Federal

SEAB Task Force Evaluates FracFocus. In recent meetings, the Secretary of Energy Advisory Board (SEAB) FracFocus task force has questioned administrators of the FracFocus website and industry representatives regarding the sufficiency of current chemical disclosures. Some task force members were critical of the extent to which operators invoked trade secret protections, and asked whether operators could protect confidential information by listing chemical constituents of hydraulic fracturing fluid without providing a formulaic breakdown. Industry representatives defended current disclosure as more than sufficient to put interested parties on notice, while protecting trade secrets. Some states require well operators to disclose chemical use through FracFocus, and in its 2013 proposed rule, the U.S. Bureau of Land Management has likewise proposed to require use of FracFocus for disclosures for wells on federal land.

House Energy and Commerce Committee to Release LNG Export Report. The House Energy and Commerce Committee is due to release a report on liquefied natural gas (LNG) exports by the end of January. The report is expected to explore U.S. natural gas supplies and the geopolitical implications of exports. The report is also expected to discuss requests to streamline the permitting process for approval of LNG export terminals by representatives from countries seeking to import U.S. natural gas. Currently LNG export facilities must obtain permits from the Department of Energy and complete a Federal Energy Regulatory Committee environmental review. Opponents of streamlined permitting, including the Industrial Energy Consumers of America, question the impact of LNG exports on domestic manufacturing.

Senators Question Continuing Ban on Crude Oil Exports. Several members of Congress, including Sen. Lisa Murkowski (R-AK), Sen. John Hoeven (R-ND), and Sen. Mary Landrieu (D-LA) have recently signaled an interest in reconsidering laws that, with some exceptions, have effectively banned the export of crude oil from the United States for 40 years. In a recent speech, Sen. Murkowski suggested the Administration has sufficient statutory authority to lift the ban on its own, but would be prepared to introduce targeted legislation if necessary. In the House, Energy and Commerce Chairman Fred Upton (R-Mich. 6th Dist.) noted that the export ban was under analysis, but did not take a position. The American Petroleum Institute and many producers have come out strongly in favor of permitting exports.
BLM Urged to Defer Oil and Gas Lease Sales in Colorado. In comments on a Bureau of Land Management (BLM) draft Environmental Assessment, interest groups are urging BLM to defer a planned lease sale for five parcels in the North Park area of Colorado. The groups are asking BLM to finish revisions to the region’s Resource Management Plan (RPM) before making any decisions regarding specific lease sales. The revised RPM, which should be issued this spring, is expected to consider potential impacts on habitat for the greater sage grouse and on fish populations. The parcels are slated to be included in a June 2014 lease sale, and BLM is expected to make a final decision on their inclusion by March 2014.

President Announces Quadrennial Energy Review. On January 9, 2014 President Obama issued a memorandum convening the Quadrennial Energy Review, a four year policy plan included in the President’s June 2013 Climate Action Plan. The initial review will deliver a report by January 31, 2015 that addresses the nation’s infrastructure for transporting and transmitting energy. Subsequent reviews will be completed every four years. The initial review will be conducted by an interagency task force co-chaired by the White House Domestic Policy Council and the Office of Science and Technology Policy. The task force will include representatives from 22 federal entities including, the Departments of Energy, Defense, and State; the Environmental Protection Agency; and the Council on Environmental Quality. The final report is expected to include recommendations for legislative and regulatory action as well as research and development priorities.

EPA Revises General Permit to Require Disclosure for Off-Shore Drilling Using Hydraulic Fracturing. On January 9, 2014, the Environmental Protection Agency (“EPA”) published a revised Clean Water Act general permit for off-shore drilling in California that includes chemical disclosure and spill reporting requirements. Under the new requirements, operators must maintain an inventory of chemicals used for well completion, treatment, and workover fluids, and report the chemical makeup of such fluids that are discharged in their discharge monitoring reports. EPA added the requirements in response to concerns raised by state legislators.

States

California: Budget Proposal Includes New Fees for Oil Development. California Gov. Jerry Brown’s proposed budget includes new fees that would be allocated to address risks related to transportation of crude oil. Concluding that increases in domestic oil production have outstripped current pipeline capacity, Gov. Brown proposed to allocate $6.7 million for oil spill prevention and administration, which would focus on the state’s ability to respond to oil releases. The funding would be obtained by expanding the state’s 6.5 cents per barrel fee currently assessed at marine terminals to all crude oil received by California refineries. Gov. Brown declined to support a severance tax on oil production, explaining the state has enacted a number of recent tax increases.

Colorado: Groups Comment on Colorado’s Air Pollution Proposal. The Colorado Petroleum Association and Colorado Oil and Gas Association have filed comments raising concerns with Colorado’s proposal to limit air emissions from oil and gas development. The trade associations argued the rules are too restrictive and the compliance costs will exceed Colorado’s estimate. In contrast, interest groups, including Earthworks and Wildearth Guardians, argued that the proposed rules to do not go far enough. When it introduced the rules last November, Colorado had been joined by three of the state’s largest oil and gas companies and a national environmental group who together worked with the state on the proposal. The Colorado Air Quality Control Commission will hold a hearing on the proposed rule in February.
Colorado: Interest Groups Seek Ballot Measure to Allow Local Restrictions. In response to lawsuits challenging local moratoria on hydraulic fracturing, the Colorado Community Rights Network has drafted a state-wide ballot measure that would permit local governments to restrict industrial activities, including oil and gas development using hydraulic fracturing. The ballot measure still must obtain more than 86,000 signatures to appear on the 2014 ballot.

Ohio: Proposed Drill Site Regulations Expected. More than fifteen months after Ohio passed a law requiring new regulations for the construction of drill sites, the Ohio Department of Natural Resources (ODNR) is expected to issue a proposed rule. The proposal is anticipated to address, among other things, requirements for freshwater storage and erosion controls. While interest groups have been critical of the delay, ODNR representatives have responded that additional time has been taken to ensure the effectiveness of the proposed rule.

Pennsylvania: GIS Database of Abandoned Wells Under Development. As part of an effort to help developers of new natural gas wells, Pennsylvania is developing a detailed GIS database to map up to 50,000 abandoned wells within the state. Releases can occur if fractures created during well stimulation transect existing wells. The database would work in conjunction with proposed rules that would require drillers to review all wells within 1,000 feet of horizontal and vertical well bores. The Pennsylvania Department of Environmental Protection is currently accepting comments on the proposed rules.

Pennsylvania: Agencies Seek Reconsideration of State Supreme Court Ruling. The Pennsylvania Public Utilities Commission and Department of Environmental Protection have asked the Pennsylvania Supreme Court to reconsider aspects of its ruling in Robinson Township v. Commonwealth of Pennsylvania, a decision in which the Court struck down portions of the state’s revised oil and gas law (known as “Act 13”). Act 13 imposed statewide regulations on oil and gas development, but also preempted local zoning laws and other ordinances that would impact such development. The agencies argued in their motion that the Supreme Court based its decision on an incomplete factual record that should have been more fully developed at the trial court level. Separately, Pennsylvania Gov. Corbett expressed concern that the Court’s decision threatened key environmental provisions in the law and urged developers to continue to abide by Act 13’s setback requirements. Industry trade associations have indicated they would comply with the Governor’s request and, to date, there have been no applications for drilling that would not comply with the now-vacated setback requirements.

Texas: Production in the Permian Basin approaches one million barrels per day. In western Texas, unconventional oil development in the Permian Basin increased by more than 100,000 barrels per day in 2013 and is now approaching one million barrels per day. The Permian Basin is made up of a series of unconventional oil and gas plays that occur at a variety of depths and have proved very susceptible to development using hydraulic fracturing. The Permian Basin now accounts for two-thirds of Texas’ oil and gas production and fifteen percent of the United States’ total production.

Texas: Texas Railroad Commission Responds to Seismic Activity near Injection Wells. In response to a series of tremors in the Dallas-Fort Worth area over the past two months, the Texas Railroad Commission is taking steps to evaluate whether underground injection control wells are contributing to the activity, including adding a seismologist to their staff to help with the evaluation. The U.S. Geologic Survey and Southern Methodist University are also evaluating the recent increase in seismic activity in the area and reportedly will
publish their results within the next few months. The Commission has also contacted the Texas Bureau of Economic Geology about the potential for conducting a separate study.

**Virginia: State Announces Plan to Consider Disclosure Requirements for Hydraulic Fracturing.** The Virginia Department of Mines, Minerals and Energy issued a notice of intended regulatory activity that will consider expanded “disclosure of ingredients used in gas and oil well stimulation and completion” as well as industry best practices for oil and gas development. While Virginia currently requires companies to provide a general description of chemicals used in oil and gas development, chemicals used during well stimulation are currently exempt from disclosure. Instead, Virginia recommends that developers voluntarily submit chemical disclosures through FracFocus. The notice is subject to public comment and a public hearing.

**International**

**Chinese Coal Company Invests in U.S. Shale.** China’s largest coal company, China Shenhua Energy Co. announced plans to form a joint venture with Energy Corp. of America to drill 25 natural gas wells in Pennsylvania. China Shenhua intends to use the joint venture to develop expertise in unconventional oil and gas development that it can apply to China’s shale reserves. While China Shenhua is the first Chinese coal company to invest in U.S. shale development, several Chinese oil and gas companies have already made significant investments in United States shale reserves.

**Business**

**Shale Oil and Gas Development Projected to Remain Strong in 2014.** Federal government and industry analysts generally project that 2014 will be a strong year for oil and gas development in the U.S. Capital investments by oil and gas developers are expected to increase modestly, maintaining the recent trend of increasing shale oil production. Industry surveys indicate that shale oil operations in the Permian Basin, Eagle Ford, and Niobrara plays are expected to be among the fastest-growing plays in 2014, and investments in oil and gas pipelines and related infrastructure are also expected to grow by as much as 30%. While increased oil supplies and the anticipated end of federal economic stimulus are putting downward pressure on oil prices, analysts are projecting modest price declines. Expected economic growth, both domestically and abroad, and improved efficiency within the industry, are expected to offset declining prices, and a cold winter is also supporting natural gas prices through increased demand.

**Peterson Institute Study Evaluates Growth Associated with Shale Development.** A recent Peterson Institute for International Economics report concludes the expansion of domestic oil and gas production in the U.S. is providing much-needed economic stimulus and will produce ongoing economic benefits through 2020. The production of shale gas and tight oil could increase GDP growth by an average of 0.2 percent per year through 2020, boosting economic output by a total of 2.1 percent. While substantial, these forecasted benefits are more modest than in other analyses, and the report warns against simply projecting forward the current short-run impact of the boom. Over the past decade, shale oil and gas development have been a significant driver of domestic economic growth by creating demand for labor and materials, reducing energy prices, and shifting the balance of trade. The study predicts that, going forward, some of those benefits may be lost, as increased economic growth will strengthen the dollar, making U.S. products less competitive internationally.
**SandRidge Energy Shifts Exclusively to On-Shore Development.** SandRidge Energy exited the off-shore oil business, selling its Gulf Coast and Gulf of Mexico assets to Fieldwood Energy LLC for $750 million in cash and the assumption by Fieldwood of an additional $370 million in liabilities. The company intends to focus its resources on the Mississippi Lime and Permian Basin shale formations. SandRidge currently holds the second largest position in the Mississippi Lime formation, with more than 1.9 million net acres. This strategy shift came after shareholder TPG Axon Capital gained four seats on SandRidge’s board.

**Australian Firm to Invest in North Slope Shale Development.** Australian firm Rampart Energy recently announced plans to conduct 3-D seismic testing on a 120 square mile lease southwest of the Prudhoe Bay oil fields. In 2013, Rampart formed a joint venture with Royale Energy, Inc. that will allow it to obtain an ownership interest by funding exploration. Seismic testing is expected to begin next month, and exploratory wells could be drilled in 2015 if the seismic testing is successful. Rampart is the second firm to engage in shale exploration on the North Slope, following Great Bear Petroleum LLC’s exploratory drilling program in 2012.

If you have any questions regarding this update, please contact the Sidley lawyer with whom you usually work.

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**The Environmental Practice of Sidley Austin LLP**

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