



Testimony of
The Marcellus Shale Coalition
Before the
House Environmental Resources and Energy Committee

October 30, 2023

The MSC is a state-wide trade association representing more than 140 energy companies from the upstream, midstream, and downstream sectors, and those who supply goods and professional services to the industry. Our members are fully committed to working with local, county, state and federal government officials to facilitate the safe development of natural gas resources in the Marcellus, Utica and related geologic formations. On behalf of the MSC and its members, we appreciate the opportunity to share this testimony regarding House Bill 170, related to expanded setback distances for unconventional natural gas wells.

Introduction

The MSC expresses its deep disappointment that Chairman Vitali chose not to invite representatives of Pennsylvania's unconventional natural gas industry to appear in person and offer testimony on this significant and impactful piece of legislation. It is incumbent upon those entrusted by the citizens of Pennsylvania to shape public policy to judiciously entertain perspectives that may differ from theirs. That judicious mindset, unfortunately, is lacking at this hearing.

Defaulting to House Rules that allow the minority chair to attempt to balance a hearing agenda through the selection of one witness is an insufficient redress and does not absolve the Committee majority of its obligation to be fair-minded and even-handed to all major stakeholders impacted by legislation under consideration.

In reality, it is not our association that you are silencing. It is the 123,000 people in Pennsylvania whose jobs are supported by the modern natural gas industry, including untold numbers of skilled trades men and women who are also affected by this proposal. Furthermore, hundreds of thousands of Pennsylvania landowners would effectively be prohibited from developing their property rights under House Bill 170, depriving them of their property rights and royalty payments, which in 2022 alone amounted to an estimated \$6.3 billion.

House Bill 170

House Bill 170 is premised upon a 2020 Grand Jury report which exhibited a jarring lack of understanding regarding how natural gas development is conducted and the statutory and regulatory requirements already in place. The report and accompanying recommendations were so egregious that Governor Wolf's Department of Environmental Protection publicly stated that

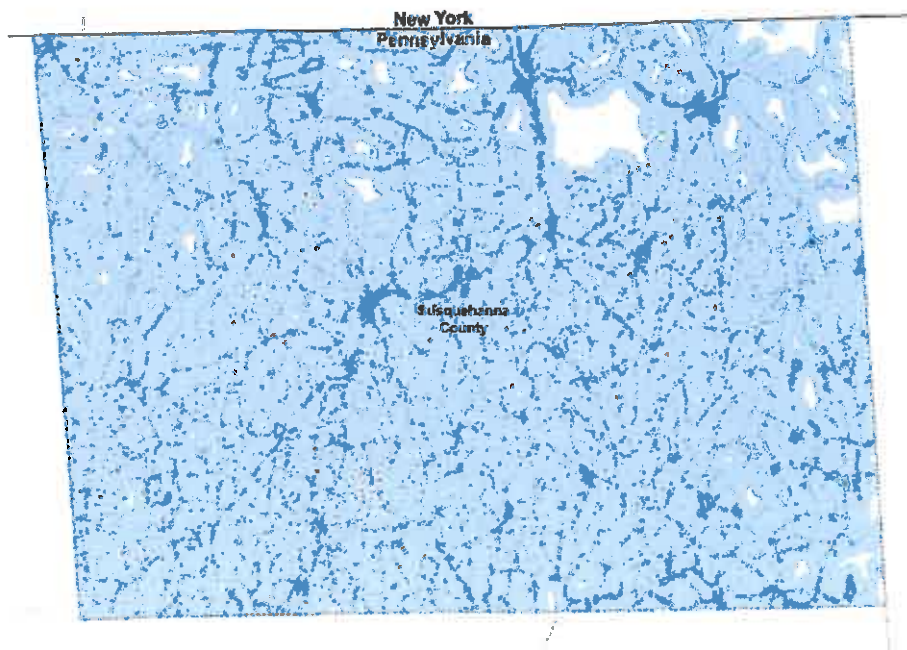
it did “a disservice to the citizens of the Commonwealth” and that many aspects of the report “were factually and legally inaccurate.”

While House Bill 170 ostensibly is about expanding setbacks between unconventional natural gas wells and certain features or resources, the reality is that it is nothing but a backdoor ban on new unconventional natural gas development. This fact is indisputable.

To illustrate this, members of the MSC with operations in various regions of Pennsylvania’s shale play mapped what the impact of a proposed 2,500 foot setback would be within leading production counties of the Commonwealth. The following chart illustrates the percentage of land currently off limits for development and the percentage of land off limits for development as proposed in House Bill 170:

County	Percent of Land Banned Under Current Setbacks*	Percent of Land Banned Under Legislative Proposals*
Allegheny	75%	99%
Beaver	66%	99%
Butler	69%	99%
Lycoming	21%	65%
Susquehanna	30%	96%
Tioga	26%	81%
Washington	43%	99%

As this committee knows, many of these counties are extremely rural. Yet, even these rural counties would face development bans of up to 99% of their surface land. Consider this map of Susquehanna County – one of the largest natural gas producing counties in the state:



Every light and dark blue area within this map would be prohibited from surface development. This also does not factor in other critical elements of the development process, including whether the non-prohibited areas are leased for development, have access to infrastructure, or even have recoverable natural gas resources underlying the surface. As geologic data and experience have taught us, natural gas resources are not evenly distributed across the entire Commonwealth.

Current Setbacks

It is important to understand the purpose of setbacks (beyond their manipulation by some to ban the industry). Setbacks serve as a reasonable buffer between well development activity (well pad construction; installation of stormwater management controls; drilling; completion; well site restoration) and a public or private resources (stream, occupied building, water well). They are not a substitute for a comprehensive and robust regulatory regimen, or for the industry's best practices that supplement and often serve as the basis for the regulatory requirements.

Aside from those states which have adopted punitive setback distances to effectively ban the industry, Pennsylvania currently has perhaps the most stringent setback distances of any major hydrocarbon producing state in the nation.

As part of its legislative efforts to modernize Pennsylvania's shale gas requirements through Act 13 of 2012, the General Assembly increased significantly the setback distances between a vertical unconventional well and water wells (500 feet), existing buildings (500 feet), streams, springs and wetlands (300 feet), and public water supplies (1,000 feet). Additionally, a separate 100 feet setback must be maintained from the edge of the well pad and any stream, spring, wetland or body of water.

These setback distances complement the significant well site and well bore construction standards in place to protect the environment and public health. The host of legislative and regulatory requirements that govern every step of the unconventional well development process are among the most stringent in the nation, including the requirement for multiple layers of steel casing and cementing to protect the aquifer and drinking water supplies, as illustrated below:





Grandfathering

As committee members know, unconventional well pads are designed to host multiple wells in relative close proximity to each other so as to minimize the surface footprint of the well pad. Not all wells are drilled concurrently, as market conditions significantly influence when it makes sense to invest the capital necessary for each well. It is, therefore, quite common for an operator to return to a well pad to drill additional wells.

When Act 13 of 2012 was enacted, the General Assembly recognized this reality and grandfathered in these pads from the new and expanded setback distances. This allowed future wells to be drilled in a manner that minimized new earth disturbance, while subjecting new well pads to the increased setbacks. It is worth noting that House Bill 170 does not allow for such grandfathering, resulting in significant, stranded investment for operators who have already expended money on constructing a well pad that cannot be fully drilled. Make no mistake, however, given that HB 170 is clearly a de facto ban, even if such a grandfathering clause was included, it would do little to ameliorate the devastating impacts of the legislation.

Waiver

House Bill 170 amends the well location restrictions of Section 3215 subsection (A) by authorizing a waiver of certain setback distances provided the Department of Environmental Protection is satisfied that additional measures proposed by the permit applicant are protective of the environment. However, House Bill 170 also creates a new paragraph (4) under subsection (B) which essentially repeats the setback distance restrictions for streams, wetlands, buildings and water wells and then states unequivocally “The department may not waive the distance restrictions.”

The language within House Bill 170 is inconsistent, confusing and poorly drafted and creates a false impression that PA DEP may waive distance restrictions. However, it is clear from a statutory construction perspective, the language within new paragraph (4) prohibits distance setbacks restrictions from being waived.

White Paper

Working with its member companies, the MSC developed the attached White Paper, which analyzes in greater detail the impact of a proposed 2,500 feet setback. It is important to note that some of the setbacks proposed in House Bill 170 are even greater – up to 5,000 feet. Therefore, the impacts outlined in the White Paper are, if anything, conservative in their calculations.

The MSC offers this White Paper as part of the record of this Committee's proceedings.



Analysis of Legislative Proposals to Expand Setback Distances for Unconventional Natural Gas Development to 2,500 Feet

Original Purpose of Setbacks

Setbacks serve as a reasonable buffer between well development activity and a public or private resource over the life of a well. Setbacks complement a robust permitting and inspection regimen, along with industry best practices and standards.

What are the Primary Means of Protecting Natural Resources and Public Health?

Pennsylvania employs a comprehensive statutory and regulatory framework to ensure that exploration, production and transportation of natural gas resources is done in a manner protective of the environment and public health.

Pennsylvania's primary statute for regulating natural gas development is Act 13 of 2012. This Act updated the Oil and Gas Act to modernize the well drilling, completion and production standards applicable to shale gas wells in Pennsylvania. To fulfill these statutory requirements, a host of permits are required of operators, accompanied by criteria specific to the particular facet of development. These permits and accompanying regulations are revised on a regular basis to ensure maximum protection for the environment and public health. Examples of permits include:

- An [erosion and sediment control permit](#) to construct the well pad, pipeline and related infrastructure.
 - This permit ensures proper and safe construction of the well site to protect from runoff and any earth-moving related impacts to environmental resources.
- A [well drilling permit](#) to drill and operate the well.
 - This permit and related regulations include comprehensive [well construction and operating standards](#), such as casing and cementing the well to protect water supplies and aggressive monitoring inspections of the wellbore's mechanical integrity.
- An [air quality permit](#), or adherence to robust operating and emission control criteria if the well will operate below applicable permit emission thresholds.
 - This permit ensures that all aspects of operations adhere to air quality and emissions standards.
- [Waste permits](#) to process or handle or transport liquid waste.
 - These permits ensure all waste is tested, handled, transported, and reused or disposed of in accordance with all laws and existing public health and safety standards.
- Strict regulations governing [production fluids](#) and [secondary containment](#) for activities on the well site. Operators also routinely test well water before drilling, and by [law](#) face a rebuttable presumption standard should a water supply appear to be impacted. This standard was significantly expanded in 2012 to reflect modern shale gas development.
- County and/or municipal requirements, as applicable.



Additional Pennsylvania statutes, such as the Clean Streams Law, the Air Pollution Control Act, the Waste Management Act, the Radiation Protection Act, and others also apply to the industry. Additional requirements of operators for both surface and subsurface activities are found in regulations promulgated by the PA Department of Environmental Protection (25 Pa. Code Chapter 78a).

Current Setback Distances in PA

Under Act 13 of 2012, the General Assembly significantly expanded setback distances in Pennsylvania. Currently, distances from a vertical wellbore and a resource include:

- 300 feet from streams, springs, wetlands and bodies of water
- 500 feet from a water well and existing building
- 1,000 feet from a public drinking water supply intake

PA's current setbacks are the strictest among the top five natural gas producing states in the nation.

Legislative Proposals

House Bill 170 was introduced by state Representative Danielle Otten. A companion bill will be introduced by state Senator Steve Santarsiero. These bills would increase existing setback distances while imposing new setback distances, as follows:

- From 500 feet to 2,500 feet for an existing water well or building
- From 1,000 feet to 2,500 feet for a public drinking water supply intake, except a reservoir
- From 1,000 feet to 5,000 feet for a reservoir
- 5,000 feet from a school, hospital, compressor station, tank or storage facility (new)

Neutralizing Existing Well Pads and Infrastructure

A typical unconventional well pad may host numerous (perhaps more than 10) wells on the pad over its lifetime. This multi-well approach minimizes surface disturbances, including pipeline right of ways and access roads, while maximizing efficient development of the resource.

Notably, unlike Act 13 which applied the increased setbacks to newly constructed well pads, HB 170 would prohibit any well from being drilled within these setback distances after its effective date.

This restriction would render thousands of existing well pads already connected to existing infrastructure incapable of hosting additional wells thereby permanently stranding the resource underlying the well pad. As a result, property owners who had leased or are contemplating leasing their oil and natural gas rights would be prohibited from realizing royalties through the development of their property.



Analysis of Impacts of House Bill 170 & Senate Companion Bill

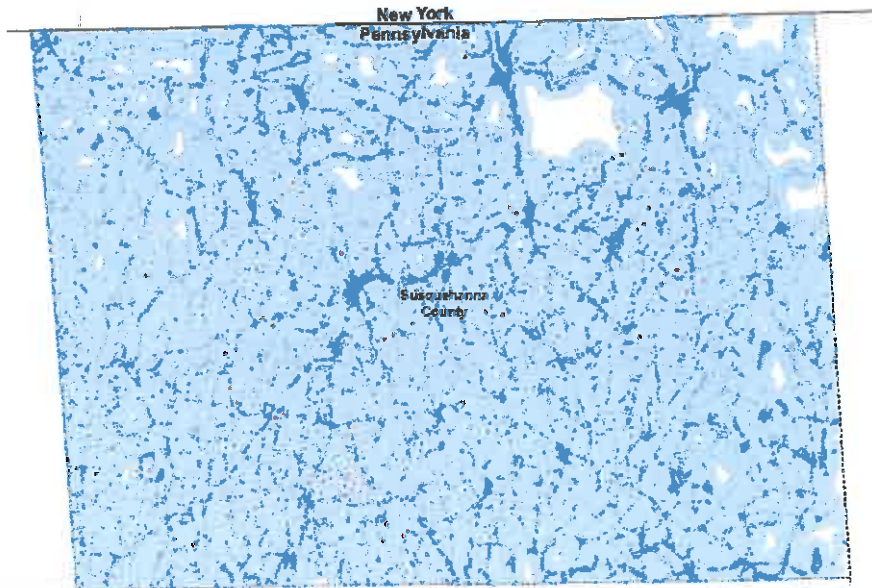
The proposed setback distances would prohibit the construction and development of unconventional natural gas wells in an overwhelming majority of the Commonwealth where unconventional natural gas is currently being produced safely and responsibly. This shortsighted approach will deprive tens of thousands of property owners who own oil and gas rights from realizing the financial benefit of their own property, is not justified or supported by any scientific or health data and would threaten energy production and therefore national security in the United States.

For example, an MSC analysis of the proposed legislation demonstrates that for some of the top producing counties in Pennsylvania, an overwhelming percentage of the county would be precluded from hosting an unconventional natural gas well. The following table illustrates this analysis:

County	Percent of Land Banned Under Current Setbacks*	Percent of Land Banned Under Legislative Proposals*
Allegheny	75%	99%
Beaver	66%	99%
Butler	69%	99%
Lycoming	21%	65%
Susquehanna	30%	96%
Tioga	26%	81%
Washington	43%	99%

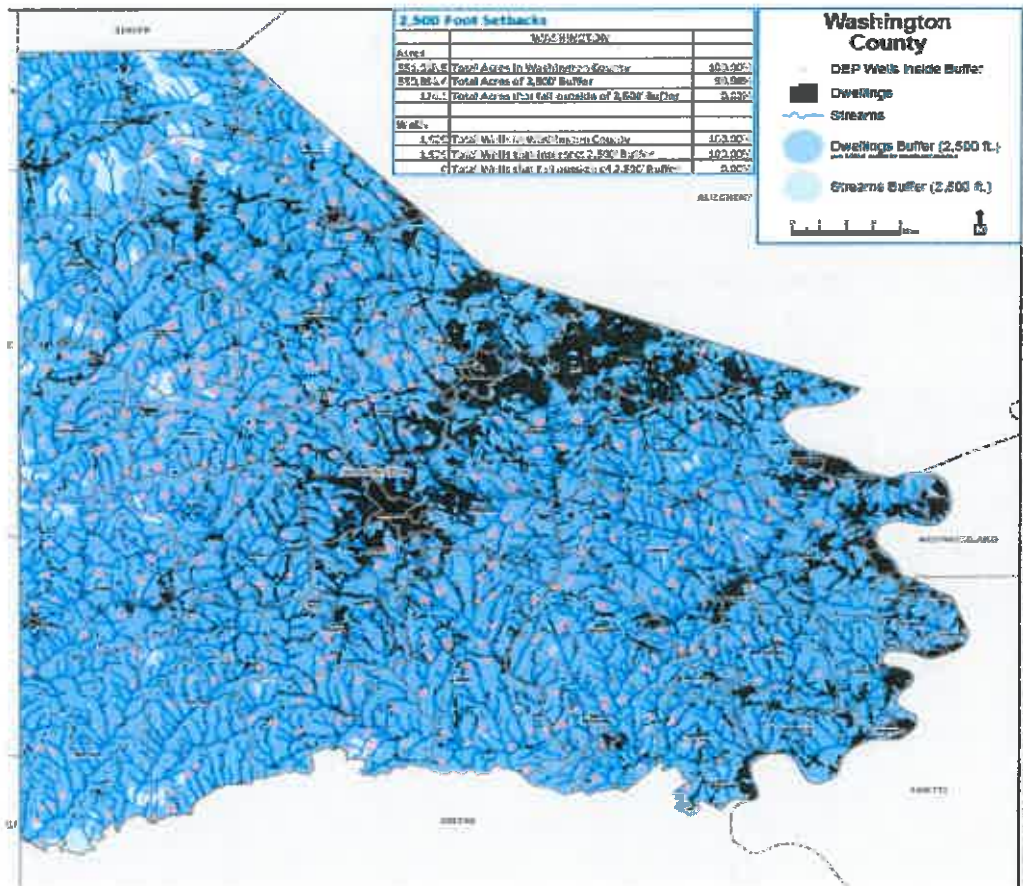
** Percent of land refers to total land in county, not land actually available for development. See "Other Factors Limiting Amount of Developable Acreage" for additional context.*

SUSQUEHANNA COUNTY



Blue areas represent land banned from development under proposed legislation.

WASHINGTON COUNTY



Blue areas represent land banned from development under proposed legislation.

Other Factors Limiting Amount of Developable Acreage

It is worth noting that just because a limited amount of acreage may fall outside of the proposed setback distances does not mean that this acreage can be developed.

There are other factors, including geologic limitations of the resource, lack of legal surface access, or insufficient infrastructure to gather, process and transport natural gas or other considerations which may neutralize any acreage remaining outside of the proposed setback distances. For example, while 35% of land in Lycoming County *may appear* to still be available for development, in reality – when factoring in state parks and forests (under a leasing moratorium) and the lack of any developable Marcellus acreage in the southern portion of the county – **less than 1.5% of developable land in Lycoming County would actually be available for exploration and production under this legislation.**



Impacts of a Natural Gas Development Ban

Increased setback distances are meant to prohibit further natural gas development and deprive property owners of their oil and gas rights. The consequences of doing so would be costly:

- Declining domestic energy production
- Increased electricity costs to consumers
- Decreased reliability of our energy grid
- Increased reliance on foreign dictatorships
- Increased threats to our energy – and thereby national – security
- Lost income for Pennsylvania royalty owners
- Precipitous decline in tax revenues collected from the industry, including:
 - Impact Fee revenue, which has generated over \$2.5 Billion to support local governments and environmental investments across Pennsylvania.
 - Personal income, corporate net income, sales and use and other business taxes which have generated billions of dollars to fund schools, hospitals, health care, public safety and other critical services.
- Jobs and capital investment devastated, threatening the livelihoods of 480,000 Pennsylvanians – many within the skilled trades unions – and pushing entire industries, service companies and downstream manufacturers out of Pennsylvania.

Pennsylvania citizens and consumers want affordable, clean, domestic energy. Pennsylvania-produced natural gas delivers on each of these needs. Increasing setbacks is a misguided policy that threatens our national security and prosperity while impeding the property rights of Pennsylvania citizens.