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Pennsylvania Passes Marcellus Shale Unconventional Gas Well Fee

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After much debate, and ultimately compromise, last night Gov. Tom Corbett signed into law a bill that permits any of Pennsylvania's 67 counties to impose a fee on almost every natural gas-producing well drilled in Pennsylvania. The revenue from this new fee could be as much as $335 million over the next three years.

The Fee

The law provides each county in the Commonwealth with the power to impose a $40,000 to $60,000 flat fee on a well in its first year of operation, depending on the price of natural gas and inflation, with the annual fee declining over 15 years. The fee amounts to approximately a 1 percent tax on drilling operations in the Commonwealth, with more than 40 percent of the revenue from the fee being appropriated to statewide, non-Marcellus-Shale-related projects, such as housing programs in rural counties.

Reporting Requirements, Penalties, Bonding

On April 1 of each year of operation, every natural gas producer must submit a report to the Pennsylvania Public Utility Commission, along with payment of the appropriate fee. The report must include: (1) the number of unconventional gas wells the producer operates in each municipality within each county that has imposed the fee; and, (2) the date each unconventional gas well was drilled/spud, or ceased production. But since the fee will be imposed retroactively, a company's "catch-up" payment and report for any well spud prior to January 1, 2012 is due by September 1, 2012.

All chemicals used in the well operator's fracking process must be disclosed to the Pennsylvania Department of Environmental Protection. Each well operator must complete a chemical disclosure registry form and post the form on the Department of Environmental Protection registry. Everything but the well operator's "trade secrets" as marked on the form becomes public record.

Civil and criminal penalties can be imposed for failure to comply with the reporting requirements, informational requirements, etc., set forth in the new law. Strict bonding requirements for well operators, based on the depth and number of wells operated, are also included.

Conclusion

The language of the enacted statute is broad, and could be subject to interpretation. There is also some question as to whether the bill, as passed, imposes a "fee," or rather a "tax" on drilling. Finally, the reporting requirements are elaborate, so to the extent your company would like to discuss them, or would like assistance with compliance, please contact one of the authors of this *Alert*, or the Reed Smith attorney with whom you regularly work.

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