

## **A Call to Action on the Municipal Regulation of Natural Gas Activities**

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The extraction of natural gas from Marcellus Shale has been portrayed by some as either an economic savior or environmental nightmare. The purpose of this article is not to argue either of these positions. Instead, this article is a call to action, whether you hope to capitalize on the economic upside, avoid the environmental downside, or pursue some path in between. By answering this call, citizens of the region can take control and make informed decisions about their own futures.

Natural gas development may fit in very well or even go unnoticed in some areas, and the community may welcome those activities with few restrictions. In other areas, development activities might appear totally out of place or raise reasonable safety concerns. A town may wish to respond to applications based on its existing zoning ordinance, or it may wish to guide potential Marcellus Shale development to certain districts within the community. The bottom line is that municipalities have the right and the duty to regulate where activities can take place, just like they regulate where homes, farms, retail shops or manufacturing plants may be located.

The Oil and Gas Act prevents municipalities from regulating the technical details of well construction – those decisions are left to the state. At the risk of oversimplifying, the Act controls *how* the wells are drilled, but does not address *where* the wells may be located, nor does it address the broad range of activities and land uses which are necessary to bring the newfound natural gas to market.

The location of wells is just the beginning of the story. Before the gas reaches the market it must be filtered, metered, pressurized and transported through a network of pipelines. Beyond this, it may require processing. Many of these activities take place above ground, in facilities that may have similarities to industrial activities and that are appropriately subject to local zoning.

Municipalities should take the time to thoroughly consider how natural gas development will impact their communities. Even more important, municipalities need to plan for development before specific proposals are put forward, and they find themselves simply reacting to proposals and doing so with inadequate tools.

Unfortunately, many municipalities do not have a sufficient framework for evaluating proposed natural gas activities. The Marcellus Shale boom was largely unforeseen, so a zoning ordinance drafted just five years ago may not be adequate. In its report this past summer, the Governor's Marcellus Shale Advisory Commission pointed out that in many cases, the rural communities where drilling is most likely to take place "have not adopted sufficient land use controls to

protect citizen interests.” Once an application is filed, it is too late to figure out the rules or change them. The application must be judged based upon the ordinance in place when it was filed, however inadequate or contrary to the municipality’s overall development preferences.

With that background, where do you go from here? First, get a better understanding of where your municipality stands. Does it openly embrace all of the natural gas development it can get, or does it want to limit those activities to specific areas? Second, evaluate whether your existing ordinances and regulations advance those goals. Are they silent on natural gas activities? Will they stand up to challenge? Bear in mind that, as a general rule, municipalities may not completely ban a legitimate business, so a court may invalidate an ordinance that makes natural gas development impossible in a particular community. Similarly, a court will invalidate an ordinance that is so vague that applicants cannot determine what they must do to gain approval.

Finally, if the existing framework needs work, engage in the thoughtful process of drafting and revising these ordinances and regulations so that they best achieve the desired outcomes and better withstand challenges. While municipalities have the authority and duty to regulate certain activities within their borders, that authority is not unlimited. Municipalities should avoid the temptation to regulate areas outside their authority, such as the technical design of wells and pipelines.

Pennsylvania’s communities have the opportunity to shape their own destiny. Determine what’s right for your community. Encourage your municipality to enact or update a comprehensive ordinance to regulate natural gas development activities to achieve those goals. Call your senators and representatives in Harrisburg to tell them that however natural gas activities are regulated at the state level, the placement of those activities must continue to be controlled at the local level.