality problems due to surface run-off.

Regulatory Capacity. A threshold issue is whether there are sufficient and appropriate regulatory controls built into our statutes and related regulations to deal with water, waste water, run-off, and transportation issues. Even when the permitting and oversight functions have an adequate statutory base, we are increasingly concerned that insufficient state resources mean a regulatory staff stretched too thin to adequately do its job.

Our specific concern is that under the Rendell administration the responsibility for issuing erosion and sedimentation permits was removed from our county conservation districts, and placed exclusively with DEP. The Department was at that time only beginning to build capacity, and we believe this capacity is still lacking. The result is that in most respects, counties and municipalities have only nominal direct enforcement capacity through permitting, zoning, and other means, so are heavily reliant on the state to protect our citizens' interests. While we have access to the permit application process and so can monitor local activity, even this process gives us only nominal input and notice to local agencies is often not as timely as we need it to be.

We believe that returning the E&S permitting function to the conservation districts would yield several important results, in particular by placing the permitting with local officials who have broad and detailed familiarity with topography and geology; that, coupled with counties' much greater manpower capacity, would result in more careful scrutiny and monitoring of the permits.

Emergency Management. There is potential for well, pipeline, traffic, hazardous materials, and environmental incidents, all of which require county emergency management planning and many of which require specialized responses. Many of our counties, all of which handle 911 call-taking and dispatch, now require the companies to register well sites as discrete addresses to facility response. Every county must also update its all-hazards plan, in conjunction with its municipalities, to be able respond to the variety of potential events. Adequate preparation also means county and municipal training exercises. Although most calls to date are employee injuries, we must still be prepared for the industry's unique incident response requirements.

Long-term Consequences. While there is no certainty of the quantity or accessibility of Marcellus gas, or the Utica and other formations that may be exploited in the future, there is clear knowledge that it is a finite resource. The breathless reports of considerable prosperity need to be tempered by recollection of Pennsylvania's industrial and resource heyday, when we led the world in production of oil, gas, coal, steel, and hard woods. We must put in place a long term planning process that recalls the decline of these industries, and plans for the inevitable depletion of the Marcellus reserve. At minimum, some portion of the revenues generated should be redirected toward growing the sustainability of our communities – including diversity of job skills, development of technological and training infrastructure, attraction of other industries and employers – so that our citizens do not suffer the same fate as their forebears.

Benefits. While some of these comments might lead to a conclusion that our Association views development of Marcellus Shale to be problematic, we emphasize that it is a balance. We certainly recognize the significant benefit to our local economies, including injection of capital and wealth, job opportunities, diversification of the job market, short term insulation from a down-turned economy, benefits to local service industries, stability of housing markets, and others. Many of our commissioners also report that the companies have reached out to them

with an appreciable and appreciated civic-mindedness. Still, we have the concurrent responsibility to be certain that the industry operates in an environment that gives it sufficient latitude to compete in the marketplace, while appropriately recognizing and managing the impacts that concern the citizens we serve.

Property Taxation. Taxation was our Association's entry point in the discussion of issues needing action. Until 2002, oil and gas, like coal and other minerals, were assessable for real property tax purposes. In 2002, the Pennsylvania Supreme Court, in *Independent Oil and Gas et al v. Fayette County Board of Assessment Appeals*, found that for oil and gas to be assessable they had to be specifically enumerated in law. The ruling flies in the face of language in the General County Assessment law which stated that all property is taxable unless specifically exempted from taxation by the General Assembly. Importantly, the Court's decision was not based on constitutional or equity grounds, but simply on the lack of specific authority.

Counties support legislation that would restore the assessability of oil and gas for real property tax purposes. Assessment would be based on the leasehold value of the mineral, the methodology used for coal, mineral, and other interests, and comparable to the income-based methodology used to assess wind farms, most commercial, and many industrial properties. Because the industry's common lease mechanism constitutes severance of the subsurface rights, the assessment (and tax bill) would fall to the company holding the interest in the oil and gas, and not to the surface owner.

The intent of this approach is to restore equity, both among mineral producers and among property tax payers generally. Any time one segment of property is excluded from taxation, the burden of provision of local government services falls to the remainder of the taxpayers.

We are mindful of the impact of restoration of the tax on the industry, and believe based on the prevalence of property or well-head taxes in other states, and the manner in which we propose to structure the tax, that it will not serve as any meaningful impediment to exploration or development. We also emphasize that it is a matter of equity; coal, limestone and other minerals are assessable, and oil and gas were assessable until 2002. The lease value had been taxable under Pennsylvania law since at least 1910, when Justice Elkin in *Rockwell v. Warren County* found that taxation of mineral estates including oil and gas was "well settled." Only recently was that hundred year history changed by the *IOGA* decision. CCAP's proposal would create tax equity among mineral interests that was impaired by the *IOGA* decision, and maintain uniformity in methods of taxation among all minerals.

Severance Tax and Impact Fee. In the alternative, we have supported a severance tax, as discussed in the opening of this testimony. The discussion this session has now shifted to an impact fee, and in this context, there are three points that we need to make.

First, we emphasize that both state and local revenue issues need to be addressed comprehensively. This is one key aspect of the Marcellus issue where our statutes lag behind; most other states have a combination of severance and property taxes already in place, and we can separately furnish a compilation to the Committee if you do not have it already.

Second, as the discussion trends toward an impact fee, we need to recognize that impacts are more than the visible infrastructure of roads and bridges, and include the full array of local government services. As we trust our testimony and that of others today has pointed out, just like any other industry, commercial endeavor, or homeowner, the gas industry and its employees and contractors have access to and use the full array of local government services. They are a member of the community, valued like all the others but equally beholden to the other members of the community for paying their fair share of support for those services.

Third, we must be careful in nomenclature when discussing an impact fee. While it is correctly a fee or levy of some sort that recognizes the impact of the industry on a community, it is not to be confused with a fee-for-service. All other classes of taxpayers, business or individual, contribute their fair share based on a uniform levy of some kind (e.g., property tax), and we do not itemize services or tailor levies based on the level of access to those services.

Still, some have suggested an impact fee on the gas industry be literally that – an itemized assessment based on services rendered. With the scope and complexity of services we demonstrably are providing, the varied nature of how the service is provided (to a specific gas company or a group of companies, or to an employee or contractor), and the combination of direct and indirect costs for providing those services, it would be difficult at best, and a time and manpower consuming nightmare at worst, to try to equitably bill each company for its service impact. Instead an impact fee should be some uniform levy, comparable in size to that paid by other industries, apportioned across the industry based on some equitable measure of ability to pay, with the revenue distributed by some equitable formula to host counties, host municipalities, and impacted municipalities in host counties.

Thank you for giving us this opportunity to present our comments, and we would be pleased to answer your questions.