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## Stormwater Management Charges Encourage Sustainability

By Michael Mattioni Esq. & Dawn M. Tancredi, Esq., LEED GA



the gross area of the property and the impervious coverage area. Impervious area means the total square feet of any plane hard surface area, including buildings, any attached or detached structures, and paved or hard-scaped areas, gravel, and compacted dirt, that either prevents or restricts the absorption of water into the soil, and thereby causes water to runoff the surface.

One point to note is that property owners that currently use little or no water may see a large impact on their bill since they will now be charged based on the size of impervious coverage on their property. Those properties expected to receive the largest increase in their bills include many large parking lots and shopping centers.

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The Philadelphia Water Department will implement new assessment charges on all non-residential properties and residential properties with more than four dwelling units beginning July 1, 2010 for stormwater runoff. Stormwater runoff is water that flows over yards, streets, buildings, parking lots and other surfaces when it rains. The stormwater management service charge (SMSC) will be based upon

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### Disclaimer

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## Marcellus Shale: Is there buried treasure in your back yard?

By Lauren Reap, Esquire

By now you have likely heard the term "Marcellus Shale," but you may know little about it except that it has provided some people with a big pay day, and that it has something to do with energy.

Marcellus Shale is a naturally occurring rock formation lying beneath about two thirds of Pennsylvania as well as parts of New York and West Virginia. It is estimated that the shale may hold trillions of cubic feet of natural gas.

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The stormwater management charge is expected to encourage property owners to incorporate green building practices into their sites to diminish stormwater runoff.

The Philadelphia Water Department will send out billing notices which describe how the new charges are calculated. A property owner may file an appeal to challenge the calculation of the charges. There are two bases for appeal of the SMSC. First, stormwater credits may be obtained through the appeal process. Stormwater credits can be earned as a result of the construction, operation, and maintenance of privately owned Stormwater Management Practices that reduce a parcel's contribution of stormwater to the City's collection and conveyance systems. The second basis for appeal is to adjust errors in the calculation of a property's gross or impervious area.

In Philadelphia, there are almost 1,600 miles of sewers that handle stormwater and wastewater flows. Much of the stormwater is discharged directly to our rivers and other connecting tributaries. Problems associated with excess stormwater include: damage to aquatic and riparian environments; channel erosion; pollution in drinking water; and property damage due to flooding of low lying areas such as basements and roads.

The City has been subject to various state and federal administrative orders and other regulatory compliance deadlines to eliminate these problems. The new fee scheme is in part a response to such mandates. It is the City's method for securing overall compliance by charging fees sufficiently high enough to, in effect, force property owners to develop methods for limiting storm water discharges from their

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properties and to find new ways to retain stormwater on their own properties long enough to permit "natural" percolation into the groundwater, or to provide some form of treatment prior to discharge to streams and rivers. The City has multiple problems caused by its existing combined waste and stormwater management systems. When heavy rains occur, the combined sewer systems are frequently overtaxed, resulting in the discharge of untreated sanitary and stormwater to our rivers and their tributaries. The stormwater system is inadequate to handle significant storms. The result is that stormwater is discharged directly into our rivers without any form of treatment. Stormwater management by individual property owners is now required to reduce the amount of stormwater flowing into combined sewers as well as limiting other direct untreated stormwater discharges to rivers and tributaries. Credits for mitigation of the new charges can be obtained using various means of acceptable stormwater management. Traditional means include detention ponds, and devices to hold rainwater on site, as well as installing green roofs or planting rain gardens which are measures that can reduce such flows. The City is implementing the SMSC because it presently has a combined stormwater and sanitary sewer system. Whenever there is a significant rainfall, the combined sewer systems become overwhelmed and untreated sewage flows directly into rivers and tributaries. Stormwater management is being required to reduce the amount of stormwater flowing into the combined sewer system, which will reduce the amount of untreated sewage that flows into rivers in storms. A couple examples of how a property owner can reduce the amount of stormwater runoff are to build a green roof or plant a rain garden.

This article explores some basic issues that should be considered by anyone effected by the new stormwater management charges. It is recommended that property owners speak with an attorney or other professional to discuss possible errors or means to reduce impervious coverage, which will lead to reduced SMSC for a property.





### ***Marcellus Shale: Is there buried treasure in your back yard?***

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The Marcellus Shale is situated approximately 5,000 to 8,000 feet below ground, depending on the location. (One mile = 5,280 feet.) Although the existence of the Marcellus Shale was known, the cost of accessing the gas trapped within it proved cost prohibitive until recently. Within the last several years, technological advances in extracting the gas from the shale, by "hydraulic fracturing," has created an oil rush mentality reminiscent of Pennsylvania's oil boom in the 1850's.

Hydraulic fracturing involves drilling a vertical well, similar to that used for drilling oil, which changes direction at a certain depth to enter the shale horizontally. The process involves encasing and cementing the well at precise stages throughout its journey to the shale, which protects the well from collapsing from the pressure of the land above, and protects nearby ground water from contamination from escaping gas. Once the well and casing are complete, a mixture of primarily water and sand is pumped in extremely large quantities and very high pressure through the well into the shale. The liquid and sand mixture creates and/or enlarges shale fractures, permitting gas to flow more freely. The well captures freed gas and returns it to the surface for use.

Using a horizontal well permits gas developers to drill their vertical base well several hundred feet from the shale they plan to access. This is convenient for landowners who have shale under their property because their land can remain relatively undisturbed while the gas is being extracted.

Unfortunately, however, the process is not entirely without discomfort to the surrounding community. Local roads often suffer substantial wear and tear occasioned by frequent trips made by large trucks to and from well sites to transport water, extracted gas and other materials. Additionally, quiet, rural communities where most of the gas is being extracted, often complain about noise and excessive light coming from the drill site 24 hours a day. There is also a potential for a gas leak or explosion, which is rare but which has occurred in at least one instance recently in Clearfield County, although the gas there never caught fire, no injuries were reported, and environmental impact was limited.

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As you may guess, the hydraulic fracturing process is not without some environmental implications. One concern is the huge amount of industrial wastewater that the process creates, which must be stored and eventually recycled, treated or disposed of, an aspect of hydraulic fracturing regulated by the Pennsylvania Department of Environmental Protection. Another concern comes from the substantial earth disturbance at drilling sites, requiring compliance with erosion and sedimentation control regulations. Other problems can arise such as groundwater pollution, pipeline collapses and failure of systems to properly function.

As always, however, it comes down to money, and gas developers are paying top dollar to lease rights to the gas beneath your property. The leases, unfortunately for the less-than-business-savvy, are private contractual agreements between gas developers and landowners, and are often crafted to protect interests of the developer.

The leasing and sale of underground mineral rights goes back more than 150 years in Pennsylvania. Therefore, it's possible a landowner does not own his/her mineral rights because they were sold in the nineteenth century. Careful analysis is required by landowners before agreeing to any lease of Marcellus Shale rights.

This article highlights some issues surrounding Marcellus Shale deposits in Pennsylvania. This is a developing area for many industries. Anyone with questions regarding Marcellus Shale should contact an appropriate professional.



### ***Estate Planning for Retirement Assets***

Employer-sponsored retirement plans, such as pension plans, profit sharing and 401(k)s, and IRAs, which are not employer-sponsored, very often comprise the most substantial part of the family estate. Careful consideration must be given to retirement benefits even in the most rudimentary estate plan because the rules can be complex and there are various tax implications.

There are several concepts to keep in mind when dealing with retirement assets. When a person becomes a participant in an employer-sponsored plan or opens an IRA, he or she is required to complete a beneficiary designation form naming the individual or class of individuals (e.g., "children") who will receive his or her plan benefits in the event he or she dies before the balance has been distributed. Thus, retirement plan assets are "beneficiary-designation-driven." The manner in which they pass upon death is controlled by what the plan participant sets forth in the beneficiary designation form not by last will and testament. It is therefore critical to review the beneficiary designations in the course of the estate planning process to confirm the designations are consistent with one's goals and objectives.

Not only does the retirement plan constitute a part of the estate for estate and inheritance tax purposes, but the receipt of benefits will result in taxable income. Assets of a qualified retirement plan or IRA are fully includable in the gross estate of the plan participant under §§2031 and 2039 of the Internal Revenue Code (IRC) even though the assets pass outside of the probate process. In addition, under the IRC qualified retirement plan funds and earnings which had been tax deferred are subject to federal income tax upon actual distribution. After the death of the plan participant, this tax is imposed on his or her designated beneficiary. A surviving spouse who receives a distribution from an employer-sponsored plan may elect to defer income taxation of the distribution by rolling it over within 60 days to an IRA. Otherwise, distribution is subject to taxation. Under §691 of the IRC a beneficiary is able to deduct for income tax purposes the amount of estate tax paid, if any, as the result of inclusion of the plan assets in the deceased participant's estate. This provision is designed to ameliorate the double tax caused when a beneficiary inherits plan assets.



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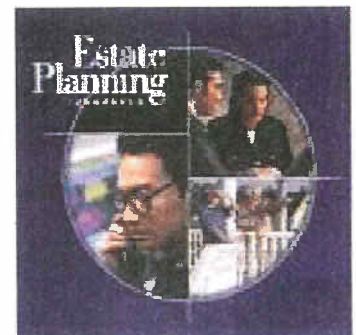
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Under the Pension Protection Act of 2006, non-spouse and non-participants can elect to roll over 401(k) or 403(b) accounts into an IRA just like a spouse or a participant. However, the beneficiaries have to take out the money in the account in accordance with the distribution period set forth in the plan.

It also is important to be mindful of the minimum distributions rules. These rules spell out how rapidly one must take the money out of the retirement plan. These rules can vary depending upon whether the plan is a "qualified" or employer-sponsored plan as compared to an IRA. Qualified plans do not have to give participants all of the distribution options that the IRC may otherwise allow. Employers can limit distribution options in this way. For instance, qualified plans often provide that upon the participant's death, the beneficiary must take out all of the funds within three to five years. This requirement may intersect uneasily with other traditional estate planning rules and an individual's planning objectives.

The basic life scheme of the IRA is that a person puts money in and it grows tax deferred. Once the money is taken out of the plan, it is subject to tax. If the money is taken out before age 59 ½ there is a penalty in addition to any income tax. From age 59 ½ until the required beginning date (the required beginning date is April 1 of the calendar year following the calendar year in which the participant attains the age of 70 ½ without regard to the actual date of retirement) the participant is taxed but not penalized. Upon the required beginning date, the participant must take the required minimum distribution which is calculated based on the age of the account holder with reference to the Uniform Lifetime Table published in Treasury Regulations. Upon the death of the account owner, the beneficiaries still have to take the minimum distributions. The period over which the beneficiaries must take the funds is based on when the account owner died - before or after the required beginning date - and the identity of the beneficiary.



## Firm News and Updates

**John Mattioni, Esquire**, has been elected to serve as a member of the Board of Directors of the Historical Society of the United States District Court for the Eastern District of Pennsylvania. The Society's goal since its incorporation in 1984 has been to inform the public of the Court's distinguished role in American history.

**Michael Mattioni, Esquire**, has been elected to serve as Secretary of the Justinian Society, a legal organization founded in 1935, which promotes and supports the legal profession.

**Regina Parker, Esquire**, has been re-appointed to serve as a member of the Minority Bar Committee of the Pennsylvania Bar Association for the 2010-2011 year. The Committee endeavors to better serve its members, the public and the legal profession.

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