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THE SHALE PLAY TODAY



News & Insights from the Marcellus and Utica Shales



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Tennessee Gas Pipeline Company Goes on the Offensive

On February 5, 2013, the United States District Court for the Middle District of Pennsylvania granted Tennessee Gas Pipeline Co. LLC's ("TGPC") motion for an emergency preliminary injunction preventing Pennsylvania's Environmental Hearing Board ("EHB") from reviewing permits issued by Pennsylvania's Department of Environmental Protection ("DEP") to TGPC associated with its Northeast Upgrade Project ("Project"). The permits were issued on November 21, 2012 and were appealed by the Delaware Riverkeeper Network ("DRN") and others to the EHB on December 19, 2012. TGPC filed its preliminary injunction on January 8, 2013 based on a theory that the Natural Gas Act ("NGA") preempted EHB from reviewing the permits. The Court granted the injunction - not based on preemption, but on harmonizing two federal statutes (the NGA and the Clean Water Act ("CWA")) and the structure of the NGA which provides federal judicial review of an order or action of a state administrative action acting pursuant to federal law - even if that action is not "final agency action."

The procedural history of the proceeding is complicated but relevant to understanding the significance of this decision. In relevant part, TGPC applied to the Federal Energy Regulatory Commission ("FERC") for a Certificate of Public Convenience and Necessity ("CPCN") for their Project under the NGA on March 31, 2011. FERC issued an Environmental

In The News



West Virginia Legislature Focuses on Energy Bills by [Michael J. Basile](#)
Charleston, W.Va.

Just two weeks into the 2013 Regular Session of the West Virginia Legislature, dozens of bills have been introduced with potential impact to the natural gas industry. From the omnibus rules governing shale gas exploration to legislation focused on promoting the proliferation of natural gas transportation infrastructure and vehicle usage, the West Virginia Legislature will spend its fair share of time focused on the industry over the next six weeks. We will be following these bills as they work their way through the Legislature and will update you promptly with news as to how you may be impacted if and when any should become law. If you are interested in learning more, please feel free to contact Mike Basile, Chair, Government Relations Practice Group, Spilman Thomas & Battle, PLLC at mbasile@spilmanlaw.com.



New Rules Proposed for Drilling Wastes in Ohio

In Ohio, proposed legislation would strengthen current regulations on Utica Shale drilling wastes. Specifically, the legislation would address concerns about radiation from those wastes. Spilman will continue to follow such legislation for its potential impact on our clients.

[Read more.](#)

Assessment ("EA") under the National Environmental Policy Act of 1969 ("NEPA") in November 2011 recommending that FERC order a finding of no significant impact but include mitigation measures to protect the environment. FERC issued such an order on May 29, 2012 as well as the CPCN. DRN filed a Request for Rehearing and stay of the May 29 order - which was denied on January 11, 2013. During the proceedings before FERC, TGPC also obtained three permits from DEP on November 21, 2012: two Water Obstruction & Encroachment Permits and one Erosion and Sediment Control General Permit. DRN appealed DEP's issuance of the permits to the EHB on December 19, 2012 and a petition for temporary supersedeas - prompting TGPC to seek the preliminary injunction in federal district court.

[Read the full article on our website.](#)



Pa. Shale Gas Production Doubled Between 2011 and 2012

Pennsylvania's shale gas wells continued to increase production in 2012, even though lower gas prices and other factors led to a drop in the number of new wells being drilled. A report issued by the EIA anticipates the trend of increasing production to continue.

[Read more.](#)



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Mr. Tarutis represents clients with Federal Energy Regulatory Commission matters and audits within the North American Energy Standards Board/Wholesale Gas Quadrant. He has counseled many energy companies on complex regulatory audits and investigatory matters before FERC. In addition, he has developed a proprietary program that analyzes corporate exposure to violating FERC, PUC, CFTC, and other regulatory schemes. [Click here](#) to read his full professional biography.

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