MINIMIZING LITIGATION RISK FOR ENERGY COMPANIES IN THE SHALE PLAY
Lunch and Learn Topics

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Environmental

Starting the Environmental Case Out Right – Responding to Notices of Intent under Federal Citizen Suit Provisions, and How to Respond to Government Requests for Information under Federal Environmental Statutes

Most of the major environmental statutes include citizen suit provisions, allowing non-governmental organizations to act as "private attorneys general" when federal or delegated state agencies fail to enforce the law against regulated entities. Typically, a citizen suit may not be brought until after the targeted company has been given specific notice of the alleged violations and the appropriate agencies have been given 60 days to bring a government enforcement action or otherwise address the issues raised. How a company responds to a "notice of intent to sue" may significantly affect the course of any subsequent litigation. Similarly, all such statutes include provisions allowing the government to submit broad information requests to regulated entities, sometimes as a prelude to issuance of civil enforcement orders and/or criminal charges. How a company responds to such an information request may substantially influence whether an enforcement action is brought, and if so, how it is resolved. This presentation will discuss the basics of how to organize and respond to these types of notices, and how to work with counsel to ensure that a company puts its best foot forward in this beginning stage of an environmental enforcement case.

What Orders are Appealable to EHB?

Certain Pennsylvania Department of Environmental Protection notices, letters or determinations can be challenged through an appeal to the Environmental Hearing Board within a certain period of time, typically 30 days. It is important to understand what types of notices, letters or determinations can be challenged and recognize the applicable appeal deadlines, because a failure to file a timely appeal can cause a party to forever lose its ability to challenge the notices, letters or determinations.

Understanding the Basics of NEPA and How Companies Can be Prepared to Deal with NEPA Challenges – Both Proactively and in Response to Litigation

With the expansion of gas pipeline projects to serve the growing supply in the Appalachian basin, environmental groups are poised to challenge such projects under the National Environmental Policy Act ("NEPA"). NEPA requires federal agencies such as the Federal Energy Regulatory Commission ("FERC") to take a "hard look" at federally permitted projects if an initial environmental assessment shows that they may have a significant effect on the environment. When such projects are likely to have a significant impact on the environment, preparation of an environmental impact statement ("EIS") is required. The need for development of an EIS can significantly delay, if not preclude, certain projects. If, on the other hand, the agency's assessment does not show that an EIS is needed, it will issue a "finding of no significant impact," or "FONSI," an action which is also frequently subject to court challenge. This presentation will cover the basics of NEPA and how companies can be prepared to deal with NEPA challenges – both proactively and in response to litigation.

Permit Challenges – What to Do and When to Do It, from Initial Project Scoping to Final Judicial Appeal

This presentation discusses the permitting process, from pre-app meeting, through the application process, through public notice, and through subsequent challenges, and explains how others can use the process to derail your project and what you should do to best position yourself to win a permit challenge.

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Dealing with Citizen Groups

This presentation discusses the unique motivations, resource issues, and third party optics associated with citizen groups and their opposition to energy-related projects, and provides practical tips on how to deal with them before, during, and after litigation.

Protecting the Courtroom While Your Finger's in the Dike

This presentation discusses how to preserve and address potential future litigation issues while in the midst of addressing an environmental crisis.

Employment and Labor

Wage and Hour Issues

In 2012, the United States Department of Labor ("DOL") began targeting the energy industry for alleged wage and hour violations. A corresponding increase in individual and class/collective action suits soon followed in Pennsylvania, West Virginia and Ohio. This presentation focuses on issues that are targeted by the DOL and the Plaintiffs' bar, including: non-discretionary bonuses and their impact upon employees' regular rates of pay, travel time, and misclassification issues, particularly those involving the Fair Labor Standards Act's (FLSA) administrative exemption.

Independent Contractor Issues

Due to the trend of increasing employee misclassification issues, during the summer of 2015, the DOL issued a 15-page interpretative memorandum with an aim to provide "additional guidance" for determining who is an employee and who is an independent contractor under the FLSA. According to the DOL, when applying the economic realities test, "most workers are employees under the FLSA." This presentation examines each of the factors used to determine the "broader concept of economic dependence" and discusses the steps employers should take to comply with the FLSA.

Joint Employment

Many businesses in the energy industry have decreased their direct employee headcount by relying upon staffing firms to provide temporary employees, or outsourcing certain job functions entirely through contracts with independent businesses. This presentation highlights potential liabilities under labor and employment law under the joint employment doctrine, and the steps businesses can take to minimize exposure when engaging temporary employees or contracting out specific job functions. As the traditional direct employment model has changed, the DOL, Equal Employment Opportunity Commission ("EEOC"), National Labor Relations Board ("NLRB") and the Plaintiffs' bar have all targeted these so-called "fissured workplaces" as joint employers, in order to apply traditional labor and employment laws and regulations to businesses that do not view themselves as the "employer" of temporary or contracted employees.