

July 29, 2011

Practice Group:
Oil & Gas

West Virginia Governor Orders WVDEP to Enact Marcellus Shale-Specific Regulations

On July 12, 2011, acting West Virginia Governor, Earl Ray Tomblin, issued Executive Order No. 4-11 (the “Order”), prescribing the course of future regulation of oil and gas operations in the Marcellus Shale in West Virginia.¹ The Order confirms a number of existing policies and practices and directs the West Virginia Department of Environmental Protection (“WVDEP”) to promulgate additional environmental regulations to govern Marcellus Shale operations.

Highlights of the Order include the following:

1. Prohibition of land application of return fluids from completion activities.
2. Requirement for written approval from WVDEP prior to disposal of return fluids from completion activities at any publicly-owned wastewater treatment plant.
3. Enactment of emergency rules by DEP to address the following:
 - **Contents and procedures for well permit applications.** For well-sites with three acres or more of surface disturbance (excluding pipelines, gathering lines and roads), the Order requires the operators to have the following:
 - a. An erosion and sediment control plan certified by a registered professional engineer;
 - b. A site construction plan certified by a registered engineer; and
 - c. A comprehensive well-site safety plan.
 - **Rules concerning water withdrawals.** Well work permit applications must include an estimate of the volume of water to be used in drilling, fracturing or stimulation. Where applications project a withdrawal of West Virginia waters in excess of 210,000 gallons in any month, the application must also include a comprehensive water management plan. Well operators that withdraw more than 210,000 gallons of water from sources in West Virginia will be required to comply with specific recordkeeping and reporting requirements.
 - **Water protection.** New rules will contain specific measures to protect the quantity and quality of surface water and ground water during drilling, after drilling, and during reclamation.
 - **Notice to Municipality.** Well work permit applicants that seek to drill the first horizontal Marcellus Shale well on a well pad located within any municipality will be mandated to publish public notice of the filing of the application.
4. For horizontal well sites that either (a) contain three acres or more of surface disturbance (excluding pipelines, gathering lines and roads), or (b) will require water withdrawal from the State of West Virginia in excess of 210,000 gallons in any month, operators will be required to dispose

¹ A press release from the Governor’s office, which contains a link to the text of the Order can be found at: <http://www.governor.wv.gov/newsroom/pressreleases>.

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of “drill cuttings” and “drilling mud” in an approved solid waste facility or manage those materials on-site in accordance with DEP specifications.

Although existing West Virginia rules may not contain some of these specifics, many of the items included in the Order reflect or are consistent with industry standards and current practices in West Virginia. Moreover, by adopting these practices, West Virginia appears to be moving closer to procedures in neighboring Pennsylvania, as for example with respect to erosion and sediment control plan and water management plan requirements. Nonetheless, operators doing business in West Virginia should review their policies and procedures for compliance with the Order and continue to monitor the activities of the WVDEP in regard to the development and promulgation of rules pursuant to the Order.

Authors:

Brian P. Anderson

brian.anderson@klgates.com

+1.412.355.8966

R. Timothy Weston

tim.weston@klgates.com

+1.717.231.4504

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