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ATTORNEYS AT LAW

July 6, 2012

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SECRETARY'S BUREAU

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Pennsylvania Public Utility Commission  
PO Box 3265  
Harrisburg, PA 17105-3265

**Re: Shippingport Borough  
Request for Advisory Opinion on Ordinance**

Dear Sirs:

I am writing in my capacity as Solicitor to the Borough of Shippingport, Beaver County, Pennsylvania asking for the appropriate office within the PUC to render an advisory opinion on a proposed ordinance of the Borough, addressing Act 13. Enclosed is a draft of the ordinance, not yet adopted, which seeks to amend the Borough's Zoning Ordinance in conformance with Act 13. The Borough believes the proposed ordinance conforms to the requirements of the Municipalities Planning Code and Act 13.

Would you kindly provide your comments, corrections, questions and suggestions to me.

Very truly yours

McMillen, Urick, Tocci, Fouse & Jones

Richard Urick

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RU:jmp  
Enclosures (y)  
Cc: Laura Korcan, Borough Secretary

Ordinance No: \_\_\_\_\_

**AN ORDINANCE OF THE BOROUGH OF SHIPPINGPORT, BEAVER COUNTY, COMMONWEALTH OF PENNSYLVANIA, AMENDING ORDINANCE NO.184 "THE SHIPPINGPORT BOROUGH ZONING ORDINANCE" BY ADDING ARTICLE XVIII, PROVIDING FOR THE REGULATION OF OIL AND GAS OPERATIONS AND PENALTIES FOR VIOLATION THEREOF**

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**NOW THEREFORE**, be it ordained and enacted and it is hereby ordained and enacted by the Council of the Borough of Shippingport as follows:

**Section 1. Purpose**

The purpose of this ordinance, amending the Shippingport Borough Zoning Ordinance, is to ensure compliance with the local ordinance uniformity standards and other requirements of the Unconventional Gas Well Impact Fee Act ("Act 13"), which amends Title 58 (the "Oil and Gas Act") of the Pennsylvania Consolidated Statutes; and to allow for the reasonable development of oil and gas resources in the Borough while properly protecting the health, safety and welfare of the residents of the Borough of Shippingport.

**Section 2. Adoption of New Article XVI to Zoning Ordinance**

The Shippingport Borough Zoning Ordinance is hereby amended to add the following new Article XVIII.

**ARTICLE XVIII**

**Special Provisions Relating to Oil and Gas Operations**

**§ 1800 Definitions:**

The following words and phrases when used in this Article XVIII of the Zoning Ordinance shall have the meanings given to them in this Section unless the context clearly indicates otherwise:

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“**Act 13**” means Act 13 of 2012 (H.B. 1950), P.L. 87, § 1, approved Feb. 14, 2012, 58 Pa.C.S. § 2301 et seq., commonly known as the “Unconventional Gas Well Impact Fee Act”, which amended Title 58 (“Oil and Gas”) of the Pennsylvania Consolidated Statutes to add Chapter 23, 25, 27, 33 and 35, and any subsequent amendments thereto and regulations promulgated thereunder.

“**Agricultural Zoning District**” shall have the same meaning as such term is used in Act 13. For the specific purposes of this article the A-1 Agricultural District shall be considered” Agricultural Zoning District”.

“**Environmental Acts**” means, in accordance with Section Act 13 (58 Pa.C.S. § 3301), all statutes enacted by the Commonwealth of Pennsylvania relating to the protection of the environment or the protection of public health, safety and welfare, that are administered and enforced by the department or by another Commonwealth of Pennsylvania agency, including an independent agency, and all Federal statutes relating to the protection of the environment, to the extent those statutes regulate oil and gas operations.

“**Impoundment Area**” shall have the same meaning as such term is used in Act 13, including as used in 58 Pa.C.S. § 3304.

“**Industrial Uses**” shall have meaning in this Article XVIII as the term “Industrial Uses” as used in Act 13, and, without limiting the foregoing, shall include the following specific uses provided for in the Shippingport Borough Zoning Ordinance:

a) **Article X I-2 General Industrial District**

“**Industrial Zoning District**”, shall have the same meaning as such term is used in Act 13. The following Borough Zoning Districts for the purposes of this Article of the

Zoning Ordinance shall be considered “Industrial Zoning Districts”: I -2 General Industrial District and I -1 Light Industrial District.

“**Natural Gas**” shall have the same meaning as such term is defined in Act 13 (58 Pa.C.S. § 2301).

“**Natural Gas Compressor Station**” shall have the same meaning as such term is used in Act 13, including in 58 Pa.C.S. §§ 3301-3309.

“**Natural Gas Processing Plant**” shall have the same meaning as such term is used in Act 13, including in 58 Pa.C.S. §§ 3301-3309.

“**Occupied Building**” shall for the specific purposes of this Article XVIII of the Zoning Ordinance mean, consistent with the definitions of “Building” pursuant to Act 13 (58 Pa.C.S. § 3203), an occupied structure with walls and roof within which persons live or customarily work.

“**Oil and Gas Operations**” for the specific purposes of this Article XVIII of the Zoning Ordinance incorporates by reference, and has the same meaning as, the term “Oil and Gas Operations” as defined in Act 13 (58 Pa.C.S. § 3301), which provides that such term includes the following:

- (1) well location assessment, including seismic operations, well site preparation, construction, drilling, hydraulic fracturing and site restoration associated with an oil and gas well of any depth;
- (2) water and other fluid storage or impoundment areas used exclusively for oil and gas operations;
- (3) construction, installation, use, maintenance and repair of:
  - (i) oil and gas pipelines;
  - (ii) natural gas compressor stations; and

- (iii) natural gas processing plants or facilities performing equivalent functions.

And

- (4) construction, installation, use, maintenance and repair of all equipment directly associated with activities specified in paragraphs (1), (2) and (3), to the extent that:

- (i) the equipment is located at or immediately adjacent to a well site, impoundment area, oil and gas pipeline, natural gas compressor station or natural gas processing plant; and
- (ii) the activities are authorized and permitted under the authority of a Federal or Commonwealth agency.

**“Oil and Gas Well”** or **“Well”** as used in this Article XVIII of the Zoning Ordinance is intended to have the same meaning as the term **“Well”** as defined in Section 3203 of Act 13 (58 Pa.C.S. § 3203).

**“Oil and Gas Well Site”** or **“Well Site”** as used in this Article XVIII of the Zoning Ordinance is intended to have the same meaning as the term **“Well Site”** as used in 58 Pa.C.S. § 3304(b)(5.1).

**“Owner of Building or Adjoining Lot”** for the purposes of this Article XVIII shall have the same meaning as such term as used in Act 13 (58 Pa.C.S. § 3304(b)).

**“Permanent Oil and Gas Operations”** as used in this Article XVIII of the Zoning Ordinance is intended to have the same meaning as the term **“Permanent Oil and Gas Operations”** as used in 58 Pa.C.S. § 3304(b)(3).

**“Residential District”** or **“Residential Zoning District”** shall have the same meaning as the term **“Residential District”** as used in Act 13. The following Zoning Districts shall for the purposes of this Article XVIII of the Zoning Ordinance be

considered “Residential Zoning Districts”: R-1 Single Family District; R-2 Residential District; R-3 Residential District.

“**Review Period for Conditional Use**” as used in this Article XVIII of the Zoning Ordinance is intended to have the same meaning as such phrase is used in Act 13, including in 58 Pa.C.S. § 3304(b)(4).

“**Review Period for Permitted Uses**” as used in this Article XVIII of the Zoning Ordinance is intended to have the same meaning as such phrase is used in Act 13, including 58 Pa.C.S. § 3304 (b)(4).

“**Well and Pipeline Location Assessment Operations**” shall have the same meaning as such term is used in Act 13, including in 58 Pa.C.S. § 3304.

**§ 1801            General Repealer for Consistency with Act 13**

All provisions of the Shippingport Borough Zoning Ordinance that contain provisions which impose conditions, requirements or limitations on the same features of Oil and Gas operations regulated by Chapter 32 (58 Pa.C.S. §§ 3301-3274) of Act 13, or that accomplish the same purposes as set forth in the said Chapter 32 of Act 13, are, to the extent applicable to Oil and Gas Operations and prohibited, preempted or superseded by Act 13, including as set forth in 58 Pa.C.S. § 3302 thereof, hereby repealed.

All provisions of the Shippingport Borough Zoning Ordinance that contain provisions which impose conditions, requirements or limitations on the construction of Oil and Gas Operations that are more stringent than conditions, requirements or limitations imposed on construction activities for other Industrial Uses within the Borough, to the extent such provisions are prohibited, preempted or superseded by Act 13, including as set forth in 58 Pa.C.S. § 3304(b)(2), are hereby repealed.

All provisions of the Shippingport Borough Zoning Ordinance that contain provisions which impose conditions, requirements or limitations on the heights of structures, screening and fencing, lighting or noise relating to Permanent Oil and Gas Operations that are more stringent than the conditions, requirements or limitations imposed on other Industrial Uses or other land development within the particular zoning district where the Oil and Gas Operations are situated are, to the extent such provisions are prohibited, preempted or superseded by Act 13, including as set forth in 58 Pa.C.S. § 3304(b)(3).

Any provisions of the Shippingport Borough Zoning Ordinance that regulate Oil and Gas Operations to the extent also regulated by Environmental Acts are, consistent with Act 13, including 58 Pa.C.S. § 3303, hereby repealed.

**§ 1802            Continuation of Permissible Existing Setback Provisions**

All provisions of the Shippingport Borough Zoning Ordinance regulating for all types of Industrial Uses setback distances other than those regulated by or set forth in Chapter 32 (58 Pa.C.S. §§ 3301-3274) of Act 13 shall continue to apply in full force and effect, to the extent permitted by and consistent with Act 13, to all such Industrial Uses.

**§ 1803 Permitted Oil and Gas Uses In All Zoning Districts**

The following uses shall, to the extent required by Act 13, including as set forth in 58 Pa.C.S. § 3304(b)(1) thereof, shall be permitted uses in all Zoning Districts of the Borough.

- a) Well and Pipeline Location Assessment Operations.
- b) Oil and Gas Operations, other than:
  - (i) activities at Natural Gas Impoundment Areas, Natural Gas Compressor Stations and Natural Gas Processing Plants; or
  - (ii) Wells or Well sites.

Without limiting the foregoing, the following specific sections of the Zoning Ordinance [§ 401, 501, 601, 701, 801, 901, and 1001] are amended to add to the list of permitted uses as of right for the A-1 Agricultural District, R-1 Single Family District; R-2 Residential District; R-3 Residential District, B-1 Business District, I -1 Light Industrial District, and I-2 General Industrial District:

- (a) “Well and Pipeline Location Assessment Operations”: and
- (b) Oil and Gas Operations, other than:
  - (i) activities at Natural Gas Impoundment Areas, Natural Gas Compressor Stations and Natural Gas Processing Plants; or
  - (ii) Wells or Well sites.

**§ 1804 Permitted Oil and Gas Well Uses In All Districts Other Than Residential Districts**

To the extent required by Act 13, including as set forth in 58 Pa.C.S. § 3304(b), Oil and Gas Wells or Well Sites shall be permitted uses in all Zoning Districts of the Borough other than Residential Zoning Districts.

Without narrowing the forgoing, the following specific Sections of the Zoning Ordinance are amended to add Oil and Gas Wells or Well Sites to the list of permitted uses as of right for the A-1 Agricultural District; B-1 Business District; I-1 Light Industrial District; I-2 General Industrial District:

- a) Section 401
- b) Section 801
- c) Section 901
- d) Section 1001

**§ 1805 Certain Oil and Gas Operations Impoundment Areas Permitted In All Zoning Districts**

Impoundment Areas used for Oil and Gas Operations shall be a Permitted Use in all zoning districts in the Borough provided that the edge of any Impoundment Area shall not be located closer than 300 feet from any existing Occupied Building.

**§ 1806 Natural Gas Compressor Station Uses**

Natural Gas Compressor Stations shall be a Permitted Use in an Industrial Zoning District, namely the I-1 Light Industrial District and the I-2 General Industrial District, and as a Conditional Use in all other Zoning Districts if the natural gas compressor building meets the following standards:

- (i) is located 750 feet or more from the nearest Occupied Building or 200 feet from the nearest lot line, whichever is greater, unless waived by the owner of the Occupied Building or adjoining lot; and
- (ii) the noise level does not exceed a noise standard of 60dbA at the nearest property line or the applicable standard imposed by Federal law, whichever is less.

**§ 1807            Natural Gas Processing Plant Uses**

A Natural Gas Processing Plant shall be a Permitted Use in any Industrial Zoning District, namely the I-1 Light Industrial District and the I-2 General Industrial District, and as a Conditional Use in an Agricultural Zoning District, if all the following conditions are met:

- (i)        The natural gas processing plant building is located at the greater of at least 750 feet from the nearest existing Occupied Building or at least 200 feet from the nearest lot line unless waived by the owner of the Occupied Building or adjoining lot.
  
- (ii)       The noise level of the natural gas processing plant building does not exceed a noise standard of 60dbA at the nearest property line or the applicable standard imposed by Federal law, whichever is less.

**§ 1808            Expedited Review of Zoning Permit Reviews for Oil and Gas**

**Operations**

Notwithstanding any other generally applicable provision of the Zoning Ordinance providing for a longer period of review for Zoning Permit Applications relating to Oil and Gas Operations, the Borough's Review Period for Permitted Uses shall not exceed thirty (30) days for complete submissions, and the Review Period for Conditional Uses shall not exceed 120 days for complete submissions.

**§ 1809            Severability**

If any section, subsection, sentence, clause or phrase or portion of this Ordinance is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such shall be deemed a separate, distinct and independent provision and such holding shall not affect the validity of the remaining portion thereof.

**Section 3     Additional Repealer**

Any ordinance, chapter, paragraph or sentence in any ordinance conflicting with the provisions of this ordinance is hereby repealed to the extent of such conflict

**Section 4     Effective Date**

This ordinance shall take effect upon enactment hereof.

Adopted and enacted this \_\_\_\_\_ day of \_\_\_\_\_, 2012, by the Council of the Borough of Shippingport.

ATTEST:

Borough of Shippingport

\_\_\_\_\_  
Secretary/Manager  
(SEAL)

\_\_\_\_\_  
President of Council

APPROVED this \_\_\_\_\_ day of \_\_\_\_\_, 2012

\_\_\_\_\_  
Mayor



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