Published on *The National Law Review* https://natlawreview.com

Ongoing Political and Legal Developments Impact Marcellus Operations in Pennsylvania

Article By:

Environmental & Regulatory

While some jurisdictions (Maryland, New Jersey; municipalities in California and Colorado) are still considering whether to permit or ban hydraulic fracturing, operators in Pennsylvania need not be too concerned about a statewide moratorium anytime soon. However, operators should be aware of ongoing political and legal developments that may impact their bottom line.

In his first proposed budget released on March 3, 2015, newly elected Pennsylvania Governor Wolf explained that his proposed 5% severance tax plus a per-cubic-foot fee on natural gas will generate $1 billion which will be used to help fund public education. His proposed taxes (which include a 20% increase in personal income tax) will face opposition in the Republican controlled General Assembly but many expect some sort of compromise will eventually be achieved resulting in an increased tax burden on natural gas production.

Recent court cases suggest that operators face an increased risk of royalty disputes in Pennsylvania (and elsewhere) that may impact net revenue. On March 5, 2015, a jury in federal court in Pittsburgh found Energy Corporation of America liable for underpaying gas royalties to landowners in Greene County, Pennsylvania. The plaintiffs filed a lawsuit in 2010 alleging underpayment of royalties for leases signed between 2002 and 2009. In 2013, U. S. Magistrate Judge Mitchell recommended class certification for two of three classes who allegedly had interstate pipeline charges deducted as well as marketing fees after the gas had been sold.

In December 2014, Chesapeake Energy Corporation reportedly agreed to pay $11 million to settle a class action lawsuit by royalty owners over post production fees filed in federal court in Pennsylvania. The parties had agreed in 2013 to settle for $7.5 million but some members of the class forced the court to reconsider the settlement. Even if the court approves this settlement, Chesapeake must resolve numerous other royalty lawsuits. One law firm predicted they will represent 40,000 plaintiffs in 400 separate lawsuits against Chesapeake by the end of 2015.

CNX Gas Company is defending an appeal to the Superior Court of Pennsylvania of a decision in its favor in a lawsuit filed in Allegheny County on December 23, 2010 by royalty owners who allege improper royalty payments. While CNX may ultimately prevail in *Hall v. CNX Gas Company, LLC*, this case illustrates the potential of being targeted by unhappy royalty owners.

These developments show that while the Marcellus shale play continues to provide enormous potential for energy development, lawsuits and politics will likely impact the economics. Energy companies are well advised to keep abreast of these ongoing developments.

National Law Review, Volume V, Number 77