

PUBLICATION

Hydraulic Fracturing Continues to Produce More Legislation and Oversight

June 10, 2014

As U.S. oil and gas production has dramatically increased due to the more frequent use of hydraulic fracturing and horizontal drilling to release tight oil and gas, new state legislation and rules around oil and gas drilling have seen a corresponding increase. In recent weeks, Oklahoma and North Carolina enacted laws generally seen as promoting more drilling activity, while Virginia has convened an advisory panel to determine whether rules should be updated to require disclosure of ingredients used in hydraulic fracturing.

On May 29th, Oklahoma Governor Mary Fallin signed legislation setting the state's gross production tax at 2% for the first three years of production. Oklahoma historically collected a 7% production tax, but reduced it for a limited time to 1% for horizontal wells. The existing reduced rate is set to expire in 2015 and revert to 7%. The legislation, reached as a compromise, reduces the rate to 2% for all wells, whether vertical or horizontal, and will be effective for wells spudded on or after July 1, 2015, when the current reduced rate expires.

On June 4th, North Carolina Governor Pat McCrory signed into law a bill that authorizes hydraulic fracturing in the state while prohibiting the disclosure of the chemicals used in the process. The law allows the state to start issuing permits for hydraulic fracturing as early as March 2015, following issuance of safety rules by the Oil and Gas Commission. Additionally, it makes it a crime to knowingly or negligently disclose fracking fluid contents that are considered to be trade secrets under state law. This legislation is contrary to the recent trend of requiring disclosure or encouraging voluntary disclosure. The law builds some protections in for public servants such as health care providers and fire departments who need the information in the event of an emergency. Access to the information by those public servants is provided by a state geologist, who will be the custodian of confidential information about fracking fluid used in drilling.

Finally, on June 4th, the Virginia Department of Mines, Mineral and Energy convened the first meeting of its regulatory advisory panel formed to review existing oil and gas regulations to determine whether ingredients used in hydraulic fracturing should be disclosed, to review existing best practices, and to determine whether additional requirements are necessary for drilling in different regions of the Commonwealth. The panel consists of nine individuals representing various stake holders, including the oil and gas industry and environmental groups. The panel is expected to meet several times throughout the summer and deliver recommendations later in the year, which should influence DMME's revision of its regulations.