

Conservation Law Background

In 1961, the Pennsylvania General Assembly enacted Act 359, the Oil and Gas Conservation Law. The act was passed in response to advocacy from the Interstate Oil and Gas Compact Commission, previously known as the Interstate Compact to Conserve Oil and Gas. Pennsylvania joined the compact in 1941. The stated legislative intent of the statute was:

"...to foster, encourage, and promote the development, production, and utilization of the natural oil and gas resources in this Commonwealth...in such manner as will encourage discovery, exploration, and development without waste; and to provide for the drilling, equipping, locating, spacing and operating of oil and gas wells so as to protect correlative rights and prevent waste of oil or gas or loss in the ultimate recovery thereof...and to protect fully the rights of royalty owners..."

The Oil and Gas Conservation Law seeks to minimize the waste of oil and gas resources which may otherwise remain underground due to inefficient development of the resource and whose future recovery is regarded as economically prohibitive. In addition, the act is intended to protect the correlative rights of property owners who may either be prevented from participating in a voluntary development unit, or who may receive no compensation for the development of their oil and gas resources due to the development and extraction of the mineral resource from adjacent property, which is subject to the Rule of Capture. Litigated extensively in Pennsylvania, the Rule of Capture generally recognizes that oil and gas "belong to the owner of the land, and are part of it, and are subject to his control; but when they escape, and go into other land, or come under another's control, the title of the former owner is gone." *Westmoreland & Cambria Natural Gas Co. v. De Witt*, 130 Pa. 235 (1889).

In an effort to prevent the uninterrupted development and exploration of oil and gas resources of the Pennsylvania and Mississippian Systems and within the Upper and Middle Devonian Geological Series – which had occurred continuously since the successful production of oil at the Drake Well in 1859 – the Oil and Gas Conservation Law was limited to those wells which targeted the Lower Devonian Geological Series. Specifically, the law is only applicable to wells which penetrate the Onondaga Horizon, or 3,800 feet

below the surface in areas of Pennsylvania where the Onondaga Horizon is closer to the surface than 3,800 feet.

The law authorizes the department to integrate, either through voluntary agreement or through involuntary compulsion, interests in oil and gas development, and to provide for the spacing of wells in a manner which maximizes the economic and energy extraction benefits of oil and gas development. This process is commonly referred to as "pooling" or "unitization." The department, after due process and public hearing, is authorized to provide for the spacing and location of wells throughout the unit, and to provide for fair and just compensation for all mineral rights owners within the unit, including those involuntarily integrated into the unit.

The Oil and Gas Conservation Law is not applicable to development of natural gas from the Marcellus Shale geographic strata, unless the well bore penetrates the Onondaga Horizon.