

August 12, 2019



## Budget Primer

### **Oil and Natural Gas Production Regulation in PA (Act 13 of 2012)**

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Pennsylvania's storied history of fossil fuel development is experiencing another energy renaissance: natural gas. While the state's vast reserves of coal sparked tremendous mining activity in the late 19th century - creating jobs and entire coal byproduct industries - a serious downturn in coal mining decimated the industry during the latter half of the 20th century.

The Marcellus Shale formation in Pennsylvania and neighboring states is now the largest source of natural gas in the United States. Considering its proximity to high-demand markets, the natural gas play is a target for energy development and growth.

The evolution of Pennsylvania's natural gas industry has had a far-reaching impact on the political and social divides inherent in environmental policymaking. The commercial-scale adoption of hydraulic fracturing, or fracking, has boosted industry optimism while raising alarms for environmentalists and concerned citizens. The uptick in natural gas drilling sites in Pennsylvania occurred rapidly creating challenges for policymakers to keep pace with implementing regulations and safeguards on the industry. In 2012, Act 13 overhauled the state's oil and gas laws. This law remains highly controversial seven years later, sparking seemingly endless litigation and setting the stage for serious debate on how we manage Pennsylvania's natural resources.

## Background and History

Prior to Act 13, the Oil and Gas Act of 1984 delineated key environmental safeguards to ensure responsible exploration and drilling for natural gas and oil. The Oil and Gas Act empowered the Environmental Quality Board to promulgate regulations to achieve the new measure's goals. The law's provisions applied, primarily, to conventional natural gas and oil wells.

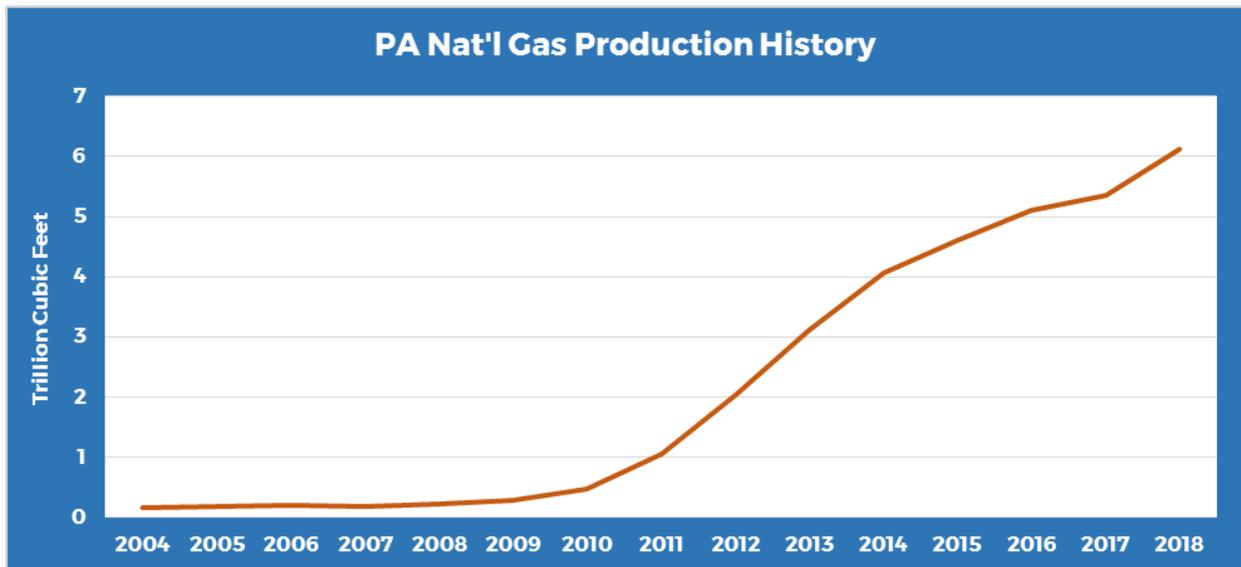
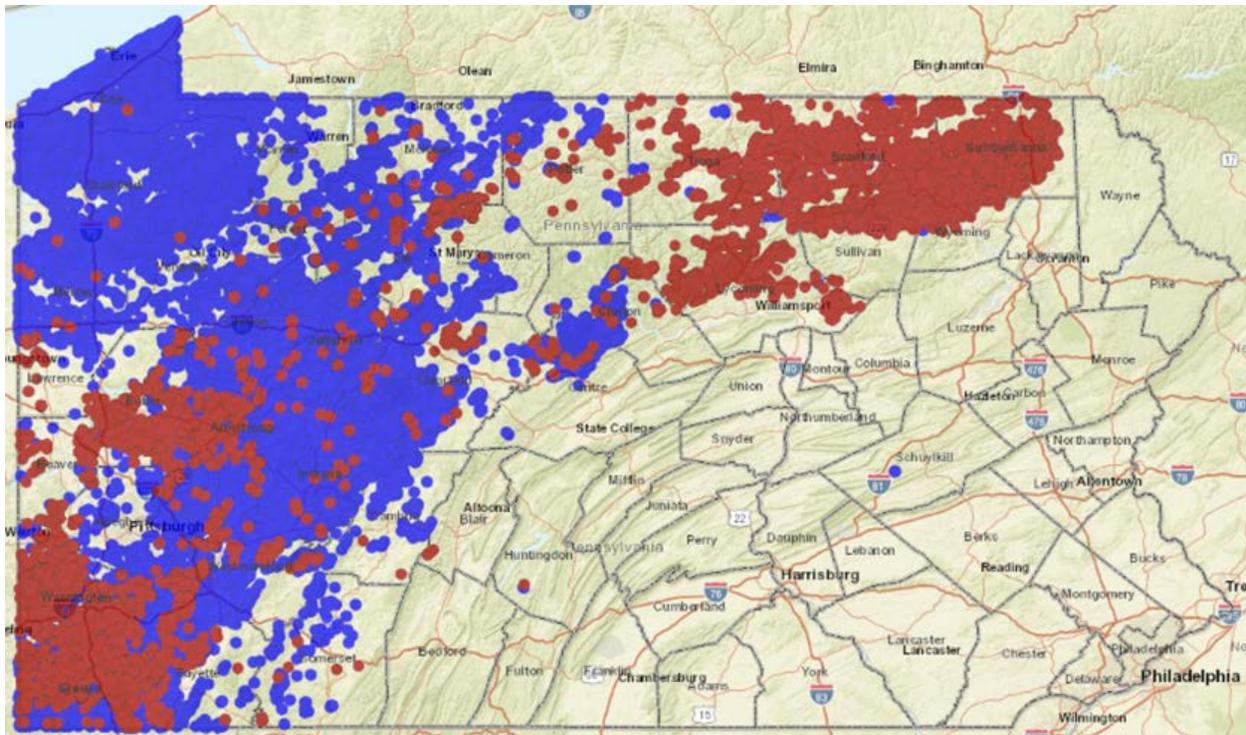
Conventional wells are located underground in areas where there is highly permeable rock, requiring drillers to bore into a pocket of gas for extraction. These wells are drilled vertically, use less space, and can be accessed without fracking. According to the [Pennsylvania Independent Oil & Gas Association](#), an estimated 350,000 conventional oil and gas wells have been drilled in Pennsylvania over the years.

The economic viability of drilling in the Marcellus Shale geologic formation, because of hydraulic fracturing technology, became the catalyst for Act 13. This gas-rich rock formation underlies more than three-quarters of Pennsylvania and is considered to be [one of the largest gas plays](#) in the United States. Although geologists and petroleum engineers have long known about the Marcellus Shale gas deposits, it was not until 2004 that extraction became economically and technologically viable. The Marcellus Shale gas play began in Washington County with Range Resources drilling [Renz No. 1 well](#), and the industry has burgeoned ever since.

## Marcellus Shale Production and Industry Growth

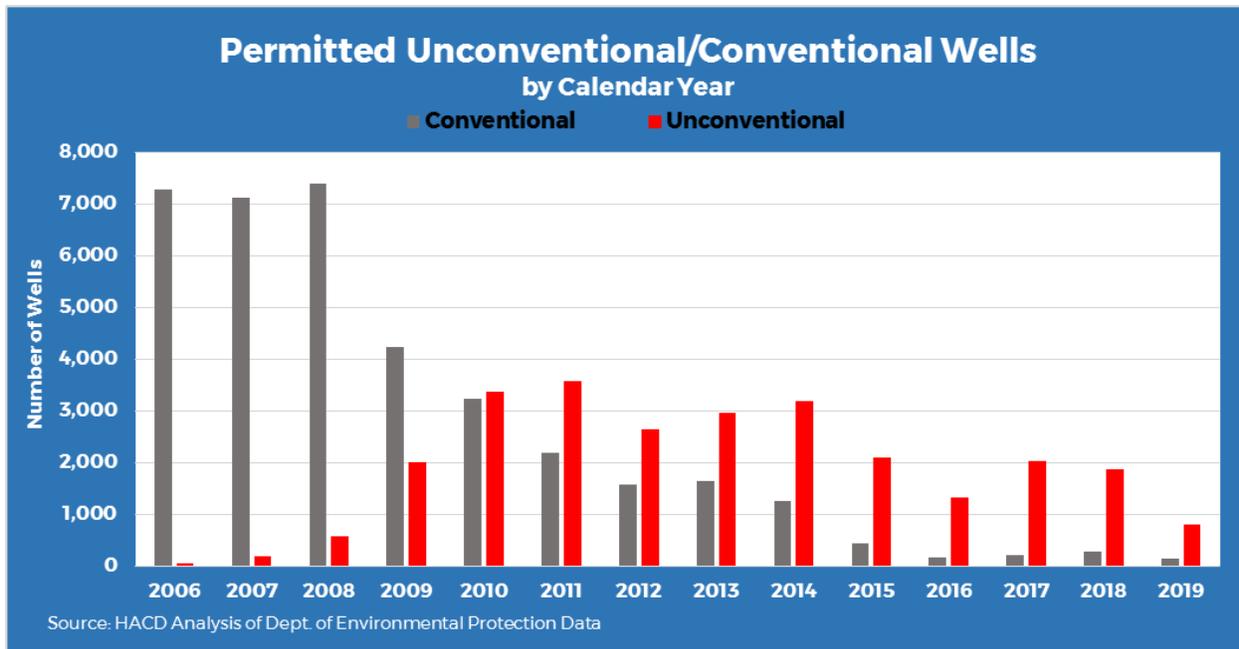
The production of natural gas from unconventional gas wells in the Marcellus Shale has sharply risen since 2004. According to Department of Environmental Protection's 2018 Annual Oil & Gas Report, Pennsylvania produced [6.1 trillion cubic feet](#) of natural gas from unconventional gas wells in 2018. [The map](#) depicts the location and concentration of Marcellus Shale development activity, with **red dots** representing unconventional wells and **blue dots** representing conventional wells.





Since 2008, the number of permits for conventional wells has dropped considerably. Over the same period, unconventional gas well permits grew substantially until peaking in 2011. Since then, because of market constraints and reduced industry activity from low natural gas prices, the number of permits issued each year has declined. Nevertheless, DEP continues to issue permits for natural gas drilling in the Marcellus Shale and, as market conditions change, these numbers will fluctuate as well. The following figure tracks the number of permits issued by DEP for conventional and unconventional gas wells since 2006.





## Regulating an Expanding Industry

The remarkable growth of the natural gas industry in Pennsylvania raised serious questions about how the state would regulate and responsibly manage this energy renaissance. To address concerns, lawmakers worked to amend the commonwealth’s Oil and Gas Act (Act 223 of 1984) and developed what became Act 13.

Act 13 provided wide-ranging amendments to the Oil and Gas Act, including the addition of six chapters to Title 58 (Oil and Gas):

- Chapter 23 – Unconventional Gas Well Fee
- Chapter 25 – Oil and Gas Lease Fund
- Chapter 27 – Natural Gas Energy Development Program
- Chapter 32 – Development
- Chapter 33 – Local Ordinances Relating to Oil and Gas Operations
- Chapter 35 – Responsibility for Fee

## Chapter 23 - Unconventional Gas Well Fee

Act 13 authorized county governments to enact an unconventional gas well fee (impact fee) on wells spud within the county. The impact fee is based on the number of years the gas well has been in existence and the average annual price of gas, as defined by the act. Gas wells pay a higher fee in the initial years after being spud, and the fee diminishes in the out years. The impact fee is scheduled for a period of at least 15 years, and will expire if a severance tax is adopted, unless that provision is simultaneously revoked.

Impact fee revenue is deposited into the Unconventional Gas Well Fund. Act 13 empowers the Pennsylvania Public Utility Commission to distribute the revenue in accordance with the statute.



## Summary of Act 13 Impact Fee Rates

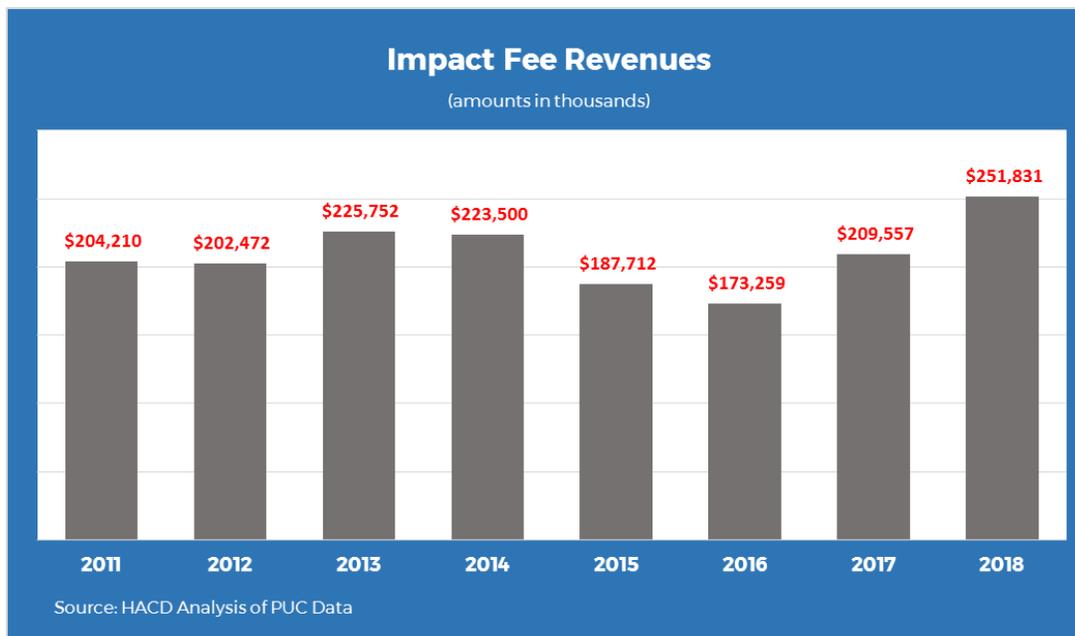
The following table shows all possible fee levels per well as described in Act 13 based on gas prices each year. Once a year, a fee is assigned to each well and is dependent upon the number of years a well has been in operation and the average annual price of gas as defined by the act.

Unconventional Gas Well Fee Schedule	Average Annual Price of Natural Gas				
	\$0.00-2.25	\$2.26-2.99	\$3.00-4.99	\$5.00-5.99	\$6.00+
Year 1	\$ 40,000	\$ 45,000	\$ 50,000	\$ 55,000	\$ 60,000
Year 2	\$ 30,000	\$ 35,000	\$ 40,000	\$ 45,000	\$ 55,000
Year 3	\$ 25,000	\$ 30,000	\$ 30,000	\$ 40,000	\$ 50,000
Years 4-10	\$ 10,000	\$ 15,000	\$ 20,000	\$ 20,000	\$ 20,000
Years 11-15	\$ 5,000	\$ 5,000	\$ 10,000	\$ 10,000	\$ 10,000

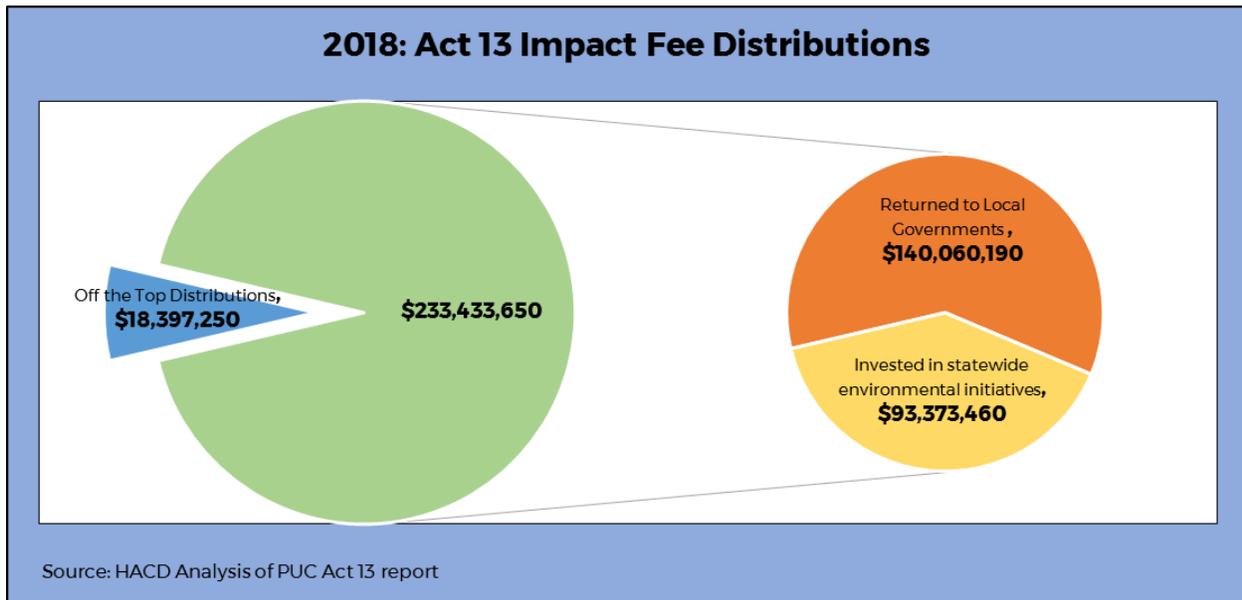
Note: Vertical well fees are 20% of horizontal well fees. Vertical wells are not subject to year 11-15 payments. The average annual price of natural gas is defined as the arithmetic mean of the **New York Mercantile Exchange** settled price for the near-month contract as reported by the **Wall Street Journal** for the last trading day of each month of a calendar year for the 12-month period ending December 31.

### Impact Fee Collections

Since its creation, the impact fee has generated over \$1.6 billion in funding for statewide environmental programs and funds sent back to counties and municipalities to address the effects of natural gas drilling activity, such as deteriorating roads from heavy truck traffic, limited affordable housing options, emergency responders not properly trained on natural gas drilling sites, and potential harm to natural resources or historically preserved sites. Act 13 revenues since 2011, the first reportable year, are listed below.



## Impact Fee Distributions



Act 13 provides a detailed distribution plan for revenues collected from the impact fee. The statute directs the majority of funds (**60 percent**) back to local governments (after **Off-the-Top** distributions) to account for the disturbance from natural gas development.

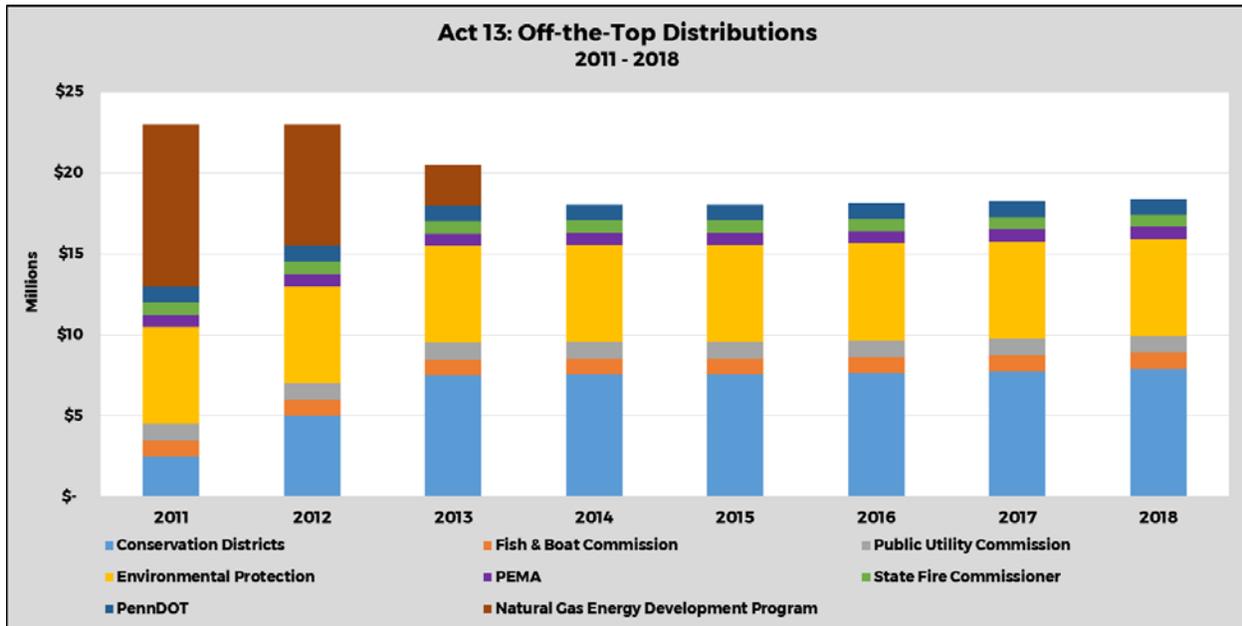
The remaining funds (**40 percent**) are deposited in a dedicated state fund to provide for commonwealth-wide environmental projects. The figure above displays a high-level breakdown of how impact fee revenue collected in 2018 will be distributed.

For 2018 **Off-the-Top** distributions, totaling \$18.4 million, are as follows:

- **\$7.9 million** to Conservation Districts & Conservation Commission (50/50 split);
- **\$1 million** to Fish and Boat Commission;
- **\$1 million** to Public Utility Commission;
- **\$6 million** to Department of Environmental Protection;
- **\$750,000** to Office of State Fire Commission;
- **\$750,000** to Pennsylvania Emergency Management Agency; and
- **\$1 million** to PennDOT.



The history of these expenditures since the first Act 13 report year, 2011, is provided below.



Since its inception, the impact fee has generated **\$157.4 million** for various state and county entities that provide service and oversight to the Marcellus Shale industry.

### 60 Percent to Local Governments

Prior to disbursement to counties and municipalities, Act 13 directs a portion of the 60 percent block of funds to the Housing Affordability and Rehabilitation Enhancement Fund for housing affordability programs. The fund received \$2.5 million in 2011 and \$5 million annually each year since then.

The inherent goal of the natural gas impact fee is to provide a source of funding to local governments that bear the costs, environmental and otherwise, for natural gas development. Local governments receive roughly **60 percent** of funds after the **Off-the-Top** distributions:

- **36 percent** to gas-producing counties;
- **37 percent** to gas-producing municipalities; and
- **27 percent** to non-producing municipalities located in gas-producing counties within the county.

For each of these categories, distributions are determined by a formula that reflects the proportion of wells in the county or municipality to the rest of the state.

Since its inception, the impact fee has generated **\$875 million** for counties and municipalities affected by the growth of the Marcellus Shale natural gas industry, excluding the funds withheld for the Housing Affordability and Rehabilitation Enhancement Fund.

Act 13 restricts the amount allocated annually to each municipality to \$500,000 or 50 percent of the municipality's total budget, whichever is lower, in the prior fiscal year. The law directs any remaining money, as a result of this budget restriction, to the Housing Affordability and Rehabilitation Enhancement Fund.



Local governments are permitted to use impact fee funds for 13 specified purposes, including:

- Construction, reconstruction, maintenance and repair of roadways, bridges and public infrastructure;
- Water, storm water and sewer systems, including construction, reconstruction, maintenance and repair;
- Emergency preparedness and public safety, including law enforcement and fire services, hazardous material response, 911, equipment acquisition and other services;
- Environmental programs, including trails, parks and recreation, open space, flood plain management, conservation districts and agricultural preservation;
- Preservation and reclamation of surface and subsurface waters and water supplies,
- Tax reductions, including homestead exclusions;
- Projects to increase the availability of safe and affordable housing to residents;
- Records management, geographic information systems and information technology;
- The delivery of social services;
- Judicial services;
- Deposit into a county or municipality's capital reserve fund;
- Career and technical centers for training workers in the oil and gas industry; and
- Local or regional planning initiatives.

Since the passage of Act 13, counties and municipalities have most often used impact fee receipts for their capital reserve funds and for public infrastructure construction.

#### **40 Percent to Statewide Initiatives**

Besides requirements to drive funding back to local governments for environmental remediation efforts resulting from local natural gas development, Act 13 created the Marcellus Legacy Fund to receive and distribute the remaining 40 percent of impact fee revenue. This funding is used for statewide initiatives – such as acid mine drainage abatement, gas well management and plugging, development of greenways and recreational trails, sewage treatment projects, and bridge repair and replacement.

Act 13 also directs a portion of revenue received from rent and royalty payments from natural gas production on state lands (collected in the Oil and Gas Lease Fund) to the Marcellus Legacy Fund.

The Marcellus Legacy Fund serves as a pass-through account in that its revenues are disbursed to other funds for actual program investments. Act 13 allows the following disbursements from the Marcellus Legacy Fund:

- **20 percent** to the [Commonwealth Financing Authority](#) for grants for the following:
  - Acid mine drainage abatement, cleanup and mine reclamation, with priority given to projects to recycle and treat water for drilling operations;
  - Orphan or abandoned oil and gas well plugging;
  - Planning acquisition and repair of greenways, recreational trails, open space, and parks;
  - Programs to establish baseline water quality data on private water supplies;
  - Watershed programs and related projects; and
  - Up to 25 percent of funds can be used for flood control projects;
- **10 percent** to the [Environmental Stewardship Fund](#), which is the revenue mechanism for the state's [Growing Greener program](#) (see HACD companion piece on Growing Greener for more programmatic information);



- **25 percent** to the Highway Bridge Improvement Restricted Account within the Motor License Fund to provide for the repair of at-risk deteriorated bridges. Funds are distributed to impacted counties proportionately based on a population-focused formula;
- **25 percent** for water and sewer projects:
  - **Half** is transferred to the Pennsylvania Infrastructure Investment Authority (PennVEST), and
  - **Half** is distributed to the Commonwealth Financing Authority for the H2O PA program;
- **15 percent** for the rehabilitation, planning and repair of greenways, trails, open space, natural areas, community and heritage parks. Funds are distributed to counties proportionately based on a population-focused formula; and
- **5 percent** to the Department of Community and Economic Development for projects related to liquefying or refining natural gas, or converting natural gas to ethane, propane or other substances.
  - Since 2015, this 5 percent is deposited in the **Hazardous Sites Cleanup Fund**.

The impact fee has generated **\$608.4 million** for these statewide environmental remediation initiatives since its creation.

In the most recent report year, 2018, fees available for distribution increased by \$23.4 million (15.9%) to \$242.9 million compared with the prior year, after excluding a one-time anomaly. Before that adjustment, total fees reflect an **\$8.8 million** increase as a result of 2018 Pennsylvania Supreme Court decision in *Snyder Brother's Inc. and Pennsylvania Independent Oil & Gas Association vs. PUC* on "stripper wells." The decision is discussed in the legal challenges section of this briefing. Additional information related to report year 2018 is available via the committee's [budget primer](#).

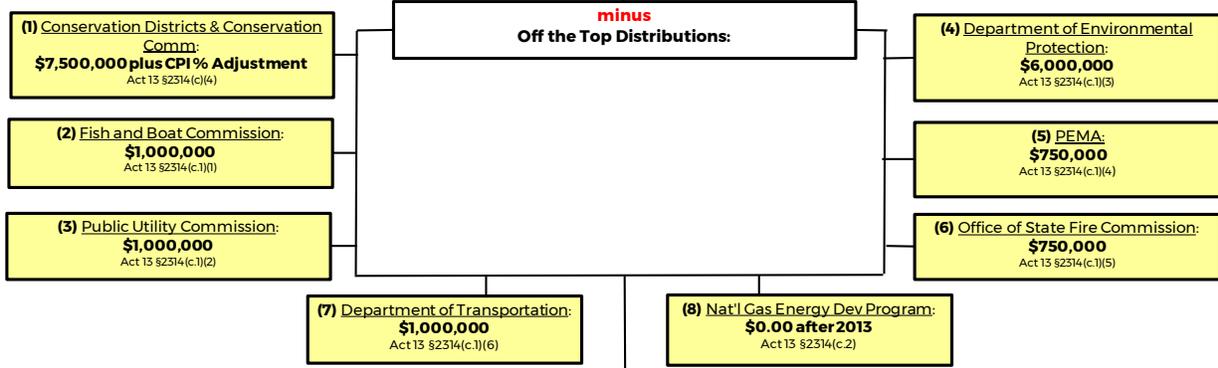


Act 13: Impact Fee	Report Year 2018		
	Amt Distributed	Reg Distribution	Stripper Well Decision
<b>TOTAL COLLECTION:</b>	<b>\$ 251,830,900</b>	<b>\$ 242,964,000</b>	<b>\$ 8,866,900</b>
<b>Distributions Off the Top:</b>	<b>Off-the-Top Distributions</b>		
County Conservation Districts & Conservation Commission (50/50 split)	\$ 7,897,250	\$ 7,897,250	\$ -
Fish and Boat Commission	\$ 1,000,000	\$ 1,000,000	\$ -
PA Public Utility Commission	\$ 1,000,000	\$ 1,000,000	\$ -
Department of Environmental Protection	\$ 6,000,000	\$ 6,000,000	\$ -
PA Emergency Management Agency	\$ 750,000	\$ 750,000	\$ -
Office of State Fire Commission	\$ 750,000	\$ 750,000	\$ -
Department of Transportation	\$ 1,000,000	\$ 1,000,000	\$ -
Marcellus Legacy Fund/Natural Gas Energy Development Program	\$ -	\$ -	\$ -
Subtotal	<b>\$ 18,397,250</b>	<b>\$ 18,397,250</b>	<b>\$ -</b>
<b>60 / 40 Distribution of Remaining Balance:</b>	<b>60 / 40 Local Gov't / Marcellus Legacy Fund</b>		
<b>60 Percent to Local Governments:</b>	<b>\$ 140,060,190</b>	<b>\$ 134,740,050</b>	<b>\$ 5,320,140</b>
Housing Affordability and Rehabilitation Enhancement Fund (taken off top of the 60%)	\$ 5,000,000	\$ 5,000,000	\$ -
36% to Counties with producing unconventional wells	\$ 48,621,668	\$ 46,706,418	\$ 1,915,250
37% to Municipalities with producing unconventional wells	\$ 49,972,270	\$ 48,003,819	\$ 1,968,452
27% to Municipalities that are contiguous or within 5 linear miles of municipalities with wells	\$ 36,466,251	\$ 35,029,814	\$ 1,436,438
<i>Municipality Budget Restriction (taken from 37% and 27%) -- Excess deposited in HARE</i>	\$ 3,225,491	\$ 3,225,491	\$ -
<b>40 Percent to Marcellus Legacy Fund</b>	<b>\$ 93,373,460</b>	<b>\$ 89,826,700</b>	<b>\$ 3,546,760</b>
20% to the Commonwealth Financing Authority	\$ 18,674,692	\$ 17,965,340	\$ 709,352
10% to the Environmental Stewardship Fund	\$ 9,337,346	\$ 8,982,670	\$ 354,676
25% to the Highway Bridge Improvement Restricted Account (PennDOT)	\$ 23,343,365	\$ 22,456,675	\$ 886,690
25% for Water and Sewer Projects (half to PennVEST; half to CFA's H2O PA)	\$ 23,343,365	\$ 22,456,675	\$ 886,690
15% for the Rehabilitation of Greenways, Recreation Trails, Open Space	\$ 14,018,199	\$ 13,474,005	\$ 544,194
5% Hazardous Sites Cleanup Fund	\$ 4,656,493	\$ 4,491,335	\$ 165,158

Included in the breakdown of the 2018 impact fee, is a graphical representation of the relevant sections of Act 13 that comprise the fee. The following diagram is a birds-eye view of the distribution of the impact fee.



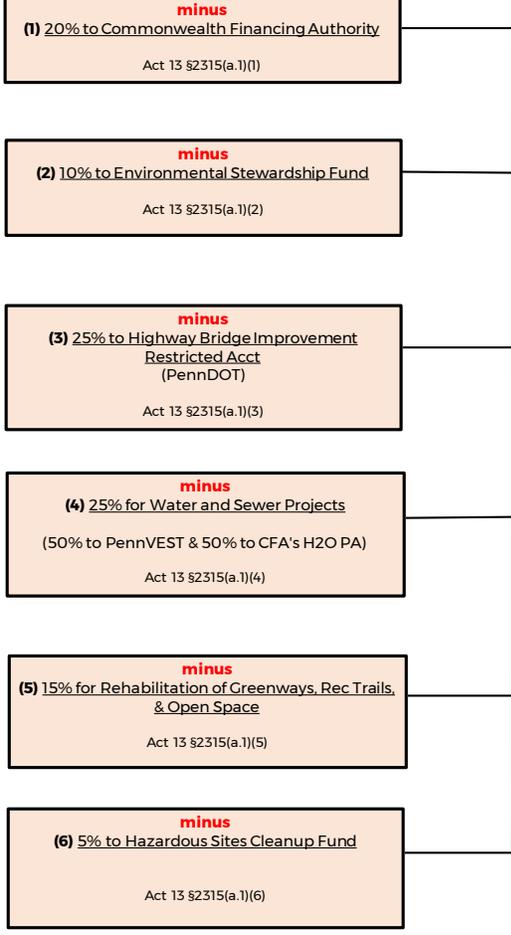
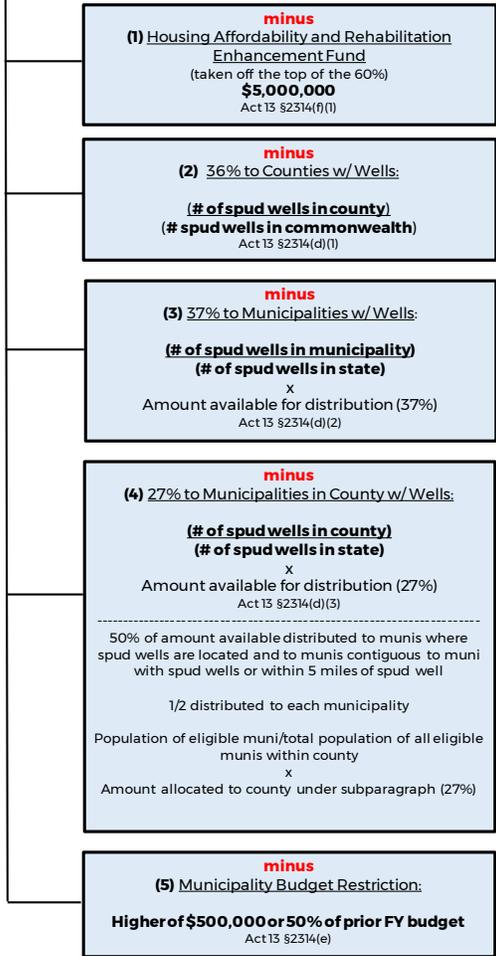
**Act 13: Unconventional Gas Well Fee  
Collection  
FY 19/20**



**Remaining Balance:  
60 / 40 Percent**

**60% to Local Govts (Unconv Gas Well FD):**  
Act 13 §2314(d)

**40% to Marcellus Legacy FD:**  
Act 13 §2315(a.1)



## Chapter 25 – Oil and Gas Lease Fund

Act 13 also directs the expenditure of revenues received in the Oil and Gas Lease Fund -- the depository for rent and royalty payments made to the commonwealth for natural gas production on state forest lands. Specifically, Act 13 authorized the following transfers from the Oil and Gas Lease Fund to the Marcellus Legacy Fund (**pass-through**):

- To the **Environmental Stewardship Fund (ESF)**:
  - For 2013, \$20 million;
  - For 2014 and each year thereafter, \$35 million;
  - For 2015 and 2016, the Fiscal Code limited the pass-through transfer to ESF to \$20 million; and
  - For 2019, the [Fiscal Code](#) eliminated the transfer and roughly replaced that amount with personal income tax revenue.
- To the **Hazardous Sites Cleanup Fund**:
  - For 2015, \$5 million;
  - For 2016 and each year thereafter, \$15 million;
    - Fiscal Code limited the pass-through transfer for 2016 to \$5 million; and
  - For 2019, the pass-through transfer remains at \$15 million

Overall, the inherent volatility of the Oil and Gas Lease Fund has resulted in a number of changes to pass-through transfers for Growing Greener programs and hazardous sites cleanup. The uncertainty of the pass-through transfers, contributes to fluctuations of the ending balances of both the Environmental Stewardship and Hazardous Sites Cleanup funds.

## Chapter 27 – Natural Gas Energy Development Program

The intent of Act 13's was to foster a growing, profitable industry in the commonwealth and Chapter 27 provides a mechanism for this development. It established the Natural Gas Energy Development Program to provide grants to applicants researching new applications and uses for natural gas. The program offered competitive reimbursement grants for the purchase or retrofit of natural gas vehicles, and it sought to promote domestic natural gas as vehicle fuel in Pennsylvania.

Act 13 authorized the disbursement of **\$20 million** for the Natural Gas Energy Development Program, including:

- For 2012/13, **\$10 million**:
  - \$5 million of this allocation was made available exclusively for local transportation organizations (political subdivisions, public transportation authorities, non-profit entities providing public transportation);
- For 2013/14, **\$7.5 million**:
  - 50 percent of this allocation was made available exclusively for local transportation organizations; and
- For 2014/15, **\$2.5 million**.

According to DEP's [2015 annual report](#), these investments have paid for the displacement of 12.2 million gallons of diesel fuel, the deployment of 289 natural gas vehicles, and a large expansion of natural gas refueling stations across the commonwealth.

Funding for the Natural Gas Energy Development Program has been depleted. Chapter 27 of Title 58 expired Dec. 31, 2016.



## Chapter 32 – Development

Chapter 32 of Title 58 is the most extensive and comprehensive provision of Act 13. This section regulates natural gas drilling activity and other environmental protections; it is also designed to protect the safety and security of oil and gas personnel and facilities, the rights of people who live where natural gas is produced, and the natural resources and environmental rights secured by the Pennsylvania Constitution.

Although Chapter 32 language is highly technical, some notable regulations include:

- Requiring well operators to notify host and adjacent municipalities and landowners who have a water supply within 3,000 feet of a well;
- Directing drillers to submit water management plans to DEP so the agency can ensure water withdrawals for hydraulic fracturing do not negatively impact watersheds;
- Empowering DEP to issue orders to compel compliance with the Pennsylvania Safe Drinking Water Act and to protect water supplies from pollution or diminution;
- Creating a chemical disclosure registry for drillers to identify the various additives and chemicals used in the fracking process. The registry is online at [www.FracFocus.org](http://www.FracFocus.org); and
- Granting DEP the power to adopt well permitting criteria, perform site inspections, and levy penalties for noncompliance.

## Chapter 33 – Local Ordinances Relating to Oil and Gas Operations

Chapter 33 of Title 58 is a direct effort by the General Assembly to steer local ordinances over oil and gas development:

- Section 3302 prohibits local governments from adopting ordinances related to development, with the rationale that the state already provides this in Chapter 32;
- Section 3303 deems environmental acts to be of statewide concern to the exclusion of all local ordinances;
- Section 3304 mandates that all local ordinances “allow for the reasonable development of oil and gas resources,” and provides for uniform rules;
- Section 3305 empowers the Public Utility Commission to issue advisory opinions on local ordinances that accommodate the gas industry; and
- Sections 3306 through 3309 detail civil actions, attorney fees and costs, and potential ineligibility of a municipality to receive impact fee dollars if the PUC finds its ordinances violate this law.

A number of provisions in Act 13 of 2012 were legally challenged. The outcome of these challenges are discussed in the [Legal Challenges to Act 13](#) section.

## Chapter 35 – Responsibility for Fee

In Chapter 35, the General Assembly asserts that in its intent to safeguard the vital interests of commonwealth citizens, a natural gas producer would be solely responsible for paying the impact fee. A producer cannot make the fee a liability of the landowner or person in possession of real property.

## Legal Challenges to Act 13

At the time of its passage, Act 13 had become a highly controversial topic. Environmental groups asserted the law did not go far enough to ensure the safety and preservation of Pennsylvania's natural resources. On the other hand, local governments assailed the law for its slew of mandates and preemptions that tied their hands.



In the case of *Robinson Township, et al. v. Commonwealth of Pennsylvania*, the main issue centered on who gets to decide how to zone oil and development. For four years, the case went back and forth from Commonwealth Court to the state Supreme Court, and spawned a landmark ruling from the state Supreme Court that promises to influence environmental decision-making for years to come.

In a 4-2 decision in December 2013, the state Supreme Court affirmed the Commonwealth Court's findings of unconstitutionality (relating to uniformity of local ordinances and authorizing DEP to grant waivers from setback requirements for oil and gas wells) and ruled portions of the law restricting local zoning were unconstitutional. The Supreme Court invalidated portions of Act 13 that established uniform, statewide standards for oil and gas operations and prohibited municipalities from enacting more stringent standards.

The Supreme Court's constitutional interpretation was a critical development in the argument for prioritizing environmental protection and conservation in all actions of the commonwealth. Ultimately, the Supreme Court's ruling in *Robinson* is considered a landmark opinion as it breathes new life into Article I, Section 27 of the Pennsylvania Constitution, the environmental rights amendment of 1971:

"The people have a right to clean air, pure water, and to the preservation of the natural, scenic, historic and esthetic values of the environment. Pennsylvania's public natural resources are the common property of all the people, including generations yet to come. As trustee of these resources, the Commonwealth shall conserve and maintain them for the benefit of all the people."

Questions over a few other controversial provisions were sent back down to the lower Commonwealth Court. In a 2014 ruling, the Commonwealth Court ruled against the environmentalists and upheld the following key aspects of the new law.

Essentially, there were four key issues before the Commonwealth Court:

1. "Doctor gag rule" - The law grants physicians access to information about trade-secret chemicals used in natural gas drilling. Doctors say they need to know what's in those formulas in order to treat patients who may have been exposed to the chemicals. But the law prohibits the doctors from telling anyone what is in those formulas;
2. Eminent Domain - Part of Act 13 allows a private corporation to use the state's eminent domain power to take private property for the storage of natural gas. The court has to decide whether this constitutes a public purpose, which would permit the taking of private property;
3. "Special Law" - Act 13 requires the state Department of Environmental Protection to notify public water suppliers about pollution incidents, but not private well owners. The court is looking at whether this makes it a so-called "special law," tailored for the oil and gas industry, which would be prohibited under the state constitution; and
4. Severability - The court is looking specifically at several sections that give the state Public Utility Commission the authority to review local zoning ordinances and withhold impact fee money to municipalities. The question now is whether these sections remain viable, given that the other zoning sections were tossed out.

Shortly after Commonwealth Court's ruling, the PUC appealed the decision back to the Supreme Court asserting it still had final say on whether local zoning rules violated Act 13.

In September 2016, the PA Supreme Court ultimately struck down four additional portions of Act 13, and reaffirmed its strengthening of the environmental rights amendment. This most recent ruling addressed the four remaining issues:

(1) Disclosure of trade secrets to the medical profession:



The court reversed the Commonwealth Court's finding regarding the "doctor gag rule" in that it violated the Pennsylvania Constitution as a "special law" that treated the natural gas industry differently than others. Furthermore, physicians could not be compelled to sign a confidentiality agreement in order to obtain proprietary product information in order to render a diagnosis of a patient.

(2) Eminent domain authority of private corporations engaged in natural gas storage and transportation:

Finally, the court found that granting of eminent domain<sup>1</sup> powers to natural gas companies to facilitate construction of infrastructure to move or store gas violated state and federal constitutions by permitting the taking of private property for a private purpose.

(3) Spill notification to public and private water sources:

Act 13's differentiation between public- and private-water supplies, in terms of notification of spills, was also struck down by the court because it violated the state constitution's ban on "special laws." The General Assembly was granted time to draft legislation to fix this discrepancy.

(4) Pennsylvania Public Utility Commission ("PAPUC") review of local ordinances:

The court made clear that the PUC no longer has authority to review local zoning ordinances regulating oil and gas operations, and these companies would not be allowed to speed up their challenges to municipal objections by going immediately to Commonwealth Court; they would need to start at the beginning of the judicial system.

## *Impact of Robinson on the Environmental Rights Amendment*

The *Robinson* decision impacts key aspects of oil and gas operations and presents further challenges to the industry's development throughout the Commonwealth. In June 2017, in *Pennsylvania Environmental Defense Foundation v. Commonwealth of Pennsylvania*, the PA Supreme Court reaffirmed and extended its decision in *Robinson*. The court rejected the Commonwealth Court's previous interpretation of the environmental rights amendment by reaffirming the commonwealth's duty as a trustee of the public natural resources in Pennsylvania, discarded the three-prong test established in *Payne*, and established a precedent that will require lawmakers to carefully consider environmental impacts of future decisions.

## **Stripper Well Decision**

### ***Original Decision***

In December 2018, the [Pennsylvania Supreme Court issued a decision](#) *Snyder Brothers, Inc. v. Pennsylvania Utility Commission* (PUC). The issue hinged on the word "any" within the definition of a "**stripper well**" and if an unconventional gas well fell under the definition of a stripper well, it would not be subject to the Act 13 impact fee. As defined in §2301 of Act 13 of 2012, an unconventional gas well incapable of producing more than 90,000 cubic feet of gas per day during **any** calendar month, including production from all zones and multilateral well bores at a single well, without regard to whether the production is separately metered is considered a "stripper well." In its decision, the Supreme Court turned to legislative intent, which it found was to assist communities affected by drilling by providing "an adequate and stable source of revenue;" thus, finding that drillers operating vertical natural gas wells whose production exceeds 90,000 cubic feet per day for even one month of the year will be required to pay impact

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<sup>1</sup> Eminent domain is the right of a government or its agent to expropriate private property for public use, with payment of compensation.



fees. As a result of the ruling, collections from previously disputed wells and outstanding payments are \$8.8 million.

### **March 2019 Decision**

Pennsylvania Independent Oil & Gas Association (PIOGA) and Snyder Brother's Inc. [filed an application for Reconsideration of Appellee](#) as a result of the Supreme Court's 2018 decision. In March 2019, the Supreme Court denied PIOGA's request for reconsideration, however it granted Snyder Brothers' request and remanded it to Commonwealth Court to be addressed. Commonwealth Court's decision is pending.

## **The Future of Act 13**

Since the earliest days of its creation, Act 13 has been a source of great controversy. Some argue the law's impact fee is insufficient and not proportional to the environmental degradation caused by fracking, others assert that DEP has overstepped its bounds in drafting onerous regulations inhibiting growth, and that the impact fee -- functioning as a tax -- is already negatively impacting Marcellus Shale development.

The courts have sought to provide general direction to lawmakers and regulators, especially in terms of strengthening the environmental rights amendment to the Pennsylvania Constitution. Still, the contradicting actions of the Supreme Court and lower courts show there are no simple answers.

The ultimate goal of nurturing an industry that promises vast economic returns and prosperity for Pennsylvanians -- while remaining vocal stewards of our environmental resources -- is an elusive and, perhaps, subjective target. Striking this balance will be a critical policy objective in the coming years.

