

ADMINISTRATIVE WATCH

ADDRESSING ENVIRONMENTAL, ENERGY AND NATURAL RESOURCE ISSUES



Marcellus Shale - Anticipating Toxic Torts

One of our litigation attorneys, Kathy Condo, has a practice focused on handling the defense of large toxic tort litigation. Recently, she shared with our team an article from The West Virginia Record (Jan. 20, 2011) in which a statewide group known as the "Citizens Against Lawsuit Abuse" is questioning the motives of a personal injury law firm's appeal to "sign up plaintiffs for potential future lawsuits" (or toxic tort litigation) against natural gas developers in Marshall County, West Virginia. The law firm, Weitz & Luxenberg, is well known for profiting over the years by bringing asbestos suits; so, it is very likely that such a firm would have the resources necessary to fund this type of litigation. We have since learned that the Weitz law firm is also seeking to sign up residents in southwestern Pennsylvania for such suits.

Toxic tort litigation involving the natural gas industry will present a number of critical legal issues that require a thorough understanding of the industry and the statutes and regulatory programs that impact it. For example, under the Pennsylvania Oil and Gas Act, water supply pollution within 1,000 feet of a gas well and within six months of drilling is presumed to have been caused by the gas well unless the well operator can prove that the pollution existed before the drilling activity or that the pollution was from another cause. If a well operator seeks to test a property owner's water supply before drilling and is refused permission, the presumption that the pollution was caused by the gas well is deemed to be rebutted.

Under West Virginia law, there is also a rebuttable presumption that an oil or gas well was the proximate cause of the contamination or deprivation of a water supply within 1,000 feet of the well. How these presumptions and other statutory and regulatory schemes that impact the gas industry might influence future toxic tort litigation is critical for the industry to take into consideration as it conducts its business today, just as it will be important to understand them if and when toxic tort litigation is filed.

Our firm's experience in advising clients regarding federal, state and local environmental laws and regulations, and in defending asbestos and other toxic tort litigation, is reflected in guidelines we have developed to help mitigate toxic tort litigation risks. If you are interested in discussing this type of potential legal exposure further, please contact our offices.

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