



Oil & Gas Update

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Environmental Law Forum Presentation
April 4, 2019

LITIGATION UPDATE (permit appeal)

Environmental Hearing Board

Delaware RiverKeeper Network et al v. DEP & R.E. Gas Development, 2018 EHB 447; EHB Docket 2014-142-B; 2018 WL 2294492 (May 11, 2018);

- First decision regarding DEP's issuance of unconventional well drilling permit addressing Article I, Section 27 after PEDF v. Cmwlth, 161 A.3d 911 (Pa. 2017).
- EHB dismissed the appeal of six permits issued to R.E. Gas Development to drill Marcellus Shale gas wells at the Geyer Well pad in Butler County.



LITIGATION UPDATE (DEP regulations)

Marcellus Shale Coalition v. Commonwealth, DEP and EQB, Commonwealth Court Docket No. 573 MD 2016

- 25 Pa. Code Chapter 78a Pre-enforcement Challenge
 - Count I: Public Resources
 - Count II: Area of Review
 - Count III: Onsite Processing
 - Count IV: Impoundments
 - Count V: Site Restoration
 - Count VI: Remediation of Spills
 - Count VII: Waste Reporting



LITIGATION UPDATE (DEP regulations)

Marcellus Shale Coalition v. Commonwealth, DEP and EQB, Commonwealth Court Docket No. 573 MD 2016

- Chapter 78a Pre-enforcement Challenge
 - Count VIII: Preliminary Injunction
 - **2016**
 - Oct. 13 – Initiated by Petition for Review seeking Declaratory and Injunctive Relief
 - Oct. 25-26 – Two-day hearing
 - Nov. 8 – Preliminary Injunction Granted/Denied



LITIGATION UPDATE (DEP regulations)

Marcellus Shale Coalition v. Commonwealth, DEP and EQB, Commonwealth Court Docket No. 573 MD 2016

- Nov. 8, 2016 Order enjoined, in whole or in part, regulations related to:
 - Public Resources
 - Area of Review
 - Impoundments
 - Site Restoration



LITIGATION UPDATE (DEP regulations)

Marcellus Shale Coalition v. Commonwealth, DEP and EQB, 185 A.3d 985 (Pa. 2018).

- June 1, 2018: Pa. Supreme Court affirmed in part, and reversed in part the Commonwealth Court's preliminary injunction.
 - *Aff'd* – Public Resources, Area of Review, Centralized Impoundments.
 - *Rev'd* – Well Development Impoundments, Site Restoration
 - Deadlines for Well Development Impoundments had lapsed. Court Order tolled deadlines and DEP published notice of the Order in the Pa. Bulletin.



LITIGATION UPDATE (DEP regulations)

Marcellus Shale Coalition v. Commonwealth, DEP and EQB, 185 A.3d 985 (Pa. 2018).

- New deadline to upgrade or close and restore well development impoundments pursuant to 25 Pa. Code § 78a.59b(b):

June 28, 2019

*See 48 Pa.B. 4175 (July 14, 2018).



LITIGATION UPDATE (DEP regulations)

Marcellus Shale Coalition v. Commonwealth, DEP and EQB, Commonwealth Court Docket No. 573 MD 2016

- Count I: Public Resources
 - August 31, 2017, MSC files Application for Partial Summary Relief: Count I.
 - December 6, 2017, oral argument held on Application for Partial Summary Relief: Count I.
 - August 23, 2018 – Granted in Part, Denied in Part
 - 193 A.3d 447 (Pa. Cmwlth. 2018)
 - November 28, 2018 – Appeal denied without prejudice
 - 198 A.3d 330 (Pa. 2018) (citing United States Orgs. for Bank. Alts., Inc. v. Dep't of Banking, 26 A.3d 474 (Pa. 2011)).



LITIGATION UPDATE (DEP regulations)

Marcellus Shale Coalition v. Commonwealth, DEP and EQB, Commonwealth Court Docket No. 573 MD 2016

- Remaining Counts
 - March 14, 2018, Commonwealth filed Application for Partial Summary Relief for Counts II-VII.
 - March 14, 2018, MSC filed Application for Partial Summary Relief for Counts III, V, and VI.
 - Oral Argument October 2018
 - Awaiting decision



LITIGATION UPDATE (continued)

Other Commonwealth Court Cases

Briggs v. Sw. Energy Prod. Co., 184 A.3d 153 (Pa. Super. 2018), *reargument denied* (June 8, 2018), *appeal granted*, No. 443 MAL 2018 (Pa. Nov. 20, 2018)

- Rule of capture does not preclude trespass due to hydraulic fracturing

Snyder Bros., Inc. v. Pennsylvania Pub. Util. Comm'n, 198 A.3d 1056 (Pa. 2018).

- Definition of “stripper well” and implications for Act 13 impact fee.



LITIGATION UPDATE (continued)

Other Commonwealth Court Cases

B&R Resources v. DEP, 180 A.3d 812 (Pa. Cmwlth. 2018)

- Corporate Officer's intentional neglect of statutory violation is sufficient to establish individual liability under the participation theory.
- EHB Hearing on Remand: **June 18-19, 2019**



LITIGATION UPDATE (Int'l Edition)

Discharging liability for orphan wells in bankruptcy???

– Not so fast, eh.

Orphan Well Ass'n and Alberta Energy Regulator v. Grant Thornton Ltd. And ATB Financial, 2019 SCC 5, Docket No. 37627 (Decided Jan. 31, 2019).



Abandoned and Orphan Wells (A&O)



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Regulatory History of Well Plugging





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General Counsel or the Pennsylvania Department of Environmental Protection**