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Different towns, different rules for gas drilling

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By Brian David, Pittsburgh Post-Gazette

The mounting wave of Marcellus Shale gas drilling is creating a substantial challenge for local municipalities.

What can they regulate? What do they want to regulate? How can they regulate it?

On the flip side, municipalities are creating a substantial challenge for Marcellus Shale drilling companies.

"You may have 10 municipalities here that may have 10 different ordinances, and in the same geographic area in Texas, it would be one municipality," Range Resources spokesman Matt Pitzarella said. "It's a uniquely Pennsylvania challenge ...

"What we really need is balance, some level of consistency across the state. That way planners can plan and the industry can have some consistency, which is all we're really asking for."

The cost and delay of dealing with the varied rules is such an issue that Mr. Pitzarella said most companies would accept more stringent regulations in exchange for consistency from municipality to municipality.

That, however, is not what is happening in southwestern Pennsylvania.

"I think everyone is so focused on getting their own ships right, right now, that they're not worried about anyone else," South Fayette manager Mike Hoy said. "It's comparable to the cable companies; everyone has their own regulations."

South Fayette is readying a set of zoning amendments created through research done by Mr. Hoy, township engineer David Gardner, solicitor Jon Kamin and the township planning commission. They drew heavily on amendments recently passed in Cecil and a countywide ordinance soon to be passed in Lycoming County.

Cecil's process was done earlier and with less precedent on which to draw. Solicitor John Smith drew on experiences that lawyers in his firm had in Texas and Oklahoma, and he examined the regulations there. Cecil also launched a community task force and held discussions with industry representatives.

"There was a lot of push back from industry," Mr. Smith said, which led to some pointed arguments. "Because it was one of the first, they knew it would be copied."

Copying is indeed rampant. Mr. Smith has done presentations to groups of township officials and has been hired to develop ordinances in two other townships. Mr. Kamin said that "every other municipality I represent" is waiting to see what comes of the South Fayette effort.

With 2,566 municipalities in Pennsylvania - 485 in Allegheny, Armstrong, Beaver, Butler, Fayette, Greene, Washington and Westmoreland counties - that's a long seeding process and one with little coordination.

There is some commonality. Most municipalities have concluded that based on current court rulings, towns with zoning ordinances can regulate anything that typically falls under the zoning heading: noise, setbacks, dust control, hours of operation, lighting, road bonding, emergency response training and similar matters.

Municipalities do not, however, have any control over some controversial issues, such as water management, other environmental impacts or the process of drilling itself, which fall under state and federal control.

Municipalities without zoning ordinances really can't do anything at all.

Mr. Pitzarella said the industry likely would embrace a sort of common ordinance with universal basic assumptions and a clearly defined set of adjustable standards. Companies could go to the municipality with a checklist to get the local rules.

"It makes it difficult to do any work with so many ordinances in so many areas," said Kathryn Klaber, executive director of the Marcellus Shale Coalition, an industry group based in Canonsburg.

"Developing really good regulations can take months to years," she said, "but then any one of our municipalities can pass any ordinance they want any time they want."

To be sure, Mr. Pitzarella and Ms. Klaber both make their living off of gas drilling. Their main points, however, were echoed by three of the top Marcellus Shale planning experts in the state: Tom Murphy, a Penn State extension educator and Marcellus Shale expert; Alex Graziani, executive director of the Smart Growth Partnership in Westmoreland County and chairman of the Marcellus Shale Committee for the state planning board; and Kurt Hausammann Jr., who as Lycoming County planning director helped develop what is being regarded as the state's model ordinance. All three agreed that a coordinated, balanced effort by municipalities would produce the best results for everyone.

"We live in a state with strong local government," Mr. Hausammann said, "and I believe that such a responsive government is good at the lowest level. But there are some things that are approached better as a group."

The three made identical basic points in separate interviews:

- Communities need to start planning now for how they want to guide drilling within their borders. If a town doesn't have zoning, it should think about establishing it.
- The industry is for real and the potential benefits are huge, so it makes sense to establish regulations that will encourage responsible drilling.
- The industry largely has been a cooperative planning partner and is happy to compromise so it can get to work.
- This does not need to be another coal, oil or steel with an economic boom followed by an environmentally troubling bust.
- The more that communities can work together, the better.

Mr. Hausammann's county is a prime example of that. In response to a growth spurt, Lycoming created a countywide zoning plan in the 1980s that covers all municipalities that do not have their own zoning.

When shale exploration began there in 2007, the county created a task force made up of community representatives, government officials, planners, local experts and industry representatives. It was a large-scale effort but was possible because it was done at a county level. It also was worth the effort because it is intended to cover the entire county.

The resulting set of zoning amendments, due to be passed in the next couple of months, is being embraced as a model by both the industry and communities, and Mr. Hausammann is busy giving speeches and webinars.

"If I could, I would form county or community Marcellus Shale task forces everywhere," Mr. Graziani said. "We need some public, participatory discussion.

"Too many people can be winners for us not to."

But Mr. Graziani is also well aware of the fierce independent streak that drives Pennsylvania communities, sometimes to their detriment.

"The Whiskey Rebellion happened in Western Pennsylvania," he said, referring to the 1794 uprising in which Western Pennsylvanians nearly went to war against the federal government over a tax on liquor. "Elements of that never left."

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