

Governor Kasich Signs Executive Order on Injection Wells

On July 10, 2012, Ohio Governor Kasich signed an Executive Order (EO) providing for the emergency amendment of the rules governing saltwater injection wells used in the fracking process. The EO closely follows Am. Sub. S.B. 315 (129th Ohio General Assembly) signed by the governor on June 11, 2012 that significantly expanded requirements on horizontal drilling operations in Ohio and which serves as a cornerstone to Ohio's fracking policy.¹ The stated purpose of the EO is to establish more stringent regulations in the wake of recent seismic events in the Youngstown area linked to brine injection wells. In particular, the EO authorizes the amendment of two rules of Ohio Department of Natural Resources' Division of Oil and Gas Resources Management (DOGRM) program, OAC 1501:9-3-06 and 1501:9-3-07, that contain provisions for saltwater injection well permits, and the operation, monitoring and reporting of saltwater injection wells, respectively. The key changes affect the rules in three areas: testing, monitoring and reporting, and public notice requirements.

Testing Requirements:

- Allows DOGRM to require specific testing of proposed wells;
- Allows applicants to request a meeting with DOGRM to discuss any required test;
- Prohibits injecting fluid into a well until DOGRM has evaluated test results;
- Allows DOGRM to prohibit injection of fluids based upon test results;
- Allows DOGRM to order the plugging of a well upon test results if deemed necessary; and
- Allows DOGRM to implement graduated maximum allowable injection pressure requirements based upon data provided in the permitting process and any applicable testing requirements.

Monitoring & Reporting Requirements:

- Requires the continuous monitoring of the annulus between the casing and tubing of a saltwater injection well during the injection of fluids (although previously permitted injection wells may continue to monitor at least monthly and to report the results annually);
- Requires that the monitoring data from all permitted wells be made available for review at any time (and that DOGRM may compel submission of such data); and
- Requires well owners to install an automatic shut-off device to terminate operations if the permitted maximum allowable surface injection pressure on the injection pump is exceeded.

¹ See "Ohio Governor Kasich Signs Energy Bill Into Law With Implications for State Fracking Operations," <http://www.squiresanders.com/ohio-governor-kasich-signs-energy-bill-into-law-with-implications-for-state-fracking-operations/> (June 2012).

Public Notice Requirements:

- Increases the review period for permit applications by DOGRM from five to 15 days; and
- Increases the public notice requirements for brine injection well permit applications from one day of newspaper publication to five days.

Both industry and agency estimates conclude that the rule changes are expected to increase costs to the brine disposal industry and well owners and operators by as much as 10-15 percent due to the heightened monitoring and testing requirements, and costs will also vary depending on whether the well is new or a conversion of an existing oil and gas well.

As an emergency rulemaking, the rules take effect immediately but will expire after 90 days unless they are re-adopted via formal R.C. 119 rulemaking procedures. Accordingly, a public hearing as part of the formal rulemaking will be held on August 15, 2012, where oral and written comments on the rules may be submitted.

For additional information regarding these rules and the rulemaking procedures, please contact one of the Squire Sanders lawyers listed below or one of the Squire Sanders lawyers with whom you routinely work.

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