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Pennsylvania Addresses Uncertainties Arising from Temporary Cessation of Oil and Gas Production

On October 30, 2017, Governor Tom Wolf signed legislation giving oil and gas operators specific mechanisms to shield themselves from claims that an oil and gas lease has terminated due to a cessation of production.

The new law, 72 P.S. § 1610-E, provides that an oil and gas lessor waives his or her right to challenge a lease due to a temporary cessation of production if, before the lessor asserts a claim that the lease has terminated, any of the following occur:

- 1) The lessor accepts a royalty payment following the recommencement of production after *less* than a year of non-production. 72 P.S. § 1610-E(a)(1).
- 2) The lessor accepts a royalty payment following the recommencement of production after *more* than a year of non-production *and* the lessee provides "an explanation, in plain terms, that the acceptance of the royalty payment shall constitute acknowledgment of an existing lease with the operator[.]" *Id.*
- 3) The operator, "after notifying the lessor of its intent to drill a new well and giving the lessor 90 days within which to object, drills a new well under the lease." Notably, as to this third mechanism, the statute does not specify the level of detail required for the notice. 72 P.S. § 1610-E(a)(2).

Importantly, the statute does not apply to leases that expressly provide for termination following a fixed period of nonproduction. See 72 P.S. § 1610-E(b). Nor can it be used to circumvent an operator's obligation to commence operations within a lease's primary term. *Id.*

The statute offers operators an opportunity to resolve uncertainties that exist under Pennsylvania's common law. Under the common law, the question of whether a temporary cessation of production terminates a lease can be difficult to answer and depends on the

facts surrounding the period of nonproduction and evidence demonstrating an intent to abandon the lease. For instance, in *Cole v. Philadelphia Co.*, 26 A.2d 920 (Pa. 1942), the Supreme Court of Pennsylvania held that a three to four-month cessation while the operator reworked the only producing well on the leasehold was not unreasonable and did not result in termination. In *Clark v. Wright*, 166 A. 775 (Pa. 1933), the same court held that a cessation of two years and 10 months during which time no rentals or royalties were paid demonstrated an intent by the lessee to abandon or surrender the lease. Under the common law, once a lease has been abandoned or surrendered, its termination is final and any further activities conducted by the operator are as a tenant at will. See *Brown v. Haight*, 255 A.2d 508 (Pa. 1969).

In light of the new statute, whenever an operator is considering recommencing production under a lease or drilling a new well, it should carefully consider whether a significant cessation of production has occurred at any time during the lease's secondary term, and whether action under 72 P.S. § 1610-E could help resolve any potential issues that a lessor may attempt to raise in the future. While lessors can still assert that a lease has terminated due to non-production, § 1610-E gives operators the option of making lessors "speak-up or forever hold their peace."

For more information, please contact [Kenneth Witzel](#), [Nicholas Koch](#) or any other member of Frost Brown Todd's [Energy and Natural Resources Industry Team](#).

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