

ADMINISTRATIVE WATCH

ADDRESSING ENVIRONMENTAL, ENERGY AND NATURAL RESOURCE ISSUES



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Fiscal Code Amendment Extends Development Permits

In addition to approving the state budget earlier this month, Governor Rendell signed into law Act 46 of 2010, amending the State's Fiscal Code to extend most development approvals, agreements and permits issued by state and local agencies. As a result, almost all state and municipal development approvals issued or in effect between December 31, 2008 and July 2, 2013 (the "Extension Period") have been automatically extended until July 2, 2013 (the "Permit Extension").

The Permit Extension appears to apply to a wide variety of approvals necessary for oil and gas development, including approvals and permits issued under the state statute governing local land use approvals, the Municipalities Planning Code ("MPC"). Such authorizations would include conditional use and special exception approvals. The Permit Extension would also apply to permits issued under the Uniform Construction Code ("UCC"), such as building permits. The legislation may also apply to Pennsylvania Department of Environmental Protection ("DEP") approvals, agreements and permits, including those issued under the Clean Streams Law, the Sewage Facilities Act, and the Dam Safety and Encroachment Act. Specifically, it appears that the extension could apply to Dam Safety permits, NPDES Stormwater Construction Permits, and water obstruction and encroachment permits, among others.

The Permit Extension supersedes any contradictory expiration language contained in an approval, such as a conditional use condition that a building permit must be obtained within one year of approval. It also supersedes any contradictory expiration language contained in an enabling ordinance or statute, such as the UCC's requirement that building permit work begin within 180 days of the issuance of the permit.

Also noteworthy is the law's protection of existing approvals, agreements and permits from any changes in law, regulation or policy enacted, adopted or modified by a government agency during the Extension Period. The law specifically addresses MPC approvals, stating that changes in a zoning, subdivision and land development or other governing ordinance shall not limit or prohibit an existing permit approval until July 2, 2013, and that the Extension Period can be further extended due to any litigation, including appeals, relating to an approval. Given the recent increase in proposed local land use ordinances intended to regulate oil and gas development activities, these provisions may prove particularly beneficial to the oil and gas industry.

There are several exceptions to the Permit Extension, however, which may create some uncertainty as to the extent of its applicability. For example, the Permit Extension will not apply to a project that impacts high quality or exceptional value watersheds, or to an approval issued to comply with Federal law where the duration or terms of expiration are specified or determined by Federal law. Any confusion as to the extent of the Permit Extension should be clarified soon, however, because the legislation requires all government agencies, including DEP, to publish a list of affected approvals, agreements and permits in the PA Bulletin by August 5, 2010. Furthermore, the legislation sets forth the procedure for the holder or recipient of any approval, agreement or permit to seek verification from the issuing government agency of (1) the existence of a valid approval and (2) the expiration date of the approval. The government agency then has 30 days to respond to the inquiry in writing, and failure to do so will result in a deemed

affirmation. The Permit Extension became effective upon the Governor's signature, so any holder or recipient of an applicable approval can take advantage of this verification process immediately.

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