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Ohio Utica/Point Pleasant Shale Update
June 2014

IN THIS ISSUE:

Royalty Calculations, Exploration and Legal Updates

Dear Clients, Friends and Colleagues:

In this edition of our newsletter, we highlight the most productive Ohio Utica/Point Pleasant wells, the basic formula to calculate royalties, and summarize three important legal changes in Ohio. As indicated by the counties listed with the most productive Ohio Utica/Point Pleasant wells, the "sweet spot" of the Utica/Point Pleasant Shale continues to be refined and to extend further south. We are also seeing many oil and gas companies start to define the specific areas in which they plan to operate.

By providing the production numbers and other educational tools in our newsletters along with writing and posting articles to our website (emenswolperlaw.com), we hope landowners will not be taken advantage of and will be able to accurately assess whether or not they are being paid properly.

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, Elliott, Gail, Heidi, Justin, Kelly, Sean

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.

Columbia Gas Permanent Subsurface Easement - We currently represent a number of landowners in litigation who have received a letter from Columbia Gas Transmission offering to purchase a permanent subsurface easement to store gas beneath their property (or be sued). If you received a letter or know of someone who received a letter, we strongly recommend they seek an attorney to assist them. We also recommend all landowners who believe they are in a storage field area but not receiving compensation to seek legal counsel.

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.

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Exploration and Development Update

OHIO'S 4Q13 UTICA PRODUCTION REPORT – In the Fourth Quarter of 2013, oil and gas companies produced a combined 1,439,308 barrels of oil and 43,124,803 MCF of gas. See http://oilandgas.ohiodnr.gov/production for a more detailed report of the production. According to ODNR's records, Carroll County produced the most natural gas and oil of all Ohio counties. According to Ohio.com, the top ten oil wells in production are:

Most Productive Oil Wells	Company	Well Name	County	Township	Amount of 4Q14 Production in barrels	Days of Production
1	Gulfport	Boy Scout	Harrison	Nottingham	26,095	80
2	Gulfport	Ryser	Harrison	Moorefield	25,755	59
3	PDC	Stiers	Guernsey	Richland	24,872	92
4	PDC	Stiers	Guernsey	Richland	23,509	92
5	PDC	Stiers	Guernsey	Richland	23,243	92
6	Gulfport	Milliken	Harrison	Freeport	19,309	75
7	Antero	Wayne	Noble	Seneca	18,983	79
8	Gulfport	Clay	Harrison	Freeport	18,299	90
9	Gulfport	Ryser	Harrison	Moorefield	18,240	52
10	Gulfport	BK Stephens	Harrison	Moorefield	16,160	57

According to Ohio.com, in the Fourth Quarter of 2013, the top ten gas wells in production are:

Most Productive Gas Wells	Company	Well Name	County	Township	Amount of 4Q14 Production in MCF	Days of Production
1	Antero	Gary	Monroe	Seneca	1,329,318	67
2	Gulfport	McCourt	Belmont	Somerset	825,703	84
3	Gulfport	Stutzman	Belmont	Somerset	823,344	86
4	Antero	Rubel	Monroe	Seneca	804,117	87
5	Gulfport	McCourt	Belmont	Somerset	792,076	84
6	Gulfport	Wagner	Harrison	Athens	790,834	78
7	Antero	Rubel	Monroe	Seneca	747,887	87
8	Antero	Yontz	Monroe	Seneca	703,013	90
9	Gulfport	Wagner	Harrison	Athens	700,647	78
10	Antero	Rubel	Monroe	Seneca	668,011	87

See http://www.ohio.com/blogs/drilling/ohio-utica-shale-1.291290/digging-deeper-into-ohio-s-4q-2013-utica-production-report-1.483716 for more information.

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

(Continued from Page 2)

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, Delaware, Fayette, Franklin, Geauga, Guernsey, Hardin, Harrison, Highland, Hocking, Holmes, Mahoning, Marion, Meigs, Monroe, Noble, Pickaway, Portage, Ross, Stark, Summit, Trumbull, Tuscarawas, Union, Washington, Wayne and others.

Exploration and Development Update, Continued

AN ADDITIONAL TAX: THE COMMERCIAL ACTIVITY TAX -- Did you know that if you receive upfront bonus money and royalties in excessive of $150,000, you may owe another tax called the commercial activity tax in addition to ordinary income tax, severance tax, and real estate tax you already have to pay? The commercial activity tax is an annual tax imposed on the privilege of doing business in Ohio. Many landowners don't know that the commercial activity tax applies to their receipt of upfront bonus and royalty payments received from oil and gas companies. If a landowner receives less than $150,000 in any year from upfront bonus or royalties, Ohio landowners do not owe this tax. However, if landowners receive between $150,000 and $1,000,000 in upfront bonus money and royalty payments in any one year, they owe a flat tax of $150; on all monies received over $1,000,000, the landowner is taxed at a rate of 0.26%. We would be happy to discuss this more if you have any questions.

EV ENERGY PARTNERS SHARES OIL WINDOW ESTIMATES—In its First Quarter 2014 earnings call, EV Energy Partners shared with its investors its estimates of the oil in place in Tuscarawas, Stark and Guernsey counties. The officers of EV Energy Partners indicated they believe there is around 20 million to 30 million barrels per section (roughly 640 acres) and about 5.5 million barrels of oil in place for 140 acre well. It is important to know that these estimates are for the "oil in place," which is very different than what is recovered. Oil in place is the total amount of oil in the ground in the targeted formation. To be productive and justify drilling costs in these three oil window counties, the officers of EV Energy Partners believe that an oil and gas company will need to recover at least 7% of the oil in place. This is great information for those landowners in the oil window of the Ohio Utica Shale Play. For more information see http://seekingalpha.com/article/2210363-ev-energy-partners-l-p-evep-q1-2014-results-earnings-call-webcast.

TRUMBULL COUNTY UPDATE – Recently, BP indicated it was abandoning its plans to drill approximately 105,000 acres it leased in Trumbull County, Ohio. BP indicated that its initial well results were not promising. According to ODNR's 4Q13 production records, BP reported production on four wells in Trumbull County:

Well Name	Township	Oil 4Q13 Production	Gas 4Q13 Production	Days of Production
Lennington	Johnston	1889	20316	92
Buckeye	Hartford	378	20322	75
Zerovich	Mecca	746	2884	30
Jewett	Johnston	0	0	0

This is the second oil and gas company that recently indicated it was not satisfied with its well production in this area of Ohio. In March, Halcon Resources indicated it was abandoning its drilling plans for Trumbull and Mahoning counties because it was not satisfied with its well results. For more information, see http://www.ohio.com/news/break-news/bp-to-end-utica-shale-drilling-in-trumbull-county-because-of-poor-results-1.484342; http://oilandgas.ohiodnr.gov/production.

GULFPORT ENERGY FUND – Gulfport Energy recently opened a new regional office in St. Clairsville and announced a partnership with the Foundation for Appalachia Ohio to create the Gulfport Energy Fund. This fund will be designed to support local leaders in schools, nonprofits, and other community organizations. Gulfport has indicated it plans to give $400,000 to the fund in order to offer assistance in the counties where it operates. For more information see http://energyindepth.org/ohio/gulfport-energy-new-philanthropic-effort-eastern-ohio/.

Exploration and Development Update, Continued

TAKING THE MYSTERY OUT OF CALCULATING ROYALTIES– In our correspondence with hundreds of landowners, it is apparent many landowners are uncertain how to calculate royalty payments, especially when their acreage is pooled with neighboring landowner's property. Calculating royalties can be very complex as often oil and gas lease language is unclear in many respects. However, it is best to start with the basic formula for calculating royalties and work into the more difficult items. For the basic formula, a landowner will need to know five items: (1) the total size of the oil and gas production unit from which he/she is receiving royalties, (2) the number of acres the landowner owns in that production unit, (3) the percentage royalty indicated in the lease, (4) the total amount of production, and (5) the post production costs, taxes, and other deductions the oil and gas company is taking. A landowner should be able to receive items (1), (2), (4), and (5) by asking the oil and gas company, reviewing a division order or declaration of pooling, or from the ODNR records. A landowner should be able to receive item (3) by reviewing their lease terms. A landowner may have some trouble knowing the total amount of production, (4) above, but that amount should be listed on the check stubs for royalty payments or ODNR records, where production on horizontal Utica/Point Pleasant Shale wells is reported quarterly.

The basic royalty calculation is: the landowner's acreage in the unit / (divided by) total number of acres in the unit x (multiplied by) royalty rate x (multiplied by) production = (equals the) gross royalty. An example may be helpful. Assume you own 60 acres and all of your land has been pooled into a unit totaling 640 acres. Assume you signed a lease with an oil and gas company and you are to receive 20% of the gross production in 365 days. Assume one well was drilled on the unit and it produced 22 barrels of oil, which was sold for $95 per barrel, and 1,249,739 MCF of gas, which was sold at $4 per MCF, for an estimated total gross production of $5,001,046 in 90 days. In this situation, a landowner would receive a gross royalty of $93,769.61 (60 / 640 x .20 x $5,001,046).

Now that we have the gross royalty, compare the gross royalty to the amount listed on the check stub. If the check stub lists a number smaller than that of the gross royalty, it is likely the oil and gas company is reducing your royalty for some cost or expense, colloquially known as post-production costs, and/or for taxes. Post-production costs are the costs that are incurred between where oil and gas is produced (the well) and where oil and gas is sold (the point of sale). Post-production costs may include costs for gathering, dehydration, compression, manufacturing, processing, treating, transporting, marketing or other related costs. Often oil and gas companies will deduct a landowner's pro rata share of these post-production costs when calculating the landowner's negotiated royalty set forth in the oil and gas lease. Whether or not an oil and gas company is permitted to deduct post-production costs when calculating royalties <u>depends on the language contained in the oil and gas lease</u> that the landowner negotiated with the company. The issues of whether or not, and to what extent, an oil and gas company can reduce a landowners royalty for post-production costs is unsettled law in Ohio. We fully expect many controversies over royalty payments over the next few years. We would be happy to discuss this more if you have any questions.

This analysis will be on our website soon.

Infrastructure & Pipeline Update

HARRISON COUNTY PROCESSING PLANTS EXPANDING – While it seems as if construction in Harrison County just completed a number of facilities (because it did), those plants are already having to be expanded to meet production capacity. Utica East Ohio announced its plan to expand its Leesville, Ohio facility with a second processing train and extension to an existing high-pressure pipeline from Utica East Ohio's Harrison Hub to Cardinal Gas Services' Archer Compression Facility in Harrison County. Utica East Ohio indicated this expansion will increase the company's capacity to 1 billion cubic feet per day and allows for a processing capacity of more than 1.1 billion cubic feet per day. Utica East Ohio indicated this expansion is being driven by a new agreement reached with American Energy – Utica. The Scio fractionation plant is also expanding to meet the need for more separation of natural gas liquids. For more information see http://www.ohio.com/news/local/liquids-separating-plants-are-expanding-to-handle-more-ethane-butane-propane-from-ohio-s-utica-shale-1.490628; http://www.wfmj.com/story/25502064/gas-pipeline-project-expanding-in-eastern-ohio.

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.

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Please visit our website for Educational Articles

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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Infrastructure & Pipeline Update, Continued

BLUE RACER MONROE SEEKING EXPEDITED APPROVAL FOR COUNTY PROCESSING PLANT – Blue Racer has announced its plan to build a natural gas processing plant, called the Berne Processing Plant, located west of Woodsfield in Monroe County. This plant is expected to come online by the end of the Third Quarter of 2014 and expected to add 200 MMcf/d of processing for that area of Ohio. Blue Racer recently requested an expedited approval for this project from the Ohio Power Sitting Board so it can start construction in early June and complete the project by August. For more information, see http://www.blueracermidstream.com/about-us.

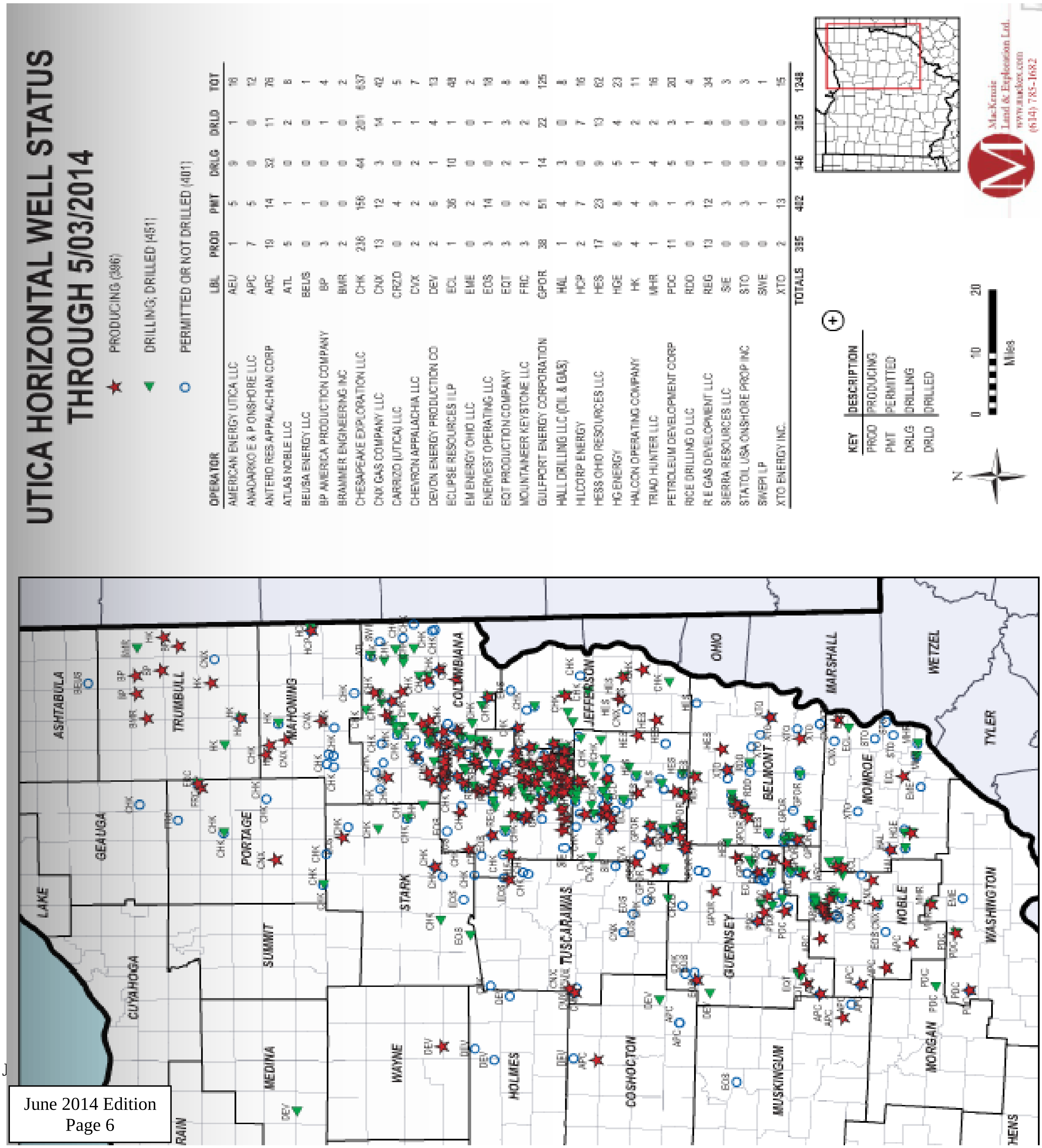
Oil and Gas Related Legal Update

ODNR REVISES FORCED UNITIZATION GUIDELINES – Generally speaking, forced unitization is a process similar to eminent domain where an oil and gas company can drill and produce the mineral rights of a mineral owner even though the mineral owner does not lease or otherwise allow the oil and gas company to produce their mineral rights. We have represented and assisted many landowners facing forced unitization in Ohio and have become very concerned about the onerous timing limitations mineral owners face in the process. When an oil and gas company files an application with ODNR for forced unitization, a hearing is held in Columbus where the company must put on evidence. At this hearing, mineral owners can present their situation and object to the forced unitization application. This hearing used to be held no sooner than 45 days of the filing of the application, which did not give mineral owners a real opportunity to evaluate their position and options when faced with forced unitization. ODNR recently agreed to extend the time period between the application and hearing from 45 to 120 days. This 75 day increase will provide mineral owners with essential time to better evaluate and prepare in this process. For more information, see ohiodnr.com.

A DEFINING OHIO DORMANT MINERAL ACT DECISION -- On April 3, 2014, the Seventh District Court of Appeals ruled on two important Dormant Mineral Act issues in *Walker v. Noon*, 2014-Ohio-1499. Facts in this case indicate John Noon purchased certain property in 1964, and he sold that same property in 1965 excepting and reserving the mineral rights. The Walkers purchased the subject property in 2009. In December of 2011, the Walkers sent "notice of abandonment" to Noon claiming that mineral rights had been abandoned. In January of 2012, Noon timely recorded an "Affidavit and Claim to Preserve Mineral Interest" stating he did not abandon the mineral rights reserved in 1965. The trial court held Noon's mineral interest was abandoned and automatically vested with the surface estate pursuant to the 1989 version of the Dormant Mineral Act because no savings events occurred from 1969 through 1992. The Seventh District Court of Appeals affirmed this decision and held (1) the 2006 version of the statute applies only prospectively (i.e. from June 30, 2006 forward) and (2) the 1989 version of Ohio's Dormant Mineral Act is self-executing. The *Walker* case will have vast implications in Ohio as millions of dollars in upfront bonus payments and royalties are at stake. The *Walker* case will likely be appealed to the Ohio Supreme Court.

STRONGER FRACING RULES IN LIGHT OF PROBABLE EARTHQUAKES -- On April 11, 2014, ODNR announced new rules requiring operators on new permits for horizontal drilling within 3 miles of a known fault or area of seismic activity greater than a 2.0 magnitude to install sensitive seismic monitors. The new policies are in response to recent seismic events in Poland Township, Mahoning County, that show a probable connection between an earthquake and hydraulic fracturing near a previously unknown microfault. Initially the discussion focused on only disposal wells, but more recently targets oil and gas wells. There is much publicity concerning fracing, "earthquakes" and what steps government should take. This subject will be an area of continued discussion and investigation.

On May 3, 2014, MacKenzie Land & Exploration, Ltd. issued the following Utica/ Point Pleasant horizontal well production update.



OPERATOR	LBL	PROD	PMT	DRLG	DRLD	TOT
AMERICAN ENERGY UTICA LLC	AEU	1	5	9	1	16
ANADARKO E & P ONSHORE LLC	APC	7	5	0	0	12
ANTERO RES APPALACHIAN CORP	ARC	19	14	32	11	76
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
CHESAPEAKE EXPLORATION LLC	CHK	236	156	44	201	637
CNX GAS COMPANY LLC	CNX	13	12	3	14	42
CARRIZO (UTICA) LLC	CRZO	0	4	0	1	5
CHEVRON APPALACHIA LLC	CVX	2	2	2	1	7
DEVON ENERGY PRODUCTION CO	DEV	2	6	1	4	13
ECLIPSE RESOURCES I LP	ECL	1	36	10	1	48
EM ENERGY OHIO LLC	EME	0	2	0	0	2
ENERVEST OPERATING LLC	EOS	3	14	0	1	18
EQT PRODUCTION COMPANY	EQT	3	0	2	3	8
MOUNTAINEER KEYSTONE LLC	FRC	3	2	1	2	8
GULFPORT ENERGY CORPORATION	GPOR	38	51	14	22	125
HALL DRILLING LLC (OIL & GAS)	HAL	1	4	3	0	8
HILCORP ENERGY	HCP	2	7	0	7	16
HESS OHIO RESOURCES LLC	HES	17	23	9	13	62
HG ENERGY	HGE	6	8	5	4	23
HALCON OPERATING COMPANY	HK	4	4	1	2	11
TRIAD HUNTER LLC	MHR	1	9	4	2	16
PETROLEUM DEVELOPMENT CORP	PDC	11	1	5	3	20
RICE DRILLING D LLC	RDD	0	3	0	1	4
R E GAS DEVELOPMENT LLC	REG	13	12	1	8	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	13	0	0	15
	TOTALS	385	482	146	385	1348