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I. Introduction

This Article summarizes important developments in Montana oil and gas law that occurred between August 1, 2016 and July 31, 2017. Part II deals with legislative and regulatory developments, and Part III addresses common law developments in both State and Federal courts.

II. Legislative and Regulatory Developments

A. State Legislative Developments

The 65th Session of the Montana Legislature adjourned, *sine die*, on April 28, 2017.¹ During this session, the Legislature enacted two bills related to oil and gas.²

Senate Bill 299 attempts to increase industry transparency by requiring companies to disclose the contents of hydraulic fracturing fluids while allowing them to protect their trade secrets and competitive advantages.³ Effective October 1, 2017,⁴ SB 299 requires that all owners, operators, and service companies disclose the product name and the chemical compound name, the chemical abstracts service registry number, and the proposed rates and concentration of all ingredients and additives used in fracturing fluids.⁵

An owner, operator, or service company providing fracturing services may request that the Board of Oil and Gas Conservation waive this requirement and keep certain ingredients confidential, at a cost of no more than \$25 per ingredient, if the owner, operator, or service company believes that public disclosure will be detrimental to its competitive business model.⁶ The waiver application includes several factors: (1) whether the ingredient has appeared in a public source; (2) to what extent the identity of the ingredient is known within a company and how that information is housed; (3) whether a federal or state entity has previously ruled that the ingredient is not entitled to protection from public disclosure; (4) how the

1. H.D. 0203, 2017, Leg., 65th Reg. Sess. (Mont. 2017).

2. *Id.*

3. S.B. 299, 65th Leg. § 2 (Mont. 2017).

4. H.D. 0203, 2017, Leg., 65th Reg. Sess. (Mont. 2017).

5. S.B. 299, 65th Leg. § 2(1)-(4) (Mont. 2017).

6. *Id.* at § 3(1)(a)-(b).

identity of the ingredient is commercially valuable to the applicant; and (5) the ease or difficulty with which the complete composition of the fracturing fluid could be determined because of public disclosure of the ingredient.⁷

The legislature also enacted Senate Bill 86, which revises the tax on incremental production of oil. Previously, taxes were imposed on incremental oil production when the average price for a barrel of West Texas Intermediate crude oil exceeded \$30. SB 86 provides for a tax only when the oil price rises above \$54 per barrel.⁸

B. State Regulatory Developments

Effective January 7, 2017, an applicant for a permit to drill a new oil and gas well must provide reasonable notice to all record owners of occupied structures located within 1,320 feet of the proposed well.⁹ The notice must advise each owner that the application is eligible for administrative approval unless the record owner files a demand for an opportunity to be heard within 14 days after receiving the notice.¹⁰ The applicant must file all notices to record owners with the Montana Board of Oil and Gas Conservation.¹¹ If a property owner wishes to demand an opportunity to be heard, the owner must file a writing that includes proof of ownership of an occupied structure within 1,320 feet of the proposed well and specifies the reasons for requesting a hearing.¹² The application for request to be heard must be served upon the applicant for the well permit.¹³

III. Judicial Developments

Between the dates of August 1, 2016 and July 31, 2017, neither the Montana Supreme Court nor any Federal Court in Montana decided a case that shaped or altered existing Montana oil and gas law.

7. *Id.* at § 3(2)-(4).

8. S.B. 299, 65th Leg. § 1(6)(c) (Mont. 2017).

9. MONT. ADMIN. R. 36.22.620.

10. *Id.* at 620(2)(a).

11. *Id.* at 620(2)(b).

12. *Id.* at 620 (5)(a)-(d).

13. *Id.* at 620(5)(e).