

E&W sends this newsletter quarterly. If you or a friend would like to receive future copies, please send your email address to chodakievic@emenswolperlaw.com



EMENS & WOLPER LAW FIRM

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Ohio Shale & Pipeline Update September 2014

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PIPELINES & MINERAL RIGHT OWNERSHIP DISPUTES

Dear Clients, Friends and Colleagues:

The Ohio shale play continues to attract national attention with its eye-popping gas gushers. As we discuss in this issue, the development of Ohio's shales in the past few years revivals the development in Texas' Eagle Ford Shale, and companies continue to drill bigger and bigger wells as they improve their drilling techniques. With companies developing their acreage and oil and gas production sharply increasing, the two main issues currently facing Ohio landowners are pipelines and mineral right ownership disputes.

We are seeing a tremendous amount of pipeline activity around the entire State of Ohio, not just eastern Ohio. In the last few months, several very large pipeline projects (potentially 42' pipe) have been proposed including ET Rover, ANR TransCanada and NEXUS. With pipelines, landowners are often asked to first sign a survey permission form. The survey permission forms often are overbroad and contain insufficient language protecting landowners from liability for injury or damage. Upon completion of the surveys, landowners will then be approached to sign an easement. Easements are different than leases – they typically can last forever and there is only a one-time payment. The terms of the easement are just as important as the compensation. We have seen many landowners get taken advantage of with easements. Our firm has had great success in assisting landowners negotiate pipeline easements and we have written several articles on easements to help landowners understand easements, which are on our website.

Another major issue many landowners are facing is ownership disputes of the oil and gas mineral rights. Ohio's Dormant Mineral Act ("ODMA") is a use it or lose it statute. Generally, ODMA says that if an owner of just mineral rights, not the surface, does not "use" their mineral rights for 20 years, the surface owner can claim the mineral rights have been abandoned the minerals and the surface owner can become the lawful owner. There are many questions surrounding ODMA and, as discussed below, the Ohio Supreme Court has finally taken up several cases relating to this statute.

We continue to enjoy working with landowners facing oil and gas and other related issues. We look forward to hearing your comments and questions. If there is a topic you would like us to discuss in our next newsletter, please email or call us!

Sincerely,
Emens & Wolper Team
Bea, Chris, Craig, Dick, Gail, Heidi, Kelly, Sean, Tyler



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Emens & Wolper Upcoming Presentations

September 17, 2014 7:00 PM
Bert G. Taylor
American Legion Post 300
500 Glenwood Ave
Napoleon, OH 43545
Topic: Pipeline

September 18, 2014 7:00 PM
Morgan UTICA Shale Group
Masonic Lodge,
275 S. 8th St.,
McConnelsville, OH 43756
Topic: Pipelines, Shale Activity

September 24, 2014 6:00 PM
Salt Fork Lodge
14755 Cadiz Rd
Lore City, OH 43755
Topic: Pipelines & Estate Planning

September 25, 2014 7:00 PM
Clark Elementary
1390 Ohio 83
Millersburg, OH 44654
Topic: Pipelines (ANR/TransCanada)

September 30, 2014 7:00 PM
Mid-Ohio Educational Service Center
890 West Fourth Street
Mansfield, OH 44906
Topic: Pipeline (Rover)

October 1, 2014 7:00 PM
Ashland County
Location TBA - see emenswolperlaw.com
Topic: Pipelines (Rover)

October 2, 2014 7:00 PM
Union Local Middle School
66859 Belmont Morristown Rd
Belmont, OH 43718
Topic: Pipelines (Rover/ANR/Spectra)

October 7, 2014 7:00 PM
Wayne County
Location TBA - see emenswolperlaw.com
Topic: Pipelines (Rover)

October 8, 2014 7:00 PM
The Brown Center
100 Creamery St.
Woodsfield, Ohio 43
Topic: Pipelines & Estate Planning

October 15, 2014 7:00 PM
Harrison County
Location TBA - see emenswolperlaw.com
Topic: Pipelines

October 22, 2014 7:00 PM
Winterville Fire Station
286 Luray Dr.
Winterville, OH

Ohio Landowner Alert

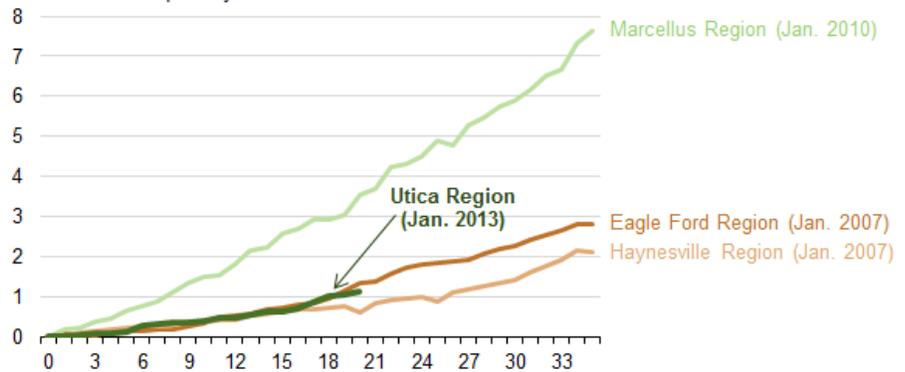
DIVISION ORDERS: After a well is drilled and before it starts producing, landowners are often asked to sign a document called a division order. A division order typically describes the percentage of royalty you are to receive from the production and sometimes the percentage of ownership a landowner has in the particular unit. We have seen several oil and gas companies try to include landowner unfriendly terms in the division order, which may conflict with the lease terms. Moreover, landowners often tell us that the companies are stating that if they don't sign the division order, they will not receive royalties. We strongly advise landowners to be prudent and cautious with division orders. Unless your lease requires you to sign a division order, you do not have to sign to receive your royalties.

EXPLORATION AND DEVELOPMENT UPDATE

OHIO PASSES 1,000 UTICA SHALE WELLS DRILLED - As of August 16, 2014, Ohio has hit a landmark 1,025 Utica/Point Pleasant Shale wells drilled, drilling, or producing. There are 46 rigs running in the State and out of the 1,025 wells drilled there are 495 producing Utica wells. See <http://oilandgas.ohiodnr.gov/> for more information.

OHIO'S UTICA SHALE RIVALS TEXAS' EAGLE FORD SHALE – The Federal Information Administration recently added the Utica Shale to its drilling productivity report as “one of the fastest growing natural gas production areas in the United States”.

Natural gas production growth in select regions
indexed to start of rapid production growth
billion cubic feet per day



Source: U.S. Energy Information Administration, [Drilling Productivity Report](#)

Note: Production growth indexed from January of the year production began increasing rapidly in the region.

“The pace of drilling productivity growth can be attributed to both the geological properties of the Utica formation—it contains significant volumes of oil and natural gas—as well as the considerable horizontal drilling and hydraulic fracturing expertise producers are bringing to the play after nearly 10 years of drilling shale and tight formations. Because of the relatively low number of rigs drilling in the Utica Region, total natural gas production has grown about on pace with production growth in Texas's Eagle Ford Region from 2010 to 2012.” For more information see <http://www.eia.gov/todayinenergy/detail.cfm?id=17511>.



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Landowner Groups and Other Ohio Counties Where Emens & Wolper Assists Landowners:

Black River Landowners
Association-- Lorain County

Central Ohio Landowners
Association—Richland &
Ashland counties.

Coshocton County Landowners
Group-- Coshocton &
Northeastern Muskingum
counties.

Jefferson County Landowners
Group—Jefferson County.

Mohican Basin Landowners
Group--Ashland, Wayne, &
Holmes counties.

Muskingum Hills Landowners
Southeastern Muskingum
County.

Perry County Landowners --
Perry County.

Resources Land Group--
Licking and Southeastern Knox
County.

Smith Goshen Group--
Belmont County.

Ashland, Ashtabula, Athens,
Carroll, Columbiana,
Crawford, Defiance, Delaware,
Fayette, Franklin, Geauga,
Guernsey, Hardin, Harrison,
Henry, Highland, Hocking,
Holmes, Mahoning, Marion,
Meigs, Medina, Monroe,
Noble, Pickaway, Portage,
Richland, Ross, Seneca, Stark,
Summit, Trumbull,
Tuscarawas, Union,
Washington, Wayne, Wood,
and others.

EXPLORATION AND DEVELOPMENT UPDATE, CNT'D

1Q14 PRODUCTION NUMBERS – The Ohio Department of Natural Resources (ODNR) recently reported the First Quarter of 2014 production. The two top gas-producing wells were Eclipse Resources' Tippens Well in Monroe County with 1,117,754,000 cubic feet and Antero Resources' Gary well in Monroe County with 1,115,801,000 in the First Quarter. The next eight top gas-producing wells are Gulfport's in Belmont County. For oil, the top-producing well was Antero Resources' Neuhart Well in Seneca Township, Noble County with 49,057 barrels for the Quarter. Seven of the top 10 oil-producing wells were in Noble County. See <http://oilandgas.ohiodnr.gov/production> for a more detailed report of the production.

RICE HITS BIG IN BELMONT COUNTY – In June, Rice Energy announced production its first Utica Shale well in Belmont County (the Bigfoot 9H Well) produced at a stabilized rate of 41.6MMcf per day. In terms of dollars, if you assume the gas can be sold for \$4 per MCF, the Bigfoot Well produced roughly \$166,000 per day. This is the largest initial production rate of all Utica/Point Pleasant Shale wells currently drilled in the State of Ohio! The Bigfoot well has a 6,957 foot lateral and the gas being produced should not require any processing. Rice anticipates that the Bigfoot Well will produce 4.7 to 5.1 BCF of gas in the first 12 months, and 6.0 to 7.3 BCF of gas in 18 months. Assuming these projections are accurate and using \$4.00 per MCF of gas, the Bigfoot Well is anticipated to make \$18.8 to \$20.4 Million in 12 months, and \$24.0 to \$29.2 Million in 18 months. For more information, see http://www.marketwatch.com/story/rice-energy-announces-utica-shale-well-results-provides-operational-update-2014-06-02?reflink=MW_news_stmp and <http://riceenergy.com/media/2Q14%20Investor%20Presentation%20Aug%2011%202014.pdf>.

NEW FRAC TECHNIQUES COMING TO OHIO'S UTICA SHALE OIL WINDOW – Chesapeake Energy Corp. recent drilled the Parker Well in Perry Township, Tuscarawas County. While the amount of production has not been disclosed, Chesapeake indicated it was pleased with initial test results of the well. Chesapeake is one of several companies trying to tap into the Utica Shale "oil window". EV Energy Partners recently announced it plans in Tuscarawas County on October 1, 2014. EV Energy (a subsidiary of EnerVest) indicated that it is working with experts who are testing unique fracturing techniques to increase likelihood of producing significant quantities of oil and gas. EV Energy indicated it has found that by using more water and sand in the fracking process for wells in the oil window, they have had much better results. For more information, see <http://www.daily-jeff.com/business/2014/08/14/ev-energy-partners-ready-to-drill-in-tuscarawas-county-the-western-fringe-of-utica-shale>; <http://www.vindy.com/news/2014/aug/19/potential-oil-window-is-best-bet-for-uti/>; <http://www.ohio.com/blogs/drilling/ohio-utica-shale-1.291290/chesapeake-happy-with-ohio-oil-results-to-drill-in-wa-for-gas-1.511126>.

McCLENDON'S FIRM CONTINUES TO LEASE – American Energy-Utica, LLC (Aubrey McClendon's new company) just completed another large acquisition of 27,000 leased acres in Monroe County for \$475 million, or \$17,500 per acre, from East Resources, Inc. and an unnamed private company. With this acquisition, American Energy-Utica owns leases on approximately 280,000 acres in eastern Ohio. For more information, see <http://www.ohio.com/news/local/mcclendon-firm-completes-acquisition-of-27-000-leased-acres-in-southeast-ohio-1.510902>.



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Emens & Wolper Law Firm Legal Services

Our law firm provides numerous legal services related to natural resources including the following:

- **We review, analyze and negotiate NEW and OLD oil and gas leases and mineral deeds;**
- **We review, analyze and negotiate pipeline easements;**
- **We analyze mineral abandonment claims and claims regarding expired leases;**
- **We represent landowners in ODNR mandatory unitization proceedings who are being forced unitized;**
- **We review, analyze and negotiate water, sand, timber, gravel, and coal rights agreements;**
- **We review, analyze, negotiate sale of minerals and royalties; and**
- **We assist with litigation on all these matters.**

Our law firm also provides services regarding estate planning, succession planning for family businesses, and purchases and sale of businesses.



PIPELINE/INFRASTRUCTURE UPDATE

EASTERN & NORTHERN OHIO - ET Rover Pipeline, LLC (Rover), a subsidiary of Energy Transfers Partners, has proposed installing a large (42 inch) pipeline across Ohio to transport natural gas being produced from the Marcellus and Utica Shales in eastern Ohio, Pennsylvania, and West Virginia. The proposed Rover project is planned to cross 18 different Ohio Counties – starting in eastern Ohio near Clarington, running north to Leesville, heading west to Defiance, then heading north thru Michigan. For more information, see <http://www.emenswolperlaw.com/wp-content/uploads/2013/11/ET-Rover-Description.pdf>.

EASTERN & NORTHERN OHIO - TransCanada U.S. Pipelines is developing a project called the ANR East Pipeline to transport growing supply of Appalachian Basin gas including the Utica shale to the Midwest, Louisiana Gulf Coast, and Ontario. The ANR East Pipeline Project will include the construction of a new pipeline originating at the Cadiz Gas Plant in southeastern Ohio and terminating at the ANR Joliet Hub in Lake County, Indiana. The new build will consist of approximately 320 miles of large diameter and is expected to cross northern Ohio. For more information, see https://www.anrpl.com/documents/openseason/document/ANR%20East%20Pipeline%20Project_Brochure.pdf.

EASTERN & NORTHERN OHIO - DTE Energy and Spectra Energy are planning a 250 mile large pipeline across the U.S. Midwest, including Ohio, Michigan, Chicago and Ontario, Canada called the NEXUS Gas Transmission (NGT). The NGT project will originate in northeastern Ohio, include approximately 250 miles of large diameter pipe, and be capable of transporting at least two billion cubic feet per day of natural gas. For more information, see <http://www.spectraenergy.com/Operations/New-Projects-and-Our-Process/New-Projects-in-US/NEXUS-Gas-Transmission/>.

EASTERN OHIO - EnLink Midstream, LLC plans a 45 mile, \$250 million expansion to its existing 200 miles of pipeline in eastern Ohio and West Virginia. EnLink indicates it plans to build six processing facilities along the expansion in Belmont, Guernsey and Noble counties. This planned pipeline will be used to move condensate, which is a light oil. For more information, see <http://www.bizjournals.com/columbus/blog/ohio-energy-inc/2014/08/pipeline-company-planning-250m-utica-investment-to.html>.

EASTERN & SOUTHERN OHIO - Columbia Pipeline Group and its parent company, NiSource, plan to construct a 160 mile natural gas pipeline in Ohio and West Virginia at a cost of \$1.75 Billion, which is known as the Leach Xpress project. The proposed route runs west from West Virginia, thru Monroe County, Ohio to Fairfield County, Ohio and then runs south thru Lawrence County, Ohio. For more information, see <http://ir.nisource.com/releasedetail.cfm?ReleaseID=865789>.

EASTERN OHIO – Texas Eastern Transmission plans to build a thirty inch pipeline through five eastern Ohio counties, called the OPEN project. The OPEN project will consist of approximately 76 miles of new 30-inch diameter mainline pipeline and associated pipeline support facilities in Ohio, including a new compressor station. Approximately 35 miles (49%) of the proposed pipeline facilities will be either within or adjacent to existing transmission line or pipeline right-of-way. Texas Eastern submitted a formal application to the FERC on January 31, 2014 and was assigned docket number CP14-68-000. For more information, see <http://www.spectraenergy.com/Operations/New-Projects-and-Our-Process/New-Projects-in-US/Ohio-Pipeline-Energy-Network-OPEN/>.



*Please visit our website for
Educational Articles*

www.emenswolperlaw.com

Pipeline Easements: You Wouldn't Buy
a Car or Tractor Without Asking
Questions First!

Selling Your Mineral Rights - -Questions
You Should Consider First!

Separating your Mineral Rights:
Remember Real Estate Taxes

Post-Production Costs: Protecting
Landowner Rights

Oil and Gas Leases and Pipeline
Easements - -This Time It's Different

Oil and Gas Considerations When
Buying and Selling Farmland

"Force Pooling" in Ohio: Requiring
Non-Consenting Landowner's to
Develop Their Oil and Gas Minerals

"Mineral Rights ARE Different!"

Pipeline Easements and Right of Ways:
Protecting Your Rights

Pipeline Easements: Steps to Protecting
Landowner Rights

Unusual Ohio Oil and Gas Lease
Provisions

Ohio Oil and Gas Conservation Law--
The First Ten Years (1965-1975)

PIPELINE EASEMENTS:

YOU WOULDN'T BUY A CAR OR TRACTOR WITHOUT ASKING QUESTIONS FIRST

Landowners all across the State of Ohio are being approached by land agents for proposed pipeline projects. As one of the few Ohio landowners' pipeline law firms, we continue to receive calls from landowners with "buyer's remorse". **DON'T BE A LANDOWNER WHO HAS BUYER'S REMORSE.** Ask the essential questions first, evaluate your rights, and negotiate for what is fair.

We see time and time again landowners who don't ask the basic and essential questions before they sign a pipeline easement. Yet, when we ask these landowners if they would buy a car or tractor without first taking it for a test run, asking about the features, without evaluating the quality, or without trying to negotiate more favorable terms, most say they would not. Think of a potential pipeline easement as a business transaction like buying a car or a tractor. Before considering the potential terms of a pipeline easement, ask the following basic, but essential questions:

1. How large is the proposed pipeline going to be (how many inches in diameter)?
2. Does the company want the right to install more than one pipeline?
3. What materials does the pipeline company plan to transport through the pipeline?
4. Where on your property will the pipeline cross?
5. How many feet across your property will the proposed pipeline run?
6. How wide is the proposed easement?
7. Does the pipeline company want any additional space?
 - Temporary work/construction space
 - Additional construction space
 - Access Roads
 - Valves, compressors, meters, etc.
8. What is the financial strength of the Pipeline Company?
9. What is the construction timeline?

Only after having the answers to these essential questions can a landowner truly begin thinking about the actual terms of the proposed easement. In our experience of representing landowners in negotiating pipeline easements, the pipeline company's initial easement is almost always broader than a landowner would expect and does not contain adequate protection for the landowner. Please call us if you have any questions.



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Dick Emens
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LITIGATION UPDATE

ACCEPTANCE OF ROYALTIES AND WAIVER OF TERMINATION

In *Price v. K.A. Brown Oil and Gas, L.L.C.*, 2014 WL 2466360 (7th Circ. Ct. App. May 27, 2014) the Court upheld the trial court decision that the Lessors did not waive termination provisions of an oil and gas lease by accepting de minimis royalty payments. Willard and Eleanor Maienknecht (predecessors in interest of Lessor) executed an oil and gas lease in November 1988, which stated “the purpose of this lease so that the Lessee may put the existing wells into production” and the Lessee was required to put the first well into production within six months and the second well in production within the following six months. *Id.* at 2. The first well was put into production in 1988 and the second well in 1995. The Prices purchased the property in 1999. No royalties were paid except for five checks in 2004 and 2005 totaling \$68.59. The Prices did use free gas. K.A. Brown argued Prices ratified the lease by accepting royalties, by taking free gas, and by failing to take affirmative action to terminate the lease in a timely manner. The Court held that the doctrine of ratification does not apply as it refers to actions taken by a corporation to validate an unauthorized contract and the Prices are not a corporation. The Court held that accepting de minimis royalties does not constitute waiver or estoppel of the lease termination. The Court also held that the Prices did not waive nor are they estoppel from their right to enforce termination because they accepted free gas.

IMPROPER ACKNOWLEDGMENT DOES NOT INVALIDATE LEASE

In *Cole v. EV Properties, LP*, et al, No. 13-3677 (6th Circ. April 18, 2014) the Court affirmed the trial court decision and held improper notarization of an oil and gas lease remains enforceable between the parties. The Plaintiffs executed an oil and gas lease in July of 2006. At the time of signing, a notary was not present. Plaintiffs claim the lease was invalid and unenforceable because of the defective acknowledgment of their signatures. The Court held that the improper acknowledgement of the lease does not invalidate the lease and it remains effective between the parties. The Court stated it does not believe the Ohio Supreme Court would diverge from this approach or permit the Plaintiff to exploit a technically defective acknowledgment to documents that they [the Plaintiffs] unquestionably executed.

TERMINATING OUTSTANDING INTERESTS IN OIL AND GAS LEASES

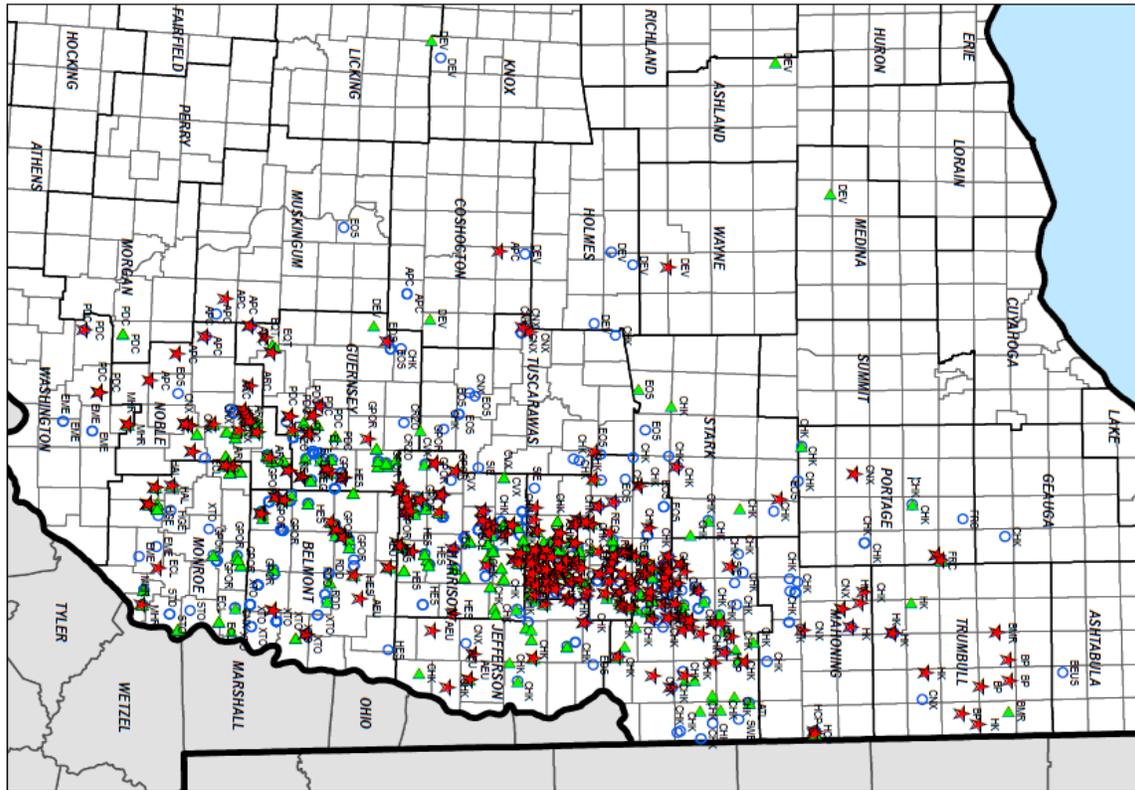
In *Gardner v. Oxford Oil Co.*, 7 N.E.3d 510 (7th Dist., December 20, 2013), the Seventh District Court of Appeals ruled that the interest of the Appellant (The Oxford Oil Company (“Oxford Oil”)) in the deep rights of an oil and gas lease could be terminated by the Appellee (Gardner) the landowner who owned the shallow rights and sole well on the lease when the well was not commercially producing. Oxford Oil entered into an oil and gas lease in 1976 with the predecessor-in-title to Gardner. In 2001, Oxford Oil informed Gardner (who purchased property subject to the lease) that the sole well drilled on the lease was not very productive and would be going up for sale and Gardner agreed to purchase the well and was assigned the lease in an Assignment and Bill of Sale in which Oxford Oil reserved “all deep rights from the bottom of the producing zone to the center of the earth.” After purchasing the well Gardner used the well solely for domestic production and in 2011 Gardner sent a letter to Oxford Oil demanding a release due to Oxford Oil’s failure to produce oil and gas from the leased premises since 2001 and stating that if a release was not given an affidavit of forfeiture would be filed. In response Oxford Oil filed an affidavit and notice that the lease had not been forfeited and Gardner filed a complaint seeking a declaratory judgment that Oxford Oil’s right, title and interest in and to the lease had expired. The trial court granted Gardner’s motion for summary judgment which was upheld on appeal.



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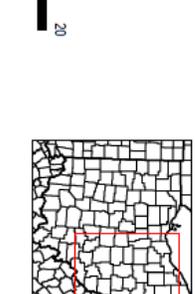
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On August 2, 2014, MacKenzie Land & Exploration, Ltd. issued the following Utica/ Point Pleasant horizontal well production update.



UTICA HORIZONTAL WELL STATUS THROUGH 8/2/2014

OPERATOR	LBL	PROD	PAINT	DRUG	DRUD	TOT
AMERICAN ENERGY UTICA LLC	AEU	8	18	11	14	51
ANDARCO E & P ONSHORE LLC	APC	7	5	0	0	12
ANTERO RES APPALACHIAN CORP	ARC	24	12	38	20	94
ATLAS NOBLE LLC	ATL	5	1	0	2	8
BEUSA ENERGY LLC	BEUS	0	1	0	0	1
BP AMERICA PRODUCTION COMPANY	BP	3	0	0	1	4
BRAMMER ENGINEERING INC	BMR	2	0	0	0	2
CHEASPEAKE EXPLORATION LLC	CHK	299	160	38	186	683
CNX GAS COMPANY LLC	CNX	16	10	4	14	44
CARRIZO UTICA LLC	CRZO	1	6	5	0	12
CHEVRON APPALACHIA LLC	CVX	2	2	1	2	7
DEVON ENERGY PRODUCTION CO	DEV	2	6	1	4	13
ECLIPSE RESOURCES LP	EOL	1	45	13	3	62
EM ENERGY OHIO LLC	EME	0	6	0	0	6
ENERVEST OPERATING LLC	EOS	3	15	0	1	19
EOT PRODUCTION COMPANY	EOT	3	0	2	3	8
MOUNTAINEER KEYSSTONE LLC	FRC	3	2	1	2	8
GULFPORT ENERGY CORPORATION	GPOR	50	69	37	11	167
HAUL DRILLING LLC (OIL & GAS)	HAL	3	1	4	0	8
HILL CORP ENERGY	HCP	3	7	1	6	16
HESS OHIO RESOURCES LLC	HES	10	15	12	17	54
HG ENERGY	HGE	6	5	8	6	25
HALCON OPERATING COMPANY	HK	6	4	1	0	11
TRIMD HUNTER LLC	MHR	3	3	8	2	16
PETROLEUM DEVELOPMENT CORP	PDC	13	1	8	2	24
RICE DRILLING D LLC	RDD	0	4	0	2	6
R E GAS DEVELOPMENT LLC	REG	16	6	3	9	34
SIERRA RESOURCES LLC	SIE	0	3	0	0	3
STATOIL USA ONSHORE PROP INC	STO	0	3	0	0	3
SWEPI LP	SWE	0	1	0	0	1
XTO ENERGY INC	XTO	2	20	3	1	26
TOTALS	491	431	188	308	1428	

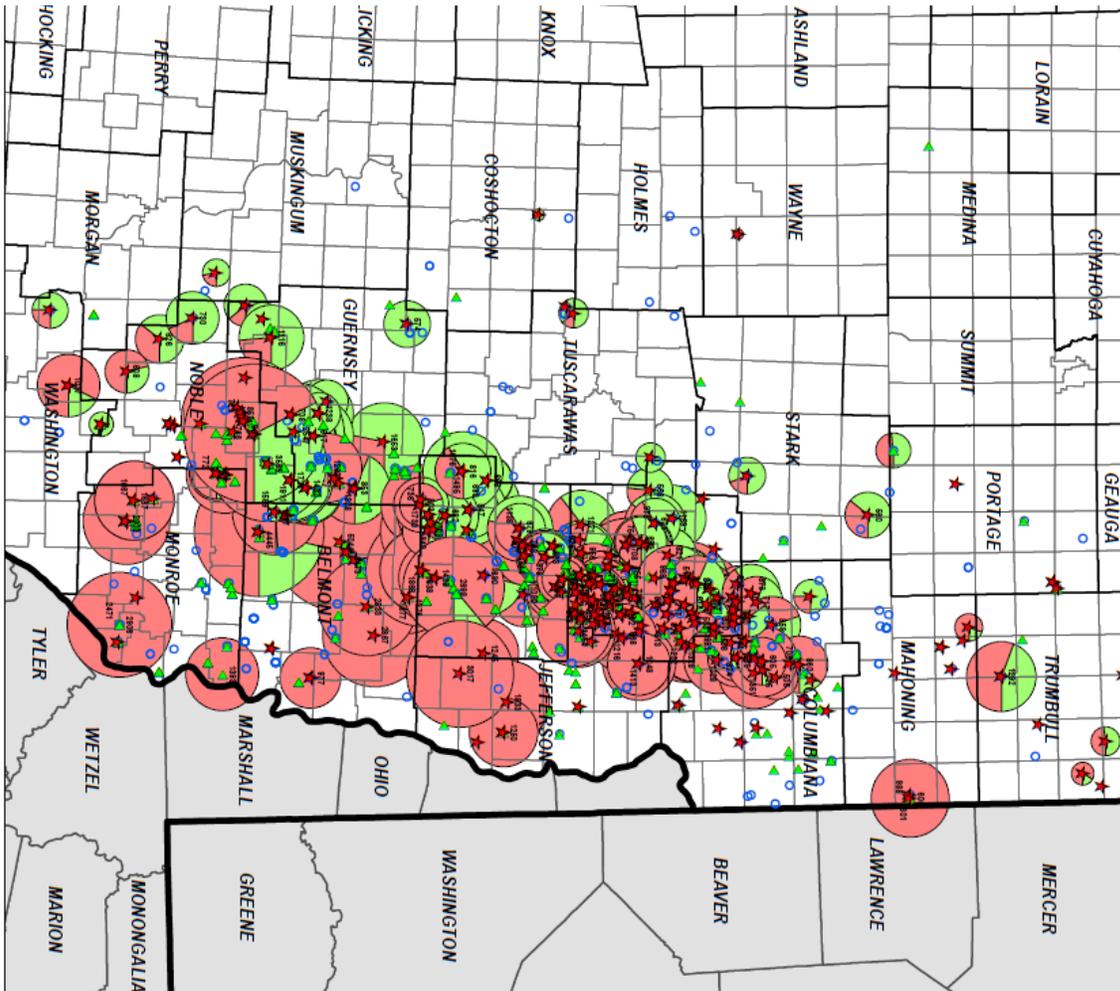




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On August 2, 2014, MacKenzie Land & Exploration, Ltd. issued the following Utica/ Point Pleasant horizontal well production update.



UTICA HORIZONTAL WELL STATUS THROUGH 8/2/2014 REPORTED INITIAL PRODUCTION

- ★ PRODUCING (489)
 - ▲ DRILLED, DRILLING OR INACTIVE (504)
 - PERMITTED OR NOT DRILLED (428)
- INITIAL PRODUCTION AS REPORTED
BBL'S OIL EQUIVALENT PER DAY
- 1,000
 - PRODUCED AS OIL
 - PRODUCED AS GAS
- IP VALUES AS REPORTED TO THE STATE ON COMPLETION REPORTS. BARRELS OF OIL EQUIVALENT (BOED) CALCULATED AS 6 MCF NATURAL GAS PER DAY EQUALS 1 BOED. IP VALUES GREATER THAN 500 BOED ARE POSTED (SOME VALUES ARE NOT SHOWN FOR CLARITY).

