



**Marcellus Shale Natural Gas Extraction Study
2011 Addendum**

**Pipeline
Legislation and Ordinances**

Leagues of Women Voters of Southeastern Pennsylvania
and
Indiana County

Study Committee

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League of Women Voters of Southeastern Pennsylvania
Extracting Natural Gas from Marcellus Shale Addendum Study
2011
DRAFT Study Guide III

Legislation/Ordinances

The position statement of the League of Women Voters of Pennsylvania on Marcellus Natural Gas Extraction supports legislation that provides for transparency, ensures public input into decision-making regarding the location of facilities and related pipelines; and establishes an efficient and effective oversight system for reporting potential violations and accidents. The development of natural gas from Marcellus Shale has created impetus for legislation in the Commonwealth involving pipelines. First, there is the matter of safety regulation, and, secondly, there is the area surrounding the siting of interstate transmission lines.

Safety

Pennsylvania and Alaska are the only states that do not regulate gathering and non-utility intrastate transmission lines. The U.S. Department of Transportation (DOT) has jurisdiction but has stated that the pipelines that are located within the borders of the state are the responsibility of the Commonwealth. This jurisdiction cannot be implemented without the authority of the legislature. With the advent of natural gas production from Marcellus Shale and the increasing number of gathering lines, the need for oversight and safety regulation is emerging. Public welfare is at risk if pipeline companies are not required to meet consistently the same safety regulations of other operators or neglect to follow safe construction standards. Although some speculate that weather may contribute to problems in the Trans-Alaska pipeline, inadequate oversight may also be a factor.¹

According to a presentation by Commissioner Paul Metro² of the PA Public Utility Commission (PUC) in the fall of 2008, Governor Rendell's office contacted the PUC to attend meetings with other agencies such as the DEP to discuss pipelines related to Marcellus Shale. During the spring of 2010, the PUC held fact-finding hearings on this topic.³ Reasons Mr. Metro provided for PUC's involvement in regulating gathering lines include:

- PUC is the only state agency with certified gas safety engineer inspectors.
- PUC already has jurisdiction over utility transmission lines.
- Gathering and non-utility intrastate transmission lines are supplying Pennsylvania's regulated transmission lines and ratepayers are consuming the gas .
- Pipeline complaints are increasing and the public is requesting PUC assistance.
- Many gathering lines are providing metered services to Pennsylvania residents.

In January 2010, Laser Marcellus Gathering LLC, a pipeline company, submitted an application to the PUC to be granted public utility status. At hearings in April, June, and July of 2010, concerns were raised that such status could open the door for natural gas companies to seize private property through the power of eminent domain. In November 2010, the application was denied by order of Administrative

¹ <http://www.propublica.org/blog/item/regulators-warn-that-trans-alaska-pipeline-poses-safety-risk>

² http://www.puc.state.pa.us/transport/gassafe/pdf/Presentation_SAVE2.pdf

³ http://www.puc.state.pa.us/naturalgas/naturalgas_marcellus_Shale.aspx

Court Judge Susan D. Colwell in the Recommended Decision.⁴

To promote safety while balancing the rights of property owners, the PUC has proposed a change that would

- not provide economic regulation for non-utility pipelines;
- continue to regulate rates for utility pipelines; and
- add to the definition of a public utility to include pipelines that are defined under federal definition for jurisdictional gathering/intrastate transmission.

Many bills are under consideration in PA House and Senate regarding the role of the PUC and pipelines. According to a February 25, 2011 article in *Times Tribune* by Robert Smith, bills on pipeline safety are becoming a priority.⁵ State Fire Commissioner Ed Mann, speaking at a House hearing, noted that the state needs to start tracking the location of pipelines or potentially face serious problems in the future. If a high-pressure gas line is now installed in a rural area, no one needs to keep a record of its location. Future construction by developers could lead to unintended consequences as a result of potential pipeline failure.

Sample Pennsylvania Legislative Proposals

BILL	PROVISIONS
SB 325 (2011-2012)	<ul style="list-style-type: none"> • PUC authorized to conduct safety inspections and investigations, respond to complaints, assess fines or penalties, and address service quality issues for all gas and hazardous liquid pipeline operators • Pipeline operators not considered to be public utilities • Operators charged registration and renewal fees so taxpayers are not forced to cover the cost of providing increased inspections and enforcement • Replaces current state regulations with federal level regulations that, as a rule, are less stringent
SB 305 (2011-2012)	Amends the PA Clean Streams Law so that National Pollution Discharge Elimination System (NPDES) permit (to control storm water related to gas construction) no longer required; reduces compliance to Federal Water Pollution Control Act not state standards
HB 1128 (2009-2010) (failed)	Increases civil penalties for gas safety pipeline violations from \$10,000 to \$100,000 per violation for each day the violation exists with a maximum penalty increased from \$100,000 to \$ 1 million for any series of related violations.
HB 744 (failed 2011)	Provides requirements for natural gas distribution companies with regard to operation and maintenance of service lines

⁴http://mshaletaskforce.org/uploads/Laser_NE_Gathering_ALJ_Recommended_Decision_11-22-10.pdf

⁵ <http://thetimes-tribune.com/news/pipeline-safety-bills-gaining-steam-in-harrisburg-1.1110364#axzz1G7bNjzuh>

BILL	PROVISIONS
<p>HB 744 (failed 2011)</p> <p>HB 2693 (2009-2010)</p> <p>HB 2693 (2009-2010) being reintroduced</p>	<p>Provides requirements for natural gas distribution companies with regard to operation and maintenance of service lines</p> <ul style="list-style-type: none"> • Allows PUC to regulate safety of pipeline operators without Similar to SB 325; • Allows PUC to regulate safety of pipeline operators without considering them to be public utilities with the right to eminent domain. • Sets federal rather than state standard for regulation • Passes costs on to pipeline operators
<p>HB 2693 (failed)</p>	<p>Regulates operators that transport gas and hazardous liquids Provides civil penalties for gas pipeline safety violations</p>
<p>SB 1045</p>	<ul style="list-style-type: none"> • Authorizes state to join the Mid-Atlantic Area Natural Gas Corridor Compact • Promotes regional cooperation in the location, approval and construction of cross-border natural gas pipelines in region • Develops regional pipeline siting council

Siting

Because of difficulties with the FERC process, landowners in Chester County have advocated for changes in the siting of pipelines. These difficulties concern problems created by the complexities of a relatively ill-understood process by the general public and local government officials, poorly designed routes that failed to account for environmental risks, and a lack of consideration for protected or conserved areas as well as historic, cultural and/or archaeological resources. In response to landowner concerns in Chester County regarding difficulties with the FERC process, Rep. Curt Schroeder introduced in the 2010 legislative session HB1817 calling for a natural Gas Interstate Compact.⁶ It provides for the following

- moving siting decisions from the federal level to the regional level;
- expanding notification provisions;
- adopting rules and regulations that ensure free and open participation of the public and other interested parties; and
- involving members of the public through comments, service on the advisory committee, and the development of a regional strategic plan

At a public hearing on this bill before the members of the House Consumer Affairs Committee on September 2010, the Energy Association of Pennsylvania, a group representing gas companies, expressed concern that such an Interstate Compact would ultimately slowdown and obstruct timely construction of necessary pipeline infrastructure projects.⁷

Written testimony of attorney Carolyn Elefant, also noted the proposed Natural Gas Interstate Compact

⁶ HB 1817

⁷ Statement of Terrance Fitzpatrick, President and CEO, Energy Association of Pennsylvania, delivered on September 8, 2010, on H.B 1817 before the Members of the House Consumer Affairs Committee
Legislation/Ordinance

was:

- legally consistent with the Natural Gas Act and the United States Commerce Clause (15 U.S.C. 717);
- consistent with national trends to move from national to regional planning to provide opportunities for states to play a meaningful role; and
- fair in ensuring that those that bear the brunt of a siting decision have a voice in the process and are shielded from the toll of federal eminent domain.⁸

The H.B. 1817 did not reach the house floor during the 2010 session. However, S.B. 104, still under consideration, has similar provisions. It authorizes state to join the Mid-Atlantic Area Natural Gas Corridor Compact, promotes regional cooperation in the location, approval and construction of cross-border natural gas pipelines in region, and develops regional pipeline siting council.

Local Ordinances and Zoning Regulations

A number of cities, boroughs, and townships have been enacting ordinances and regulations to limit and/or restrict natural gas operations. *The PA Environmental Digest* features a piece by Paul Weilage, Planning Director for Wyoming County entitled “Opinion – Natural Gas Pipelines Within Wyoming County.”⁹ In it, he expresses concern about the impact of pipelines on land use patterns. Although the Pennsylvania Municipal Planning Code exempts all activities regulated by the Oil and Gas Act, municipalities can regulate through local zoning where wells are located. Penn State’s Dickinson School of Law provides an interesting overview *Municipal Regulation of Oil and Gas Operations*.¹⁰

If the location of wells can be regulated by local governments, Mr. Weilage believes that this is also true for pipelines. He thus advocates for state standards and guidelines that are depend on assessed risks. Consideration needs to be given to:

- local education on land-use issues to lessen impact created by on-going development;
- good mapping to avoid land-use conflicts;
- analysis of land-use needs during the planning of pipeline corridors to protect prime resources such as soil and to avoid placing pipelines in areas of future development;
- ways to address and mitigate property fragmentation;
- unified design standards for setbacks for pipelines and for development around pipelines that are based on their size and pressure;
- consultation zone standards and requirements for high consequence land uses such as schools or hospitals with high density populations or hard to evacuate populations.

To establish local ordinances to regulate local development around pipelines, communities need standards and the authority from the state. Standards should provide a baseline from which communities can address, through local regulations, land use issues as related to the numerous impacts of proposed

⁸ Written testimony delivered to the PA House Consumer Affairs Committee on September 8, 2011, regarding HB 2817.

⁹ <http://www.paenvironmentdigest.com/newsletter/default.asp?NewsletterArticleID=16011>

¹⁰ law.psu.edu/_.../20101006-Municipal_Regulation_of_Natural_Gas_Operations-Lawrence_County_COG.ppt

pipeline projects. These include: geology (tremors, landslides, subsidence), soils, water resources, vegetation, wildlife, fisheries, special status or endangered species, visual resources, cultural resources, air quality, noise and safety. To assist in the planning, the Pipeline Safety Trust¹¹ has compiled a valuable treasure house of resources. Their website includes the recent report of the Pipelines and Informed Planning Alliance (PIPA)¹² and sample ordinances from local jurisdictions.¹³

¹¹ <http://www.pstrust.org/planningnearpipes.htm>

¹² <http://www.pstrust.org/library/docs/PIPA-Report-Final-20101117.pdf>

¹³ <http://www.pstrust.org/planningordinances.htm>