

MARCELLUS SHALE AND CLEAN AND GREEN  
HOUSE AGRICULTURE AND RURAL AFFAIRS COMMITTEE

Williamsport, Pennsylvania

Presented By  
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Good afternoon. My name is Rebecca Burke, and I am chair of the Lycoming County Board of Commissioners. I also serve as chair of the Assessment and Taxation committee of the County Commissioners Association of Pennsylvania (CCAP), as well as co-chair of the CCAP Natural Gas Task Force. Joining me today is CCAP Executive Director Doug Hill. The CCAP is a non-profit, non-partisan association providing legislative and regulatory representation, education, research, insurance, technology, and other services on behalf of all of the Commonwealth's 67 counties.

I want to thank Representative Mirabito and Representative Hanna for the opportunity to give the House Agriculture and Rural Affairs Committee the counties' perspective on Clean and Green as it relates to oil and gas, and windmills, as well as local revenue from natural gas.

CCAP testified before this committee last summer, indicating our support for an amendment to the Clean and Green statute that would allow preferentially assessed lands to be used for oil and gas development, but would clearly define when a change of use has occurred that would cause part of the tract to be ineligible for preferential assessment. At that time, we talked about existing language in the law allowing Clean and Green lands to be leased for cell towers, with rollback applied on the leased portion and fair market value adjusted accordingly. Preferential assessment for the land that is not leased is not affected.

At the time, we identified the cell tower language as a model, but we have continued to flesh out these discussions among our CCAP policy committees and the Assessors Association of Pennsylvania because, while it is a starting point, the two are really very different. In the case of oil and gas, large amounts of land are leased for the right to access the minerals below. And, particularly in the case of Marcellus wells where horizontal drilling occurs, surfaces of entire properties may not be disturbed, and the land above can continue to be farmed while minerals are extracted from the earth below.

Some counties in Pennsylvania have moved ahead to address this issue under the parameters of the existing law. Their reasoned and defensible approach is consistent with the statute today – that is, that a violation occurs when the land is leased for a commercial purpose. Obviously, rollback penalties are significant when entire properties are re-valued based on their fair market value rather than their use value. Bradford County is one of the counties that has been actively enforcing Clean and Green as it stands today. When they issued their first violations, commissioners report that all rollback penalties were paid on time, and that in more than 75% of cases, the rollback was paid by the company who had leased those preferentially assessed properties to develop oil and gas.

However, most of Pennsylvania's counties have not moved forward to enforce the existing law, anticipating that the General Assembly would amend the law to make it more fair for property owners. A majority of our members believe that where lands can continue to be used, uninterrupted, for agriculture, agriculture reserve and forest reserve, those lands should maintain in preferential assessment. Consequently they have hesitated to move forward while this issue is under discussion, and in a demonstration of their willingness to contribute to this conversation, the members of CCAP made Clean and Green a priority issue for 2009.

There are two bills that have been introduced in the House to address oil and gas on Clean and Green lands which have been referred to this Committee. First, House Bill 208 sponsored by Representative Godshall, allows portions of Clean and Green land to be used for oil and gas drilling and extraction to a maximum of one acre. We do not believe this bill represents an appropriate solution, because acreage caps, such as the one in place for cell towers, are incompatible with oil and gas operations. Unlike cell

tower sites, the size of the affected area for an oil or gas site can vary considerably, and it is conceivable that there could be multiple wells on any property.

House Bill 1394 was recently introduced by Representative Houghton. We believe that this bill has the fundamental components of a workable solution, although we oppose it as drafted. Its strength is that it addresses oil and gas, as well as the extraction of coal bed methane. Loss of preferential assessment and roll-back taxes would be imposed on land associated with development of these resources, including appurtenant facilities such as roads and compressor stations. Fair market value would be adjusted on portions of the land, not the entire preferentially assessed parcel. There are no acreage caps, and instead the provisions are applied to the areas that are actually disturbed.

That said, we do have several differences of opinion with HB 1394 and we oppose this legislation as currently drafted. First, we believe that loss of preferential assessment should be applied to any area disturbed for oil and gas development, not just the area that ultimately cannot be restored. From an equity standpoint, even though part of the well pad can eventually be restored, the land has still been used for activities that violate the spirit and intent of the Clean and Green covenant.

Therefore we believe that the entire area impacted by drilling, as identified by the erosion and sedimentation plan, should be violated with loss of preferential assessment and rollback imposed. The E&S plan would define the area for which violation is applied and value is adjusted. Ultimately, if the land is restored, and the surface owner subsequently returns the land to a use that qualifies for preferential assessment under Clean and Green, then the portion that is restored to an eligible use can be re-enrolled. This approach is also supported by the Assessors Association of Pennsylvania.

We also oppose language in HB 1394 that appears to prohibit counties from assessing rollback penalties on wells that are in existence prior to the effective date of the act. To explain, we need to differentiate two circumstances the bill addresses. The first is where the well existed prior to the land being enrolled in Clean and Green. We can agree that the prohibition against a look-back on these sites is appropriate.

The second circumstance is the one where our disagreement lies. This is the situation where the county felt it unfair, despite the clear requirement of law, to violate the entire parcel for the violation. The bill appears (at least by the sponsor's description) to prevent these counties from using the provisions of the bill to equitably violate the well site if the well is in place prior to the act's effective date. This penalizes counties that have been diligent in holding off for a legislative solution that will result in greater fairness for landowners, and it is also unfair to landowners. Proponents argue that counties cannot look back indefinitely to impose rollback and fair market value on well sites that have been in existence for a long time. Although we do not have a specific suggestion today to address this concerns, it is significant, and we are willing to work with the bill's sponsor on a compromise.

We have been asked to address House Bill 984, which deals with windmills on Clean and Green property. Similar language is contained in House Bill 1394. We support House Bill 984, with one minor change, suggesting that the language requiring accessibility is not necessary and should be deleted from the legislation. Otherwise we agree with its provisions, which require rollback and market value to be adjusted on the plot actually leased for a windmill, and the remainder of the property that is not leased retains preferential assessment.

Finally, we would like to address our overarching interest in local revenue from Marcellus shale. My colleagues and I have approached the Clean and Green issue for oil and gas in a manner that may seem

counter-intuitive from a revenue perspective. Admittedly rollback taxes on entire properties leased for oil and gas development would generate significant revenues for counties, municipalities, school districts, and also the farmland preservation program. There is a need for local revenue from oil and gas development, but we are advocating a more equitable approach. Counties' oil and gas assessment priority, embodied in House Bill 10, will reduce the burden on existing property taxpayers, and improve tax equity in Pennsylvania.

Counties are responsible to maintain the assessment rolls, and in doing so assess all categories of property, including residential, commercial, tax exempt and mineral property. In 2002, in *Independent Oil and Gas Association v. Fayette County*, the Supreme Court ruled that counties cannot assess oil and gas, because the ability to assess these minerals is not specifically granted in the county assessment law. Since that time, oil and gas interests have been escaping taxation. This was a major change to the assessment system, because prior to the court decision, counties have a long history of assessing oil and gas, as documented by court cases from the early 1900s.

Counties have sought legislation to reverse this Supreme Court ruling from the time of the court decision. However, the matter now takes on new urgency as oil and gas development rapidly expands. The industry brings economic development and jobs, and represents an area of potential growth in a time of economic slowdown. Counties are excited about the opportunities, but these benefits are also no different from what small local businesses and large corporations from inside and outside Pennsylvania bring to the state's overall economy. What *is* different is that all of these other business interests pay a share of the property tax, whereas the oil and gas industry does not because the Supreme Court has created a legal loophole that currently allows them to be exempt from this responsibility.

Any time one segment of property is excluded from taxation, the burden of provision of local government services falls to the remainder of the taxpayers. The fundamental basis of the property tax system is that everyone who owns property – whether an individual, a retailer, a mineral producer, a manufacturer – is a member of the community and derives benefit, directly or indirectly, from that community. Property taxes are one mechanism to share the fiscal cost of providing core community services, in some nominal proportion to the ability to pay. As the law stands today, all other property owners are carrying the tax responsibility that should be borne by for-profit oil and gas developers. Simply stated, our efforts are about assuring that oil and gas producers pay their fair share of the property tax.

CCAP argues that the Supreme Court's decision is unfair to residential and commercial property owners, as well as developers of other minerals including coal and limestone, all of which contribute a share to the local property tax base. The issue is one of fairness, equity, and of oil and gas companies paying their fair share. Local residents and businesses, including farmers who already bear a large share of the property tax burden, should not be forced to shoulder an inequitable portion of the tax burden due to what counties believe to be an errant court ruling. We would ask the members of the committee to support restoration of oil and gas assessment.

Thank you for your attention. If you have any questions, Doug and I would be happy to answer them.