



EMENS & WOLPER LAW FIRM

A LEGAL PROFESSIONAL ASSOCIATION

One Easton Oval, Ste. 550, Columbus, Ohio 43219 ■ (614) 414-0888 ■ www.emenswolperlaw.com

Dick Emens-demens@emenswolperlaw.com
Bea Wolper-bwolper@emenswolperlaw.com
Sean Jacobs-sjacobs@emenswolperlaw.com
Kelly Jasin-kjasin@emenswolperlaw.com

Craig Wilson-cwilson@emenswolperlaw.com
Chris Hodakievic-chodakievic@emenswolperlaw.com
Gail Tibbals-gtibbals@emenswolperlaw.com
Michael Frabott - mfrabott@emenswolperlaw.com

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Ohio Shale & Pipeline Update March 2016

Dear Clients, Friends and Colleagues:

Because of the continued depressed oil and natural gas prices, the oil and gas industry continues to cut drilling and other expenses. And, landowner royalty checks show more deductions, many not in accordance with lease terms. The Rover, Utopia, Leach Express and Nexus pipelines continue to move forward with several recent developments discussed on pages 5 and 6.

We do believe oil and gas prices will rise, but it may take more than a year, especially for natural gas. In the meantime, enjoy the fact that prices at the gasoline pumps are lower.

Sincerely,

Emens & Wolper Team
Bea, Chris, Craig, Dick, Gail, Kelly, Michael, Sean



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



Royalty Payments - Many landowner's royalty statements continue to have unwarranted deductions. Before cashing a royalty check, please make sure it is accurate. Landowners who do not timely receive their royalty checks should promptly follow up with the oil and gas production company.

Pipeline Easements – We are seeing more pressure to sign easements put on landowners by pipeline companies. The easement a landowner receives from a pipeline company does not fully protect the landowner or his/her land. Please get a knowledgeable attorney to assist you with negotiating the easement terms and compensation! As we have said at many landowner meetings – “We hope you choose us, but if not, get another experienced attorney!”



EMENS & WOLPER UPCOMING PRESENTATIONS

Tuesday, March 22, 2016

UTOPIA Pipeline
UPDATE MEETING
Fremont Ross H.S. Little Theatre
1100 North Street
Fremont, Ohio 43420
6:00 p.m. to 9:00 p.m.

Tuesday, March 29, 2016

UTOPIA Pipeline
UPDATE MEETING
Swanton High School Auditorium
601 N. Main St
Swanton, Ohio 43558
6:00 p.m. to 9:00 p.m.

Thursday, March 31, 2016

UTOPIA Pipeline
UPDATE MEETING
South Central Local Schools
3305 Greenwich Angling Road
Greenwich, Ohio 44837
6:00 p.m. to 9:00 p.m.

Wednesday, April 6, 2016

UTOPIA Pipeline
UPDATE MEETING
Waynedale H.S. Cafeteria
9050 Dover Road
Apple Creek, Ohio 44606
6:00 p.m. to 9:00 p.m.

EXPLORATION AND DEVELOPMENT UPDATE

Rex Energy and Benefit Street Partners Deal Brings New Wells: A recent announcement shows Pennsylvania-based Rex Energy, Corp. and New York-based Benefit Street Partners, LLC entered a joint exploration-development agreement to drill new Utica and Marcellus wells in eastern Ohio and western Pennsylvania. The \$175 million agreement will allow drilling of up to 58 new wells between the two states, covering an estimated 6,300 acres in Carrol County, Ohio. These new wells will be in addition to the 37 already in production by Rex Energy in eastern Ohio. For more information, see <http://www.ohio.com/business/utica/rex-energy-announces-175-million-joint-venture-in-utica-marcellus-shales-1.665996>.

Despite Losses, Gulfport's Production to Increase: Gulfport Energy, Corp. took one of the biggest 2015 losses we have seen for oil and gas producers operating in Ohio. The company reported a \$1.2 billion loss in 2015 despite drilling 49 additional wells and putting an additional 55 wells into production. Nevertheless, Gulfport plans to drill 29 to 32 horizontal wells in the Utica Shale in 2016 and begin production on another 44 to 48. CEO Michael G. Moore stated that he believes Gulfport will be able to "deliver an attractive rate of return . . . while growing production thoughtfully" despite the "many challenges for the industry" last year. For more information, see <http://www.ohio.com/blogs/drilling/ohio-utica-shale-1.291290/gulfport-energy-loses-1-2-billion-in-2015-production-to-grow-1.662948>.

Financial Woes Continue to Hit Chesapeake Energy: As the price of oil and gas commodities continues to fall, many are concerned about the financial viability of Chesapeake Energy, Corp. Due to a heavy debt load and low prices, the company has posted a series of quarterly losses. Chesapeake says it has been working with Kirkland & Ellis, LLP since 2010 to help reduce debt and restructure assets. Shares of Chesapeake have dropped by more than half in recent months. The Wall Street Journal reported last December that the corporation is also working with Evercore Partners, Inc. to bring Chesapeake back into the black and reduce some of its \$11.6 billion debt. While things look dire for the oil and gas giant, it has stated that there are currently no plans to pursue bankruptcy.

Nevertheless, Chesapeake's financial hardships are rippling to other companies. Other businesses, such as Williams Cos., which hold contracts to process and ship natural gas from Chesapeake, are also feeling the strain. In particular Williams shares recently closed 35% lower than before. For more information, see <http://www.wsj.com/articles/chesapeake-says-it-doesnt-plan-to-pursue-bankruptcy-1454949654>.

As part of the restructuring process, Chesapeake announced after its most recent quarterly report that it will further decrease expenses by *completely* halting the drilling of new wells in the Marcellus and Utica shale plays. This comes as no surprise considering it drilled 25 wells in 2014 and only 3 in 2015. Chesapeake has already made agreements to sell \$700 million in gas fields and plans to sell an additional \$500 million to \$1 billion in properties to allow continued payment of pre-existing debts. For more information, see <http://marcellus.com/news/id/135455/chesapeake-halts-marcellus-and-utica-drilling/>.



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 royalty payments and division orders;
- 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.



EXPLORATION AND DEVELOPMENT UPDATE - CONTINUED

Former Chesapeake CEO Indicted for Conspiracy and Involved in Fatal Car Crash: Aubrey McClendon, the co-founder and former CEO of Chesapeake is often credited with bringing the shale boom to eastern Ohio. He once opined that the Utica Shale was “the biggest thing to hit Ohio since the plow.” And, on some level, he was correct. Until he stepped down in 2013 McClendon was at least partially responsible for Chesapeake’s activities in all states where it operates, Ohio is no exception.

McClendon was indicted on Tuesday March 1, 2016 in the United States District for the Western District of Oklahoma on a charge of conspiring to rig bids to buy oil and natural gas leases in Northwest Oklahoma. The Department of Justice stated that McClendon was suspected of orchestrating a scheme between two large companies, neither of which were named. Essentially, the indictment claimed that these two companies would decide ahead of time who would win bids and allocate an interest to the other, in violation of federal antitrust laws.

The day following the indictment, McClendon was killed in a car crash in Oklahoma City. The Oklahoma City Police Department claimed that the former CEO was the only occupant in his 2013 Tahoe when he drove into a concrete bridge at high speed. Police have stated the evidence seems to suggest that he drove left of center before he “pretty much drove straight into the wall” despite having ample opportunity to correct and get back on the roadway.

Following McClendon’s death, the Department of Justice has dismissed the criminal indictment.

For more information, see <http://www.ohio.com/blogs/drilling/ohio-utica-shale-1.291290/mcclendon-indicted-on-charge-of-conspiring-to-rig-lease-bids-1.665834> and <http://www.ohio.com/business/utica/aubrey-mcclendon-visionary-behind-ohio-s-utica-shale-drilling-boom-killed-in-oklahoma-city-crash-1.665893>.

Fewer Drilled Wells in 2016: Texas-based EV Energy Partners, LP has announced that it has no plans to drill any new wells in Ohio’s Utica or Marcellus Shale plays (or anywhere else for that matter). In fact, EV Energy Partners has been working to trim its 2016 capital spending in order to avoid company-wide layoffs. To do so, it has cut spending for 2016 to somewhere between \$10 million and \$18 million (a cut of over 75%) in addition to top company officials taking pay cuts of 10%. While EV Energy Partners saw a profit of \$21.3 million last year, its fourth quarter earnings were a \$71.3 million loss. Company chairman John Walker called the state of the market “dreadful” and the worst downturn he has ever seen, but he remains optimistic that the industry will rebound. For more information, see <http://www.ohio.com/business/utica/houston-based-ev-energy-partners-has-no-drilling-plans-in-2016-in-ohio-s-utica-shale-1.665423>.



***Landowner Groups and
Other Ohio Counties
Where Emens & Wolper
has Assisted Landowners***

Black River Landowners
Association—Lorain County

Central Ohio Landowners
Association—Richland and
Ashland counties

Coshocton County Landowners
Group—Coshocton and
Northeastern Muskingum
counties

Jefferson County Landowners
Group—Jefferson County

Mohican Basin Landowners
Group—Ashland, Wayne, and
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, Erie,
Fayette, Franklin, Fulton,
Gauga, Guernsey, Hardin,
Harrison, Henry, Highland,
Hocking, Holmes, Huron,
Mahoning, Marion, Meigs,
Monroe, Noble, Pickaway,
Portage, Ross, Sandusky,
Seneca, Stark, Summit,
Trumbull, Tuscarawas, Union,
Washington, Wayne, Wood, and
others

EXPLORATION AND DEVELOPMENT - CONTINUED

Pennsylvania-based Eclipse Resources, Corp., who has been operating in the Ohio counties of Guernsey, Harrison, and Monroe, also cited commodities pricing to be the reason behind its recent, sharp decrease in drilling. Recently the company announced a halt to all drilling in Ohio for the first six months of 2016 and only limited drilling in the second half. Although production increased by 186% in 2015, it still reported a loss of \$971.4 million, \$813.9 million in the fourth quarter alone. The production increase was caused, in part, by new Ohio wells the company had drilled. Last year, Eclipse drilled 31 Utica wells, completed 51 wells, and began producing another 71. These wells will most likely be held by with shut in royalty payments until natural gas prices increase. For more information, see <http://www.ohio.com/business/utica/eclipse-resources-to-reduce-ohio-utica-shale-drilling-until-commodity-prices-rise-1.666167>.

Antero Resources Reports 2015 Profits: Not every oil and gas producer in Ohio achieved losses over 2015. Colorado-based Antero Resources, Corp. reported a profit of over \$941 million last year. This is an increase from 2014, where the company's profit was \$674 million. The company's good-fortune could continue, as officials have stated they are pleased with the initial 60-day results from its first Utica Shale well in West Virginia.

In Ohio, Antero has allocated this year's budget toward the Marcellus Shale play because of transportation constraints. 75% of the company's \$1.3 billion drilling and completion budget have been allocated to Marcellus Shale development while only 25% remains available for the Utica. Currently, Antero has 10 rigs running, but it estimates an average of only seven by the end of the year. For more information, see <http://www.ohio.com/blogs/drilling/ohio-utica-shale-1.291290/antero-resources-reports-2015-profit-of-941-million-1.664606> and <https://www.kallanishenergy.com/2016/02/23/antero-increases-marcellus-focus-due-to-utica-constraints/>.

Pipeline Update

FERC Issues Rover EIS: The Federal Energy Regulatory Commission ("FERC") has recently issued its draft Environmental Impact Statement ("EIS") for the 510-mile ET Rover Pipeline (204 miles in Ohio). The 450-page draft states that the two 42-inch pipes "would have some adverse and significant environmental impacts" but those could be "reduced to acceptable levels" if additional measures, suggested by FERC, were complied with. The major issues reviewed by FERC in its EIS related to water bodies, wetlands, vegetation, wildlife habitats, and alternatives. Until April 11, FERC will be taking comments discussing the draft EIS. Emens & Wolper has been reviewing the EIS and plans to make appropriate comments. For more information, see <http://www.ohio.com/blogs/drilling/ohio-utica-shale-1.291290/ferc-wants-environmental-impacts-reduced-on-rover-pipeline-1.663865>.



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)

Emens & Wolper Law Firm
One Easton Oval, Suite 550
Columbus, Ohio 43219
Phone: (614) 414.0888
Fax: (614) 414.0898

Chris Hodakievic, Assistant to Dick Emens
chodakievic@emenswolperlaw.com

Pipeline Update – Continued

Producers Renegotiating with Midstream Pipelines: Generally, when a producer enters a contract with a midstream pipeline company which gathers, processes, and transports the producer’s oil or gas, it is set in stone. The producer is usually locked in for a minimum of 15 years with a fixed rate that usually doesn’t change. However, because of the recent collapse of the oil and gas prices, companies like Chesapeake and Southwestern Energy are getting midstreamers to make unprecedented moves; actually renegotiating their contracts with these companies. Some producers have already filed for bankruptcy, seeking the courts to completely dissolve these contracts. Thus, for the producers who are not in bankruptcy, renegotiating could solve some problems. For more information, see <http://marcellusdrilling.com/2016/02/southwestern-chesapeake-negotiate-lower-midstream-rates-from-williams/>.

ETE Wants Out of Williams Merger: After six months of negotiating Energy Transfer Equity (“ETE”) finally convinced Williams to agree to an ETE merger/takeover for \$38 billion. This was down \$10 billion from the original, \$48 billion offer. Now, the New York Times is reporting the deal “has become a nightmare” and ETE wants out. So much so that ETE is offering Williams \$2 billion to rescind the deal. If the merger/takeover goes through, however, ETE/Williams will rival Kinder Morgan as the country’s biggest midstream company. For more information, see <http://marcellusdrilling.com/2016/02/ete-wants-out-of-williams-mergertakeover-offering-2b-breakup-fee/>.

Mariner East 2 Pipeline Delayed by Sunoco: Sunoco Logistics Partners CEO Mike Hennigan recently admitted that construction on the Mariner East 2 Pipeline (“ME2”) has been delayed due to applying for “hundreds of permits.” He also wanted to make it clear that the pipeline will be completed, but not at the pace believed when the project was first announced. Once complete, consumers across Pennsylvania will benefit from having access to natural gas from the western part of the state.

Mr. Hennigan was not able to provide a “go/no go” as to whether Sunoco was planning to build a second pipeline until construction begins on ME2. For more information, see <http://marcellusdrilling.com/2016/02/sunoco-lp-delays-construction-of-mariner-east-2-pipeline/>.

Kinder Morgan UTOPIA Moving Rapidly. The Kinder Morgan UTOPIA Project is moving ahead rapidly with 30 day notice letters being sent to some landowners. This notice basically says that if the landowners does not sign an easement with Kinder Morgan, the landowner can expect to be sued. Since Kinder Morgan UTOPIA is an intrastate pipeline and not regulated by FERC, it needs to follow a different legal process than FERC regulated pipelines such as Rover, Nexus and the LEACH Express.



Pipeline Update - Continued

LEACH Express Mostly Quiet Except for Sale. Columbia Pipeline Group (CPG) just announced that another pipeline company, TransCanada, will be purchasing CPG. The deal is reported to be for \$13 billion and expected to close in the second half of 2016. As this has just been announced, it is unclear how this will ultimately affect the ongoing negotiations regarding the Leach Xpress Project.

Land agents continue their rather casual efforts to obtain easements on the Leach Express Project. We do not expect Leach to receive its Certificate from FERC until Late 2016 or early 2017.

NEXUS Meeting Opposition. Even though several groups of Landowners continue to loudly oppose Nexus, it appears to be making good progress in acquiring easements. Nexus has acquired and recorded more than 140 easements from an estimated 1,200 Ohio landowners affected. The progress of acquisitions seems to be moving faster than we have seen on other recent projects. It's also notable that many of the easements already acquired were from Medina and Summit Counties, which is particularly surprising considering the opposition of the project that has come from these areas.

Legal Update

Ohio Supreme Court Issues Second Ohio Dormant Mineral Act Decision (ODMA): The Ohio Supreme Court has finally provided additional guidance on the application of the ODMA. The Ohio Dormant Mineral Act ("DMA"), which provides that if a severed mineral owner (who is not a public entity or owner of an interest in coal), does not complete one of six potential "savings events" within a certain twenty-year period, the severed minerals are or can be deemed abandoned and will vest with the surface estate owner. One of the savings events that can prevent a mineral interest from being deemed abandoned under the DMA is if it has been "the subject of a title transaction." In November, the Ohio Supreme Court issued its second DMA decision providing clarity about whether a recorded lease by a severed mineral holder, or the unrecorded expiration or termination of such a lease, are title transactions that constitute savings events under the DMA.

In *Chesapeake v. Buell* the Ohio Supreme Court held that a recorded oil and gas lease of a severed mineral interest is a "title transaction" but the expiration of such lease is not. The suit stems from an October 2012 action that was filed in the Southern District of Ohio to determine ownership of the severed mineral interest.

As the ODMA does not define "title transaction", the Court looked to the definition contained in Ohio's Marketable Title Act, which defines a "title transaction" as "any transaction affecting title to any interest in land, including title by will or descent, title by tax deed, or by trustee's, assignee's, guardian's, executor's, administrator's, or sheriff's deed, or decree of any court, as well as warranty deed, quit claim deed, or mortgage." Rejecting the surface owners claim that only the select enumerated transactions can constitute a "title transaction," the Court focused on the word "any" to conclude that the definition of "title transaction" includes "any transaction affecting title to any interest in land" and is not solely limited to the transactions enumerated. The Court also found that a "title transaction" is not limited to a transaction that alters an ownership interest, as easements and use restrictions also fit the definition. From this, it determined that a recorded oil and gas lease is a "title transaction" because it affects title to the surface and mineral interests in land, to which potential interest holders have notice. No matter how a lease is characterized under Ohio law, the rights and privileges granted under an oil and gas lease "are sufficiently vast to affect the possession and custody of the mineral estate, even if not its ownership." Due to a lessee's right to reasonably use the surface estate under the lease, "the lease affects possession and custody of both the mineral and surface estates." Therefore, because a recorded lease constitutes a "title transaction," it is also "a saving event under the ODMA because '[t]he mineral interest has been the subject of a title transaction that has been filed or recorded' in the appropriate county recorder's office."

The Court also concluded that the mere expiration of a recorded lease and reversion of rights back to the lessor is not a title transaction that re-starts the 20-year clock.

The case is the most recent step by the Ohio Supreme Court towards clarifying one of the most litigated statutes in recent years. The determination that a recorded lease by a severed mineral holder is a savings event is in line with the majority of lower Ohio courts who have examined the issue. This is a significant victory for severed mineral holders in the State of Ohio, although for many, the ultimate effect of this decision will depend on the Ohio Supreme Court's interpretation of the 20-year period under the 1989 version of the DMA which was not at issue in this case. Even though the Court determined that the unrecorded expiration or termination of a lease is not a savings event, it is notable that the Court clearly left open the question of whether a recorded release would be considered a savings event.