

ADMINISTRATIVE WATCH

ADDRESSING ENVIRONMENTAL, ENERGY AND NATURAL RESOURCE ISSUES



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Oil and Gas Lease Act Signed Into Law, Addresses Joint Development

On July 9, 2013, Governor Corbett signed into law Senate Bill 259, also known as the Oil and Gas Lease Act (Act), amending the Guaranteed Minimum Royalty Act. In addition to providing new rights and requirements as to payments resulting from the production under oil and gas leases, the Act authorizes an oil and gas operator to combine contiguous leased acreage for more efficient development unless any such lease expressly prohibits unitization or pooling. Section 2.1 of the Act provides:

Where an operator has the right to develop multiple contiguous leases separately, the operator may develop those leases jointly by horizontal drilling unless expressly prohibited by a lease. In determining the royalty where multiple contiguous leases are developed, in the absence of an agreement by all affected royalty owners, the production shall be allocated to each lease in such proportion as to the operator reasonably determines to be attributable to each lease.

Accordingly, if the leases are silent as to pooling and unitization, operators are authorized to pool or unitize contiguous leases and develop such leases by horizontal drilling without acquiring the consent of the lessor. However, if a lease expressly prohibits pooling and unitization, the Act does not alter the terms of such lease and an operator would still be required to obtain an amendment of lease from the lessor to permit the pooling and unitization of the leasehold acreage. Similarly, the Act does not provide an operator with the right to compel the pooling or unitization of unleased acreage. Although most modern leases address the lessee's right to pool and unitize leaseholds, the Act provides those operators working under leases that are silent as to pooling with new rights to move forward with the efficient development of contiguous leaseholds. Regarding the application of the Act to such leases, the Act does not provide limitations as to the size of units. Additionally, the Act does not provide for forced pooling, as commonly defined in other jurisdictions as the bringing together, as required by law or a valid order or regulation, of separately owned small tracts sufficient for the granting of a well permit under applicable spacing rules.

In addition to the pooling provision, the Act also: (i) restates the escalation of a minimum royalty to a one-eighth royalty of all oil, natural gas or gas of other designations; (ii) requires the lessee to disclose in their payments, among other information, details of production and the payment of taxes, deductions and royalties payable to other "Interest Owners"; (iii) permits accumulated payment when proceeds total less than \$100.00; and (iv) provides that a lease controls in the event that a lease and division order are in conflict.

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It is important to note that the Act broadly defines an Interest Owner as a person who is legally entitled to payment from the proceeds derived from the sale of oil or gas from a well located in the Commonwealth. Presumably, the payment disclosure requirements apply not only to lessors and non-participating royalty owners, but also overriding royalty interest owners and other persons who share in the proceeds from the sale of oil and gas. The Act takes effect September 7, 2013, 60 days after it was signed into law.

There are currently other proposed House and Senate Bills that may impact the rights and obligations of oil and gas operators under oil and gas leases. We will inform you of any additional developments as they arise. In the meantime, if you have any questions regarding the enforceability or application of Oil and Gas Lease Act, please contact Bruce Rudoy at 412-253-8815 or brudoy@babstcalland.com, Christopher J. Hall at 412-253-8820 or chall@babstcalland.com, or Matthew Lambach at 412-253-8825 or mlambach@babstcalland.com.

About Babst Calland

Babst Calland represents exploration and production, midstream, construction and other clients supporting the energy industry in all areas of the law encountered by natural gas development, including: environmental, local zoning and land use; title opinions; transactional, labor and employment; and a variety of litigation cases ranging from lease disputes, quiet title actions, toxic tort and construction matters. For more information, visit www.babstcalland.com or contact Joseph K. Reinhart, shareholder and chairman of the firm's Energy and Natural Resources Group at (412) 394-5452 or jreinhart@babstcalland.com. To stay current on related issues and industry developments, please subscribe to our new Shale Energy Law Blog (www.shaleenergylawblog.com).