The Pennsylvania Bar Association & Widener Environmental Law & Sustainability Center Present

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The Environmental & Energy Law Section Newsletter

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Pennsylvania Bar Association — Your Other Partner

Widener University Commonwealth Law School

Welcome from the EELS Chair

This is my last Newsletter Welcome; Andy Hartzell is your new EELS Chair.

At our EELS Section Day meeting March 21st, we discussed the existing EELS program of work and solicited member ideas to enhance those programs and initiate new ones to best serve our members and our communities. I will be posting our Program of Work to our PBA EELS Section website and welcome your input, comments on existing programs, recommendations on programs you would like to add. Also, let me know how you are willing to volunteer.

Serving, first on EELS Council, and then moving through the officer ladder in 2 year increments is a serious commitment. It's a commitment that I recommend to all, especially our younger colleagues: The benefits gained far exceed the effort required.

In the ten years plus that that journey has taken me, I have had the opportunity to work and socialize with dozens of amazing PA attorneys and have grown immeasurably from these collaborations. I have had the opportunity to meaningfully participate in regulatory, legislative and social action initiatives, including a running open dialog with DEP and DCNR Chief Counsels. I have been able to support pro bono representation, environmental sustainability, and professional education and issue awareness; encourage and mentor the development of environmental and energy law students; and participate in the recognition of EELS members that have contributed immeasurably to our profession.

Thank you for these opportunities. Please take advantage of your EELS membership by volunteering to serve or lead a sub-committee, serve as a Council member, or undertake a Council leadership role. I guarantee you that you will benefit in unanticipated ways from the effort. Finally, I welcome each of your comments on how EELS can do a better job serving PA environmental and energy law practitioners.

While my term as Chair has ended, I get to serve on Counsel for two more years and so offer to assist any of you who wish to become more active in EELS. Contact me at rfriedman@mcneeslaw.com.

Rick

Richard H. Friedman
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Newsletter Team

What do you think? Do you want to contribute an article? Do you have an event to add to the Newsletter?

Send your material to our email address. Provide sufficient contact information. The editorial staff may make changes for format, length, and content only and in coordination with original author.

Disclaimer: Any views expressed by article authors are solely their own and do not reflect the views of the EELS Newsletter Team, the PBA Environmental & Energy Law Section, or the Widener Environmental Law Center.

FEATURED ARTICLES

Celebrating the 800th Anniversary of the Charter of the Forest – Why it matters to environmental, energy and resources lawyers

Steven Miano, Esq.

2017 marks the 800th anniversary of the Charter of the Forest. Celebrations will take place in several cities around the world, most notably at the Lincoln Cathedral north of London, where one of the few surviving original copies of the Charter makes its home, alongside the Magna Carta. Celebrations are also being planned in Washington, D.C. at the Library of Congress. Other celebrations are being planned around the world. Why?

Chances are, many of you don't know much about the Charter of the Forest, its significance, and its historical and enduring relevance to environmental, energy and resources law. The Charter of the Forest is widely considered one of the first laws in the world to regulate the use of natural resources. It did that by extending, for the first time, tangible rights, privileges, and protections regarding the use of the forests in England to the common man. Read or download the full article here.

Pennsylvania Marijuana Grower Industry Must Be Energy Savvy

Whitney E. Snyder, Esq.

The energy-intensive marijuana industry is having a significant impact on electricity usage in states where it is legalized. Some states worry that this drastic increase in electricity demand will negatively impact both their infrastructure and carbon footprint while increasing costs. Some state and local governments have reacted to these electricity usage impacts by implementing new taxes, fees, and other regulatory measures. However, the naturally energy-intensive process for growing marijuana is sometimes exacerbated by each state's own regulations. For instance, Pennsylvania, which legalized medical marijuana in 2016, requires growers to contain their entire grow operation indoors. See 28 Pa. Code § 1151.23. While the Pennsylvania Act is specific about how growers must run their operations, this Act is frighteningly silent on how Pennsylvania will cope with the corresponding energy drain on local infrastructure or on how such an increase in electricity usage might impact Pennsylvania's carbon footprint. But whether Pennsylvania, or any other state, has considered the impact of these energy issues or not, it is absolutely critical for every marijuana grower to consider the impact its energy consumption has on its overall operation. To reduce operating costs and hence gain a competitive advantage, marijuana operators, especially grower/processors, should seek ways to reduce both the price of energy and the amount they use. Pennsylvania's energy industry provides a plethora of creative ways to achieve both of these goals and more. Read or download the full article here.

Shale Law in the Spotlight: Use of the Congressional Review Act to Alter Energy and Environmental Policy in the Early Days of the Trump Administration

Chloe J. Marie & Ross H. Pifer

During his presidential campaign and since taking office, President Donald Trump has repeatedly expressed concern about the "burdensome regulations on [the U.S.] energy industry." He has vowed to "eliminat[e] harmful and unnecessary policies," which are inconsistent with his energy agenda. Working with Congress, President Trump already has used the Congressional Review Act as a method to alter existing energy and environmental policies since he assumed office.

FEATURED ARTICLES

Congress has within its general powers the ability to overturn federal agency rules in conformity with the 1996 Congressional Review Act (CRA). Under the CRA, Members of Congress have sixty "days of continuous session" to introduce a joint resolution of disapproval from the date the rule is received by Congress and published in the Federal Register. If both the House of Representatives and the Senate pass the joint resolution, the President may sign or veto the disapproval joint resolution. Prior to the recent change in Presidential administrations, only one regulation ever had been struck down using the CRA. In March of 2001, President George W. Bush signed into law the repeal of workplace ergonomic rules promulgated by the Clinton Administration's Occupational Safety and Health Administration in the Department of Labor. Read or download the full article here.

Shale Gas in the Spotlight: EPA Releases its Final Report on Impacts from the Hydraulic Fracturing Water Cycle on Drinking Water Resources in the United States

Chloe J. Marie & Ross H. Pifer

After years of study, on December 13, 2016, the U.S. Environmental Protection Agency (EPA) finally released its final report on Impacts from the Hydraulic Fracturing Water Cycle on Drinking Water Resources in the United States. Despite much attention on the changes to some of the specific language used, this long-awaited final report largely conforms with the preliminary findings set out in the EPA's draft assessment, dated June 2015, that hydraulic fracturing activities have some potential to impact drinking water resources, but that impacts to date have been relatively isolated rather than pervasive.

Changes have been made in the final report, in comparison with the draft assessment, including providing further clarification relating to the major findings, adding other chemicals to the chemicals listed in the draft assessment, and better identifying gaps in data and uncertainties in scientific knowledge. Notably, EPA also reconsidered the language of its conclusion in the draft assessment that the agency "did not find evidence that these mechanisms have led to widespread, systemic impacts on drinking water resources in the United States." EPA excluded this sentence in its final report explaining that "contrary to what the sentence implied, uncertainties prevent EPA from estimating the national frequency of impacts on drinking water resources from activities in the hydraulic fracturing water cycle." Read or download the full article here.

COURT OPINIONS

Commonwealth Court

Antonio Romeo v. Pa. PUC, No. 498 C.D. 2016 (February 8, 2017). Antonio Romeo (Romeo) petitioned *pro se* for review of the order of the Pennsylvania Utility Commission (Commission), adopting the Initial Decision of an Administrative Law Judge (ALJ) and dismissing Romeo's exceptions to the Initial Decision. Romeo specifically objected to PECO Energy Company's (PECO) threatened termination of his electric service because he did not allow PECO access to his meter to replace it with a smart meter, alleging PECO's attempts to force installation of a smart meter on his property is a violation of the Energy Policy Act of 2005 (Energy Policy Act), which supersedes Pennsylvania's Act 129 of 2008 (Act 129), and that smart meters are unsafe. The ALJ sustained PECO's preliminary objections and dismissed Romeo's complaint, concluding under state law, a customer does not have the option to opt out of the smart meters that an electric distribution company is required to deploy and install pursuant to its Commission-approved Smart Meter Plan and which is required by state statute. The ALJ further concluded that the Commission does not have the authority, absent legislative directive, to prohibit PECO from installing a smart meter even if a customer does not want one. The Commission adopted the ALJ's decisions, and added Act 129 was not preempted by the Energy Policy Act because section 1252 of the Energy Policy Act amended the Public Utility Regulatory Policies Act of 1978 (PURPA), to add provisions related to smart metering. The Commission further stated Romeo's safety concerns are unfounded.

In his appeal, Romeo again contends Act 129 is preempted by the federal Energy Policy Act, and argues the Commission's decision is contrary to Section 1501 of the Code, 66 Pa. C.S. § 1501, which requires public utilities to maintain adequate, efficient, safe and reasonable service and facilities for their customers, claiming that smart meters are unsafe, and the Commission erred in denying him a hearing regarding the safety concerns raised. Romeo, citing the Supremacy Clause of the United States Constitution, argues that Act 129's compulsory installation is contrary to federal law because Congress declined to make installation of smart meters mandatory. The Court held Congress has not enacted a provision that preempts Act 129, but rather, has expressly provided for states to adopt standards or rules affecting electric utilities different from those of PURPA or the Energy Policy Act. Because the federal standards are a supplement to the state standards, the federal and state standards are not and cannot be in conflict. Congress's lack of intent to regulate states is indicative of Congress's intent to allow states to regulate as they see fit. Additionally, the Court held where the Commission conducts a review that encompasses issues not raised by an exception, Romeo is not precluded on appeal from raising issues specifically addressed by the Commission. The portion of the Commission's order sustaining PECO's preliminary objections and dismissing for legal insufficiency Romeo's complaint that smart meter present health and safety concerns was reversed and remanded.

EQT Production Company v. Pa. DEP, No. 485 M.D. 2014 (January 11, 2017). EQT Production Company (EQT) petitioned relief under the Declaratory Judgments Act, with respect to the Department of Environmental Protection's (Department) interpretation of certain penalty provisions under the Clean Streams Law following likely leakage of impaired water generated from hydraulic fracturing into the subsurface beneath gas well known as "Phoenix Pas S." EQT filed with the Court an Application for Interim Relief in the Form of a Stay of the action before the Board for the penalty determination, arguing that the validity of the Department's interpretation of Sections 301, 307, and 401 of the Clean Streams Law bore directly on the Board's decision for EQT's penalty amount and required stay. The Court denied the Application for Interim Relief, arguing a hearing before the Board was still required and a stay would seriously and indefinitely delay the Department's penalty complaint. EQT then filed its Application for Summary Relief, challenging the Department's interpretation of Sections 301, 307, and 401 of The Clean Streams Law.

At issue in this case is whether every time a person allows their industrial waste or pollution substance to flow from one water of the Commonwealth into another waster of the Commonwealth, the person is

COURT OPINIONS

committing a new and separate violation of Section 301, 307, and/or 401 of the Clean Stream Law. The Department interpreted the above sections as authorizing a penalty under a continuing violation theory for every day that industrial waste or a substance resulting in pollution remains in the water of the Commonwealth following the initial release of the waste or substance. EQT countered, arguing violation under the Clean Streams Law only occurs on the days that the industrial waste or substance resulting in pollution is discharged or enters from an area outside of the waters of the Commonwealth into a water of the Commonwealth, and once discharge or entry stops, no additional violations occur.

Article III of the Clean Streams Law regulates pollution resulting from "industrial waste," while Article IV addresses "other" types of pollution. The Court held the pollution in question does not meet the definition of "discharge" regulated by Section 307 of the Clean Streams Law because Section 307 applies only to surface water, not ground water. Additionally, The Court held the Department's interpretation of Section 301 of The Clean Streams Law, providing for continuing violation until remediation is provided, is not supported by statutory provisions or the rules of statutory construction. The Court stated the Department's interpretation would result in potentially limitless continuing violations for a single unpermitted release of industrial waste while any of the waste remained in the water of the Commonwealth; Section 301 of The Clean Streams Law does not provide for a violation based upon the movement of industrial waste from one water of the Commonwealth to another. The Court granted EQT's Application for Summary Relief.

Andrew Lester v. Pa. DEP, No. 1778 C.D. 2015 (January 13, 2017). Andrew Lester petitioned for review from an order of the Environmental Hearing Board (EHB) that dismissed his appeal of a Department of Environmental Protection (DEP) administrative order requiring him to permanently close underground storage tanks pursuant to the Storage Tank and Spill Prevention Act (Storage Tank Act). As background, Kenneth Lester owns property which formerly operated as a retail petroleum fueling station and an automobile repair service station known as Ken's Keystone. Several underground storage tanks are present on the owners site, all registered as underground storage tanks with the DEP. Owner's son, Andrew Lester, subsequently submitted a Storage Tank Registration Amendment Form to DEP, registering the tanks as temporarily out-of-service as of June 23, 2010. Andrew Lester signed the form and checked the box for "facility operator." DEP then issued an administrative order to Kenneth Lester and Andrew Lester revoking the permit-by-rule for operation of the tanks and ordering Kenneth Lester and Andrew Lester to, among other things, empty and cease operations of the tanks until DEP reinstated the permit-by-rule. Thereafter, DEP inspected the property and observed the tanks were not permanently closed, issued notice of violation to Kenneth and Andrew Lester.

Andrew Lester filed a notice of appeal of the closure order with the EHB which was dismissed with EHB finding Andrew Lester was an "operator" of the tanks under the Storage Tank Act, relying heavily on various forms Andrew Lester signed to support its belief he met the definition of an operator under the Storage Tank Act and its regulations. EHB also found Andrew Lester, as "operator" of the tanks under the Storage Tank Act, and his father, as owner, were responsible for their closure. Andrew Lester appealed EHB's determination he was an "operator" under the Storage Tank Act, and EHB's determination he was liable under the Act for their closure.

The Court affirmed EHB's determination that both "owners" and "operators" were subject to the Storage Tank Act's closure requirements. Further, it determined DEP reasonably found that Andrew Lester was an "operator" under the Storage Tank Act and its regulations where he identified himself as the operator on various forms and took actions consistent with exercising control and responsibility for the underground storage tanks at issue by participating in almost all verbal communication from DEP, attending meetings on his own with DEP to discuss tank violations, and other actions consistent with operation of the tanks. The Court affirmed EHB's determination Andrew Lester was an "operator" under the Storage Tank Act, and he and his father as owner were responsible for their closure.

Environmental Hearing Board

Sierra Club et. al. v. Pa. DEP and Consol Pa. Coal Company, LLC, Permittee, Docket No. 2016-155-B (January 9, 2017) (single judge opinion by J. Beckman). The Board found Appellant's Petition for Supersedeas pertaining to Polen Run moot as the action the Petition for Supersedeas sought to prevent, that of full extraction mining beneath Polen Run located in Greene County, had already occurred. Further, the Board found ripe the remaining portions of Appellant's Petition for Supersedeas involving Kent Run because the issuance of a permit revision by Appellee is a final action with sufficiently developed surrounding issues to permit Board review.

Benner Township Water Authority v. Pa. DEP and Borough of Bellefonte, Docket No. 2016-042-M (January 10, 2017) (single judge opinion by J. Mather). The Board denied Appellant's Motion to Compel the Department to make available an employee for an informal meeting because discovery rules are not applicable to informal meetings. Additionally, the Board denied Appellant's request the Department employee be represented by separate counsel as inappropriate relief under Board rules.

Gerald E. and Joyce E. Buser v. Pa. DEP, Docket No. 2016-145-M (January 17, 2017) (single judge opinion by J. Mather). The Board dismissed Appellant's Appeal as a sanction due to Appellant's failure to perfect its appeal pursuant to an Order to Perfect and Rule to Show Cause. Under 25 Pa. Code § 1021.61, dismissal of Appellant's action was an appropriate sanction because their conduct demonstrated a disinterest in prosecuting their appeal.

Anthony Liddick v. Pa. DEP, Docket No. 2016-051-M (January 23, 2017) (single judge opinion by J. Mather). The matter arose from the Department's compliance order requiring Appellant to cease activity in wetlands located on his property. As sanctions, the Board precluded Appellant from introducing as evidence at the hearing any documents other than those already identified by Appellant and Appellant was precluded from calling any witness other than himself due to failure to identify any individual or witness with knowledge of the matters involved during written discovery requests and a previous Board order directing Appellant to provide discovery responses. Further, the Board denied Department's request to shift the burden of proceeding by requiring Appellant to file his Pre-Hearing Memorandum first.

Charles and Joyce Little v. Pa. DEP, Docket No. 2016-105-M (January 30, 2017) (single judge opinion by J. Mather). Appellant filed an appeal of the Department's Administrative Order addressing violations of the Solid Waste Management Act. The Board granted the Department's Motion to Dismiss Appeal because Appellant's Notice of Appeal (NOA) was filed outside the 30-day appeal period mandated by 25 Pa. Code § 1021.52(a)(1).

Center for Coalfield Justice and Sierra Club v. Pa. DEP and Consol Pa. Coal Company, LLC, Permittee, Docket No. 2016-155-B (February 1, 2017) (single judge opinion by J. Beckman). The Board issued an Opinion in support of its earlier Order granting in part a Petition for Supersedeas of the issuance of a permit revision by the Department that allowed for longwall mining by Permittee under Kent Run. The Board found the Appellants have shown they are likely to succeed in their claim because the Department's review process was arbitrary, capricious, inappropriate, and unreasonable. In holding, the Board found there was irreparable harm per se along with the potential for actual irreparable harm, and the proper balancing of factors lead to the conclusion the Petition for Supersedeas should be granted preventing longwall mining under Kent Run until the Board can hold a full hearing on Appellant's appeal.

Sierra Club v. Pa. DEP and FirstEnergy Generation, LLC, Permittee, Docket No. 2015-093-R (Consolidated with 2015-159-R) (February 1, 2017) (single judge opinion by J. Renwand). This matter involves consolidated appeals filed by Ap-

Environmental Hearing Board

pellant pertaining to permits issued for the Hatfield Ferry Coal Combustion Byproducts Landfill operated by Permittee. The Board denied Appellant's Motion to Compel to the extent that is seeks additional responses from Permittee regarding shipping methods and contractors employed at other sites, except to the extent Appellee's have provided such information. Further, the Board denied Appellant's Motion to Compel regarding the quantity of coal ash at the Bruce Mansfield Site, finding to the extent Permittee has agreed to supplement its answers, the information provided adequately responds to Appellant's discovery request regarding sites other than the permit site.

Ivan and Kathleen Dubrasky v. Pa. DEP and Hilcorp Energy Co., Permittee, Docket No. 2016-102-R (February 2, 2017) (single judge opinion by J. Renwand). This matter involves a notice of appeal filed by Appellants, challenging the issuance of a permit by the Department to Hilcorp for the Chrastina 8H well in Pulaski Township, Lawrence County. Appellants were served with the First Set of Interrogatories consisting of 10 interrogatories requesting Appellants to identify, among other things, "the specific permit language, inadequacies and harms that form the basis of their claims." The Board stated the Appellee's Motion to Compel responses to discovery is granted in part, ordering Appellants to respond and provide more specificity to numerous Interrogatories.

Northampton Bucks County Municipal Authority v. Pa. DEP and Bucks County Water and Sewer Authority, Intervenor, Docket No. 2016-106-L (February 15, 2017) (single judge opinion by J. Labuskes). Appellant is appealing two letters from the Department related to the conveyance and treatment of sewage in the Neshaminy Interceptor sewer line. The Department moved to dismiss appeal on the grounds the letters do not constitute final, appealable actions. The Board denied the motion with respect to the first letter because it was not entirely free from doubt the letter was not a final, appealable action. Further, the Board granted Appellant's motion with respect to the second letter because it was an interlocutory decision of the Department.

Premier Tech Aqua et. al. v. Pa. DEP and Norweco, Inc., Permittee, Docket No. 2016-007-M (February 17, 2017) (single judge opinion by J. Mather). This matter involves challenge to a Department decision to list an onlot alternative technology of Permittee as an approved alternative onlot sewage disposal technology. The Board denied the Department's Motion for Summary Judgment in this third-party appeal because issues of material fact exist regarding harm to Appellants stemming from the Department's classification of their competitor as an alternative sewage system under 25 Pa. Code § 73.72 and factual issues subject to competing expert analysis exist requiring a hearing with expert witnesses to resolve the matter.

Clean Air Council et. al. v. Pa. DEP and Sunoco Pipeline, L.P., Permittee, Docket No. 2017-009-L (February 23, 2017) (single judge opinion by J. Labuskes). Appellants have appealed 20 permits issued by the Department to Permittee for earthmoving work associated with construction of two parallel natural gas liquids pipelines known as the Mariner East 2 project. The Board denied Appellant's motion for expedited hearing and for reconsideration of the Board's Order denying Appellants' application for temporary supersedeas because the Appellant's have not shown that expedition will not unduly prejudice the Department and Permittee. Further, Appellants have not presented any information not previously considered by the Board that constitutes extraordinary circumstances justifying reconsideration.

Whitehall Township v. Pa. DEP and Coplay Agreements, Inc., Permittee, Docket No. 2015-109-M (March 1, 2017) (single judge opinion by J. Mather). This matter involves the Department's approval authorizing Permittee's use of regulated fill as a construction material in conjunction with the development of two subdivided lots. Appellant challenged the Department's decision under the

ENVIRONMENTAL HEARING BOARD

General Permit No. WMGR096, listing twenty-seven objections in support of its appeal. The Department and Permittee filed a Joint Motion for Partial Summary Judgment, asserting three areas in which they assert they are entitled to judgment as a matter of law. The Board denied the Joint Motion for Partial Summary Judgment stating there were genuine issues of material fact and a motion for partial summary judgment is not the proper vehicle to resolve stated disputes where there are numerous contested issues of material fact.

David and Pamela Gintoff v. Pa. DEP, Docket No. 2015-084-C (March 1, 2017) (single judge opinion by J. Coleman). Of concern in this matter is an alleged release of heating oil from an above ground storage tank on the Appellant's property. Appellants identified unspecified Department employees as individuals with knowledge related to the appeal, some as the Appellants' experts. Appellants also did not submit exhibits until after the Department filed its motion in limine. The Board granted in part a motion in limine precluding Appellants from calling Department witnesses as Appellants' experts in their case, and further precluded Appellants from calling certain witnesses not previously identified.

LEGISLATIVE DEVELOPMENTS

Proposed Legislation

Energy Issues

Administrative

Senate Bills

Senate Bill 234 (Blake, D-22) would amend Title 12 (Commerce and Trade) of the Pennsylvania Consolidated Statutes, authorizing assessments for energy improvements in districts designated by municipalities. The bill would establish Pennsylvania's Property Assessed Clean Energy (PACE) program. PACE is a financing mechanism that enables low-cost, long-term funding for energy efficiency, renewable energy, and water conservation upgrades to commercial or industrial properties. The upfront capital is then paid back in the form of a voluntary property tax assessment on the specific, improved building. A local government chooses to participate in or develop a PACE financing program, making the program voluntary. PACE financing does not require any public funds – in fact, general obligation debt financing is prohibited. Local communities collect the assessment on the improved building and remit it for payment on the debt incurred from the building's energy-efficiency and clean energy technology upgrades. The bill was referred to Community, Economic, and Recreational Development in the Senate on January 31, 2017.

Alternative Energy

Senate Bills

Senate Bill 291 (Leach, D-17) would amend the act of November 30, 2004 (P.L.1672, No.213), known as the Alternative Energy Portfolio Standards Act, further providing for alternative energy portfolio standards and for portfolio requirements in other states. The Alternative Energy Portfolio Standards Act passed in 2004 and was amended in 2007 to require electric energy distribution companies to sell electricity that is made

LEGISLATIVE DEVELOPMENTS

up of a minimum percentage of Tier I alternative energy sources, such as wind and solar photovoltaic. This bill would increase the percentage of electricity sold in the Commonwealth that must be generated from Tier I sources. By 2023 it would require that 15% of electricity sold be Tier I. It would also increase the "solar carve-out" from the current 0.5% of electricity sold by 2020 to 1.5% by 2022 and require that the solar energy be generated in Pennsylvania in order to keep the Commonwealth on pace with neighboring states. The bill was referred to Environmental Resources and Energy in the Senate on February 6, 2017.

Construction/Transportation

House Bills

House Bill 47 (Burns, D-72) would amend the Act of December 10, 1974 (P.L.852, No.287), referred to as the Underground Utility Line Protection Law. The bill would require that all natural gas pipelines in the Commonwealth be manufactured with US Steel. This legislation would include reconstruction, alterations, repairs, improvements, maintenance, or new construction. The bill was referred to Consumer Affairs in the House on January 23, 2017.

Oil and Natural Gas

Senate Bills

Senate Bill 138 (Yaw, R-23) would amend the act of July 20, 1979 (P.L.183, No.60), known as the Oil and Gas Lease Act, further providing for payment information to interest owners, for accumulation of proceeds from production, and for conflicts and providing for joint ventures and for inspection of records. The bill expands upon Act 66 of 2013 by allowing royalty interest owners the opportunity to inspect records of the gas company to verify proper payment. All information provided by the gas company will be confidential in nature and cannot be disclosed to any other person. In addition, the bill requires that proceeds from production of oil and gas shall be paid within 60 days of production. This bill is meant to support leaseholders that seek more transparency and protection while engaging the gas industry on their lease agreements. The bill was referred to Environmental Resources and Energy in the House on February 2, 2017.

Senate Bill 139 (Yaw, R-23) would prohibit a gas company from retaliating against a royalty interest owner by terminating the lease agreement or ceasing development because a landowner questions the accuracy of the royalty payments. The bill was referred to Environmental Resources and Energy in the House on February 2, 2017.

House Bills

House Bill 91 (Godshall, R-53) would amend the Act of July 11, 2006 (P.L.1134, No.115), known as the Dormant Oil and Gas Act. The bill would give property owners who do not own the oil and gas rights beneath their land an opportunity to purchase those rights when the owner of the oil and gas estate cannot be identified or located. The bill would achieve its purpose by amending the Dormant Oil and Gas Act to allow landowners the opportunity to petition the court of common pleas to hold an unknown or non-locatable owner's oil and gas estate in a trust to allow the surface owner to purchase those rights. The bill would set the standards for determining the market value of the oil and gas rights, and upon sale of the dormant oil and gas rights to the surface owner, it would hold the proceeds of the sale in trust for the unknown or non-locatable owner. The bill was referred to Environmental Resources and Energy in the House on January 23, 2017.

House Bill 107 (Godshall, R-53) would amend Title 66 (Public Utilities) of the Pennsylvania Consolidated Statutes, in rates and distribution systems, providing for recovery of natural gas distribution

LEGISLATIVE DEVELOPMENTS

system extension costs. It would authorize natural gas distribution companies, with Public Utility Commission (PUC) approval, to establish a distribution system extension charge to recover the costs of extending or expanding a natural gas distribution system to underserved areas. Furthermore, the bill would require the PUC to evaluate the impact of a distribution system expansion charge on existing customers and to authorize the charge only if the proposed expansion is economically feasible, does not unduly burden current ratepayers, and is in the public interest. The bill was referred to Consumer Affairs in the House on January 23, 2017.

House Bill 113 (Harper, R-61) would amend Title 58 (Oil and Gas) of the Pennsylvania Consolidated Statutes, in unconventional gas well fee, repealing expiration; and providing for imposition of tax. The bill would assess a tax of 3.5% of the gross value of units severed at the wellhead. The tax would be applied in conjunction with the current impact fee; thereby keeping the existing impact fee unchanged allowing local governments in the shale region to see continued benefits. The revenue of the tax would be dedicated to help the Commonwealth meet the obligations of its underfunded pensions, and to help contribute to the costs of State Police protection in rural communities. The bill was referred to Environmental Resources and Energy in the House on January 23, 2017.

Proposed Legislation
Environmental Issues

Administrative

House Bills

House Bill 173 (Driscoll, D-173) would create the Waterfront Redevelopment Grant Program, and establish the Waterfront Redevelopment Fund. This bill would promote revitalization and redevelopment of waterfront areas in the Commonwealth by establishing a state grant program aimed at increasing both public and private investment and economic development in Pennsylvania's coastal and waterfront areas. The program, to be administered by the Department of Community and Economic Development, would provide funding for projects, which support remediation and economic development in areas of the state where potentially contaminated, undeveloped or under-developed property exists. The bill was referred to Commerce in the House on January 23, 2017.

Air

Senate Bills

Senate Bill 175 (Reschenthaler, R-37) would amend the act of January 8, 1960 (1959 P.L.2119, No.787), known as the Air Pollution Control Act, further providing for permissible actions. The bill would ensure that the regulation of methane emissions in Pennsylvania is consistent with those standards adopted by the United States Environmental Protection Agency (EPA) without expanding far beyond those standards, in order to ensure Pennsylvania is not at a competitive disadvantage with other states. The bill was referred to Environmental Resources and Energy in the Senate on January 25, 2017.

Water

Senate Bills

House Bill 146 (Moul, R-91) would amend the act of May 29, 1945 (P.L.1134, No.405) regarding Interstate Commission on the Potomac River Basin to permit a member of the commission from the General Assembly to have a designee with proxy voting rights at commission meetings. The bill was referred to Environmental Resources and Energy in the House on January 23, 2017.

Regulatory Developments

Department of Agriculture

Addendum to the Order of Quarantine; Spotted Lanternfly
47 Pa.B. 441, January 28, 2017

The Spotted lanternfly, *Lycorma delicatula*, is a new pest to the United States that has been detected in the Commonwealth and has the potential to spread. This is a dangerous insect to forests, ornamental trees, orchards and grapes. Consistent with the Order of Quarantine published at 44 Pa.B. 6947 issued November 1, 2014, the area in which the plant pest is detected or confirmed will be added to the Order of Quarantine. A quarantine was established with respect to Haycock Township, Bucks County and East Pikeland Township, and Warwick Township, Chester County. An addendum published at 47 Pa.B. 1386, Saturday, March 4, 2017, added Salisbury Township and Coopersburg Borough in Lehigh County to the quarantine.

Delaware River Basin Commission

Delaware River Basin Commission Amends Fees
47 Pa.B. 313, January 21, 2017

The Delaware River Basin Commission amended its Rules of Practice and Procedure and Basin Regulations, to add § 401.43, Regulatory Program Fees, thus, adopting a new project review fee structure. The Commission's comprehensive revision of the project review fee structure includes an automatic annual indexed inflation adjustment for most fees.

Department of Conservation and Natural Resources

Community Conservation Partnerships Program Grants Available
47 Pa.B. 318, January 21, 2017

The Department of Conservation and Natural Resources announces the 2017 open application period for the Community Conservation Partnerships Program Grants; running from January 23, 2017, and closing 4 p.m. April 12, 2017. Grant assistance from the Department helps communities and organizations in the Commonwealth plan, acquire and develop recreation, park and trail facilities, and conserve open space. New in 2017 is the Riparian Forest Buffer Grant Program from which grants will be awarded to municipal entities, educational institutions and nonprofits to establish riparian forest buffers along the Commonwealth's waterways. Eligible applicants include municipalities and appropriate nonprofit organizations in this Commonwealth.

Department of Environmental Protection

Alternative Fuels Technical Assistance Program Opportunity
47 Pa.B. 359, January 21, 2017

The Department of Environmental Protection, Office of Pollution Prevention and Energy Assistance, announces an opportunity for eligible entities to apply for the Alternative Fuels Technical Assistance (AFTA) Program for the purpose of maximizing the economic and environmental benefits of alternative fuel use in vehicle fleets within this Commonwealth. Alternative fuels considered under the AFTA Program may include natural gas, electric, propane, hydrogen, hythane, ethanol, methanol and other advanced biofuels. Eligible entities are municipalities, school districts, municipal authorities, and nonprofit organizations.

Regulatory Developments

Interstate Pollution Transport Reduction; Proposed 2017 Ozone Season Nitrogen Oxide Emission Limits for Nonelectric Generating Units

47 Pa.B. 1593, March 11, 2017

The Department of Environmental Protection is providing notice and an opportunity for comment concerning the proposed Nonelectric Generating Unit (non-EGU) 2017 Ozone Season Nitrogen Oxide (NO_x) emission limitations. The 15-day public comment period ended on Monday, March 27, 2017. The non-EGU NO_x Trading Program budget of 3,619 tons of NO_x, less a specified adjustment amount, serves as a Statewide Ozone Season NO_x emissions cap for new and existing non-EGUs, and Clean Air Interstate Rule exempt EGUs that are subject to the NO_x Budget Trading Program. The proposed NO_x emissions limitations for individual units ensure that non-EGUs in the Commonwealth continue to meet the emission limits of the NO_x Budget Trading Program.

Federal Consistency under the Coastal Zone Management Act; Maintenance Dredging at the Philadelphia Shipyard

47 Pa.B. 732, February 4, 2017

The Department of Environmental Protection, Coastal Resources Management Program, has received notice that the Philadelphia Shipyard is proposing to conduct maintenance dredging. The Shipyard is located along the Delaware River in Philadelphia, PA and consists of piers and dry docks that are utilized to construct vessels for operation in the Jones Act market. The Shipyard is proposing to conduct maintenance dredging of Dry Docks 4 and 5. The Shipyard plans to dredge material from the two dry dock areas and dispose of the material in White's Basin, Logan Township, NJ. Dredging will be completed to a depth of -40 feet lower low water plus 2 feet mean of allowable overdredge. Approximately 50,000 cubic yards of material will be removed.

Proposed Modifications to General Plan Approval for Natural Gas Compressor Stations, Processing Plants and Transmission Stations

47 Pa.B. 733, February 4, 2017

General Permits establish best available technology requirements and other applicable Federal and State requirements including air emission limits, source testing, leak detection and repair, recordkeeping, and reporting requirements for the applicable air contamination sources. The proposed modifications to the General Permits will be applicable to unconventional natural gas well site operations and remote pigging stations that emit more than 200 tons per year (tpy) of methane, 2.7 tpy of volatile organic compounds (VOC), 0.5 tpy of any individual hazardous air pollutant (HAP) or 1.0 tpy of total HAP. The Comment period was extended by 47 Pa.B. 1235 Saturday, February 25, 2017, stating that interested persons may submit written comments on the Draft General Permits and Air Quality Permit Exemption List by Monday, June 5, 2017.

Rates to be Used for Calculating Long-Term Operation and Maintenance Cost Bonds for Water Supply Replacement-Mining Operations

47 Pa.B. 1059, February 18, 2017

The Department of Environmental Protection announced the rates to be used to calculate bond amounts for water supply replacement operation and maintenance costs for anthracite and bituminous coal and industrial mineral mining operations. The rates are used in calculating the water supply operation and maintenance bond amounts for replacement water supplies affected by activities at mining. The rates will become effective on April 1, 2017.

REGULATORY DEVELOPMENTS

Proposed Conditional State Water Quality Certification under Section 401 of the Clean Water Act for the United States Army Corps of Engineers Nationwide Permits

47 Pa.B. 1233, February 25, 2017

The United States Army Corps of Engineers has published its reissuance of 50 existing Nationwide permits (NWP) and issuance of two new NWPs within the Commonwealth. The final NWPs are effective for 5 years beginning on March 19, 2017. Consistent with the Clean Water Act, the Department of Environmental Protection proposes to certify the activities authorized by the Corps under the final NWPs and grant State Water Quality Certification (SWQC). The Department will consider all comments received on or before March 27, 2017, before taking the final action on this conditional SWQC.

Environmental Quality Board

Gasoline Volatility Requirements

47 Pa.B. 1157, February 25, 2017

The Environmental Quality Board proposes to amend Chapters 121 and 126 (relating to general provisions; and motor vehicle and fuels programs) to delete requirements for gasoline with a Reid vapor pressure (RVP) of 7.8 pounds per square inch (psi) or less to be sold or transferred into or within the Pittsburgh-Beaver Valley Area between May 1 and September 15 of each year. Gasoline formulated with an RVP of 7.8 psi has lower VOC emissions than gasoline formulated at higher RVP levels. The Pittsburgh-Beaver Valley Area includes Allegheny, Armstrong, Beaver, Butler, Fayette, Washington and Westmoreland Counties.

Game Commission

Preliminary Provisions; Replacement Costs for Wildlife Killed

47 Pa.B. 1467, March 11, 2017

To effectively protect wildlife resources of this Commonwealth, the Game Commission has increased replacement costs for osprey (*Pandion haliaetus*), from $200 to $2,500. The osprey has achieved a population level, geographical distribution and tolerance of human activity that no longer meets the definition of a threatened species. Upon delisting, replacement costs for osprey were reduced to a default of $200. Notwithstanding its efforts to delist the osprey, the Commission determined that the species necessitates further protection from unlawful takings in the form of increased replacement costs upon its effective delisting date.