



Alert

Energy and Natural Resources Client Service Group

To: Our Clients and Friends

July 2, 2013

Illinois Hydraulic Fracturing Regulatory Act

Following extended debate inside and outside of the state house, the Illinois General Assembly easily passed the bi-partisan Hydraulic Fracturing Regulatory Act ("Act"), which Governor Pat Quinn signed into law on June 17, 2013. Despite recent objections to the Act by groups seeking to impose a moratorium on hydraulic fracturing in Illinois, the Act had the support of environmental advocates and oil and gas industry representatives alike. The Act has been hailed by Gov. Quinn as imposing "the nation's strongest environmental protections when it comes to hydraulic fracturing." Following passage by the General Assembly, Natural Resources Defense Council Midwest Director Henry Henderson called the bill "a solid foundation to build on" in a press release. This Client Alert provides an overview of the Act and describes the final changes and compromises made in order to finalize and enact the legislation.

Over the last decade the use of hydraulic fracturing has significantly increased across the county, leading to increased domestic oil and natural gas production. Hydraulic fracturing is a well completion technique which involves the injection of a mixture of water and sand (typically comprising about 99.5% of the mixture), and small quantities of chemicals, at high pressure into oil and gas wells drilled thousands of feet below the surface. The process fractures the shale and allows the release of oil and gas. Shale resources exist in southern Illinois in the New Albany shale formation. The oil and gas industry believes that, through the use of hydraulic fracturing and horizontal drilling, oil and gas can be economically produced from that formation. The purpose of the Act is to promote such development while protecting health and the environment from potential risk.

As described in our prior [March 27, 2013 Client Alert](#) regarding the initial bi-partisan bill H.B. 2615, the Act establishes a interconnected scheme of permitting, disclosure, and environmental monitoring requirements intended to allow both Illinois governmental agencies and the public to monitor the hydraulic fracturing activities from inception through each well's eventual closure. Before drilling, operators must first receive a High Volume Horizontal Hydraulic Fracturing Permit from the Illinois Department of Natural Resources ("IDNR"), and pay a permitting fee of \$13,500, intended in part to fund administration and enforcement of the Act. The permit itself is subject to public review and comment before issuance. Every chemical used in the hydraulic operations must be disclosed to the state, although operators may seek trade secret protection to inhibit disclosure to the general public.

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Throughout the drilling and extraction process, regulations mandate water and air quality monitoring and set forth specific site preparation and well operation provisions intended to insure the integrity of the wells and protect human health and the environment.

The Act also provides for both regulatory enforcement via actions brought by the Illinois Environmental Protection Agency, as well as enforcement by private citizens who believe drillers have violated the Act.

In order to secure final passage of the bill and approval by Governor Quinn, several changes were incorporated to address concerns raised by various groups and interests. For example:

- The definition of “high volume horizontal hydraulic fracturing operations” was expanded to include not only those operations that use more than 80,000 gallons per stage of operations, but also those that use more than 300,000 gallons total of hydraulic fracturing of fluid.
- Site preparation requirements now mandate that if site operators will improve, construct, or repair a publicly owned highway or roadway, they must use the bidding procedures outlined in the Illinois Department of Transportation rules governing local roads and streets.
- Additional pre-use testing requirements for wells were added.
- Following closure of any well operations, operators must notify and provide a detailed report to the state.
- A Task Force on Hydraulic Fracturing Regulation was created, consisting of Illinois legislators, IDNR representatives, and representatives from environmental organizations and from the oil and gas industry. The Task Force is charged with evaluating the state of Illinois hydraulic fracturing operations, and making recommendations for any additional regulations, if needed.
- A Local Workforce Tax Rate Reduction was added, providing that if at least 50% of the workforce hours are provided by Illinois construction workers (i.e., those workers domiciled in Illinois for the previous 24 months) who are paid wages equal to or exceeding the prevailing rate, then the operator can receive a .25% reduction on the rate of severance tax imposed.

Gov. Quinn specifically called the Act a “shot in the arm for many communities,” opening “the door for thousands of jobs and significant economic development in Southern Illinois.”

Bryan Cave LLP energy and natural resource lawyers have significant experience in the oil and gas industry including the use of hydraulic fracturing. If you are interested in learning more about hydraulic fracturing and related legislation, law, and compliance, contact one of the following Bryan Cave LLP attorneys:

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Bryan Cave will be offering a presentation in our Chicago office on July 31st about what everyone needs to know about hydraulic fracturing, the new Illinois Legislation, and fracturing developments in Mid-eastern states like Pennsylvania. Click [here](#) for more information.