Welcome!

On behalf of the PBA Shale Energy Law Committee, co-chairs Anne John, John Carroll and Jeff Malak extend a warm welcome to all of our returning and new members as we present the second issue of your committee newsletter. We would like to acknowledge the efforts of Newsletter Editor Paul Yagelski, who, with the assistance of Brian Pulito and contributors Chloe J. Marie and Ross Pifer of the Penn State Center for Agricultural and Shale Law, has worked hard to produce another outstanding newsletter. We hope you find it to be informative and that it will prove to be a helpful resource in your practice. We also would like to express our appreciation to PBA staff liaison Pam Kance and senior publications editor Nancy Wilkes for lending their expertise and hard work. We are always looking for new ideas to make this committee work for you; this newsletter is an important part of that process. If you would be willing to provide content for the next newsletter, or suggested topics, please contact Mr. Yagelski or Mr. Pulito directly. Enjoy!

Message from the Co-editors

Dear fellow members of the Shale Energy Law Committee:

We hope that you enjoy the second issue of the PBA Shale Energy Law Committee newsletter. It is our intent that each issue include case summaries, legislative updates, regulatory changes and articles concerning subjects that impact shale energy law. In particular, your articles are important. If you have an article that you would like to share with the other members of the Committee, please forward it to Brian or me. In addition, we could use assistance in preparing the regulatory section of the newsletter. Along with case summaries and legislative updates, this section is and should be an integral part of the newsletter as our goal is to make the newsletter as informative as possible. Should you have any input as to how we can make the newsletter better, please forward your suggestions to us.

Best regards,

Paul R. Yagelski and Brian Pulito

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Background: Lessors of oil and gas rights brought action against lessee, its chief financial officer (CFO), and natural gas transporter, alleging, inter alia, that the lessee and transporter violated the Racketeer Influenced and Corrupt Organizations Act by entering into an agreement to charge inflated transportation costs for the purpose of reducing the lessors’ royalty payments.

Holdings: (1) Lessors’ allegations went beyond a breach of contract claim; (2) lessors alleged that they suffered injury; (3) lessors alleged that wire and mail fraud committed by the lessee and transporter proximately caused a reduction in their royalty payments; (4) lessors alleged a scheme to defraud; (5) lessors alleged that the lessee and transporter engaged in a pattern of racketeering activities; (6) lessors alleged that defendants participated in conduct of racketeering enterprise; (7) lessors stated unjust enrichment claim; and (8) venue was proper as to the CFO.


Background: Lessee of oil and natural gas rights on lessors’ properties brought action seeking an injunction barring lessors from continuing to pursue any class claims against lessee in arbitration.

Holdings: (1) Arbitration provision in leases was, governed by Federal Arbitration Act, and (2) lease agreements did not provide for class arbitration. Lessee of oil and natural gas rights on lessors’ properties could not be compelled to submit lessors’ class claims arising out of lease agreements to arbitration, where the arbitration clause contained in the lease agreements was silent as to class arbitration, and thus did not evidence parties’ intent to agree to class arbitration.

Delaware Riverkeeper Network v. Secretary of Pennsylvania Department of Environmental Protection, 833 F.3d 360 (3rd Cir. 2016)

Background: After the Federal Energy Regulatory Commission issued a certificate of public convenience and necessity to Transcontinental Gas Pipeline Company, LLC for a natural gas pipeline expansion project, environmental organizations filed separate petitions seeking review of water quality-related permitting decisions by the Pennsylvania Department of Environmental Protection (“PADEP”) and the New Jersey Department of Environmental Protection (“NJDEP”) in connection with the project.

Holdings: (1) The court had jurisdiction under the Natural Gas Act (“NGA”) to review permitting decisions; (2) the petitions were not moot; (3) Pennsylvania and New Jersey waived sovereign immunity for NGA suits; (4) the NJDEP did not deprive organizations of the opportunity to comment; (5) the NJDEP did not act arbitrarily or capriciously in issuing fresh water wetlands individual permits; (6) the NJDEP did not act arbitrarily or capriciously in issuing Federal Flood Hazard Area Individual Permits; and (7) the organizations were not prejudiced by the PADEP permitting actions.


Background: Well owner sought review of adjudication of the Environmental Hearing Board dismissing his appeal upon determining that he did not meet his burden proving that natural oil and gas drilling operations contaminated his well water.

Holdings: (1) substantial evidence supported the finding of the Environmental Hearing Board that the site of the natural gas operations was not the source of constituents found in the well owner’s water supply. There was evidence that many of the constituents detected between the well water and the site were naturally occurring, other constituents found in the well were not unique to oil and gas activities. Higher levels of chlorides leaked at the site were not detected in the well’s water supply. The water quality of other neighboring springs refuted a hydrogeological connection between the site and the well, and there was expert testimony that the groundwater pathway from the site was not toward the well. (2) the Environmental Hearing Board did not capriciously disregard evidence in
Case Summaries

CONTINUED FROM PAGE 2

finding that the site of the natural gas operations was not the source of the constituents found in the well owner’s water supply. The board considered evidence and made determinations as to weight and credibility. The board found that many of the constituents were naturally occurring or not unique to drilling. The board focused on concentrations and ratios of constituents, and the board considered evidence of hydrogeological connection but ultimately determined that it was outweighed by contrary evidence. (3) the Environmental Hearing Board did not improperly rely on speculative evidence in finding that the existence of factors other than natural gas operations could explain the pollution of the water well. Constituents detected in the well’s water had possible sources on or nearby the owner’s property and were not prominent components of sources found at the site of natural gas operations, and an expert testified that the well was not isolated from the ground surface and that the cap was not sealed, which provided a mechanism for surface water infiltration into the well.


Background: An oil and gas company brought an action challenging the constitutionality, validity, and enforceability of a township ordinance purporting to establish a Community Bill of Rights, and seeking declaratory and injunctive relief. The township counterclaimed, arguing that by challenging the ordinance, the company was violating the inalienable rights of the people of the township. Both parties moved for judgment on the pleadings.

Holdings: (1) The township’s claimed right to local community self-government did not allow it to enforce an ordinance provision prohibiting the right to challenge an ordinance in court; (2) the ordinance provision which prohibited the depositing of waste materials from oil and gas extraction and declared permits or licenses awarded by state or federal authorities invalid exceeded the township’s legislative authority; (3) the portion of the ordinance purporting to create a legal cause of action in the township and its residents to enforce an ordinance exceeded the township’s legislative authority; (4) the portion of the ordinance which purported to divest corporations of their rights as persons was preempted; (5) the portion of the ordinance providing that violators of the ordinance would not possess any other legal rights, including the power to assert state or federal pre-emption in an attempt to overturn the ordinance, was pre-empted; and (6) a portion of the ordinance providing that rights and prohibitions within the ordinance would trump Pennsylvania law when there was a conflict between state and local law was pre-empted.

Pennsylvania Independent Oil and Gas Association (PIOGA) v Commonwealth of Pennsylvania, Department of Environmental Protection (DEP), 146 A.3d 820 (Pa. Commonwealth 2016)

Background: PIOGA brought a declaratory judgment action against the DEP asking the Commonwealth Court to declare that the DEP could not apply and enforce Section 321S(c) of the Pennsylvania Oil and Gas Act, also known as Act 13, 58 Pa. C.S. § 321S(c), as part of its well permit application process. PIOGA contended that the Pennsylvania Supreme Court enjoined the application and enforcement of § 321S(c) of Act 13 in Robinson Township v. Commonwealth, 623 Pa. 564, 883 A.3d 901 (2013) (Robinson Twp. I). PIOGA initiated its action because after Robinson Twp. I, the DEP, as part of the well permit application process continued to seek information from applicants relating to the impact that a proposed well site will have on the public natural resources identified in § 321S(c) of Act 13. The DEP contended that notwithstanding Robinson Twp. I, § 321S(c) of Act 13 provided the DEP with authority to require the applicants to complete the Public Resources Form and to comply with the PNDI policy and to consider this information in evaluating the impact a proposed well site would have on public natural resources.

Holdings: The Commonwealth Court rejected PIOGA’s request for a declaratory judgment that the DEP lacked the authority to apply and enforce in any and all respects § 321S(c) of Act 13 and to consider the impact that a proposed well site will have on public natural resources. To the contrary, the DEP’s authority under § 321S(c) to consider the impact that a proposed well will have on public resources, those listed and unlisted, is extant, limited only by the portion of the Supreme Court’s mandate in Robinson Township I that enjoined its application and enforcement with respect to the water source setback and waiver provisions set forth in § 321S(b). In practice, this means that when the DEP considers the impact of the proposed well on a source or sources used for public drinking supplies, it is not constrained to do so “in accordance with” enjoined § 321S(b).
Oil & Gas Legislative Update: Regular Session 2017-18

PENDING LEGISLATION

Regular Session 2017-2018

House Bill 91

Short Title: An act amending the act of July 11, 2006 (P.L. 1134, No. 115), known as the Dormant Oil and Gas Act, further providing for purpose, for definitions and for creation of trust for unknown owners.
Prime Sponsor: Representative GODSHALL
Last Action: Referred to ENVIRONMENTAL RESOURCES AND ENERGY, Jan. 23, 2017 [House]
Memo: Former HB 70 Dormant Oil and Gas Act
Printer’s Number: 74*

House Bill 113

Short Title: An act amending Title 58 (Oil and Gas) of the Pennsylvania Consolidated Statutes, in unconventional gas well fee, repealing expiration; and providing for imposition of tax, for registration, for meters, for assessments, for time for assessment, for extension of assessment period, for reassessments, for interest, for penalties, for criminal acts, for abatement of additions or penalties, for bulk and auction sales, for collection upon failure to request reassessment, review or appeal, for tax liens, for tax suit reciprocity, for service, for refunds, for refund petition, for rules and regulations, for recordkeeping, for examinations, for unauthorized disclosure, for cooperation with other governments, for bonds and for deposit of proceeds.
Prime Sponsor: Representative Harper
Last Action: Referred to ENVIRONMENTAL RESOURCES AND ENERGY, Jan. 23, 2017 [House]
Memo: Marcellus Shale Severance Tax Combines with the Shale Impact Fee
Printer’s Number: 89*

House Bill 534

Short Title: An act amending Title 58 (Oil and Gas) of the Pennsylvania Consolidated Statutes, in unconventional gas well fee, further providing for distribution of fee and for Statewide initiatives.
Prime Sponsor: Representative THOMAS
Last Action: Referred to ENVIRONMENTAL RESOURCES AND ENERGY, Feb. 17, 2017 [House]
Memo: Marcellus Legacy Fund
Printer’s Number: 560*

House Bill 557

Short Title: An act amending the act of July 20, 1979 (P.L. 183. No. 60), known as the Oil and Gas Lease Act, further providing for definitions; and providing for minimum royalty for unconventional oil or gas well production and for remedy for failure to pay the minimum royalty on unconventional oil or gas wells.
Prime Sponsor: Representative EVERETT
Last Action: Referred to ENVIRONMENTAL RESOURCES AND ENERGY, Feb. 17, 2017 [House]
Memo: Guaranteed Minimum Royalty Act (Act 60 of 1979)
Printer’s Number: 580*

Senate Bill 32

Short Title: An act amending Title 58 (Oil and Gas) of the Pennsylvania Consolidated Statutes, in development, further providing for well plugging funds.
Prime Sponsor: Senator HUTCHINSON
Last Action: Referred to ENVIRONMENTAL RESOURCES AND ENERGY, Jan. 12, 2017 [Senate]
Memo: DEP Regulation Violation Fee Transfer
Printer’s Number: 13*

Senate Bill 77

Short Title: An act amending Title 58 (Oil and Gas) of the Pennsylvania Consolidated Statutes, in unconventional gas well fee, further providing for distribution of fee.
Prime Sponsor: Senator GREENLEAF
Last Action: Referred to ENVIRONMENTAL RESOURCES AND ENERGY, Jan. 13, 2017 [Senate]
Memo: Funding for Natural Gas Drilling Health Research
Printer’s Number: 57*

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Senate Bill 138

Short Title: An act amending the act of July 20, 1979 (P.L. 183, No. 60), known as the Oil and Gas Lease Act, further providing for definitions, for payment information to interest owners, for accumulation of proceeds from production and for conflicts and providing for joint ventures and for inspection of records.

Prime Sponsor: Senator YAW
Last Action: Referred to ENVIRONMENTAL RESOURCES AND ENERGY, Feb. 2, 2017 [House]
Memo: Oil and Gas Lease Protection Package
Printer's Number: 92*

Senate Bill 139

Short Title: An act providing for protection for a lessor of natural gas rights who reports a violation or suspected violation of a contractual agreement and for remedies and penalties.

Prime Sponsor: Senator YAW
Last Action: Referred to ENVIRONMENTAL RESOURCES AND ENERGY, Feb. 2, 2017 [House]
Memo: Oil and Gas Lease Protection Package
Printer's Number: 93*

Senate Bill 141

Short Title: An act amending Title 58 (Oil and Gas) of the Pennsylvania Consolidated Statutes, in development, providing for lease extended by production.

Prime Sponsor: Senator YAW
Last Action: Referred to ENVIRONMENTAL RESOURCES AND ENERGY, Jan. 20, 2017 [Senate]
Memo: Pugh Clause
Printer's Number: 118*

Senate Bill 142

Short Title: An act amending Title 58 (Oil and Gas) of the Pennsylvania Consolidated Statutes, in utilization, providing for unconventional oil and gas conservation by consolidating the Oil and Gas Conservation Law with modifications relating to definitions, standard unit order, process, administration, standard of review, hearings and appeals, establishment of units, integration of various interests, lease extension and scope, providing for gas and hazardous liquids pipelines, and making a related repeal.

Prime Sponsor: Senator YAW
Last Action: Referred to ENVIRONMENTAL RESOURCES AND ENERGY, Jan. 20, 2017 [Senate]
Memo: Company to Company Integration
Printer's Number: 119*

Senate Bill 335

Short Title: An act amending Title 58 (Oil and Gas) of the Pennsylvania Consolidated Statutes, in development, further providing for protection of water supplies.

Prime Sponsor: Senator FONTANA
Last Action: Referred to ENVIRONMENTAL RESOURCES AND ENERGY, Feb. 15, 2017 [Senate]
Memo: Water Testing Results by DEP
Printer's Number: 333*

Senate Bill 392

Short Title: An act amending Title 58 (Oil and Gas) of the Pennsylvania Consolidated Statutes, in development, further providing for protection of water supplies, for transportation records regarding wastewater fluids, for inspection and production of materials, witnesses, depositions and rights of entry and for inspection reports.

Prime Sponsor: Senator YUDICHAK
Last Action: Referred to ENVIRONMENTAL RESOURCES AND ENERGY, Feb. 16, 2017 [Senate]
Memo: Reintroduction of Legislation - Improvements to DEP's Water Quality Testing Program
Printer's Number: 391*
After years of study, on Dec. 13, 2016, the U.S. Environmental Protection Agency (EPA) finally released its final report on Impacts from the Hydraulic Fracturing Water Cycle on Drinking Water Resources in the United States. Despite much attention on the changes to some of the specific language used, this long-awaited final report largely conforms with the preliminary findings set out in the EPA’s draft assessment, dated June 2015, that hydraulic fracturing activities have some potential to impact drinking water resources, but that impacts to date have been relatively isolated rather than pervasive.

Changes have been made in the final report, in comparison with the draft assessment, including providing further clarification relating to the major findings, adding other chemicals to the chemicals listed in the draft assessment, and better identifying gaps in data and uncertainties in scientific knowledge. Notably, EPA also reconsidered the language of its conclusion in the draft assessment that the agency “did not find evidence that these mechanisms have led to widespread, systemic impacts on drinking water resources in the United States.” EPA excluded this sentence in its final report explaining that “contrary to what the sentence implied, uncertainties prevent EPA from estimating the national frequency of impacts on drinking water resources from activities in the hydraulic fracturing water cycle.”

The final report is structured in a similar manner to the draft assessment, focusing on five stages in the hydraulic fracturing water cycle: i) water acquisition; ii) chemical mixing; iii) well injection; iv) produced water handling; and v) wastewater disposal and reuse. For each stage, EPA evaluated the potential for impacts on drinking water resources and factors that affect the frequency or severity of impacts. In addition, EPA stated that only relevant scientific literature, available data and public comments were used in assessing the relationship between hydraulic fracturing and drinking water resources.

Concerning the stage of water acquisition, EPA found that groundwater withdrawals may have a considerable impact on the quality of drinking water resources, especially in regions with low water availability due to high water demand and/or changing seasonal and annual weather patterns. EPA explained that groundwater generally recharges quite slowly; thus any impacts on water resources could last decades.

For the chemical mixing stage, although the concentration of additives used in hydraulic fracturing is deemed small, EPA pointed out that the delivered quantities of fracturing fluid at the well site are generally large; as a consequence, fracturing fluid management can present a problem if not handled well. EPA concluded that spills are mainly caused by equipment failure, human error or storage facility impairment. In addition to specifying that the potential for impacts on water resources largely depends on the hydraulic fracturing-related
spill characteristics, transport methods and spill response operations, EPA noted the lack of site-specific studies to identify the factors establishing frequency and severity of impacts from the chemical mixing stage of the hydraulic fracturing water cycle. EPA, however, determined that “impacts on groundwater resources have the potential to be more severe than impacts on surface water resources because it takes longer to naturally reduce the concentration of chemicals in groundwater and because it is generally difficult to remove chemicals from groundwater resources.”

As for the well injection stage, EPA sets out the mechanical integrity of well as a significant factor influencing the frequency and severity of impacts on drinking water resources and, more specifically refers to inadequate well casing and cementing as well as improper well plugging and abandonment. According to the report, another important factor concerns the underground injection of fracturing fluids creating fractures that could establish a pathway to aquifers. Interestingly, mostly due to poor data availability, EPA declared it was “unable to determine with certainty whether fractures created during hydraulic fracturing have reached underground drinking water resources.” EPA, however, determined that experience has shown it is unlikely that “hydraulic fracturing fluids would reach an overlying drinking water resource if ... the vertical separation distance between the targeted rock formation and the drinking water resource is large and ... there are no open pathways.”

With regard to produced water handling, EPA explained that produced water spills have great potential to impact drinking water sources. Based on available site-specific studies, EPA found that local geology, fluid flow path and chemical composition of produced water are factors affecting the frequency and severity of impacts. Furthermore, EPA added that “large volume spills are more likely to travel further from the site of the spill, potentially to groundwater or surface water resources ... leading to long-term groundwater contamination.”

Wastewater disposal and reuse is considered the last stage of the hydraulic fracturing water cycle. According to EPA, wastewater from hydraulic fracturing operations is usually injected into Class II wells but also could be managed through evaporation ponds and percolating pits depending upon the geographic region where the wastewater is generated. EPA underscored that wastewater disposal has the potential to create impacts on water resources because fracturing fluids can end up either in surface or groundwater. EPA, however, mentioned that the risk of contamination is higher for underground aquifers because of the slow groundwater flow speed but noted that soil and sediment properties are also factors to consider.

EPA dedicated a whole section of its report to explain the data gaps and uncertainties during the course of its assessment. EPA admitted lacking important information on data regarding the location of drinking water resources, water withdrawals, hydraulically fractured oil and gas production wells, and hydraulic fracturing wastewater management practices as well as information on chemicals in the hydraulic fracturing water cycle. As a result, EPA emphasized the need for further research highlighting the fact that “the uncertainties and data gaps identified throughout this report can be used to identify future efforts to further [the] understanding of the potential for activities in the hydraulic fracturing water cycle to impact drinking water resources and the factors that affect the frequency and severity of those impacts.”

In its concluding observations, EPA commented that “evaluating the potential for activities in the hydraulic fracturing water cycle to impact drinking water resources will need to keep pace with emerging technologies and new scientific studies.” The agency finally contended that “this report provides a foundation for these efforts, while helping to reduce current vulnerabilities to drinking water resources.”

Ross Pifer is director of the Penn State Law Center for Agriculture and Shale Law. His research focuses on shale gas development and the interface between agricultural and residential development.

Chloe Marie is a research fellow at Penn State Law Center for Agriculture and Shale Law. Her current research analyzes legal issues that have arisen through shale oil and gas development in the United States and the European Union.
By unanimous votes on Jan. 30, 2017, the Pennsylvania Senate passed two bills that have been collectively referred to as the Oil and Gas Lease Protection Package. This legislation was introduced on Jan. 19, 2017, by Senator Gene Yaw and was referred to the Senate Environmental Resources & Energy Committee. The two bills would provide protections to royalty interest owners by amending the Oil and Gas Lease Act to allow royalty interest owners to inspect the records of oil and gas companies for the purpose of verifying royalty payments (Senate Bill 138); and by enacting the Natural Gas Lease Anti-Retaliati on Act to prohibit retaliatory actions from oil and gas companies against royalty interest owners who challenge the accuracy of their royalty payments (Senate Bill 139). In a co-sponsorship memorandum to all Senate members dated December 2016, Senator Yaw explained that these bills are aimed at “support[ing] leaseholders who seek more transparency and protection while engaging the gas industry on their lease agreements.”

Senate Bill 138 would amend existing sections of the Oil and Gas Lease Act as well as adding new sections to this Act addressing the inspection of records and joint ventures. Under the bill, leaseholders would be allowed, upon written request, to inspect all relevant records and documentation of the oil and gas company to verify the accuracy of their royalty payments. Precisely, the bill states that “a lessee may not retaliate by ceasing development or production or take other reprisals against a lessor because the lessor takes a good faith action.” Furthermore, it defines “good faith action” as “a claim, demand or complaint intended to secure rights granted under a lease or to determine whether the terms of a lease are being complied with, including, but not limited to, a request for an accounting of any costs, taxes or fees allowed to be deducted from royalty payments by the lessee, that is made without malice or ulterior motive and which the lessor or a party acting on the lessor’s behalf reasonably believes to be valid and legally correct.”

The introduction of the current Oil and Gas Lease Protection Package is not the first time that Senator Yaw has introduced such a package. Indeed, on April 7, 2014, the Pennsylvania Senate passed SB 1236, 1237, and 1238 — three bills drawn up to protect landowners who entered into oil and gas leases. While these three bills did not advance through the Pennsylvania House of Representatives, a related bill, Recording of Surrender Documents from Oil and Natural Gas Act, was enacted as Act 152 of 2014 on Oct. 22, 2014. In the subsequent legislative session, Senate Bills 147 and 148 were passed unanimously by the Pennsylvania Senate on Jan. 28, 2015, but again did not advance through the House. Both bills in the current Oil and Gas Lease Protection Package were referred to the House Environmental Resources & Energy Committee on Feb. 2, 2017, where they remain.
THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL
No. 138 Session of 2017

INTRODUCED BY YAW, VOGEL, GREENLEAF, YUDICHAK, VULAKOVICH, SCHWANK, WHITE, COSTA, BREWSTER, HUGHES, BAKER, RAFFERTY, SCARNATI AND BARTOLOTTA, JANUARY 19, 2017

REFERRED TO ENVIRONMENTAL RESOURCES AND ENERGY, JANUARY 19, 2017

AN ACT

Amending the act of July 20, 1979 (P.L.183, No.60), entitled "An act regulating the terms and conditions of certain leases regarding natural gas and oil," further providing for definitions, for payment information to interest owners, for accumulation of proceeds from production and for conflicts and providing for joint ventures and for inspection of records.

The General Assembly of the Commonwealth of Pennsylvania hereby enacts as follows:

Section 1. Sections 1.2, 3.2, 3.3 and 3.4 of the act of July 20, 1979 (P.L.183, No.60), known as the Oil and Gas Lease Act, are amended to read:

Section 1.2. Definitions.

The following words and phrases when used in this act shall have the meanings given to them in this section unless the context clearly indicates otherwise:

"Check stub." The financial record attached to a check.

"Division order." An agreement signed by an interest owner directing the distribution of proceeds from the sale of oil, gas, casing head gas or other related hydrocarbons. The order
1 shall direct and authorize the payor to make payment for the
2 products taken in accordance with the division order.
3 "Interest owner." A person who is legally entitled to
4 payment from the proceeds derived from the sale of oil or gas
5 from an oil or gas well located in this Commonwealth.
6 "Joint venture." An association or any other contractual
7 relationship of two or more individuals or companies engaged in
8 the production of an oil or natural gas well for profit without
9 actual partnership or incorporation.
10 "Lessee." A person that has obtained the right to explore,
11 drill, stimulate, produce, market or sell oil, gas or natural
12 gas liquids pursuant to an executed lease.
13 "Lessor." An owner of oil and gas in place that controls the
14 oil and gas rights and executes a lease granting the right to
15 explore, drill, stimulate, produce, market or sell oil, gas or
16 natural gas liquids.
17 "Mcf." A unit of measurement expressed by 1,000 cubic feet.
18 Section 3.2. Payment information to interest owners.
19 Whenever payment is made for oil or gas production to an
20 interest owner, whether pursuant to a division order, lease,
21 servitude or other agreement, all of the following information,
22 at a minimum, shall be included on the check stub or on an
23 attachment to the form of payment, unless the information is
24 otherwise provided on a regular basis:
25 (1) A unique property identification and the name,
26 number or combination of name and number that identifies the
27 lease, property, unit or well or wells for which payment is
28 being made; and the county in which the lease, property or
29 well is located.
30 (2) Month and year of gas production.
31
(3) Total barrels of crude oil or number of Mcf of gas or volume of natural gas liquids sold.

(4) Price received per barrel, Mcf or gallon.

(5) Total amount of severance and other production taxes and other deductions permitted under the lease, with the exception of windfall profit tax.

(6) Net value of total sales from the property less taxes and deductions from paragraph (5).

(7) Interest owner's interest, expressed as a decimal or fraction, in production from paragraph (1).

(8) Interest owner's share of the total value of sales prior to deduction of taxes and deductions from paragraph (5).

(9) Interest owner's share of the sales value less the interest owner's share of taxes and deductions from paragraph (5).

(10) Contact information, including an address and telephone number.

Section 3.3. Accumulation of proceeds from production.

(a) General rule.--[Proceeds] Unless otherwise provided by contract, proceeds from production of oil and gas [may be accumulated and remitted to the persons entitled thereto annually for the 12 months' accumulation of proceeds totaling less than $100.] shall be paid within 90 days of production.

(a.1) Remittance.--Proceeds from production of oil and gas may be accumulated and remitted to the persons entitled thereto quarterly for the three months' accumulation of proceeds totaling less than $100.

(a.2) Delinquency.--Delinquent payments under this section shall be paid at the legal rate of interest.
(b) Owner to be paid.--Notwithstanding any other provision of this section to the contrary, all accumulated proceeds shall be paid to the owner thereof when production ceases or upon relinquishment or transfer of the payment responsibility.

Section 3.4. Conflicts.

If there is [any] a conflict between a division order and an oil and gas lease, the terms and conditions of the oil and gas lease shall control. A division order may not amend or supplement the terms and conditions of an oil and gas lease.

Section 2. The act is amended by adding sections to read:

Section 3.5. Joint ventures.

In the case of a joint venture, interest owners shall be provided the following information related to a joint venture company on an annual basis if the joint venture company is separately paying its share of the royalty:

(1) Name of company,

(2) Company address,

(3) Company telephone number,

(4) The proportionate share of oil or natural gas that each joint venture markets, expressed as a decimal interest.

Section 4. Inspection of records.

(a) Authority.--A lessor or a person acting on behalf of a lessor may inspect the supporting documentation of a lessee for the payment information required under section 3.2.

(b) Procedure.--

(1) A lessor or a person acting on behalf of a lessor seeking inspection under subsection (a) must make a written request for inspection of records for any property for which the lessor has been paid royalties within the three-year period immediately preceding the date of the request.
(2) Within 30 days of receipt of the request, the lessee shall do all of the following:

(i) Designate a location in this Commonwealth for inspection which shall not impose an unreasonable travel burden on the lessor or the lessor's representative.

(ii) Designate a date for inspection:
(A) as mutually agreed; or
(B) within 90 days of receipt of the request.

(iii) Designate a time for inspection which is reasonable to permit completion of the inspection.

(iv) Provide supporting documentation of payment information required under section 3.2. For services that are provided by third parties, supporting documentation shall consist of invoiced amounts for the services provided, but shall not include the composition of the fees charged by an unaffiliated third party.

(v) Make available a knowledgeable individual who is able to answer questions pertaining to accounting issues regarding a well which is the subject of the request.

(c) Confidentiality.--

(1) Except as set forth in paragraph (2), information provided to a lessor or person acting on behalf of a lessor that makes a request under subsection (a):

(i) shall be confidential; and

(ii) may not be disclosed to any other person except an attorney or accountant employed by the lessor.

(2) Paragraph (1) does not apply to disclosure in a judicial proceeding.

(d) Frequency.--A request for inspection under this section may not be made more than once in a 12-month period.

This act shall take effect in 60 days.
THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 139  Session of 2017

INTRODUCED BY YAW, VOGEL, GREENLEAF, YUDICHAK, VULAKOVICH, SCHWANK, WHITE, COSTA, BREWSTER, HUGHES, BAKER, RAFFERTY, SCARNATI AND BARTOLOTTA, JANUARY 19, 2017

REFERRED TO ENVIRONMENTAL RESOURCES AND ENERGY, JANUARY 19, 2017

AN ACT

1 Providing for protection for a lessor of natural gas rights who
2 reports a violation or suspected violation of a contractual
3 agreement and for remedies and penalties.
4 The General Assembly of the Commonwealth of Pennsylvania
5 hereby enacts as follows:
6 Section 1. Short title.
7 This act shall be known and may be cited as the Natural Gas
8 Lease Anti-Retaliation Act.
9 Section 2. Definitions.
10 The following words and phrases when used in this act shall
11 have the meanings given to them in this section unless the
12 context clearly indicates otherwise:
13 "Good faith action." A claim, demand or complaint intended
14 to secure rights granted under a lease or to determine whether
15 the terms of a lease are being complied with, including, but not
16 limited to, a request for an accounting of any costs, taxes or
17 fees allowed to be deducted from royalty payments by the lessee,
18 that is made without malice or ulterior motive and which the
lessor or a party acting on the lessor's behalf reasonably
believes to be valid and legally correct.
"Lessee." A person who has obtained the right to explore,
drill, stimulate, produce, market and sell oil, gas and natural
gas liquids, or any portion thereof, pursuant to a properly
executed lease.
"Lessor." The owner of the oil and gas in place, who
controls the oil and gas rights and has executed a lease.
Section 3. Protection of lessors.
A lessee may not retaliate by ceasing development or
production or take other reprisals against a lessor because the
lessee takes a good faith action.
Section 4. Remedies.
(a) Civil action.—A lessor who alleges a violation of
section 3 may bring a civil action in a court of competent
jurisdiction for appropriate injunctive relief or damages, or
both, within one year after the occurrence of the alleged
violation.
(b) Necessary showing of evidence.—A lessor alleging a
violation of this act must show by a preponderance of the
evidence that its action meets the definition of a good faith
action and that a retaliatory action was taken by the lessee
after it became aware of the good faith action of the lessor.
(c) Defense.—It shall be a defense to an action under this
section if the lessee proves by a preponderance of the evidence
that the action by the lessee was authorized under the terms of
the lease or occurred for legitimate business reasons.
Section 5. Enforcement.
A court that finds in favor of the lessor may order the
lessee to pay reasonable damages to the lessor and may impose a

Background: Landowners who leased mineral rights to their property brought action alleging that exploration production company breasted its lease agreements by improperly withholding postproduction costs for transporting and marketing gas. After jury verdict in favor of the landowners, the company appealed. The Court of Appeals affirmed.

Holdings: (1) Company improperly withheld post-production costs for transporting natural gas since those costs were never incurred by the company, and (2) the company improperly withheld postproduction costs for marketing natural gas, since company sold its gas exclusively to its affiliate, and there were no marketing costs involved in that transaction.