

ENERGY ALERT

GOVERNOR RENDELL ESTABLISHES COAL BED METHANE BOARD

On February 1, 2010, Pennsylvania Governor Edward G. Rendell signed into law Act No. 4 of 2010 known as the “Coal Bed Methane Dispute Resolution Act.” The purpose of this Act is to provide an alternative method for resolutions of disputes between the owner of surface rights to real property and a well operator when the operator intends either (a) to drill a coal bed methane well; or (b) to construct an access road associated with such well. The dispute would involve the location of the well or access road.

In Pennsylvania, when the owner of rights to the surface of land grants to a third party, by lease or by deed, rights to extract oil, natural gas, or other minerals from the subsurface, this granting automatically carries with it a right to the third party of reasonable access over the surface of the land in order to perform the extraction. This concept has led to numerous disputes between surface landowners and the holders of subsurface rights regarding the placement of wells and access roads. With the Marcellus Shale operations exploding in Pennsylvania, issues involving well and access road placement are becoming more numerous.

To resolve these issues in a way that does not involve litigation, the Pennsylvania Legislature established a three-person “Coal Bed Methane Review Board.” One member is appointed by the Governor from a list of three individuals provided by the Pennsylvania Farm Bureau. One member is appointed by the Governor from a list of three individuals prepared by the Pennsylvania Oil and Gas Association, the Independent Oil and Gas Association of Pennsylvania, and the Pennsylvania Coal Association. Finally, one member is appointed by the Governor who is an individual with expertise in petroleum geology or petroleum engineering from a list of three individuals prepared by deans at the Pennsylvania State University.

In practice, the law works as follows: A well operator who intends to drill a coal bed methane well or construct an access road associated with the coal bed methane well must provide written notice to the surface owner about such intention. The notice must contain a statement which is defined in the legislation that informs the surface owner of its rights to participate in alternative dispute resolution.

If the surface owner decides to participate in alternate resolution for the purpose of establishing the proper placement of the well or access road, it must notify the Coal Bed Methane Review Board within fifteen days of receipt of the notice from the well operator. The surface owner’s notice must specify its objections in writing to the location of the well or the access road.

It is important to note that the Pennsylvania Dept. of Environmental Resources will not accept a well permit application unless the applicant demonstrates that the notice requirements to the surface owner described in this Act have been satisfied.

Should the surface owner notify the Board that it is invoking this alternative dispute resolution procedure, the Board shall schedule a time to hold a dispute resolution conference within ten business days (or otherwise as soon as practicable) of the date of receipt of the surface owner’s notice.

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At the conference, the well operator and surface owner will be requested to agree upon a location for the well and/or access road. If no agreement can be reached, the Board shall have the power to determine its placement. This determination shall be binding on the Department of Environmental Protection. However, either party shall have the right, within fifteen days of the Board's final determination, to appeal the determination to the Court of Common Pleas in the judicial district in which the affected property is located.

Upon appeal, the Court is then required to hold a hearing on the appeal within thirty days of filing of the appeal and to render its decision within sixty days of filing of the appeal. In any appeal, the only issue to be determined by the Court is whether the location of the disputed coal bed methane well or access road "will cause only those surface impairments that are reasonably necessary for purposes of extracting the underlying coal bed methane."

Eckert Seamans can assist both surface owners and well operators in avoiding any unnecessary issues regarding this Act and utilizing it where necessary. For further information, please contact Daniel Markind or one of our other Energy Group attorneys at Eckert Seamans.

This Energy Alert is intended to keep readers current on matters affecting businesses and is not intended to be legal advice. If you have any questions, please contact Daniel Markind at (215) 851-8523 or dmarkind@eckertseamans.com or contact one of our other Energy Group attorneys at Eckert Seamans.

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