

SEN. JAY COSTA TESTIMONY
ENVIRONMENTAL RESOURCES AND ENERGY COMMITTEE
(BRIEFING ON PUBLIC SAFETY AND ENVIRONMENTAL IMPACT)
JUNE 16, 2010

Madame Chairwoman and Members of the Committee,

The impact of the Marcellus Shale industry on Pennsylvania cannot be understated. While the safety and environmental regulation of this burgeoning industry is an integral component of its successful integration into our state's economy, we must take a tempered and thoughtful approach in all areas.

Whether it be environmental regulation, taxation, or safety measures up for discussion, all parties must participate in a holistic approach that will prove mutually beneficial to all stakeholders. It is critical that ensuring the safety and security of Pennsylvanians be done while being mindful of the need to foster the industry in a way that will also protect and ensure the promise it holds for Pennsylvania's economy.

There are outstanding issues which exist. They must be confronted in a timely fashion, and they should not delay the implementation of a severance tax.

I would like to address a few of them in detail.

Regulatory Issues, Environmental:

The issues of concern to the Natural Gas Industry when it comes to environmental regulation are valid ones. I would like to begin with a few issues that have been brought up recently.

These are issues that can and must be resolved in order to have a balanced and fair approach to regulating the industry.

Forced pooling

Initially, based on pure definition, and taken at face value, this is something that I would not support.

The practice of compelling landowners who don't wish to lease their mineral rights to be part of a drilling unit with others that do seems wholly unfair.

There are ways, I believe, to work around this issue. This could be an option if, and only if, the unique concerns of local homeowners are addressed, and those local communities are provided for through the implementation and local distribution of a severance tax.

Advocates say forced pooling would enable drilling companies to move forward more quickly with drilling in areas where some landowners have agreed to lease their mineral rights, while others have not.

I say that this is an option only if proper measures and avenues of recourse for homeowners have been put into place.

Such regulation would allow companies to drill longer horizontal wells than they do now in the Marcellus Shale, which in turn, promotes more economic drilling and prevents wasteful land disturbances.

Simply put, the practice allows the company to drill the most direct and efficient wells, rather than weaving according to property lines because of land owners who are unwilling to lease or sell their land with others in the unit or area.

It makes sense to minimize the impact of drilling on the land as much as possible. If that can be done in a way that works through landowner concerns, it should not be a sticking point to moving forward in the overall debate.

Forced pooling can also prove beneficial to local citizens by preventing the potential financial benefit of some landowners from being held stagnant by their neighbors who are unwilling to sell or lease their land in the unit or area.

Forced pooling statutes already exist in Texas, Oklahoma, Kentucky and New York. While the concept seems coercive, it is available in other states and due to the nature of the drilling may not be as invasive as it would be if each parcel of land were to have its own drill pad.

The approaches taken by other states should be carefully assessed. Pennsylvanians stand to gain from the experience of other states if we critically assess what has worked and has not worked in areas that have already dealt at length with this issue.

Again, I would like to reiterate the caveat that should local landowners come forward with valid, substantial concerns related to forced pooling, they should be given an avenue to express their objections. Unique scenarios and circumstances may come into play which could make this option less palatable.

Should forced pooling still be put into play after a homeowner's grievances are heard, mechanisms should be put in place to ensure that homeowner is compensated fairly.

Well Spacing

The industry would like to see the enactment of Senate Bill 1374, which amends the Coal and Gas Resource Coordination Act.

Currently, the act states that no permit for a gas well covered under the act may be issued to drill a new gas well unless the proposed gas well is located not less than 1,000 feet from any other well. An exemption may be granted from the minimum 1,000 feet distance requirement where the permit applicant and owner of the workable coal seam consent in writing. In no case, shall the minimum distance between the proposed gas well and any other well be less than 900 feet.

The Department of Environmental Protection can grant an exception to the 1,000 feet distance requirement if the vertical distance between the producing formation of the proposed gas well and the producing formation of any other well is 1,000 feet or greater.

Senate Bill 1374 would remove the requirement for the 900 feet minimum distance when the permit applicant and owner of the workable coal seam consent in writing to the exemption. The bill would also allow, without consent, Marcellus shale wells to be drilled underneath coal seams or shallow natural gas wells if the proposed well doesn't penetrate the coal seam or shallow gas well.

This should not be a problem since shallow wells are drilled to a depth of 300 feet but shale wells will be 3,000 to 5,000 feet deep.

This legislation was passed out of the Senate Environmental Resources and Energy Committee on June 8th.

Local Zoning Ordinances

When the natural gas industry looks for standardized local zoning regulations it is important to remember the high burden that a local government and its citizens have placed on them by shale drilling.

- Drilling pads, pipelines, gathering lines and wastewater storage pits invade quiet towns, not to mention becoming fixtures of the community for the next 40 years.
- Natural habitat is disrupted at best and destroyed in some cases.
- Loud compressors run 24 hours a day to power the operations.
- There is increased traffic as heavy rigs tear up and disrupt normal traffic patterns.
- Over 3 million gallons of water must be trucked in and stored.
- Dangerous chemicals are also brought in through residential neighborhoods and down commercial districts dotted with small businesses.

Citizens look to their local elected officials to protect them. The state should not strip away local protection rights when they are needed most. Local communities through their locally elected officials know best how to manage growth. Zoning regulations are not uniform because our townships and boroughs are not uniform.

Furthermore, The Oil and Gas Act already contains a local pre-emption. Local governments cannot make or enforce any local ordinances that limit drilling except under the Municipal Planning code and the Flood Plain Management Act.

It makes sense that any industry issues which should arise pertaining to the Act should be addressed on a case-by-case basis by elected local leaders.

Total Dissolved Solids (TDS)

We are awaiting further action at tomorrow's meeting of the Independent Regulatory Review Commission (IRRC) as to regulations on the amount of total dissolved solids (TDS), in wastewater discharged by drillers and other industrial operators into waterways. This will be another hurdle for gas drillers to clear, as these drilling operators are producing millions of gallons of wastewater each day.

Clean drinking water is of urgent concern. The impact of benzene or other potential byproducts which can be released during the fracking process must be taken into account. We must also make sure that regulation is fair and doesn't create costs that crush any chance of regaining investments from instituting those safeguards.

Currently, the EPA is conducting its own comprehensive study to answer a number of questions relating to the fracking process.

The industry has made assurances that it is committed to working with DEP to address this issue and focus on water quality and standards on well casings.

Others (individual companies) have gone a step further to express commitment to other industry practices, including recycling the fracking water, advanced irrigation to transfer water, and "green additives".

If indeed they are looking into these new technologies seriously, this is something we should foster and work on together in order to capitalize on the tools available to protect the environment as well as to come up with something with which both sides can be comfortable.

Regulatory Issues, Safety:

Recent events have brought to the forefront the need for measures to be set firmly in place to prevent and confront the potential hazards that can arise in the course of the natural gas extraction process.

Earlier this month (June 3) natural gas and polluted drilling water from a well in Moshannon State Forest in Clearfield County spouted 75 feet into the air for 16 hours, according to the well's owner. There were no homes within a mile of the well, and nobody was injured. Polluted drilling water did not reach any of our waterways. We were lucky.

In West Virginia, they were not so lucky. Four days after the Pennsylvania blowout, seven workers were injured there.

Of course, we would be remiss to overlook the BP oil spill in the Gulf of Mexico which resulted in a loss of 11 lives, and long-term, catastrophic effects on the environment and the economies of not only Louisiana, but Alabama, Mississippi and Florida.

These events must serve as a reminder to all – the industry, regulators, legislators and citizens -- of the importance of setting effective safety measures in place, not to mention vigorous follow up.

DEP's intensive investigation of the Clearfield incident will provide valuable information which can be used in constructing further guidelines pertaining to inspection and regulation.

The scrutiny of blowout preventers in West Virginia will yield further guidance as we move forward.

These safeguards should be viewed as a way not only to protect Pennsylvanians but the industry itself.

Finally these incidents must serve as an example of the importance of emergency relief funds and hazardous site clean-up funds to protect our local communities.

Taxation:

First, let's address the obvious and get it out of the way. Lease revenues have already served as a critical resource that has helped us to balance state budgets.

Our current budget deal earmarked a portion of excess lease revenue for the purposes of environmental regulation and oversight.

The general fund received \$60 million in 2009-10 and \$180 million in 2010-11. DCNR will receive the balance of lease revenue in excess of these amounts after these general fund transfers are completed --- up to \$50 million annually -- mainly for protection of the state's forest. That money for DCNR is placed in a special fund to be used for conservation, recreation, dams, and flood control.

Now as we proceed with a severance tax, we need to proceed carefully in the application of the tax and the distribution of said tax.

The Governor's proposal to implement a 5% tax at the wellhead and a royalty provision of 4.7 cents per thousand cubic feet (Mcf) is a fair approach.

It is also important to note that local communities must be given the tools to effectively address the costly demands imposed upon them by the natural gas drilling industry.

This issue was addressed by many House members during floor debate yesterday. The spirited and useful debate in the House serves as a good starting point in the discussion about how to allocate funds to make sure that local governments can provide clean-up, infrastructure, maintenance or any other service necessitated as a result of local drilling.

Furthermore, it's important to note that 27 out of 32 natural gas-producing states levy a tax on natural gas production.

A study of surrounding states reflects little impact from an imposed severance tax. Even raising existing severance taxes in Texas, Wyoming and West Virginia have had little impact on exploration and production.

Bottom line: A severance tax can and must be enacted. It should be enacted in unison with other regulatory components previously discussed, but cannot be used as a bargaining chip to water down or weaken the necessary regulatory measures.

Jobs:

The Allegheny Conference estimates \$40 billion has already been invested in Pennsylvania as a result of Marcellus Shale extraction.

All facets of the economy can benefit if the Natural Gas industry is handled properly.

According to a study conducted by The Pennsylvania State University College of Earth & Mineral Sciences Department of Energy and Mineral Engineering released last year:

“Natural gas production from the Pennsylvania Marcellus could rise to almost 4 billion cubic feet per day by 2020.”

Further impact:

- Direct spending by Marcellus producers to support drilling operations and the royalty and other payments to land owners will stimulate business activity throughout the economy and induce households and businesses to spend earnings on additional goods and services.
- The Marcellus industry could be generating \$13.5 billion in value added and almost 175,000 jobs in 2020.
- The present value of additional state and local taxes earned from Marcellus development between now and 2020 is almost \$12 billion.

One only need go to Bradford, Susquehanna, or surrounding northern tier counties to see the impact on the economy firsthand.

Many people are needed to not only work the drill sites but to write leases, conduct legal work, survey land, not to mention provide healthcare and housing to those brought to the area by the well. The secondary benefits also go toward the renewable energy development and education sectors.

Conclusion:

This issue literally hits home for me. Pittsburgh and Western Pennsylvania have already begun to recognize the benefits, potential, and promise of the natural gas industry.

These wells bring with them immediate jobs, lucrative leasing opportunities to landowners, and growing business opportunities for the service industries which support this new workforce.

The sector of new energy technology stands poised to benefit as well with an expanding landscape for growth with the development of environmental safeguards, alternative transportation and other areas which can grow through the emergence of natural gas.

This magnet is attracting companies from across the country and around the world.

While much attention has been brought to the number of workers that are being brought into Pennsylvania from other states to get the industry up and running, we must work to insure that Pennsylvanians are trained and considered for the jobs created as the natural gas industry grows. It can't be stressed enough that we must remain steadfast in seeing these companies stick to their commitments to give back, making sure the people in the communities where they're located thrive along with them.

It goes without saying that it is imperative we protect our communities – whether it be our drinking water, infrastructure or safety. That said, we can't kill the goose that lays the golden egg.

We must take a comprehensive and thoughtful approach. We can balance the needs of our economy with the mandate we have to protect our environment and our safety.

The needs of business can be balanced with the needs of the community.

If this happens, we avoid the need for any more drastic remedies, which have been contemplated and put forth by a number of members of the General Assembly.

Some have spoken of the need to impose a moratorium on issuance of future leases if these crucial land management and regulatory oversight issues are not thoroughly addressed.

The General Assembly needs to step forward now to provide that oversight and direction.

If we cannot work out the finer points of regulation to protect our environment and the safety of our citizens, then we must stop and take stock.

Regulation to protect our environment and our safety is important enough to slow all of this down in order to assess the situation and determine the environmental impact of the natural gas industry.

A number of my colleagues have brought up their desire to impose a moratorium on the industry. Relating to the extent and scope, a number of possibilities have been discussed.

I believe that going down this path is indeed a proper course of action if the importance of the regulatory component is not recognized.

I want to be clear – accepting a severance tax is not the industry’s ticket to less stringent regulations.

Imposing a severance tax must be pursued independently of the regulatory component.

This is not the time to engage in quid pro quos or deal-swapping. The stakes are much too high.

Regulation of the industry and protection of our people and our resources holds enough importance that it must stand alone.

While some may argue that the assurances we are pursuing are too stringent and the rhetoric regarding moratoriums is too severe, I cannot stress enough how important it is that we pursue and implement the proper regulatory measures to ensure the safety and success of the industry now and in years to come.

We are looking at a resource that has the potential in the next 20 years to make the U.S. self-sufficient in its supply of natural gas.

It has the potential to create jobs, growth, and wealth in Pennsylvania much sooner than that.

Thank you.