

*Coalbed
methane free*

If you are asked how your amendment reflects upon the conclusions of the Joint Legislative Air and Water Pollution Control and Conservation Committee:

That Committee did a thorough review of the Pa Supreme Court's decision in Hoge, which ruled that the owner of the coal seam also owned the coalbed methane and had a right to access it. The Committee decided that legislation should be discouraged because of the Hoge decision, perhaps fearing that surface owners would believe any legislation might lead surface owners to believe they are entitled to royalties for methane as they may be for natural gas produced on their property.

It seems that most of the constituents I have met with understand that they are not entitled to royalties, although many would like to be; but they understand that we are NOT willing to overturn Hoge, which would negate property rights and violate state and federal constitutional takings clauses.

However, Hoge did not anticipate that coalbed methane would become so widely produced as a source of energy for sale; and it is silent on the question regarding whether or not a producer's right to access means he is allowed to violate the surface owner's right to protect his interest and have his property repaired or receive other compensation should the methane operation disrupt, for example, his farming business.

The amendment is based, in part, on Montana law regarding methane production agreements, because Montana, like Pennsylvania, severs the mineral estate from the surface estate. And it is based on testimony of University of Pittsburgh Professor, Cyril Fox, an expert on natural resources development, who testified before the Joint Committee generally, that:

There is room, for a narrowly tailored surface use and damages statute limited to methane gas operations where the gas has been severed as part of the coal estate, and there is no provision for compensation to the surface owner based on gas production.

Based on experience with Act 54 negotiations, producers could negotiate provisions with landowners that would allow them to cause production related damages and repair them or provide compensation for them.

THOMAS A. TANGRETTI, MEMBER

COMMITTEES



APPROPRIATIONS
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House of Representatives
COMMONWEALTH OF PENNSYLVANIA
HARRISBURG

M E M O R A N D U M

TO: All Members
FROM: Thomas A Tangretti, Member
DATE: February 13, 2006
SUBJECT: Methane Drilling Accommodation Legislation

In the near future, I will be introducing legislation, as suggested by University of Pittsburgh Professor, Cyril Fox, which provides that methane drillers must accommodate surface owners by providing notice of proposed operations and negotiating compensation agreements to cover loss of land use or damages to the land. The bill also confirms rights related to the protection of water resources and well casing and plugging procedures under the "Oil and Gas Act."

The Department of Environmental Protection would promulgate regulations regarding procedures to be followed and a bond/guaranty to be posted in the event a landowner and gas operator cannot reach agreement.

It has been recommended that this is as far as Pennsylvania can go in light of the Pennsylvania Supreme Court's decision in Hoge, which stated that methane and other gas within a coal formation is the property of the owner of the coal. To attempt to reverse this decision could represent a "taking" contrary to the Pennsylvania and federal constitutional takings clauses. This could expose the Commonwealth to significant damages.

In the interim, some of you may have heard from constituents claiming that methane drillers are actually drilling into their gas wells and stealing their natural gas. Unfortunately, this is a matter that must be resolved by geologic research and litigation before legislation can be contemplated.

If you would like to cosponsor this legislation, please contact Cynthia Clory in my office at cclory@pahouse.net or by telephone at 783-5963.



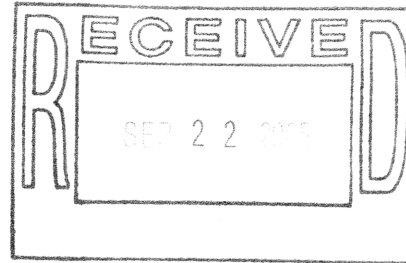
**Rachel Carson State Office Building
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September 19, 2005

Secretary

717-787-2814

The Honorable H. William DeWeese
Pennsylvania House of Representatives
House Post Office Box 202020
Harrisburg, PA 17120-2020



RE: Coal Bed Methane

Dear Representative DeWeese:

This letter is in response to the letter by your constituent, Mr. Earl Kennedy. As you know, high natural gas prices have made previously uneconomical resources, such as coal bed methane, a viable and profitable commodity. Unfortunately, increased drilling for this resource has created tensions between property owners. As Mr. Kennedy correctly points out, the Pennsylvania Supreme Court in *U.S. Steel v. Hoge*, 503 Pa. 140 (1983), held that as a matter of Pennsylvania property law, coal bed methane belongs to the owner of the coal seam. Because ownership of coal bed methane and the right to access it are private property rights issues, the Department of Environmental Protection (Department) does not have the authority to deny a well permit based solely on the objections of the surface owner. While the Department cannot determine ownership of the mineral property, it does regulate the manner in which it is developed.

Mr. Kennedy expresses a concern that the Department does not regulate coal bed methane development. However, coal bed methane wells are indeed permitted and regulated under the Oil and Gas Act, 25 Pa. Code Chapter 78, the Coal and Gas Resource Coordination Act, and the Clean Streams Law. These laws and regulations cover every aspect of coal bed methane well drilling and production and the Department will ensure that these wells meet the same environmentally protective standards as any other oil or gas well.

Coal bed methane wells in Greene County are using a dual-well multilateral horizontal system. First, a conductor used to keep the surface of the well bore open for drilling is placed at the surface. Next, drilling proceeds through the fresh ground water zones. These zones are protected and isolated by steel casing that is cemented in place. Drilling then proceeds horizontally through the Pittsburgh coal seam for about 4,000 to 5,000 feet. An innovative technology is used where the location of the drill bit is transmitted back to the control station. From the control station, directions are relayed to the operator so that the drilling can remain within the Pittsburgh coal seam. Finally, because coal bed methane is held in place by pressure produced by water in the coal seam, "desorption" is accomplished by using a conventional pumpjack (as seen on an oil well) to remove the water from the coal seam and allow the gas to



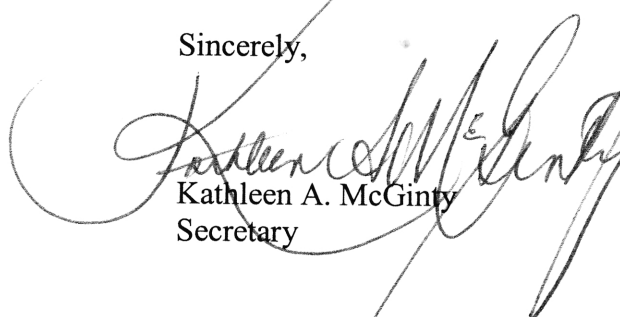
flow into the production casing. Any water removed from the well must be properly disposed of pursuant to the Department's regulations. After the well is drilled, the operator is required to submit a Well Completion Report and deviation survey to the Department. These reports show how and where the well was drilled.

Given this brief explanation of coal bed methane development, it is unlikely that gas production strays from the targeted coal seams and reaches other sources as stated in Mr. Kennedy's letter.

Ultimately, the key issue underlying coal bed methane disputes is ownership of the resource and the right to use the surface to access it. While the Pennsylvania Supreme Court appears to have decided the question of ownership, I should note that the Court did not address the question of the coal bed methane owner's right to use the surface to access the methane. Importantly, the Department cannot resolve these property rights issues. However, the Department will uphold its statutory obligation to ensure that coal bed methane wells are drilled in an environmentally protective manner.

If you have additional questions or concerns, please contact Joseph T. Leighton, Director of Legislative Affairs, by e-mail at jleighton@state.pa.us or by telephone at 717-783-8303.

Sincerely,



Kathleen A. McGinty
Secretary