



# EMENS & WOLPER LAW FIRM

A LEGAL PROFESSIONAL ASSOCIATION

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## *Ohio Shale & Pipeline Update December 2014*

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### BIG PRODUCTION AND NEW TECHNOLOGY

Dear Clients, Friends and Colleagues:

Happy Holidays! We hope you have had a terrific year. Our law firm is continuing to grow and we truly are grateful for the opportunity to represent landowners in the State of Ohio with all aspects of natural resource issues. We are continuing to see landowner's approached by companies with all kinds of requests - - pipeline easements, leases, water impoundments, and purchase of property.

In this newsletter, we highlight some exciting new technologies coming to Ohio. Companies are beginning to experiment with new frac techniques in the "oil window" of the Utica Shale play to more efficiently produce the oil. We are also seeing companies using the horizontal drilling technique to tap into underground formations, other than the Utica Shale, such as the Clinton Sandstone. With this new technology, Ohio may see even more oil and gas development over the next few decades, especially considering the money being spent on oil and gas infrastructure.

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, Michael,

Sean, Tyler



**\*\*\*Ohio Landowner Alert\*\*\***



**Pipeline Easements**—Companies continue to want pipeline easements and rights-of way from landowners. We advise of the importance of understanding that easements usually last forever; and they should be thought of as a sale of land rather than a lease of land and need to contain language that will protect landowners. The "form" easements landowners are handed by companies often lack essential landowner protections and provide insufficient compensation. Before discussing terms or compensation with the pipeline company, or an agent for the pipeline company, please call a knowledgeable attorney.

**Forced Unitization** – We discuss this process in a short article below. If you are a landowner that is being threatened with forced unitization, it is extremely important that you understand your rights in the process. We have assisted many landowners with forced unitization and do not believe landowners are adequately protected under the current laws and regulations.



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## Emens & Wolper Upcoming Presentations

### December 2, 2014

Defiance County Scoping Meeting.  
Emens & Wolper Law will be attending the E.T. Rover informational meeting.

### December 3, 2014

Informational Meeting on Pipelines and Oil and Gas Leasing

Jefferson County, Ohio  
Jefferson County JVS  
1509 County Highway 22A  
Blomingdale, Ohio 43910  
6:00 pm to 9:00 pm

### December 11, 2014

Pipeline Meeting

Shelby Middle School Library 109  
W Smiley Rd, Shelby, OH 44875  
6:00 pm to 9:00 pm

### January 14, 2014

Pipeline Meeting

Bert G. Taylor  
American Legion Post 300  
500 Glenwood Ave  
Napoleon, OH 43545  
6:00 pm to 9:00 pm

### January, 2015

TBA Pipeline Meetings for Columbia Pipeline in Southeast and South-central Ohio. Please email us for more information.

### Exploration and Development Update

**Rice Hits Big with Bigfoot Production** – In just five months, Rice Energy reports that its “Bigfoot” Well located in Belmont County, Ohio has produced about 2 billion cubic feet of natural gas. Assuming a \$4 natural gas price, the Bigfoot Well has produced nearly \$8,000,000 in five months. If you assume the landowners in the Bigfoot Well Unit are to receive 20% gross royalty, the landowners will be splitting \$1,600,000 in royalty payments. With these kind of production numbers, it is clear why Ohio’s Utica Shale continues to be developed by companies. For more information, see <http://eaglefordtexas.com/news/id/140595/rice-energy-reports-impressive-results-bigfoot-utica-well/>.

**Gulfport Making Great Strides** – Gulfport Energy is one of the most active drillers in the Ohio Utica Shale play, with 195 well permits as of November 25, 2014. Gulfport recently reported that the company has surpassed its own production forecasts by nearly 20% as a result of its Utica Shale activity in Ohio and West Virginia. Gulfport has stated that while its current acreage holdings will support years of drilling, it would like to expand its eastern Ohio acreage but unleased land in the region is limited. Gulfport currently reports 184,000 acres under lease. For more information, see <http://eaglefordtexas.com/news/id/139119/gulfport-energy-takes-big-steps-utica-shale/> and <http://marcellus.com/news/id/111825/gulfport-energy-struggles-find-new-areas-lease-utica/>.

**Forced Unitization Update - Forced Unitization Update-** Ohio law under Ohio Revised Code § 1509.28, provides a process for oil and gas companies to develop unleased landowner’s property without having a lease, called forced unitization. This process is similar to eminent domain in the FERC pipeline situation, where so long as certain conditions are met the landowner’s rights can be taken (drilled) by the oil and gas company. We are monitoring the forced unitization applications and orders issued by ODNR very carefully and have represented landowners in these situations. Currently, ODNR is taking some landowner friendly actions, but we still believe more landowner protection is necessary.

As of November 25, 2014, the following table is a summary of the filed applications:

	Total Applications Filed by Company	Total Resolved/Withdrawn	Total Pending	Total Orders
American Energy	1		1	
Antero	3		2	1
Atlas	1	1		
BP	2			2
CHK	27	5	10	12
Eclipse	2		2	
Halcon	2	2		
Hess	1		1	
Gulfport	6	2	2	2
Rice	2		2	
REX	6		6	
<b>TOTAL</b>	<b>52</b>	<b>10</b>	<b>25</b>	<b>17</b>



***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, Fulton, Geauga, Guernsey, Hardin, Harrison, Henry, Highland, Hocking, Holmes, Mahoning, Marion, Meigs, Monroe, Noble, Pickaway, Portage, Ross, Stark, Summit, Trumbull, Tuscarawas, Union, Washington, Wayne, Wood and others.

**EV Energy Partners Selling Some of its Utica Acreage** – EV Energy Partners announced it wants to sell off about 120,000 acres within its 660,000 acre joint venture acreage with Chesapeake and Total in 10 Ohio counties. About 55,000 acres of the acres are located in Carroll County. For more information, see <http://www.ohio.com/news/local/texas-company-to-look-for-buyers-for-utica-shale-acreage-other-assets-1.540399>.

**New Frac Technology Coming to Ohio** - While EV Energy Partners plans to sell some of its acreage, the company has a large acreage position in the “oil window” of the Ohio Utica Shale Play. The company along with partners recently drilled an experimental test well near Uhrichsville, Ohio in the “oil window.” The company is using liquid butane and mineral oil to hydraulically fracture the well, rather than using water. For more information, see <http://www.ohio.com/news/local/texas-company-to-look-for-buyers-for-utica-shale-acreage-other-assets-1.540399>.

**Horizontal Drilling the Clinton Formation** – EV Energy Partners and others are beginning to use the horizontal drilling technique in the Clinton Sandstone formation, which is the formation many conventional (vertical) wells have been drilled in Ohio. EV Energy indicated that is getting about 80 barrels of oil per day, plus natural gas, from four Stark County horizontal wells drilled into the Clinton Formation. EV Energy indicated that each well costs about \$2.6 million and the wells are projected to produce about 150,000 barrels of oil, which could generate a 20 percent return on investment at \$80 per barrel of oil. For more information, see <http://www.ohio.com/news/local/texas-company-to-look-for-buyers-for-utica-shale-acreage-other-assets-1.540399>.

**Utica Shale Well Activity** – Through November 22, 2014, the Ohio Department of Natural Resources reports that 1,638 horizontal Utica Shale well permits have been issued in Ohio and 1,200 wells have been drilled. Currently, there are 52 rigs operating in Ohio. For more information, see <http://oilandgas.ohiodnr.gov/shale#SHALE>. The Top 10 Counties by Number of Permits are:

- |                             |                           |
|-----------------------------|---------------------------|
| 1. Carroll – 452 Permits    | 2. Harrison – 290 Permits |
| 3. Belmont – 187 Permits    | 4. Guernsey – 149 Permits |
| 5. Noble – 130 Permits      | 6. Monroe – 131 Permits   |
| 7. Columbiana – 114 Permits | 8. Jefferson – 47 Permits |
| 9. Tuscarawas – 19 Permits  | 10. Stark – 13 Permits    |

The Top 10 Companies by Number of Permits are:

- |                             |                                 |
|-----------------------------|---------------------------------|
| 1. Chesapeake – 720 Permits | 2. Gulfport – 195 Permits       |
| 3. Antero – 121 Permits     | 4. American Energy – 89 Permits |
| 5. Eclipse – 76 Permits     | 6. Hess – 68 Permits            |
| 7. CNX Gas – 45 Permits     | 8. REX – 41 Permits             |
| 9. PDC – 35 Permits         | 10. XTO – 35 Permits            |

**Utica Shale Extending Eastward** – Royal Dutch Shell continues to acquire acreage in Pennsylvania after drilling 100 miles west of the closest Utica Shale well. Shell indicated that its two test wells, the “Gee” Well and the “Neal” Well, have high-pressure with exceptional reservoir quality. Shell indicated it believes that after its drilling of these two wells, the core of the Utica and will be extended eastward, into an area where Shell will hold 430,000 net acres after it completes certain agreements. Shell is also awaiting well results from four additional Utica wells in Tioga County later this year. For more information, see <http://www.ogj.com/articles/uogr/print/volume-2/issue-5/shell-expands-leasehold-position-in-marcellus-utica.html>.



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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.



**Chesapeake to Sell Utica Acreage** – Chesapeake Energy recently announced it will sell 413,000 acres and 435 wells in Utica and Marcellus shale regions in northern West Virginia and southern Pennsylvania to Southwestern Energy Co. for \$5.38 billion. It does not affect Chesapeake's 1 million acres of leased mineral rights and wells in eastern Ohio. On a per acre basis, Southwestern Energy is paying a little more than \$13,000 per acre. For more information, see <http://www.ohio.com/news/break-news/chesapeake-energy-to-sell-413-00-acres-435-wells-in-west-virginia-pennsylvania-1.532329>.

### PIPELINE AND INFRASTRUCTURE UPDATE

**Two Pipelines with ET Rover** – As we reported in our last newsletter, ET Rover Pipeline, LLC (Rover), a subsidiary of Energy Transfers Partners, proposed installing a large (42 inch) pipeline across Ohio to transport natural gas. Rover has amended its plans and now proposes to install TWO 42" pipelines from Harrison County, Ohio to Defiance County, Ohio. 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>.

**NiSource Spins off Columbia Pipeline Group** – NiSource, the parent company of Columbia Gas, has decided to spin off its Columbia Pipeline Group into a publicly traded business next year. Columbia Pipeline Group is currently proposing to install a new 36" pipeline from Clarington, Ohio to the Sugar Grove, Ohio area, and then south to West Virginia. For more information, see <http://www.bizjournals.com/columbus/blog/ohio-energy-inc/2014/09/nisource-spinning-off-columbia-pipeline-group-to.html?page=all/>.

**Blue Racer Gets Monroe County Plant Running** – Blue Racer announced that its cryogenic processing plant, which will separate natural gas liquids from dry natural gas, will be ready to start processing in November of 2014. This plant will be able to process 200 million cubic feet of natural gas per day, which will greatly help the Utica Shale region. Blue Racer has a second processing plant under construction and should be operational by April 2015. For more information, see <http://bakken.com/news/id/224669/utica-shale-benefit-new-processing-plant/>.

**Site Chosen for Ethane Cracker** – Shell Chemical, LP recently announced that it has decided to purchase property in Monaco, Pennsylvania for a \$2.5 billion refinery that converts ethane into ethylene, and then polyethylene, which is used in the plastics industry.. This cracker could bring in thousands of jobs of construction, 400 employees to run the plant, and thousands of jobs relating to the plastics industry for the state of Pennsylvania. A similar cracker is being proposed in Wood County, West Virginia For more information, see <http://www.statejournal.com/story/27325627/shell-purchases-site-for-ethane-cracker>.





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*Please visit our website for Educational Articles*

[www.emenswolperlaw.com](http://www.emenswolperlaw.com)

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)

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## LEGAL UPDATE

**DORMANT MINERAL ACT HAS FIXED LOOK-BACK PERIOD** - On August 28, 2014, the Ohio Seventh District Court of Appeals answered (at least until the Ohio Supreme Court considers the question) what twenty-year period(s) could be used under the 1989 version of the Ohio Dormant Mineral Act in *Eisenbarth v. Reusser*, 2014 WL 4291635 (7<sup>th</sup> Dist. August 28, 2014), finding that the DMA as originally enacted in 1989 had a look-back period which is fixed to only the twenty years preceding March 22, 1989 (and the three-year grace period set forth in the statute). This case involves a 1954 Deed from William Eisenbarth to Paul and Ida Eisenbarth in which William Eisenbarth reserved one-half of the minerals underlying two tracts comprising 153 acres (the deed did expressly give the right to lease the minerals to Paul and Ida). William Eisenbarth then transferred his one-half mineral estate to Mildred Reusser (who subsequently died leaving her estate to the Defendant/Appellees or the "Reussers"). Paul and Ida Eisenbarth entered into several oil and gas leases, the last of which was entered into in 1973 and recorded in 1974. After the death of Paul and Ida their interest was transferred to their three sons (the Plaintiffs/Appellants or the "Eisenbarths").

The Court found that the DMA as originally enacted in 1989 was only meant to apply to one fixed twenty-year period from March 22, 1969 to March 22, 1989 (plus the three year grace period provided for in the 1989 DMA). Therefore, since there was a savings event in this look-back period (the oil and gas lease recorded in 1974) the severed one-half oil and gas mineral interest was not deemed abandoned and vested with the Eisenbarths.

**LEASES NOT PERPETUAL AND IMPLIED COVENANTS NOT BREACHED** - The Seventh District Court of Appeals in *Hupp v. Beck Energy Corp.*, 2014 WL 4792553 (7<sup>th</sup> Dist. September 26, 2014) considers whether the oil and gas leases at issue were perpetual and if the Lessee had failed to reasonably develop the leases. In 2011, four landowners filed a complaint against Beck Energy Corporation ("Beck") which complaint was amended to assert claims as a class action. The complaint involved leases which contained the following two relevant clauses: (1) a habendum clause providing that the lease was for "a term of ten years and so much longer thereafter as oil and gas or their constituents are produced or are capable of being produced on the premises in paying quantities, in the judgment of the Lessee, or as the premises shall be operated by the Lessee in search for oil or gas\*\*\*"; and (2) a delay rental clause providing that the lease terminates if a well is not commenced within 12 months of execution, unless lessee pays a delay rental. In the complaint, Plaintiffs alleged that the leases with Beck (which were still in their primary term) were perpetual and therefore void against public policy and that Beck breached implied covenants including the implied covenant to reasonably develop. In 2012 the trial court held, in a decision which granted Plaintiff's motion for summary judgment and denied Beck's motion to dismiss, that the leases at issue were perpetual and therefore void as against public policy and that Beck breached the implied covenant to reasonably develop the land by failing to drill on the leased premises.

The Appellate Court dis and agreed held that the oil and gas leases were not perpetual because the lease contained two distinct terms in the habendum clause (a primary term of definite duration and a secondary term of indefinite duration that extends as long as the conditions of the secondary term are met); the delay rental provisions only apply during the primary term; that the "capable of production" language contained in the habendum clause should be read as referring to whether a well is capable of production not whether the land is capable of producing, and the phrase "in the judgment of Lessee" in the habendum clause does not permit leases to continue at Beck's sole discretion because "courts generally impose a good faith standard on the paying quantities requirement, with or without this lease language."



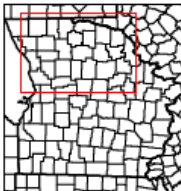
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## UTICA HORIZONTAL WELL STATUS THROUGH 11/29/2014


- ★ PRODUCING (688)
- ▼ DRILLING; DRILLED (506)
- PERMITTED OR NOT DRILLED (448)

OPERATOR	LBL	PROD	PMT	DRLG	DRLD	TOT
AMERICAN ENERGY UTICA LLC	AEU	16	30	31	18	95
ANADARKO E P ONSHORE LLC	APC	0	1	0	0	1
ANTERO RESOURCES CORPORATION	ARC	37	22	55	9	123
ARTEL OIL COMPANY	ARX	6	4	0	0	10
ATLAS NOBLE LLC	ATL	8	4	0	0	12
BEUSA ENERGY LLC	BEUS	1	0	0	0	1
BP AMERICA PRODUCTION COMPANY	BP	0	1	0	0	1
BRAMMER ENGINEERING INC	BMR	0	2	0	0	2
CHESAPEAKE EXPLORATION LLC	CHK	396	154	31	147	728
CNX GAS COMPANY LLC	CNX	23	11	3	9	46
CARRIZO (UTICA) LLC	CRZO	3	8	0	1	12
CHEVRON APPALACHIA LLC	CVX	1	1	8	0	10
DEVON ENERGY PRODUCTION CO	DEV	2	6	1	4	13
ECLIPSE RESOURCES LP	ECL	12	27	27	10	76
EM ENERGY OHIO LLC	EME	4	2	0	0	6
ENERVEST OPERATING LLC	EOS	5	16	0	1	22
EQT PRODUCTION COMPANY	EQT	2	4	1	1	8
MOUNTAINEER KEYSTONE LLC	FRC	5	2	0	1	8
NGO DEVELOPMENT CORP	NGO	0	0	1	0	1
GULFPORT ENERGY CORPORATION	GPOR	84	60	46	10	200
HALL DRILLING LLC (OIL & GAS)	HAL	0	3	5	0	8
HLCORP ENERGY COMPANY	HCP	7	13	2	1	23
HES OHIO DEVELOPMENTS LLC	HES	25	17	12	14	68
HG ENERGY LLC	HGE	5	7	4	3	19
HALCON OPERATING COMPANY INC	HK	6	3	1	3	13
TRIAD HUNTER LLC	MHR	7	6	3	0	16
PDC ENERGY INC	PDC	14	2	16	3	35
RICE DRILLING D LLC	RDD	4	6	1	1	12
R E GAS DEVELOPMENT LLC	REG	23	9	7	2	41
SIERRA RESOURCES LLC	SIE	2	0	0	1	3
STATOIL USA ONSHORE PROF INC	STO	0	0	1	2	3
SWEPI LP	SWE	0	0	0	1	1
XTO ENERGY INC.	XTO	5	22	2	6	35
<b>TOTALS</b>		<b>703</b>	<b>443</b>	<b>258</b>	<b>248</b>	<b>1652</b>



**KEY**

PROD	PRODUCING
PMT	PERMITTED
DRLG	DRILLING
DRLD	DRILLED



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