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Table of Contents

I. Introduction	366
II. Proposed Legislation	366
III. Proposed Regulations.....	366
IV. Judicial Developments.....	367

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I. Introduction

This update covers the period from August 1, 2015 to July 31, 2016. During this time, one judicial opinion affected the oil and gas industry. In *Dye v. CNX Gas Co., LLC*, the Supreme Court of Virginia affirmed that, when used in a deed, the term “minerals” includes petroleum, oil, and gas, absent language indicating a different intent of the grantors. In addition, some proposed legislation and regulations regarding oil and gas permitting and industry pollution are noteworthy.

II. Proposed Legislation

Proposed Senate Bill 743 adds to the duties of the Division of Energy of the Department of Mines, Minerals, and Energy (“Division”). More specifically, the proposed bill provides that the Division act as the state certifying authority for ensuring coal, oil, and gas conform with state requirements for abatement and control of pollution or contamination.¹

III. Proposed Regulations

The Department of Mines, Minerals, and Energy (“DMME”) proposed a number of amendments to Virginia oil and gas permitting regulations within the Virginia Administrative Code. First, the DMME plans require certification that the proposed operation complies with local land use ordinances and submission of an emergency response plan.² The DMME also proposed “a pre-application meeting jointly conducted by the DMME and the Department of Environmental Quality before an operator drills for gas or oil in Tidewater, Virginia”—production in the Tidewater area requires consideration of the potential impact on the Chesapeake Bay environment.³ The permit amendments also include a requirement that well operators use FracFocus, the national hydraulic fracturing chemical registry website, to disclose the anticipated ingredients used in hydraulic fracturing operations.⁴ In addition, the DMME proposed the establishment of a groundwater sampling, analysis, and monitoring program before and after well construction.⁵ Next, the DMME proposed to regulate centralizers in

1. S.B. 743, 2016 Reg. Sess. (Va. 2016).

2. 2015 Va. Reg. Text 348925 (NS) (proposed to modify 4 VA. ADMIN. CODE § 25-150-80).

3. *Id.*

4. *Id.* (proposed to modify 4 VA. ADMIN. CODE § 25-150-365).

5. *Id.* (proposed to modify 4 VA. ADMIN. CODE § 25-150-95).

the water protection string of the casing and to strengthen casing and pressure testing requirements for well casings used in conventional and coalbed methane gas wells.⁶ Finally, the DMME plans include protection of trade secrets from public dissemination while making that information available to emergency responders and local officials if the circumstances require.⁷

IV. Judicial Developments

Dye v. CNX Gas Company, LLC

This case concerns the meaning of the term “minerals” as used in two severance deeds. The plaintiff, a successor in title to property interests retained by grantors in severance deeds executed in 1886 and 1887, filed a declaratory judgment action seeking the determination of the meaning of “minerals” used in such deeds.⁸ The circuit court ruled, as a matter of law, that the deeds did in fact convey the gas.⁹ On appeal, the Supreme Court of Virginia affirmed the circuit court’s decision.¹⁰

In the severance deeds at issue, the grantor conveyed “all the coal and minerals” and “all the coal & other minerals” underlying the tracts located in Buchanan and Russell Counties.¹¹ The successor in title to the property interests conveyed by the two deeds had leased those oil and gas rights to a gas producer.¹² However, the plaintiff argued that the use of the term “minerals” did not convey the natural gas and coalbed methane underlying the land because “minerals” was ambiguous, triggering extrinsic evidence which could prove that the grantors did not intend to convey the gas.¹³

Relying upon the long-standing decision of *Warren v. Clinchfield Coal Corporation*,¹⁴ the Supreme Court of Virginia held that “minerals” unambiguously includes gas.¹⁵ The *Warren* deed conveyed all coal and also “all other minerals of every description.”¹⁶ In *Warren*, Court held that

6. *Id.* (proposed to modify 4 VA. ADMIN. CODE §§ 25-150-100, 25-150-615).

7. *Id.* (proposed to modify 4 VA. ADMIN. CODE § 25-150-365).

8. *Dye v. CNX Gas Co., LLC*, 784 S.E.2d 703, 704 (Va. 2016).

9. *Id.*

10. *Id.*

11. *Id.*

12. *Id.*

13. *Id.*

14. 186 S.E. 20 (Va. 1936).

15. *Dye*, 784 S.E.2d at 705.

16. *Id.* (quoting *Warren*, 186 S.E. at 21).

petroleum, oil, and gas are “minerals” unless the four corners of the deed suggested a “contrary . . . or less comprehensive meaning.”¹⁷

In reaffirming *Warren*, the Court verified that the language in the 1886 and 1887 severance deeds were no different than the *Warren* deed.¹⁸ By conveying “all the coal and all the minerals” and “all the coal & other minerals,” the word “all” modified both minerals and coal.¹⁹ Neither *Dye* deed included language indicating a different intent of the grantors or language that would indicate a contrary or less comprehensive meaning of “minerals.”²⁰ Therefore, the term “minerals” in the severance deeds conveyed the gas.²¹

17. *Id.* (quoting *Warren*, 186 S.E. at 21–22).

18. *Id.* at 706.

19. *Id.*

20. *Id.* at 707.

21. *Id.* at 706–07.