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Client Alert: Ohio EPA Requests Comments on Draft General Permit

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On June 28, 2011, the Ohio Environmental Protection Agency ("Ohio EPA") released a letter to the oil and gas industry requesting comments on its proposed Draft General Permit for a Natural Gas Extraction Well Site Production Line (the "Draft GP"). The Ohio EPA worked with industry contacts to understand shale development and the equipment involved so that it could address the oil and gas industry's permitting needs. In order to make the permitting process as efficient as possible, the Ohio EPA proposed the Draft GP as the appropriate permit for oil and gas production activities associated with Marcellus and Utica Shale development.

Generally, air permitting takes between 6 and 18 months in Ohio depending upon the number of air contaminant sources and their complexity. A new facility has to apply for a permit to install (PTI) before commencing construction on the site. The application has to list all of the sources and provide all of the supporting technical data for each source. That information includes: operating rates, emission rates, pollutant identification and analysis of air impacts (especially for air toxics and hazardous air pollutants). The Ohio EPA will evaluate each source and all of the anticipated emissions to set emission and operating limits for every source. This process can be lengthy because of the many questions that arise and the amount of time required to respond. Construction cannot begin until the Ohio EPA issues the final PTI. Thus, the Ohio EPA is trying to make the PTI process more efficient for oil and gas production.

A general permit would make the process much easier for those facilities that qualify. If a new facility believes that its emission units meet the criteria for a general permit, it simply completes the Qualifying Criteria Document and the application and files those with the Ohio EPA. If the agency determines that the facility qualifies, it will issue the general permit in place of the PTI. Once that is issued, the facility can begin construction. This entire process could take as little as two weeks.

The Draft GP identifies several production activities that may need permits. These include: the natural gas production system (separators,

heater/boilers, equipment/pipeline leaks and dehydrators); spark ignition internal combustion engines (two 215 horse-power units); unpaved roadways; truck loading rack; condensate storage tanks (up to four 16,800 gallon tanks); and combustion device/flare. For each of these production activities, the Draft GP identifies the applicable environmental laws and regulations and establishes emission limits. It also establishes the compliance mechanisms such as monitoring, recordkeeping, reporting and testing. Once issued, the Draft GP will provide the legally enforceable terms and conditions for oil and gas production activities. Consequently, it is important that the emission limits and operational restrictions provide Ohio's producers enough flexibility to operate within the Draft GP's limits.

The Ohio EPA's letter acknowledges that the activities that occur during the drilling and fracking stage are exempt from permitting because they are temporary. The Draft GP also states that de minimis or categorically exempt sources are exempt from permitting under Ohio law, and they are exempt from the Draft GP as well. Each producer will need to evaluate its well sites to determine whether its production activities are exempt or whether permitting is necessary.

Although the Ohio EPA's letter requested comments by July 8, 2011, the Ohio EPA subsequently indicated that it intends to accept more comments up to the issuance of a final version of the Draft GP for public comment. At that point, the Ohio EPA will begin accepting official comments on the record for 30 days after which the Draft GP will become final.

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