



THE SHALE PLAY TODAY

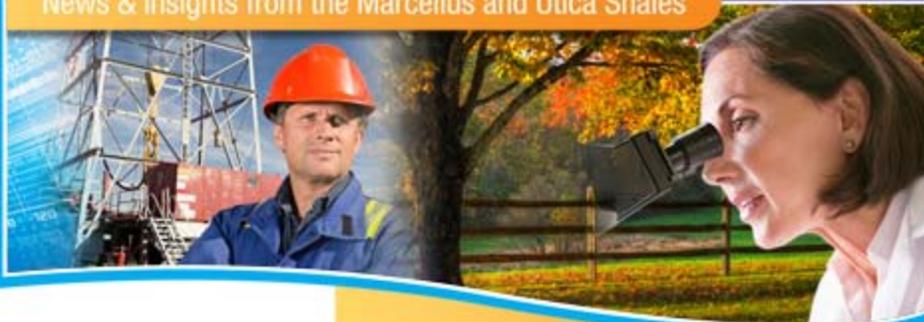


News & Insights from the Marcellus and Utica Shales

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Pa. Commonwealth Court Strikes Down Act 13 Zoning Provision

On July 26, 2012, the Pennsylvania Commonwealth Court issued its [decision](#) in *Robinson Township, et al. v. Commonwealth of Pennsylvania*, involving the challenge brought by seven townships and boroughs to the Act 13 provision preempting local regulation involving oil and gas operations, codified at 58 Pa. C.S. Section 3304. In a 4-3 decision authored by President Judge Pellegrini, the Commonwealth Court granted the relief sought by the townships in Counts I, II, and III of their Petition and declared 58 Pa. C.S. Section 3304 unconstitutional, null and void, and permanently enjoined the Commonwealth from enforcing its provisions. The other provisions of Act 13 that enforce 58 Pa. C.S. Section 3304 are similarly enjoined, but the remainder of Act 13, which was not challenged in this action, remains in effect.

While the Court sustained the Preliminary Objections of the Commonwealth on eight of the twelve counts in the Petition, dismissing those

In The News



D.C. Circuit Court Issues Important Ruling on Greenhouse Gas Regulatory Program

by [M. Ann Bradley](#) & [M. Katherine Crockett](#)
Charleston, W.Va.

In what has been described as a "sweeping victory" for the U.S. Environmental Protection Agency, the United States Court of Appeals for the District of Columbia Circuit issued a decision on June 26, 2012 in lawsuits that challenged various aspects of the Agency's regulatory scheme for greenhouse gases (GHGs). EPA's challenged actions stem from a decision by the U. S. Supreme Court in 2007 in the case of *Massachusetts v. EPA*, which found that greenhouse gases are an "air pollutant" as that term is defined under the Clean Air Act. This decision precipitated a series of pronouncements and regulations by EPA related to greenhouse gases.

Click [here](#) to read more.



The State of Hydraulic Fracturing in N.C.

by [Katie King](#) & [Nathan B. Atkinson](#)
Winston-Salem, N.C.

On July 2, 2012, the North Carolina Senate

claims, the majority held that 58 Pa. C.S. Section 3304 "violates substantive due process because it does not protect the interests of neighboring property owners from harm, alters the character of neighborhoods and makes irrational classifications - irrational because it requires municipalities to allow all zones, drilling operations and impoundments, gas compressor stations, storage and use of explosives in all zoning districts, and applies industrial criteria to restrictions on height structures, screening and fencing, lighting and noise." Opinion at 33. The full Court, including the three judges who dissented on the issue of whether the preemption provision violates substantive due process, agreed that 58 Pa. C.S. Section 3215(b)(4), which gives the DEP discretion to waive the setback requirements set forth in Section 3215(b), is unconstitutional because it gives the DEP power to make legislative policy judgments otherwise reserved for the General Assembly without sufficient guidance to the DEP as to when to grant such waivers.

Judge Brobson authored the Dissenting Opinion and concluded that Section 3304 of Act 13 is, in essence, a zoning ordinance and a challenge to such a zoning ordinance must be evaluated under established precedent of the Pennsylvania Supreme Court whereby a "zoning ordinance is a valid exercise of the police power when it promotes public health, safety or welfare and its regulations are substantially related to the purpose the ordinance purports to serve." Opinion at PKB-7. The dissent concluded that Section 3304 of Act 13 is a valid exercise of the police power because the law promotes the health, safety, and welfare of all Pennsylvanians by establishing zoning guidelines to local municipalities that ensures the uniform and optimal development of oil and gas resources in the Commonwealth.

A statement from the office of Governor Tom Corbett indicated that the Commonwealth will "vigorously defend this law," and the Commonwealth filed a notice of appeal to the Pennsylvania Supreme Court on July 27, 2012. We will have additional analysis of the Commonwealth Court's decision and information regarding the status of the appeal in next month's newsletter.

and House of Representatives voted to override Governor Perdue's veto of Senate Bill 820, known as the [Clean Energy and Economic Security Act](#) (the "Act"), legalizing hydraulic fracturing and horizontal drilling within the State but delaying permitting until the General Assembly takes additional legislative action to allow it. The law calls for the creation of a 15-member Mining and Energy Commission to develop regulations governing hydraulic fracturing in North Carolina, and with the passage of the Act, North Carolina is now able to establish a modern regulatory program for the management and development of the State's natural gas resources prior to any drilling activities taking place.

Click [here](#) to read more.



WVDEP Initiates Study Under New Horizontal Well Control Act

by [M. Ann Bradley](#)
Charleston, W.Va.

Under legislation passed in December 2011, which established a comprehensive program for the regulation of oil and gas operations utilizing horizontal drilling methods and related activities, the West Virginia Legislature directed the Department of Environmental Protection to conduct certain studies to inform future decisions regarding the need, or lack thereof, for further legislation or regulations in this area. To comply with this legislative directive the DEP has elected to outsource the performance of these studies. Based upon the proposal adopted by DEP, the studies may not fully reflect the intent of the Legislature.

Click [here](#) to read more.



Duke Fracking Study Raises Questions

A recent study released by Duke University has raised as many questions as answers about the relationship between fracking and groundwater contamination. The study shows that while some brine has seeped into groundwater above the shale layer, none of it appears to have come from fracking, and there is no determination of how long it took for the brine to travel so far.

Click [here](#) to read more.



Nationwide Won't Cover Hydraulic Fracturing Exposure

Nationwide Mutual Insurance Co. recently stated that its policies "were not designed to cover" risks from fracking. The announcement comes after an internal memo discussing the topic was leaked to the public.

Click [here](#) to read more.

Featured Shale Team Member



M. Katherine Crockett (Charleston)

Katherine's practice encompasses all aspects of environmental law, and includes permitting, enforcement issues and litigation for the energy sector. She consults with and advises natural gas clients on a wide array of regulatory compliance issues, with a focus on emerging federal and state air requirements, water permitting and enforcement, and West Virginia's new Natural Gas Horizontal Well Control Act. Click [here](#) to read her full professional biography.



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