

## Marcellus Shale Developments in Pennsylvania

If you've lived in Pennsylvania during the past few years, you've most likely heard about the "Marcellus Shale" – a natural gas formation estimated to be approximately 95,000 square miles in size. Most of the Marcellus Shale is located in Ohio, West Virginia, Pennsylvania and New York but smaller portions of the Shale are also located in Maryland, Kentucky, Tennessee, and Virginia. Even larger than originally anticipated, experts estimate that the Marcellus Shale could yield up to 500,000 trillion cubic feet of natural gas. This would be enough natural gas to supply all of the United States for nearly 20 years.

Discovery of the Shale, and of its production capabilities, led to a frenzy of natural gas exploration, leasing and development in almost every county in Pennsylvania, which continues today. Through September 2009, approximately 1,340 permits were issued by the Pennsylvania Department of Environmental Protection for Marcellus Shale drilling activities and approximately 385 wells were actually drilled. About one-third of these permits were issued in Susquehanna, Bradford and Tioga Counties. In Allegheny County, 3 permits were issued and one well was drilled.

Development of the Marcellus Shale has raised many new and interesting legal issues. For example, local municipalities would like to control where and how wells are drilled but the Pennsylvania Oil and Gas Act controls most aspects of oil and gas operations. Recent Pennsylvania Supreme Court cases attempt to clarify the

line between the exercise of local zoning power and state preemption but municipalities will need further guidance regarding this issue. The Pennsylvania Legislature is also seeking to further regulate Marcellus Shale drilling because the current laws that apply to deep well drilling do not apply to Marcellus Shale drilling.

In addition, many property owners have been approached by probably one or more companies seeking to enter into leases for Marcellus Shale drilling. Those property owners, who previously entered into leases before the Marcellus Shale became so popular, are at the same time seeking to get out from under their old leases in order to enter into new, more lucrative, leases.

While most companies will offer their "standard" lease to property owners, there are some important differences between a standard lease for "shallow" drilling and one for Marcellus Shale drilling, which involves drilling much deeper into the ground. For example, the "bonus" payment the gas companies pay to property owners who are willing to sign a lease should be higher if the company anticipates drilling a Marcellus Shale well. The bonus amount varies from company to company and county to county.

The amount of royalties being paid for Marcellus Shale operations is also higher than other standard leases. The law requires a minimum royalty of 1/8 (12.5%) and this is what most companies offer. However, Marcellus Shale leases have been offering a royalty slightly higher.

Having an experienced attorney review any proposed lease can be helpful because there are certain provisions that most “standard” leases do not contain, which the oil and gas companies are usually willing to add to the Lease, as long as you ask them. For example, property owners may limit the nature of the gas companies’ operations on their property or control the location of roadways or pipelines or the removal of trees and water.

Because of Goehring, Rutter & Boehm’s diverse civil practice, we represent not only property owners in lease negotiations but also local municipalities and oil and gas companies. We can assist our municipal clients in developing local rules that do not offend related state laws as well as our other clients, both individual and corporate, in any transactional or litigation matters that may arise with respect to oil and gas exploration and production.

*About the Author:*

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Mandi is experienced in both transactional and litigation related oil and gas matters, having represented, at different times, property owners and the oil and gas industry in lease and other contract negotiations and litigation related to title disputes and similar matters.

In addition to this work, she also helps manage the firm’s Municipal Creditors Rights Group, including our Philadelphia office, in order to maximize collections on behalf of the firm’s school and municipal clients and provide superior customer service to taxpayers. Mandi also represents the firm’s municipal clients in other special tax related matters, zoning and in various operational matters.



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