Federal Activism: Policies & Enforcement in an Election Year and Beyond

Speakers:

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*Effect of Increased Natural Gas Exports on Domestic Energy Markets*, U.S. Energy Information Administration, January 2012

*Sabine Pass Liquefaction LLC, DOE/FE Order No. 2961 (Opinion and Order Conditionally Granting LNG Export to non-Free-Trade Agreement Nations)*, May 2011


15 USC § 717B – Exportation or importation of Natural Gas; LNG Terminals; 15 USC § 717B-1 – State and Local Safety Considerations

DOE Regulations 10 C.F.R. Part 590
Administrative Procedures With Respect to the Import and Export of Natural Gas

PHMSA Regulations: 49 C.F.R. PART 193
Liquefied Natural Gas Facilities: Federal Safety Standards
Hydraulic Fracturing and the EPA

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This presentation is for informational purposes and does not contain or convey legal advice. The information herein should not be used or relied upon in regard to any particular facts or circumstances without first consulting a lawyer.

Political Landscape – A View From Washington

- Congress and the White House are already in full campaign mode
- Environmental regulations are under attack
  - Keystone pipeline
  - Utility MACT
  - Boiler MACT
- Jobs vs. Environment
Political Landscape of Hydraulic Fracturing

Federal legislation
- FRAC Act – H.R. 1084 & S.587
- Breathe Act – HR. 1204

Hearings
- Senate
  - Energy and Natural Resources Committee
  - Environment and Public Works Committee
- House
  - Science Space and Technology
  - Transportation & Infrastructure Committee
  - Natural Resources Committee
  - Agriculture Committee
  - Oversight & Government Reform Committee

Public Opinion
- Three times as many Americans say there should be more regulation of hydraulic fracturing, than less, according to a Bloomberg News National Poll conducted March 8-11.

Which road will the Administration take?

"We have a supply of natural gas that can last America 100 years. And my administration will take every possible action to safely develop this energy. Experts believe this will support more than 600,000 jobs by the end of the decade… The development of natural gas will create jobs and power trucks and factories that are cleaner and cheaper, proving that we don’t have to choose between our environment and our economy."

- President Obama 2012 State of the Union

At the same time, EPA is taking a top to bottom review of its regulatory authorities and is actively working on major rules tightening hydraulic fracturing operations
Obama’s Budget for EPA

EPA’s 2013 PROPOSED BUDGET

- $8.3 billion (1% reduction below 2012)
- $14 million for hydraulic fracturing study
- $3.7 million for ambient air monitoring and associated impact of hydraulic fracturing on air quality
- EPA’s Budget also funds:
  - Research with DOE and USGS to assess air, ecosystem and water quality impacts of hydraulic fracturing.
  - Implementation of permitting guidance under SDWA’s Class II UIC program for hydraulic fracturing injection using diesel fuel.
  - Oversight to ensure consistency of hydraulic fracturing operations with state water quality standards and CWA technology requirements.

What’s on the EPA Horizon?

- April 2012: EPA Air Rules
- Spring 2012: Water Quality Standards
- December 2012: TSCA ANPR
- December 2013: EPA Study
- December 2013: EPA Hydraulic Fracturing Study
- January 2013: 113th Congress
- November 6: Election
- October 2014: Pre-treatment Standards Shale Gas
Air

- Last July, EPA proposed a suite of rules regulating air emissions from oil and gas production

- On May 9th EPA is expected to issue the final rule which includes NSPS and NESHAP requirements that expand the coverage of sources subject to the new standards

**Background:** Since 1970 EPA has required large oil and gas facilities emitting >250tpy of a pollutant to obtain a new source review permit for major modifications. Historically units were too small to trigger NSR. EPA now considers natural gas wells and all non-contiguous gather and compression equipment as a single emissions source thus triggering an NSR permit. EPA also issued NESHAPs for oil and gas production and transmission systems and by law must review the standards every 8 years. In 2009, EPA was sued for failing to conduct a review and agreed to a consent decree to issue the rule by February 2012 (extended to May 9, 2012).

**AIR – NSPS Standards**

- Application: Rule historically covered natural gas processing plants is expanded to now also cover newly constructed, reconstructed and modified:
  - Well completions and recompletions
  - Compressors
  - Pneumatic controllers
  - Storage vessels (condensate and crude oil tanks)

- Requirements: Proposed rule limits VOC emissions and applies to all new and existing wells that are fractured or re-fractured, and requires green completion and flaring (where green completion is not an option) for most fractured wells.

- Implications: Cost of compliance uncertain, however, green completion requirements (likely a reduction in the number of economically viable developments), may mean abandoning certain projects where compliance costs are higher than the value of recovered gas.
AIR - NESHAP Standards

- **Application:** Rule covers current oil and gas production and gas transmission operations and small dehydrators and crude oil and condensate tanks located at major sources.

- **Requirements:** Proposed rule reduces the amount of hazardous air pollutants allowed to be emitted from major oil and gas production and transmission and storage sources – eliminating the 1tpy benzene compliance option for glycol dehydrators at major sources.

- **Implications:** The cost of compliance will certainly increase with tighter emission limits and the expanded coverage of sources covered by the rule.

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Clean Water

- **Wastewater Treatment Standards**
  - In October 2011, as part of the CWA section 304(m) planning process, EPA announced a schedule to develop pretreatment standards for wastewater discharges produced from shale extraction.
  - EPA will gather data; consult with stakeholders and solicit public comment on a proposed rule for shale gas expected in 2014.

- **Water Quality Criteria**
  - Section 304 of the Clean Water Act requires EPA to develop criteria for water quality that reflects the latest scientific knowledge and provides guidance to states and tribes in adopting water quality standards and a basis for establishing acceptable discharge limits.
  - EPA is specifically updating chloride water quality criteria for the protection of aquatic life, because flowback and produced water have very high levels of total dissolved solids (TDS), and chlorides are the major component of the TDS. Updating the water quality criteria for chloride will provide an updated scientific basis on which to issue discharge permits.
  - The draft criteria document is expected in early 2012.
Safe Drinking Water

- Underground Injection Control
  - EPA is developing Guidance for Permitting for Oil and Gas Hydraulic Fracturing Activities Using Diesel Fuels
    - Regulate Class II wells
    - Include well-construction, site review and sampling standards
    - Apply in states where EPA retains jurisdiction
  - EPA is stretching the definition of diesel fuel to include a wide range of hydrocarbons and petroleum distillates
    - EPA may define “diesel fuel” as any product – like mineral oil - that contains similar carbon chain characteristics
  - EPA’s authority to apply UIC regulations without notice and comment is being challenged

Hydraulic Fracturing Study

Chronology

- 2010 Appropriations Committee Conference Report directed EPA to study the relationship between hydraulic fracturing and drinking water
- November 2011 EPA issues final study plan
- Late 2012 interim report expected
- 2014 follow up report expected
- EPA is also investigating ground water in Pavillion, Wyoming
Hydraulic Fracturing Study Design

Study Design to answer five questions

- **Water Acquisition**: What are the potential impacts of large volume water withdrawals from ground and surface waters on drinking water resources?

- **Chemical Mixing**: What are the possible impacts of surface spills on or near well pads of hydraulic fracturing fluids on drinking water resources?

- **Well Injection**: What are the possible impacts of the injection and fracturing process on drinking water resources?

- **Flowback and Produced Water**: What are the possible impacts of surface spills on or near well pads of flowback and produced water on drinking water resources?

- **Wastewater Treatment and Waste Disposal**: What are the possible impacts of inadequate treatment of hydraulic fracturing wastewaters on drinking water resources?

EPA Hydraulic Fracturing Case Studies

<table>
<thead>
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<th>Case Studies</th>
<th>Key Issues being Investigated</th>
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<td>Brakken Shale</td>
<td>Production well failure &amp; suspected drinking water contamination</td>
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<td>Barnett Shale</td>
<td>Possible drinking water contamination from spills &amp; runoff</td>
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<tr>
<td>Marcellus Shale</td>
<td>Ground and drinking water contamination, suspected surface water contamination from fracturing fluids, spill &amp; methane contamination of drinking water wells</td>
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<tr>
<td>Marcellus Shale</td>
<td>Changes in drinking water quality, stray gas in wells and surface spills</td>
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<tr>
<td>Raton Basin</td>
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<td>Haynesville Shale</td>
<td>Prospective Study to monitor key aspects of hydraulic fracturing process at future sites</td>
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<td>Marcellus Shale</td>
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</tbody>
</table>
Waste

- In 1988 EPA decided – based on a comprehensive study – that wastes from the oil and gas extraction and development should not be regulated under Subtitle C of RCRA as a hazardous waste. Instead, surface impoundments, pits, and ponds would be regulated by states.

- In September 2010, NRDC petitioned EPA to revisit the agency’s long-standing decision and regulate oil & gas waste as a hazardous waste.
  - NRDC argued that hazardous waste rules under RCRA are necessary to ensure safe management of these wastes through their life cycle from cradle to grave and is now pointing to the recent earthquakes as a reason for more stringent regulation.

- EPA is now considering the petition but has not indicated when a decision will be made.

TSCA – Chemical Disclosure

- On November 23, 2011 EPA quietly granted an Earthjustice petition and announced its intent to develop and issue regulations under TSCA to require disclosure and evaluation of chemicals used in hydraulic fracturing operations.

- EPA’s plan will require:
  - Manufacturers and processors of hydraulic fracturing fluids to maintain records and submit reports to EPA on chemical composition, along with related environmental, health, and exposure information.
  - Manufacturers, processors, and distributors of hydraulic fracturing fluids to submit to EPA all existing health and safety studies related to hydraulic fracturing chemicals.

- EPA’s expect to issue an ANPR in 2012.
What does the future hold?

Can EPA’s rules be stopped?

With intense political engagement in Washington, Congress may be able to delay or significantly modify the rules.

Especially in an election year, the White House does not want to be against hydraulic fracturing but can’t ignore the environment.

The time may be right for increased political intervention in Washington.
Exporting Natural Gas – Conditional Approvals and Election Year Politics

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Conflating Gasoline Prices with Natural Gas

"At a time when Americans are feeling the pain at the pump, we should be keeping more of our American fuel here in America"

- "North America Natural Gas Security and Consumer Protection Act"
- "Keep American Natural Gas Here Act"
- ‘Keep America’s Oil Here Act’
- "Drill Here, Sell There, Pay More: The Painful Price of Exporting Natural Gas"

Rep. Ed Markey’s (D-Mass.), ranking Democrat on House Natural Resources Committee
Strange Bedfellows?

Opponents of LNG Exports Include:

- Chamber of Commerce
- Dow Chemical
- Sierra Club
- American Public Gas Association
- Industrial Energy Consumers of America

North American LNG Import/Export Terminals

Proposed/Potential

Import Terminal

- Proposed to FERC
  1. K朴实顿, ME: 1.5 Bcf/d (Androscoggin LNG)
  2. Astoria, OR: 1.3 Bcf/d (Oregon LNG)
  3. Calvert, MD: 1.2 Bcf/d (Bayshore LNG)
  4. Corpus Christi, TX: 0.4 Bcf/d (Chesapeake–Corpus Christi LNG)

- Proposed to MARAD/FEARC/G:
  5. offshore New Jersey: 2.4 Bcf/d (Energy New Jersey–Liberty)

Export Terminal

- Proposed to FERC
  6. Sublime, LA: 2.0 Bcf/d (Cheniere/Sabine Pass LNG)
  7. Freeport, TX: 1.8 Bcf/d (Freeport LNG Exp/Freon LNG Expansion/Houston LNG Liquefaction)
  8. Corpus Christi, TX: 1.6 Bcf/d (Cheniere–Corpus Christi LNG)

- Proposed Canadian Sites Identified by Project Sponsor:
  9. Kitimat, BC: 0.6 Bcf/d (Kinder Morgan)
  10. Douglas Island, BC: 0.2 Bcf/d (BC LNG Export Cooperative)

- Potential U.S. Sites Identified by Project Sponsor:
  11. Lake Charles, LA: 2.0 Bcf/d (Southern Union & BG LNG)
  12. Cove Point, MD: 1.0 Bcf/d ( Dominion Cove Point LNG)
  13. Coos Bay, OR: 1.2 Bcf/d (Jordan Cove Energy Project)
  14. Hackberry, LA: 1.7 Bcf/d (Sabine–Cameron LNG)
  15. Brownsville, TX: 2.0 Bcf/d (Gulf Coast LNG Export)

- Potential Canadian Sites Identified by Project Sponsor:
  16. Prince Rupert Island, BC: 1.0 Bcf/d (Shell Canada)

As of February 28, 2012

Office of Energy Projects
Who Decides LNG Terminals/Gas Exports?

**FERC:** Siting, operation and expansion of onshore LNG import and export terminals, offshore terminals in state waters, and other onshore interstate LNG facilities

**MARAD:** (Coast Guard): Siting and operation of all LNG import and export terminals in federal waters

**PHMSA:** Safety jurisdiction over LNG/pipelines

**DOE:** Import/Export authorizations

**States:** Coastal Zone Management Act, Clean Water Act, Clean Air Act
Consistent with the Public Interest?

- Exports are **presumed to be consistent** with the public interest – *opponents bear burden of proof*
  
  15 U.S.C 717B(a)

- Applications to **Free-Trade Agreement Nations** “shall be **deemed to be consistent** with the public interest,” and “shall be granted **without modification or delay**
  
  15 U.S.C 717B(c)

- Non-Free Trade Agreement countries: **conditional approval** (so far)
  
  - Concern about cumulative impacts of additional exports on the domestic market.
  
  - “DOE will not issue a final order addressing the pending applications to export LNG...until the full study has been completed and the Department has had an opportunity to review the results.”

Exports to Free Trade Agreement Countries: Practically automatic

Free Trade Agreement Countries -No Significant Markets

- Australia
- Bahrain
- Canada
- Chile
- Dominican Republic
- El Salvador
- Guatemala
- Honduras
- Jordan
- Mexico
- Morocco
- Nicaragua
- Oman
- Peru
- Singapore

All Contracts must include provision that

- Customer acknowledges and agrees that it will not resell gas outside of resell or transfer LNG purchased to countries other than listed (as amended)

- Customer must report country of destination, country of actual delivery, and include reporting requirement in downstream resales
Questions?

Supplemental Materials

- "Sabine Pass Liquefaction LLC, DOE/FE Order No. 2961 (Opinion and Order Conditionally Granting LNG Export to non-Free-Trade Agreement Nations)" (May 2011)
- 15 USC § 717B – Exportation or importation of Natural Gas; LNG Terminals; 15 USC § 717B-1 – State and Local Safety Considerations
- DOE Regulations 10 C.F.R. Part 590 – Administrative Procedures With Respect To The Import and Export of Natural Gas
The Other Sheriff in Town –
EPA’s Energy Extraction Industry Enforcement Initiative

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EPA's National Enforcement Initiatives for FY 2011-13

- Identifies 6 priority “environmental and public health problems.”
  - “Assuring energy extraction sector compliance with environmental laws”
  - As the nation expands its search for new forms and sources of energy, there is an urgent need to assure that we develop “clean energy” sources that protect our air, water and land.
  - Some energy extraction activities, such as new techniques for oil and gas extraction and coal mining, pose a risk of pollution of air, surface waters and ground waters if not properly controlled.
  - An unprecedented acceleration of oil and gas leasing and development has led to a significant rise in the level of air pollution throughout the intermountain West.
  - Drilling activities have led to concerns about ground water pollution and the safety of drinking water supplies in various parts of the country.
  - EPA will develop an initiative to assure that energy extraction activities are complying with federal requirements to prevent pollution of our air, water and land.
EPA’s enforcement goals relevant to the industry

- **Clean water**
  - Revamp enforcement and work with permitting to focus on the biggest pollution problems, including
    - Reduce polluted storm water runoff
  - Assure clean drinking water for all communities, including in Indian country
  - Clean up great waters that matter to communities, e.g., Chesapeake Bay

- **Clean air**
  - Cut toxic air pollution in communities
  - Reduce air pollution from largest sources

- **Climate and clean energy**
  - Assure compliance with greenhouse gas reporting rule
  - Encourage greenhouse gas emission reductions through settlements
  - Target energy sector compliance with air, water and waste rules

- **Protect people from exposure to hazardous chemicals**
  - Prevent releases of hazardous chemicals that threaten public health or the environment
  - Reform chemical management enforcement

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EPA energy extraction initiative targeted basins

[Map of targeted basins]
EPA inspection and enforcement activities in FY2011

- 362 inspections
- 43 concluded enforcement actions

EPA FY2011 enforcement in the Marcellus/Utica region

*Numbers include federal inspections/evaluations and concluded enforcement actions.*
Topics of primary EPA Region 3 FY2011 enforcement attention

- Clean Air Act – 2 enforcement actions / consent orders
  - CAA §112(r)(1) – general duty clause
  - CAA §112(r)(7) – accident prevention/inadequate risk management
  - 26 other inspections/evaluations (mostly at compressor stations)
- Clean Water Act
  - CWA §404 – Unpermitted construction in wetlands and waterways – 27 administrative orders
  - CWA – 13 administrative orders and information requests re wastewater treatment facilities accepting wastewater from shale drilling operations; most allege exceedance of NPDES permit effluent limits; some allege acceptance of oil and gas wastewater not authorized by prior NPDES permits.
- Safe Drinking Water Act
  - UIC program – 1 administrative order

For comparison - enforcement actions in Texas

- Clean Air Act – 12 actions (mostly CAA §§112 and 113)
- Clean Water Act – 1 enforcement action
- FY2012 regional priority to address brine spills from oil and gas operations
Recent developments of note

- U.S. Supreme Court decision: *Sackett et vir v. Environmental Protection Agency* (3/21/2012) – EPA unilateral order issued under Clean Water Act may be challenged under Administrative Procedures Act without waiting for enforcement
  - Has potentially broader implications as to appealability of orders under other environmental laws
  - Lead EPA to withdraw one unilateral order in TX against a shale gas E&P company
- Multiple inquiries to E&P companies concerning compliance with EPCRA Tier I and II reporting requirements
- EPA has launched several EPCRA compliance enforcement actions
- Enforcement actions in process concerning CAA §112(r) general duty clause, with EPA seeking to require companies to conduct audits for compliance with a range of API, NFPA and other standards

How to prepare / respond?

- Don’t just focus on state rules and requirements
  - Evaluate potential federal environmental law issues
  - Evaluate facilities for compliance *before* inquiries received
    - EPCRA reporting
    - Clean Air Act §112(r) general duty clause, risk evaluation & mitigation
    - Wetlands/waterway encroachments
    - Wastewater management methods / vendor selection
- Be prepared for inspections
  - Written protocol for handling site inspections
  - Training of staff and contractors – how to respond
  - Designation of company spokesperson
  - Cooperation *with care*
- Procedures for addressing EPA information requests
  - Channel requests to senior management and legal team quickly to assure appropriate response
  - Address potential concerns before info request becomes enforcement action
Cliff L. Rothenstein

AREAS OF PRACTICE
Cliff Rothenstein is a government affairs advisor in the firm’s Washington, D.C. office. Mr. Rothenstein focuses his practice on issues related to environmental policy, including issues arising under the Clean Air Act, Clean Water Act, Superfund cleanup, and brownfields and recycling policy.

PROFESSIONAL BACKGROUND
Mr. Rothenstein has more than 30 years of congressional and federal executive experience. Mr. Rothenstein served as a professional staff member for almost a decade on the Senate Environment and Public Works Committee under Senator Max Baucus (D-MT). While with the committee, he advised members on virtually all environmental matters including Superfund reauthorization, brownfields, and the Clean Air Act.

After that experience, Mr. Rothenstein worked at the Environmental Protection Agency (EPA) as the Deputy Assistant Administrator for Solid Waste and Hazardous Response, the top administration official for brownfields, recycling and Superfund efforts. Mr. Rothenstein also served as EPA’s director of the Office of Underground Tanks. While with the EPA, he led the agency’s Superfund reauthorization efforts which resulted in the enactment of the Small Business Liability Relief and Brownfields Revitalization Act and the Superfund Recycling Act. He also successfully implemented key provisions of the Energy Policy Act of 2005 regulating gas stations and underground storage tanks.

Before joining K&L Gates, Mr. Rothenstein served most recently as the director of the Office of Legislative Affairs and Policy Communications at the Federal Highway Administration where he served as the primary point of contact with Congress on the surface transportation reauthorization and other legislative and policy matters.

EDUCATION
M.P.A., University of Washington, 1978
B.A., University of California, 1976
Carl M. Fink

AREAS OF PRACTICE
Carl Fink is a partner in the Portland office of K&L Gates. Mr. Fink has more than twenty-five years experience in the energy industry, including representing interstate pipeline and storage companies, electric transmission companies, independent power projects, energy marketing companies and gas and electric utilities in complex commercial negotiations and in regulatory matters before the Federal Energy Regulatory Commission (FERC), state public service commissions and appellate courts.

Mr. Fink’s transactional experience includes a wide variety of energy-related transactions, including interstate pipeline transportation contracts on behalf of both pipelines and their customers; interconnection agreements, negotiations with domestic and international natural gas suppliers and LNG companies; electric transmission contracts; mergers, acquisitions and due diligence; joint venture agreements, shipper and vendor contract negotiations; complex credit and risk negotiations; financing, and all aspects of major greenfield infrastructure development. In the regulatory arena, Mr. Fink’s experience includes federal and state permitting of major projects; rate and certificate proceedings; compliance matters; securing market based rates; and advising clients with respect to all issues arising under the Natural Gas Act, Natural Gas Policy Act, and Federal Power Act.

PROFESSIONAL BACKGROUND
Prior to joining K&L Gates, Mr. Fink was Associate General Counsel and Chief Compliance Officer (FERC) for TransCanada Pipelines Limited’s west region pipelines, and represented its companies including Gas Transmission Northwest Corporation, North Baja Pipeline, LLC, Tuscarora Gas Transmission Company, Portland Natural Gas Transmission Company as well as the Zephyr and Chinook electric transmission lines. Prior to TransCanada, Mr. Fink served as an attorney-advisor for FERC and in private practice in Washington, D.C.

PROFESSIONAL/CIVIC ACTIVITIES
- Member of board of directors, Energy Bar Association, west region

COURT ADMISSIONS
- U.S. Court of Appeals, D.C. Circuit
- United States Court of Appeals for the Ninth Circuit

BAR MEMBERSHIPS
District of Columbia
Oregon
Pennsylvania

EDUCATION
J.D., Tulane University School of Law, 1986 (cum laude)
B.A., University of Pennsylvania, 1983
Carl M. Fink

REPRESENTATIVE EXPERIENCE

- Associate General Counsel responsible for all commercial, regulatory and credit and risk matters for multiple interstate pipeline companies.
- Chief Compliance Officer for multiple interstate pipeline companies, responsible for FERC compliance and reporting requirements and successful development and implementation of compliance procedures and policies.
- Leader of legal team for proposed development of 6,000 MW of high voltage electric transmission; sought and won significant policy change in FERC treatment of electric transmission projects.
- Member of senior management team responsible for sale of major interstate pipeline company.
- Managed legal team in complex bankruptcy litigations, achieving recovery in excess of $500 million.
- Responsible for commercial and customer negotiations and permitting for numerous existing and developmental pipeline projects.
- Obtained favorable settlement of complex FERC rate case for major interstate pipeline.
- Negotiated complex contracts and obtained favorable terms for power producers for service on a variety of interstate pipelines.
- Successfully overturned multiple FERC decisions before the D.C. Court of Appeals
- Led INGAA General Counsel Committee on industry credit matters; created new precedent allowing reasonable credit/policies for new pipeline construction.
R. Timothy Weston

AREAS OF PRACTICE
Mr. Weston has a practice focused on environmental counseling and litigation, energy development, natural resources management, and related administrative and legislative issues. He serves as Practice Group Coordinator for the firm’s global Energy Practice Group. With 40 years of experience, he has handled a broad range of complex project development, transactional, regulatory, and environmental litigation matters.

PROFESSIONAL BACKGROUND
Prior to joining K&L Gates, Mr. Weston served for eight years as Assistant Attorney General for the Pennsylvania Department of Environmental Resources, providing counsel for a wide range of natural resource and environmental protection programs, including the Pennsylvania State Water Plan and water resource management activities. From 1979 to 1987, Mr. Weston served as Associate Deputy Secretary for Resources Management in the Department of Environmental Resources, and as Commissioner on the Delaware and Susquehanna River Basin Commissions. During his tenure with DER, Mr. Weston was actively involved in the development of significant environmental legislation. Mr. Weston has published numerous law review articles in the field of environmental regulation and natural resource management. A nationally recognized practitioner in the field of environmental and natural resources management, Mr. Weston is honored with a Rank 1 listing in the Chambers USA Directory of America’s Leading Lawyers for Business for his work in the environment area in Pennsylvania.

PUBLICATIONS
- “Structuring the Brownfields Transaction” and “Negotiating Transactional Agreement,” Brownfields Law and Practice, 1998
- “New Solutions to Environmental Problems in Business and Real Estate Deals – Drafting Agreements,” New Solutions to Environmental Problems in Business & Real Estate Deals, Practicing Law Institute, 2000
- “Gone with the Water - Drainage Rights and Storm Water Management in Pennsylvania,” Villanova Law Review, 1977
R. Timothy Weston

- “Brownfields: Tackling the Obstacles,” ABA SONREEL, 5th Section Fall Meeting, October 1997

PRESENTATIONS
- “Water Transfers and NPDES Permits,” Environmental Updates Program, Pennsylvania Bar Institute, 2006
- “Recent Developments in Water Law,” Delaware Water Policy Forum Series No. 6, University of Delaware, 2006

PROFESSIONAL/CIVIC ACTIVITIES/HONORS
- Samuel Baxter Memorial Award, conferred by the Water Resources Association of the Delaware River Basin (2001) (highest award for lifetime contributions to water management in the mid-Atlantic region)
- American Bar Association (Section on Environmental, Energy and Resources)
- American Society of Civil Engineers (Task Committee on Model State Water Rights Code and Task Committee on Shared Uses of Transboundary Water Resources)
- American Water Works Association (Water Rights Committee)
- Pennsylvania Chamber of Business & Industry (Board of Directors)
- Harrisburg University for Science & Technology (Chair, Board of Trustees)
- Pennsylvania Bar Association
- Dauphin County Bar Association

COURT ADMISSIONS
- U.S. Court of Appeals, Third and Fourth Circuits
- U.S. District Courts, Eastern and Middle Districts of Pennsylvania
- U.S. Supreme Court

BAR MEMBERSHIP
Pennsylvania
R. Timothy Weston

EDUCATION
J.D., Harvard Law School, 1972 (cum laude; Editor-in-Chief, Harvard Civil Rights-Civil Liberties Law Review)
B.A., University of California, Santa Barbara, 1969 (cum laude; mathematics; Phi Beta Kappa)

REPRESENTATIVE EXPERIENCE

OIL & GAS EXPERIENCE
- Advised and represented a major integrated petrochemical company in the acquisition and development of the site of a major petrochemical facility in the northeastern U.S.
- Represented gas producer association in review and negotiation of SRBC project review regulatory changes, and in negotiations with the Pa. Department of Environmental Protection regarding water withdrawal and water management plan requirements.
- Counsel to multiple individual gas exploration and production companies in resolving enforcement proceedings regarding unpermitted water withdrawals and consumptive use projects.
- Counsel to several individual major gas production companies in regulatory and permitting issues (air, water, solid waste, and oil and gas permitting) associated with well development and infrastructure products.
- Representation of a major national water and wastewater company in the planning and development of a regional brine treatment center.
- Counsel to an international gas development company in the planning and development of midstream (gathering, compression and pipeline) projects.
- Representation of oil and gas producers in defense against third party challenges to erosion and sedimentation control and stream encroachments permits for major regional well field and pipeline projects.

ENERGY PROJECT DEVELOPMENT, OPERATIONS & TRANSACTIONS
- Service as environmental and regulatory counsel for owner of major fleet of fossil-fuel fired power generation facilities in Pennsylvania and New Jersey, including all aspects of water supply, wastewater, stormwater, air, solid waste and related permitting issues and proceedings.
- Represented a major mid-Atlantic region utility in a complex two-stage exchange and auctioning of a fleet of nuclear and fossil fuel power facilities in two states, including conduct of environmental assessments, evaluation of environmental and regulatory risks, structuring of contract provisions and negotiations with the purchaser, and related permit transfer and other regulatory proceedings to implement the transaction.
- Counseled and represented owner/operator of new 1100 MW gas and oil fired combined-cycle power plant located in the Lehigh Valley of Pennsylvania in environmental and related issues related to facility development, including (i)
R. Timothy Weston

advice concerning acquisition of a major “brownfields” site from a bankrupt steel company (including assessment of risks associated with past industrial contamination, negotiations with the former owner, negotiations with environmental agencies, and procurement of environmental insurance coverage), and (ii) counseling through complex federal, state and local permitting and related proceedings.

- Represented project sponsors in the development and federal, state, and local permitting of a major 86 MW coal-waste fired power plant in central Pennsylvania, and subsequent service as general counsel for the facility, including acquisition of air, water, solid waste and mining permits; defense against third-party challenges to certain permits; negotiation of agreements for acquisition of additional fuel sites and fuel preparation facilities; negotiations with EPA concerning new source review issues; representation in zoning and other proceedings regarding a 23-mile long transmission line; and representation in negotiations with lenders and investors for initial financing and a post-construction sale-leaseback transaction.

- Advised owner of new 544 MW gas-fired combined cycle power plant in eastern Pennsylvania regarding all aspects of land use and environmental permitting for development of power plant and related facilities, including acquisition and negotiation of permits and land development approvals, successful defense against third-party challenges to project permits, negotiations for water supply (including modification of a public water system’s federal and state permits governing reservoir operations), acquisition of emission reduction credits within the Northeastern Ozone Transport Region, and acquisition of the site and multiple related easements for water, wastewater, transmission and other lines.

- Counseled and represented the developer of an innovative salt cavern high-deliverability natural gas storage project, including representation in state and federal administrative proceedings concerning air, water, underground injection control and other permits, acquisition of water supplies, and related matters.

- Counseled an international bank in the restructuring and sale of a major waste coal fired power plant in north central Pennsylvania.

- Represented energy companies regarding various regulatory initiatives, including the development of agency rules and policies allowing innovative “beneficial use” programs for facility byproducts.

ENVIRONMENTAL REGULATION & LITIGATION

- Representation of a major commercial hazardous and industrial waste treatment and disposal company in RCRA and other permit proceedings, defense against third-party challenges, and advice on closure and post-closure care issues (including insurance and bonding requirements).

- United States and Commonwealth of Pennsylvania v. A&D Recycling, Inc., U.S. District Court, Middle District of Pennsylvania, Civil Action No. 1:CV 99-1332. Service as chair and common counsel for the Jack’s Creek PRP Group at a metals and radiologically contaminated superfund site in central Pennsylvania, including extended negotiations with EPA concerning remedy selection, presentation to the EPA Remedy Review Board (resulting in a significant change in the proposed remedy), and subsequent management of the cleanup contracting and
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implementation process for the group.

- Service as land use and environmental counsel for a large 600+ acre mixed use development, involving a 600+ acre site straddling two states, with planned 1100 residential units, 36-hole golf club, hotel, commercial and retail elements, and related public water and sewage system development.

- Counseled and represented North America’s largest vaccine manufacturing facility through permitting of several major campus expansion projects, including water supply, wastewater, waste management and other processes, including defending against citizen suit and third-party challenges to approvals.

- Advised operator of two nuclear fuels processing facilities through 10+ year decontamination and decommissioning process, involving interplay between federal and state regulatory agencies and mixed radiological and chemical remediation issues.

- Counseled a national carbon recycling facility in federal and state RCRA permitting for facilities that manage hazardous and non-hazardous waste streams.

- Commonwealth of Pennsylvania v. BWX Technologies, Inc., U.S. District Court, Western District of Pennsylvania, Civil Action No. 061135: represented former owner/operator of nuclear fuel processing company in defense against and settlement of claims by state and municipal wastewater authority for alleged liability associated with radiological contamination of wastewater treatment plant’s ash lagoon.

WATER RESOURCES


- Represented a multi-state river basin commission in federal court litigation that upheld the regulatory authority of the basin agency to regulate projects affecting basin waters and control withdrawals by a large out-of-basin city.

- Advised a major investor-owned utility company concerning the acquisition and disposition of various water resource assets, including development of an off-stream water supply reservoir facility.

- Counseled a number of independent and utility-owned generation companies through the development process in obtaining federal, basin commission, state and local approvals for multiple waste coal, natural gas and oil fired power plants.

- Advised and represented a multinational water service company in the negotiation and development of multiple municipal and industrial water and wastewater privatization projects, including negotiation of complex design/build/operate and lease/finance/build/operate contracts in Pennsylvania, Florida, New York, Massachusetts, Michigan, Louisiana, Connecticut, Ohio, California, and Hawaii.

- Counseled North America’s largest bottled water company in the acquisition of spring water and other water rights, and advised the company on water resource policy and regulatory issues in multiple states in the northeast, Mid-Atlantic and
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Great Lakes region.

- Advised and lead a coalition of business, utility, agricultural, and conservation organizations in the development and advocacy of water resources legislation, leading to passage of the Pennsylvania Water Resources Planning Act of 2002.
- Represented industrial, utility and water supply clients in policy development and legislative work associated with the Great Lakes-St. Lawrence River Basin Water Resources Compact.
- *Delaware Riverkeeper v. Pennsylvania Department of Environmental Protection and Portland Borough, Pa. Commonwealth Court, No. 1947 C.D. 2004 (Opinion, June 9, 2005):* represented municipality through administrative and judicial appeals defending against challenges by environmental groups to sewage facilities plan and NPDES Permit for new community sewage collection and treatment facility.
- Served as counsel to coalition of major landowners, resort operators and developers in the development of state wetland regulations and guidelines.

**BROWNFIELDS REMEDIATION, TRANSACTIONS & REDEVELOPMENT**

- Advised and represented a Fortune 100 owner of multiple wax manufacturing facilities and former petroleum refinery facilities in the sale of related business and associated leasing and sale of affected properties, including multi-party negotiations with governmental agencies of prospective purchaser and remediation agreements.
- Representation of major paper company in decommissioning and sale of former paper manufacturing site in Wisconsin.
- Counseled a multinational chemical company through the structuring and implementation of the phased purchase and remediation of an inorganic metals processing business at a site challenged by contamination from pre-RCRA waste units.
- Represented the New York metropolitan area’s transit agency in negotiations with a major railroad regarding environmental issues relating to a complex lease with option to purchase arrangement for a significant transit corridor across New Jersey.
- Counseled a major North Carolina city’s transit agency with respect to the environmental aspects of acquiring and developing an existing rail line corridor as a major addition to the region’s rail transit system.
- Representation of a broad range of companies involved in selling, purchasing and redeveloping industrial sites, and procurement of environmental insurance and other risk management arrangements for such transactions, including major projects in California, Pennsylvania, Michigan, West Virginia, Illinois, and Wisconsin.
- Advised cable television client in two transactions involving acquisitions of former industrial sites in Los Angeles and Orange County, California during due diligence and negotiation of purchase arrangements, including required negotiation of arrangements for ongoing remediation and subsequent agency clearance in order to complete the escrow arrangements under the purchase arrangements.
- Represented a bank lender with respect to a facility on which the borrower (who
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had operated a hazardous waste treatment facility) had defaulted; in order to preserve the bank’s interests, pursued court appointment of a trustee who assumed control of the site and negotiated arrangements with the California Department of Toxic Substances Control for funding the trustee to pursue cleanup of the site, with contributions from insurance and bonds posted with DTSC, funds from the defaulting parties, and some contributions from the bank; advised and guided the trustee through the cleanup process, including procurement of engineering and remediation contractor services.