

ADMINISTRATIVE WATCH

ADDRESSING ENVIRONMENTAL, ENERGY AND NATURAL RESOURCE ISSUES



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Pennsylvania's "Clean and Green Act" Amended to Limit the Tax Consequences of Oil, Gas and CBM Development

Pennsylvania's Farmland and Forestland Assessment Act, more commonly known as the "Clean and Green Act," (72 Pa. C.S. § 5490.1 *et seq.*) provides preferential tax treatment to property owners who agree to devote lands to agricultural, agricultural reserve, or forest reserve use under certain conditions. The primary purpose of the Clean and Green Act is to encourage the preservation of green spaces, and to tie the property tax assessment of farmland to its value-in-use as farmland.

Generally speaking, ten or more contiguous acres devoted to an eligible use can be enrolled in the program. The eligible acreage can lie upon separate tax parcels, as long as it shares common ownership. Enrollment results in a reduced tax assessment for the enrolled tract, which translates into a lower annual property tax obligation. The annual tax savings enjoyed through enrollment can be significant.

This preferential tax treatment comes with some strings attached. In order to encourage the long-term preservation of enrolled lands, and with few exceptions, a landowner faces a punitive "rollback" of the tax savings realized as a result of enrollment in the Clean and Green program if the use of the enrolled property is changed to one that is not eligible for the program. This rollback tax assessment becomes due on the date that the enrolled property's use is changed, and is calculated upon the tax savings that had been realized in the last seven years that the lands were enrolled in the program, plus interest of 6% per year. Additionally, in most cases, a change in the use of any portion of the enrolled property to one that is ineligible causes a rollback upon the entire enrolled tract of land. This is the case even if the ineligible use occurs on only one small portion of the tract, and regardless of whether the property owner conveyed the portion of the lands upon which the ineligible use occurs.

On October 27, 2010, Governor Rendell signed into law an amendment to the Clean and Green Act that clarifies the property tax implications of oil, gas and coal bed methane ("CBM") activities on enrolled lands. Before this amendment, there was considerable reason for the property owner and the oil, gas or CBM operator to be concerned about whether such activities would implicate the rollback provisions of the Clean and Green program. Moreover, the lack of clarity caused the various county offices of assessment to render disparate decisions as to what activities might implicate the rollback tax provisions, and to what extent.

The amended Clean and Green Act contains the following new provisions that relate to oil, gas and CBM development:

- The amendments expressly permit the leasing of enrolled lands, and the use of portions of such lands, for the exploration and removal of oil and gas and CBM, and the development of "appurtenant facilities, including new roads and bridges, pipelines and other buildings or structures," related to such development.

- Rollback taxes will be imposed only on the portion of the lands devoted to the activities described above. More specifically, rollback taxes are to be calculated upon the portion of the enrolled land “which is incapable of being immediately used” for an eligible use under the Clean and Green program, and the restored well site, “as measured from the well site restoration report approved by the [Pennsylvania] Department of Environmental Protection (‘DEP’).”
- Lands devoted to subsurface transmission and gathering lines are expressly excluded from the lands upon which rollback taxes will be calculated.
- Rollback taxes will become due on the date that the DEP files a copy of the well site restoration report with the applicable county assessor. The amendments require the DEP make this filing within ten days of its approval of the report.
- The fair market value of the portion of the lands subject to the rollback will be adjusted retroactively to the date the DEP issued the well permit.
- The landowner whose lands are enrolled in the program is not subject to rollback taxes as a result of the oil, gas and CBM related activities conducted by others if the transfer of the right to conduct such activities occurred (i) before the land was enrolled in the Clean and Green program, and (ii) before the effective date of these amendments.

In addition, the amendments permit the owner of enrolled lands to enter into one lease for the purpose of establishing a pipe storage yard without causing a rollback of the taxes upon the entire enrolled parcel; rather, the rollback would only be upon the lands temporarily leased. This provision states that the landowner can enter into only one such lease; that the term of the lease cannot be longer than two years and shall not be extended or renewed; that a copy of the lease must be provided to the county assessor within ten days of its signing by the landowner; and that the lands must revert to their original eligible use upon the expiration of the lease.

These amendments go into effect on December 26, 2010.

For more information regarding this and other real property tax implications from the development of oil and gas interests, contact Peter H. Schnore at (412) 394-5433 or pschnore@bccz.com.