

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all local ordinances and enactments purporting to regulate oil and gas well operations regulated by this act are hereby superseded.”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





SAFETY

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



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- 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

Cases

- 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 Nalbone, preemption statute amended to add the last two sentences of current statute

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- Commonwealth v. Whiteford (884 A.2d 364)
 - 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



- Great Lakes Energy Partners v. Salem Township
(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

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- Huntley & Huntley, Inc. v. Borough Council of the Borough of Oakmont (929 A.2d 1252)
 - 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