

The Babst Calland Report
Perspectives on Natural Gas Development
Recent Activity, Expected Trends

Volume III, Spring 2013

Babst Calland
Attorneys at Law

THE BABST CALLAND REPORT

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INTRODUCTION

2012 was a dynamic year of change and shifts in natural gas development in the Appalachian Basin. The Marcellus and Utica shale gas formations are sharing more equally the spotlights of opportunity, challenge and regulation. While shale gas development continued to be a hot topic in Pennsylvania, the regulatory agencies, courts and other parties in Ohio and West Virginia have taken a more active interest in development and its consequences. The evolving regulatory framework continues to present significant challenges to natural gas developers, midstream companies and service providers.

During the past year, Babst Calland has assisted its energy clients with a host of issues in the following practice areas:

- Environmental
- Land Use and Local Government Regulation
- Title Services
- Transactional and Business Services
- Litigation (including toxic tort)
- Pipeline Safety
- Construction
- Labor and Employment

As we reflect on the past several years of shale development growth, we have found that most often the successful resolution to a problem has required a balancing of regulatory, business and community interests. Resolving an issue has rarely been as simple as just interpreting a regulatory requirement and acting accordingly. In advising clients, we stressed the need to stay current on applicable laws and regulations and understand the regulatory differences from state to state. Careful, integrated consideration of our Firm's practice areas, grounded in environmental and energy knowledge of timely issues, has been crucial to providing practical, insightful advice to the large and small companies participating in the shale play.

The ever-changing landscape of regulatory development, governmental oversight, developing case law and transactional dealings makes it quite challenging to stay current with all of the critical events affecting shale gas development in the Appalachian Basin over the past year. Our Firm's interdisciplinary Energy and Natural Resources Group is once again providing this summary of issues, arising over the past year, as well as an outlook for those issues that are expected to be important to our clients for the remainder of 2013.

EXECUTIVE SUMMARY

Welcome to *The 2013 Babst Calland Report: Perspectives on Natural Gas Development – Recent Activities, Expected Trends*. This report (the third volume in Babst Calland’s series) offers perspective on the significant issues associated with shale gas development in Pennsylvania, Ohio and West Virginia during the past year. These perspectives are based on the experiences of our Energy and Natural Resources Group as we advised our producer, midstream and service provider clients regarding environmental, land use and local government regulation, litigation, construction, pipeline safety, title services, transaction and business services, and employment and labor issues.

This year’s report incorporates commentary on 2012 and early 2013 developments in the tri-state region. Once mostly a net consumer of energy, this region is becoming a major exporter of energy amid a number of dynamics that come with new extraction opportunities. With gas prices moderating during the past year and oil prices rising, shale development activities continued to move westward within the Appalachian Basin, toward the areas rich in natural gas liquids. This economic condition led to several significant transactions involving wells, pipelines and leased acreage across the shale landscape. Excitement over natural gas liquids also led to increased interest in the construction of “crackers” and the possible economic benefits to other industries from the proliferation of cheaper chemical feed stock. While some producers may have delayed well development due to low gas prices, the prominence of midstream players rose as producers focused on getting the natural gas to the available markets.

News events influenced the regulatory treatment of natural gas development activities. The pipeline rupture in Sissonville, West Virginia was, and will continue to be, the impetus for additional pipeline safety regulations and increased scrutiny in pipeline construction and maintenance activities. Similarly, the earthquake in Ohio led to increased scrutiny of underground injection practices. Water and air quality studies and reports from third party groups and governmental agencies continued to shape public perception of the Industry and its perceived impacts.

The agencies and individuals in the Appalachian Basin have grown more accustomed to shale gas development issues over the past year. In Pennsylvania, for example, we are witnessing a maturation of development issues, with tough questions being raised, including those regarding municipal preemption, wastewater management and air permitting. One year later, the consequences of Act 13 and pending litigation are being watched closely by those involved in the shale play. In Ohio, the Legislature and applicable governmental agencies have learned from issues encountered in Pennsylvania and have instituted additional measures to regulate the development of shale gas, including the issuance of several executive orders and the introduction of significant legislation. In West Virginia, the West Virginia Department of Environmental Protection has continued to develop policies and regulations as an extension of the requirements enacted in the 2011 Horizontal Well Control Act.

Shale gas development in the tri-state region continues to face increased regulation by federal, state and local governments, in addition to litigation challenges by private parties and

increased scrutiny from activist groups and communities. The current market dynamic is increasing the frequency and complexity of a variety of legal matters, such as construction litigation, disputes with contractors and toxic tort cases.

In this document, you will read about these and other critical legal issues that Babst Calland's Energy and Natural Resources Group addresses with its producer, midstream and service provider clients in Pennsylvania, Ohio and West Virginia.

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About The Babst Calland Report

This annual review of oil and natural gas development includes perspectives on energy and natural resources law related primarily to the Marcellus and Utica shale plays. The Babst Calland Report offers insights on key environmental and regulatory initiatives in Pennsylvania, Ohio and West Virginia from the past year and expected trends for this year, including an update on related Federal environmental developments. It covers a range of subject matter – from environmental and land use updates to perspectives on title services, transactions, litigation and pipeline safety.

This report was issued in May 2013, and represents the collective perspective of Babst Calland's energy and environmental attorneys. Updates to the content of this report are available directly through the Firm's interdisciplinary Energy and Natural Resources attorneys.

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Note: The Babst Calland Report is provided for informational purposes only to our clients and friends, and is not intended to constitute legal advice. Each of the attorneys listed above can be reached via e-mail for further information or consultation.

About Babst Calland

Babst Calland was founded in 1986 and has represented environmental, energy and corporate clients since its inception. The firm has grown to more than 110 attorneys who concentrate on the current and emerging needs of clients. This team of lawyers possesses extensive experience in construction, employment and labor, energy and natural resources, environment, land use, litigation, and transaction and business services law. Babst Calland was named “Pennsylvania’s Fastest Growing Law Firm” based on a PA Law survey conducted by *The Legal Intelligencer* in 2012. Headquartered in Pittsburgh, Babst Calland has offices in State College, PA, Charleston, WV, Akron, OH, and Sewell, NJ. Babst Calland and its lawyers have been acknowledged by various organizations, including: *U.S. News & World Report’s* “Best Law Firms,” “Best Lawyers in America,” “Pennsylvania Super Lawyers,” and “Chambers USA: America’s Leading Lawyers for Business.” For more information, visit www.babstcalland.com.

Inquiries about this report, or to request a meeting on the most up-to-date legal developments in the shale plays, please contact Joseph K. Reinhart at jreinhart@babstcalland.com. To stay current on related issues and industry developments, please sign up to access our new shale energy law blog (www.shaleenergylawblog.com).