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Energy Alert

Pennsylvania Passes Shale Gas Drilling Law

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On February 13, 2012, Pennsylvania Gov. Tom Corbett signed House Bill 1950, the Marcellus Shale bill, into law. Under the new law—the first comprehensive revision of Pennsylvania's Oil and Gas Act since 1984—shale gas wells in Pennsylvania will be assessed an annual "impact fee" that will be tied to the price of natural gas and adjusted yearly to reflect changes in the Consumer Price Index. The law also attempts to centralize zoning and land-use rules by imposing statewide standards related to drilling and pipeline activities, generally preempting local rules by requiring, among other things, that wells and pipelines be permitted in every zoning district.

The Impact Fee

Beginning in September 2012, companies will pay between $190,000 and $355,000 per "unconventional gas well" during the first 15 years after the well is drilled. All such wells will be subject to the new law, as companies will be required to pay the impact fee even for wells that were drilled prior to the law's enactment. Each affected county will decide whether to charge the fee, which will be collected by the state Public Utility Commission (PUC). If a county decides that it will not assess the fee—and thereby forfeit its share of local fee dollars—a majority of municipalities within its borders will have 60 days to override the county's decision. If all eligible counties (counties that host natural gas drilling) adopt the fee, estimates for revenue are approximately $180 million in 2012, $211 million in 2013 and $264 million in 2014. Prior to adoption of the law, Pennsylvania was the only major gas-producing state that did not impose a tax or levy on natural-gas drilling.

A fixed portion of the fees that are raised will go to state agencies with a role in the regulation of the shale gas industry, such as the Department of Environmental Protection (DEP), the PUC, the Pennsylvania Emergency Management Agency, the State Fire Commissioner and the Fish and Boat Commission. After the fixed portion is allocated to state agencies, 60 percent of the fees will be distributed directly to impacted counties, and a large portion of the remaining 40 percent will also be distributed to such impacted counties either through population- or road-mileage- based formulas, or through the awarding of competitive grants.

Zoning and Environmental Considerations

In addition to the fees, owners and operators will also face new land use and environmental regulations that, depending on the municipality, may be less strict than those currently in place and will require many municipalities to revise their ordinances in the next 120 days. While the law will allow municipalities to apply zoning standards on issues such as lighting, noise and structures, such standards cannot be more stringent for drilling than for other industrial activities, and municipalities will be limited in their power to make drilling operations "conditional use." The PUC will review stricter standards, and municipalities with drilling standards that are deemed to be too strict may be required to rewrite their drilling ordinances or risk losing a portion of the impact fees.

The law has several significant environmental provisions, including—

- increasing well-setback distance from 100 feet to 300 feet for streams, rivers, ponds and other water bodies, and from 200 feet to 500 feet from buildings and private water wells and to 1,000 feet for public drinking water systems
- expanding the "presumed liability" for the operator of an unconventional well for impairing water quality from 1,000 feet to 2,500 feet from a gas well, and extending the duration of the liability from six months to 12 months
- enhancing water quality replacement standards to meet Safe Drinking Water Act standards
- enabling the DEP to revoke permits in a manner such that it can deal with imminent safety concerns
- increasing blanket bonds from $25,000 to $600,000
- providing for statewide environmental standards
- enhancing hydraulic fracturing disclosure, including online posting through FracFocus.org.

Additional Energy Bills Signed

In conjunction with House Bill 1950, Gov. Corbett also signed two other significant bills related to the energy industry. The first bill, House Bill 1294, will allow public utilities to charge ratepayers up front for improvements to power lines and water, sewer and natural gas pipelines. The second bill, Senate Bill 1237, expands the Keystone Opportunity Zones and will provide long-term tax breaks to a buyer of three Philadelphia-area oil refineries that are shutting down and to the ethane cracker plant that may be built in southwestern Pennsylvania.

We will continue to follow as Pennsylvania begins to implement these new laws and will apprise you of any other developments that may impact how you do business.

CONTACT INFORMATION

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