

Ohio Governor Kasich Signs Energy Bill Into Law With Implications for State Fracking Operations

On June 11, 2012, Ohio Governor Kasich signed into law Am. Sub. S.B. 315 (129th Ohio General Assembly), which expands Ohio's current shale gas regulatory scheme applicable to fracking operations within the state, clarifies jurisdictional issues related to the siting of intrastate gas pipelines, incentivizes the development of cogeneration technologies and makes a host of other energy-related changes to Ohio law. SB 315 constitutes the energy portion of Kasich's mid-biennium review (MBR) of state government operations and is the outgrowth of several energy proposals discussed at the two-day energy summit hosted by the Governor last September.

Introduced on March 22, 2012, SB 315 quickly worked its way through the General Assembly, undergoing several changes before receiving final approval at the end of May. After signing the bill, Kasich took the unusual step of visiting the Senate to thank legislators for their efforts in enacting this and other MBR-related measures. Although certain changes became effective immediately, most will take effect in 90 days (September 10, 2012). The following pages provide a brief overview of significant topics addressed by SB 315.

Shale Gas

SB 315 establishes a new definition of "horizontal well" to ensure that fracking operations within the state are subject to the Ohio Department of Natural Resource's (ODNR) existing permitting and regulatory scheme. "Horizontal well" is defined as "a well that is drilled for the production of oil or gas in which the wellbore reaches a horizontal or near horizontal position in the Point Pleasant, Utica, or Marcellus formation and the well is stimulated." The bill also includes amendments to ODNR's oil and gas statutes that would:

- Direct ODNR to establish rules governing horizontal wells, production facilities associated with horizontal wells and the amount and sources of ground or surface water used in fracking operations;
- Require permit applications to ODNR for shale gas production sites to identify the source and estimated amount of water that will be used in fracking production and whether any water will be withdrawn from the Lake Erie or Ohio river watersheds;
- Require pre-drilling sampling for groundwater wells located within 300 feet of a new proposed well in an urbanized area or within 1,500 feet of a new proposed horizontal well in non-urban areas;
- Require the owner of a horizontal well to maintain liability insurance coverage in the amount of US\$5 million in order to pay for potential injuries or property damage caused by the owner's fracking operations within the state as well as a "reasonable level" of coverage for environmental liability;
- Require shale drilling operators to disclose, within 60 days after the completion of drilling operations, certain information, including identification of any additives used, regarding the products, fluids and substances intentionally added to facilitate the drilling of any portion of the well until the surface casing is set and properly sealed or to stimulate the well;

- Create a trade secret exemption from disclosure requirements for certain information relating to chemical components used, provided that access to such information must be given to medical professionals if needed for diagnosis or treatment;
- Authorize ODNR to adopt rules that help ensure the safe disposal of wastewater through underground injection and establish related requirements and procedures to protect public health and safety;
- Require permit applications for new horizontal wells to include either a “reasonable” road use and maintenance agreement with the relevant public official(s) or an affidavit attesting that no such agreement could be reached despite “good faith” efforts; and
- Subject well operators who violate safety and environmental regulations to mandatory daily fines.

In addition, SB 315 requires Ohio EPA, in coordination with ODNR, US EPA and others, to evaluate emerging wastewater treatment and recycling technologies that may reduce reliance on underground injection wells and assist in the exploration and production of oil and gas, such as through pilot projects on wastewater treatment and recycling.

Gas Pipelines

SB 315 clarifies and amends the jurisdiction of the Public Utilities Commission of Ohio (PUCO) and Ohio Power Siting Board (OPSB) over the siting of intrastate gas pipelines, specifically exempting certain businesses from the definition of a “pipeline company” subject to PUCO jurisdiction. The law clarifies the types of projects that constitute a “major utility facility” subject to OPSB’s jurisdiction, exempting from that definition gathering and processing pipeline infrastructure that will be required to move Ohio-produced shale resources to refineries and thereafter to market. It also excludes from OPSB siting jurisdiction “natural gas liquids finished product pipelines,” pipelines from a gas processing plant to a natural gas liquids fractionation plant, and compressors associated with such pipelines. At the same time, SB 315 also includes provisions that strengthen and clarify the PUCO’s oversight of pipeline safety and the application of federal pipeline safety regulations to gas gathering pipeline infrastructure.

Electric Reliability

SB 315 requires the OPSB to adopt rules for an accelerated review of construction certificate applications for electric transmission lines needed for reliability purposes, expediting review of grid enhancements to support grid reliability as Ohio’s older and coal-fired generation facilities are retired in coming years.

Alternative Energy Portfolio Standard

SB 315 provides that new or retrofit projects that generate electricity from “exhaust heat” at an industrial site qualify as “waste energy recovery” (WER) projects eligible for renewable energy credits that may be used to meet existing law requirements that electric utilities secure 12.5 percent of their electricity supplies from renewable and alternative energy resources. In addition, certain other WER projects can be included in a utility’s energy efficiency program. SB 315 incentivizes cogeneration in the form of combined heat and power (CHP) systems by allowing these technologies to meet alternative efficiency standards in certain instances as well. The bill also revamps the Energy Loan Fund to place more focus on energy efficiency and alternative fuels and requires the Ohio Department of Administrative Services to review cogeneration as an energy source as part of new construction and major renovation in state facilities.

For additional information regarding these changes and other specific revisions included within SB



315, or for assistance or legal support with shale gas or other energy matters, please contact one of the Squire Sanders lawyers listed below or with whom you routinely work.

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