

## Chapter 19

# Environmental Issues in Natural Gas Pipeline Construction

**Richard L. Lewis, II**  
*Steptoe & Johnson PLLC*  
Charleston, West Virginia

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### **§ 19.01. Overview.**

The explosion of activity by exploration and production companies in Pennsylvania, West Virginia, and Ohio related to shale gas is unprecedented in recent history. “Gold rush” mentality has led to large bonus payments to mineral owners for the right to drill and produce over a large geographic area of the affected states. Many exploration and production (E&P) companies have entered into leases with landowners that will require them to either commence oil and gas operations within the (typically) five-year lease period, renew the lease at great expense, or abandon the lease without return on the previous investment. Accordingly, as the rush to acquire and lease property

continues, extraordinary pressure is mounting on E&P companies to drill, produce, and therefore hold the leases for which they have expended great sums to acquire.

But, as E&P companies begin to produce, where does production flow? Unlike many historical oil wells in Appalachia where onsite tankage and truck transportation was possible, shale gas is produced generally in gas form, and in volumes that cannot be transported by means other than pipelines. As a result, the gold rush to acquire leased mineral interests has resulted in a stampede to build infrastructure to gather and transport shale gas from the wellhead to a market. This infrastructure is generally in the form of natural gas pipelines, and is being built in the rugged terrain of northern West Virginia, Western/Central Pennsylvania and Eastern Ohio. The amount of construction activity is pressuring construction contractors to move ahead quickly. The volume of available work has created interest from construction contractors with limited experience to enter the pipeline construction market. One of the unfortunate results: some pipeline construction contractors have misunderstood their obligations with regard to environmental law, caused environmental mishaps, and tarnished the pipeline construction industry in the view of environmental regulators.

This chapter examines two primary environmental issues dealt with in construction of natural gas pipelines: 1) requirements, process and procedure for Clean Water Act (Act) permitting under Section 404 of the Act; and 2) requirements for permitting and/or exemptions to permitting under Section 402 of the Act related to stormwater discharges from construction sites.

### **§ 19.02. Pipeline Construction in Jurisdictional Waters of the United States.**

Pipeline construction activities that cross the rugged terrain of Appalachia in the Marcellus and Utica shale regions will inevitably encounter jurisdictional waters of the United States which often include both stream crossings and “Wetland” areas. Generally, section 404 of the Federal Clean Water Act and the regulations promulgated thereunder require that a permit be obtained from the United States Army Corp of Engineers (USACE or