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I. Legislative and Regulatory Developments

A. State Legislative Developments

1. Termination of Oil and Gas Leases Due to Non-Development or Non-Production

A new code section under the Illinois Oil and Gas Act went into effect on January 1, 2016, that allows the Department of Natural Resources to adopt rules and hold hearings to determine if oil and gas leases submitted

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with an application for a well permit or permit transfer are operative on the basis that prior oil and gas leases covering the same lands have terminated due to non-development or non-production.¹ Such determinations are to be based upon affidavits of non-development or non-production and other evidence which “create a rebuttable presumption that the prior oil and gas leases have terminated and are of no further force and effect and that the submitted oil and gas leases are operative and effective.”² Specifically, the statute requires that such affidavits and evidence reasonably indicate that there has been no development or production on the lands described in the prior leases for at least twenty-four (24) consecutive months following the expiration of the primary terms of such leases or any extensions thereof, and in instances where such determinations cannot reasonably be concluded from the affidavits or evidence, a court order or judgment declaring the prior leases terminated will be required for a determination.³ The Department is required to provide the current permittee with notice and a 30-day period to request a hearing to rebut the presumption that the prior leases have terminated before the determination is made final.⁴ The fee for requesting a determination under the new code section is \$1,000, and all determinations are to be made by the Department within ninety (90) days of receipt.⁵ Determinations that prior leases have terminated will require the current permittee to plug all non-plugged and non-transferred wells within the boundaries of each prior lease within thirty (30) days of issuance of the determinations, and all such wells not plugged shall thereafter be deemed abandoned and included in the Department’s Oil and Gas Well Site Plugging and Restoration Program.⁶

2. Falsified Information in Permit Application; Penalty for Falsified Information

Senate Bill 1377, which allows for increased penalties for falsified information in relation to permit applications and broadens the scope of documentation under which such penalties apply went into effect on January 1, 2016.⁷ Previously, the Director was permitted to assess a civil penalty of up to \$1,000 per day as to a person or permittee found to have (i)

1. 2015 Ill. Legis. Serv. P.A. 99-138 (S.B. 1378) (West).

2. 225 ILL. COMP. STAT. ANN. 725/6.2 (West 2016).

3. *Id.*

4. *Id.*

5. *Id.*

6. *Id.*

7. 2015 Ill. Legis. Serv. P.A. 99-137 (S.B. 1377) (WEST).

violated any requirement of the Act, any rules adopted thereunder or any permit condition, or (ii) falsified or otherwise misstated any information on or relative to the permit application.⁸ The revised code section increases the maximum civil penalty to “\$5,000 for each and every falsification or misstatement of information and \$1,000 a day for each and every act of violation not including a falsification or misstatement of information” and expands the scope of such penalties to apply when a person or permittee “has falsified or otherwise misstated any information on or relative to any application, permit, required record, or other document required to be submitted to the Department by [the] Act or any rules or procedures adopted under [the] Act[.]”⁹

B. State Regulatory Developments

New regulations were adopted on May 6, 2016,¹⁰ to implement recent amendments to the Illinois Oil and Gas Act, including those discussed in item I.A. hereinabove.¹¹ Permanent well site equipment setback requirements were adopted, which prohibit permanent well site equipment installed on a new well permitted after July 1, 2016, including flares, from being located less than 200 feet from the nearest occupied dwelling existing at the time the initial permit application is filed unless the permittee obtains a written agreement with the surface owner.¹² The existing rule pertaining to the transfer of operating permits was also amended to revise the circumstances under which a permit transferee that permits or operates an injection well is required to undertake responsibility for regulatory requirements relative to other wells in the vicinity.¹³ Other noteworthy changes include the revision of well spacing requirements¹⁴ and new surface casing procedures for wells located over coal mined out areas¹⁵ and gas storage fields.¹⁶

8. *Id.*

9. 225 ILL. COMP. STAT. ANN. 725/8a; *see also id.* § 725/8d (providing that “[n]o person shall falsify or otherwise misstate any information on or relative to any application, permit, required record, or other document required to be submitted to the Department by the [Illinois Oil and Gas Act] or any rules or procedures adopted [thereunder]”).

10. 2016 IL REG TEXT 415852 (NS).

11. *See* ILL. ADMIN. CODE tit. 62, § 240 (2016).

12. *Id.* § 240.815.

13. *Id.* § 240.1460(c)(2).

14. *Id.* § 240.410.

15. *Id.* § 240.610(b)(4).

16. *Id.* § 240.610(b)(5).