EMENS & WOLPER LAW FIRM

"The Landowners Law Firm" SM

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IN THIS ISSUE

Oil & Gas, Solar, Pipeline, and Energy Newsletter

August 2017

Dear Clients, Friends, and Colleagues:

Much is happening to report to you and we are happy to provide the information in this Newsletter.

First, plans for opening our Belmont County, Ohio office are being implemented so that the office will be up and running before the end of 2017.

Second, we are glad to respond to landowner questions related to the subjects we report on in this Newsletter. Currently the four legal questions we are receiving most often – and our general responses are set forth below:

> Question 1: A land agent who is trying to lease our property for oil and gas told us "If you don't lease on the terms we are offering, we will just force pool you and you'll get less than we are offering." Can this statement be true?
>
> Our response: It is true that under current Ohio law as interpreted by the Ohio Department of Natural Resources Division of Oil and Gas Resources Management, in certain situations oil and gas companies can force pool or force unitize property. However, prior to a force unitization hearing most oil and gas companies are required to try to lease on a voluntary basis and a landowner often has a lot of negotiating leverage after a force unitization application has been filed but prior to the hearing. Therefore, don't let the threat of force pooling or force unitization cause you to sign a bad lease. If an oil and gas company/land agent makes this statement to you, we strongly recommend that you immediately seek the services of a knowledgeable oil and gas attorney.

More Questions/Responses on page 2.

We welcome your questions and if you wish to email or call, we will try and answer them.

Sincerely,

Emens & Wolper Team
Dick, Bea, Sean, Kelly, Cody, Heidi, Chris, and Gail

Question 2: In examining our oil and gas royalty checks, we believe there are deductions being taken from our checks that are not correct! Is there anything we can do?

Our response: Yes. We recommend that you provide both a copy of your checks and your oil and gas lease to a knowledgeable oil and gas attorney who can review the checks and lease and let you know if the deductions are permitted under the terms of the lease or whether you have a basis to challenge such deductions. Our firm reviews royalty payments on a regular basis.

Question 3: My family was told by a pipeline company representative that if we didn't give the pipeline company an easement across our property at the price being offered, that the pipeline company would just take the easement by eminent domain and the price paid would be lower than currently offered. Is this an accurate claim?

Our response: This depends entirely on your individual situation. In certain circumstances the statement can be true although even then there are "wrinkles." If the easement sought is for an interstate natural gas pipeline regulated by the Federal Energy Regulatory Commission, once the pipeline company obtains a Certificate of Public Convenience and Necessity, the pipeline company does have the right of eminent domain. If the pipeline company is not a federally regulated natural gas company, there are questions about whether the company has eminent domain rights. In either event, negotiations can, and should, take place concerning the terms of and compensation for the easement. And, to enforce eminent domain rights, a natural gas pipeline company first needs to obtain a Certificate of Public Convenience and Necessity and then prevail in a lawsuit. Most companies installing smaller pipelines in eastern Ohio don't use eminent domain.

Question 4: My parents were told by a solar company who wanted them to sign an "Option to Lease" their property that they could get out of a signed option if they wanted to. Can they get out of such an option without any obligations?

Our response: There are currently many "option" agreements being offered to landowners by solar companies. Without examining the specific agreement you are referring to, we cannot give a meaningful answer. However, we can urge you to recommend to your parents that they not sign such an "option" agreement without having knowledgeable legal counsel review the "option" and all related solar documents. Many of the solar option agreements we have reviewed are binding and enforceable in several respects.

Please understand that our responses are general and do not provide legal advice for any specific situations. Said advice is given only after an attorney-client relationship is established and we review specific facts and/or documents.

EXPLORATION AND DEVELOPMENT UPDATE

EQT Corp. ("EQT") Announces Plans to Buy Rice Energy Inc. ("Rice"): Pennsylvania-based EQT announced on Monday, June 19, 2017 that it plans to buy all of Rice's shares in a buy-out valued at $6.7 billion. The planned buy-out would make EQT the largest producer of natural gas in the United States. "This transaction brings together two of the top Marcellus and Utica producers to form a natural gas operating position that will be unmatched in the industry," EQT President and CEO Steve Schlotterbeck said in a statement. Most of the acreage EQT will acquire from Rice through the sale is contiguous to its existing holdings, so it will be able to produce more efficiently through horizontal drilling, EQT said. EQT expects the deal to close in the fourth quarter of 2017. For more information, *see* http://www.cnbc.com/2017/06/19/eqts-purchase-of-rice-energy-just-created-a-new-energy-powerhouse.html.

EQT announced its plan to purchase Rice just months after Rice announced its plan to purchase Vantage Energy, LLC ("Vantage"). On Monday, September 26, 2016, Rice announced it planned to purchase Vantage for $2.7 billion dollars which would give Rice an additional 85,000 gas-rich acres in Greene County, Pennsylvania.

EMENS & WOLPER UPCOMING MEETINGS AND PRESENTATIONS

Monday, Sept. 11, 2017
Starting at 6:30 p.m.
Wintersville Fire Station
286 Luray Dr.
Wintersville, OH 43935

Many Jefferson County Landowners are receiving money for option or lease payments, royalties, surface use and water line agreements and pipeline rights of way. This meeting will focus primarily on ways to pay less taxes, including interfamily transfers of oil and gas interests and estate planning.

A November meeting will focus primarily on drilling and production activities, including deductions from royalty checks.

Thursday, Sept. 14, 2017 for members of the Smith-Goshen Landowner Group
Starting at 6:30 p.m.
Union Local Middle School
66859 Belmont Morristown Rd.
Belmont, OH 43718

We will be discussing lease renewals, extension payments, royalty payments, EQT's purchase of Rice Energy, among other issues specific to the Smith-Goshen Lease.

EXPLORATION AND DEVELOPMENT UPDATE (CONT.)

Ethane Cracker Plant may be coming to Belmont County, Ohio: Thailand-based PTT Global Chemical ("PTTGC") bought a 168-acre site in Belmont County, Ohio in June of this year from Akron-based utility company, First Energy, for a reported $13.8 million ($82,142 per acre). The property purchased by PTTCG used to be home to First Energy's R.E. Burger power plant, which closed in 2011 and has since been demolished. PTTGC stated in February of this year that it will decide whether to build its ethane "cracker" plant by the end of the year. PTTGC spokesman, Dan Williamson, stated "While [the property purchase] does not mean the project will go forward, it does demonstrate how serious (the company) is about doing what it can to make it a reality." If constructed, the plant would take ethane, a component of natural gas, and "crack" it to produce ethelyne, a widely used component in plastics production. For more information, *see* The Columbus Dispatch, July 4, 2017 and July 27, 2017.

Consequences of Supreme Court of Ohio's Decisions on Dormant Minerals Act: *Corban v. Chesapeake Exploration, L.L.C.*, Slip Opinion No. 2016-Ohio-5796, was a landmark decision in Ohio oil and gas law and has had profound effects for both the landowners and oil and gas operators in Ohio. This decision, about which we have written previously in more detail (October 2016 and April 2017), came as a surprise, as most of the trial and appellate courts who issued prior decisions had determined that the 1989 Ohio Dormant Mineral Act ("DMA"), Ohio Rev. Code Ann. § 5301.56, was self-executing. The decision is a major blow to many oil and gas companies operating in Ohio, as many companies relied on the decisions of trial and appellate courts to pay surface owners and even drilled some shale wells. Now, we have seen many oil and gas companies review their title work and seek new leases from the historic mineral owners the companies previously ignored. Consequently, we believe there is a chance many oil and gas royalty payments were made to surface owners under an invalid lease. Because almost no surface owners filed actions pursuant to the 1989 DMA while it was in effect, these surface owners did not own the oil and gas minerals to lease. One thing is clear, however – title reviews are much more difficult as many severed mineral interests were not transferred of record upon the death of the original reserver. Please see our additional *Corban* discussion on pages 7 and 8 of this Newsletter.

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 solar options, letters of intent, and leases;**
- **We review royalty payments, deductions, and division orders;**
- **We represent landowners in ODNR mandatory unitization proceedings who are being forced unitized;**
- **We review, analyze and negotiate all wind farm documents;**
- **We review, analyze and negotiate pipeline easements;**
- **We analyze mineral abandonment claims and claims regarding expired leases;**
- **We review, analyze and negotiate water, sand, timber, gravel, and coal rights agreements;**
- **We review, prepare and negotiate real estate deeds, mortgages, notes and liens;**
- **We review, analyze, negotiate sale of minerals and royalties; and**
- **We assist with litigation on all of these matters.**

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

EXPLORATION AND DEVELOPMENT UPDATE (CONT.)

The Top Five Utica Shale Producers in 2016: In October of 2016, this Newsletter discussed the top five oil and gas producers in 2015. At that time, we stated that the top five were: (1) *Chesapeake Energy Corporation*; (2) *Gulfport Energy Corporation*; (3) *Ascent Resources, LLC*; (4) *Antero Resources Corp.*; *and* (5) *Eclipse Resources Corp*. According to Columbus Business First, the top five oil and gas producers of 2016 changed from the previous year. It stated the top five of 2016 (based on number of permits) were:

(1) *Ascent Resources – Utica, LLC* ("ARU"): Oklahoma City, Oklahoma-based ARU was issued 37 permits in 2016 primarily in Belmont, Jefferson, Guernsey, and Harrison Counties.
(2) *Antero Resources Corp.* ("Antero"): Denver, Colorado-based Antero was issued 35 permits in 2016 primarily in Noble and Monroe Counties.
(3) *Rice Drilling D LLC* ("Rice"): Canonsburg, Pennsylvania-based Rice was issued 26 permits in 2016 primarily in Belmont County.
(4) *Chesapeake Exploration I LP* ("Chesapeake"): Oklahoma City, Oklahoma-based Chesapeake was issued 25 permits in 2016 primarily in Jefferson, Harrison and Carroll Counties.
(5) *Statoil USA Onshore Properties Inc.* ("Statoil"): Austin, Texas-based Statoil was issued 15 permits in 2016 primarily in Monroe County.

For more information, *see* Columbus Business First, April 28, 2017.

Increased Drilling in Jefferson County, Ohio Predicted: Even though drilling in Jefferson County has slowed over the past few years, Ascent Resources – Utica and Chesapeake Energy have stated that their respective companies are "putting a renewed focus on the county in the coming months." The uptick in Jefferson County drilling may be due in part to possible construction of a new cracker plant, by PTTGC, in Belmont County, Ohio. Jefferson County could be in a prime location to provide feedstock to any plant constructed there. Mike Chadsey, director of public relations for the Ohio Oil and Gas Association, stated "With the [PTTGC] cracker plant planned for Belmont County, the downstream effect on this county will be definitely important."

Amanda Finn of Ascent Resources Utica has stated that "Right now we are operating six rigs in Jefferson and Belmont [C]ounties" and "[n]ow Cross Creek, Warren, Smithfield, Wayne and Mount Pleasant [T]ownships will be seeing some activity." Matt Shepherd of Chesapeake Energy also stated "our focus will be on Jefferson and Carroll [C]ounties. We will be more active in Jefferson County than we were before." For more information, *see* http://marcellusdrilling.com/2017/06/uptick-in-utica-drilling-predicted-for-jefferson-county-oh/.

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, Brown, Carroll, Columbiana, Crawford, Defiance, Delaware, Erie, Fayette, Franklin, Fulton, Geauga, Guernsey, Hardin, Harrison, Henry, Highland, Hocking, Holmes, Huron, Mahoning, Marion, Meigs, Monroe, Montgomery, Noble, Preble, Pickaway, Portage, Ross, Sandusky, Seneca, Stark, Summit, Trumbull, Tuscarawas, Union, Washington, Wayne, Wood, and others.

PIPELINE UPDATE

Ohio Environmental Protection Agency ("OEPA") Seeking Fines from Rover Pipeline, LLC ("Rover"): On April 13, 2017, Rover began drilling beneath the Tuscarawas River south of Navarre in Stark County, Ohio. While drilling, Rover contractors were using drilling mud to lubricate the drilling equipment when over 2 million gallons were spilled into a wetland adjacent to the river contaminating 6.5 acres. OEPA Director Craig Butler stated that Rover assured the OEPA that the drilling mud contained only water and clay. However, after an anonymous tipster claimed to have witnessed diesel fuel being added to the drilling mud, the OEPA conducted testing on an initial sample and found the drilling mud to contain diesel fuel.

With the discovery, the OEPA raised an already-existing penalty against Rover to $914,000 and ordered the pipeline company to monitor groundwater around the spill area. Since March, Rover's activities have resulted in 34 complaints to the OEPA hotline regarding drilling mud incidents. As such, the OEPA has released a unilateral order to Energy Transfer Partners, the parent company of Rover, ordering it to comply with the levied fines. In another step, the OEPA requested that the Ohio Attorney General, Mike Dewine, initiate civil proceedings against Energy Transfer Partners and Rover compelling them to comply with the unilateral order. Rover officials have stated that they believe Rover is not subject to Ohio law and only needs to report to federal authorities.

At the request of the OEPA, the Federal Energy Regulatory Commission ("FERC") ordered a study of the issues, but the results have not yet been made public. In the meantime, FERC has ordered that Rover may complete any existing drilling project, but may not start any new ones.

There have also been numerous Ohio landowner complaints about Rover's activities on and off Rover's easements, including a major lawsuit. In West Virginia, state environmental authorities have ordered a halt to Rover construction in places where permit violations were found to be damaging streams in northern West Virginia. Landowners with Rover problems may wish to call the Rover complaint Hotline (888) 844-3718 and/or the FERC Landowner Hotline (877) 337-2237.

For more information, *see* The Columbus Dispatch, Thursday, July 27, 2017, The Columbus Dispatch, Friday, June 2, 2017, http://www.mansfieldnewsjournal.com/story/news/2017/07/10/ohio-epa-rover-pipeline-refusing-comply/464452001/, and http://marcellusdrilling.com/2017/07/ohio-epa-asks-ohio-ag-to-force-rover-to-comply-and-pay-914000/.

Nexus Pipeline Project Start-Up Delayed to 2018: The lack of a Federal Energy Regulatory Commission quorum has delayed the Nexus Pipeline Project receiving its Certificate of Public Convenience and Necessity. Now, according to Gerard Anderson, CEO of DET Energy, the main sponsor of Nexus, the project has been delayed enough so that Nexus now anticipates an in-service date of 2018. For more information, *see* http://marcellusdrilling.com/2017/07/nexus-pipeline-startup-slips-to-2018-due-to-quromless-ferc/.

When will Federal Energy Regulatory Commission ("FERC") have a Quorum to Approve the Nexus Pipeline Project?: The five-Commissioner FERC may only approve pipeline projects when it has a quorum of three Commissioners seated. FERC has not had a quorum since February and has had only one Commissioner seated (Cheryl LaFleur – D) for almost a month. President Donald Trump has already nominated two individuals to be Commissioners who have each been approved by the Senate Energy and Natural Resources Committee ("Committee"): Neil Chatterjee – R and Robert Powelson – R. Both men are now awaiting a full vote in the Senate. A third Commissioner has also been appointed, Robert Glick – D, but is further behind in the process, awaiting to be approved by the Committee. More recently, the White House released a statement that President Trump is now planning to nominate the final, fifth Commissioner, Kevin McIntyre - R, partner at the Jones Day law firm; reports indicate that McIntyre will become Chair of the Commissioners once confirmed by the Senate. For more information, *see* http://marcellusdrilling.com/2017/07/pres-trump-finally-nominates-kevin-mcintyre-to-ferc-as-chairman/.

Please visit our website for Educational Articles
www.emenswolperlaw.com

- Solar is Here in Ohio: Landowners Beware
- 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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PIPELINE UPDATE (CONT.)

Kinder Morgan Utopia Construction in Full Force: We have been advised that KMU has obtained all of the easements it believes it needs to construct its pipeline project across Ohio. We have seen a number of lawsuits be dismissed against landowners. As construction continues, we urge landowners to continue to monitor KMU's activities to assure that KMU is in full compliance with negotiated easement terms.

WIND AND SOLAR ENERGY UPDATE

Ohio H.B. 114 Could Stifle Ohio Renewable Energy Growth: Ohio law currently contains a renewable energy portfolio standard that requires that 12.5 percent of electricity sold by Ohio's electric distribution utilities or electric services companies must be generated from renewable energy sources by 2027. Additionally, of the 12.5 percent, at least 0.5 percent must come from solar sources.

The law sets annual benchmarks, or incremental percentage requirements for renewable energy, through 2027. Each utility and electric services company is subject to compliance payments if the annual benchmarks are not met. Utilities and electric services companies may purchase renewable energy credits to meet the renewable energy standard. For more information, *see* https://www.puco.ohio.gov/industry-information/industry-topics/ohioe28099s-renewable-and-advanced-energy-portfolio-standard/.

In June 2014, Ohio became the first U.S. state to roll back its clean energy mandates after passing a law that implemented a two-year "freeze" on the state's standard. Last year, the Ohio legislature passed a bill that would have effectively extended the freeze by turning the requirements for utilities to purchase renewables and invest in energy efficiency into voluntary goals, through use of "opt-outs," with no compliance obligations, through 2019. After Governor John Kasich vetoed the bill, however, the Ohio General Assembly introduced a new bill (Ohio H.B. 114) that aimed to repeal the renewable energy mandates. Some people believe the coal and oil and gas industries are trying to limit the development of renewables in Ohio.

The Ohio House Republican Caucus refers to H.B.114 as a "pro-business bill" that "encourages economic growth [and a] free-market system." However, the House Democratic Leader Fred Strahorn, has stated "If Ohio's economy is on the 'verge of a recession,' as the governor has claimed, rolling back state renewable energy standards will threaten future job growth and could harm consumers, workers and the environment." For more information, *see* http://solarindustrymag.com/ohio-house-passes-bill-repeal-renewable-energy-mandate.

On March 21, 2017, Advanced Energy Economy, a national association, provided written testimony on Ohio H.B. 114 before it passed in the Ohio House. It stated "A report by Ohio's Public Utilities Commission concluded that the cost to an average customer for meeting the state's renewable portfolio standard is 29 cents per month. By contrast, a utility proposal that seeks subsidies for uneconomic generating facilities in Ohio would result in an increase of 5% to 9% on all Ohio ratepayers." To read the complete written testimony, *see* http://info.aee.net/hubfs/PDF/HB114-Fakhoury-Testimony.pdf.

In a report by the American Council for an Energy Efficient Economy, it is estimated that under a "mid-range scenario" that assumes a 35-percent opt-out, Ohioans would incur $6.42 billion in costs that they would otherwise have saved over a ten year period. The costs are expected to primarily come from (1) lost bill savings opportunities for participants ($3.3 billion); (2) increased utility system costs ($1.85 billion); and (3) increased healthcare costs associated with higher levels of air pollution, the study authors calculated ($1.27 billion). For more information, *see* http://midwestenergynews.com/2017/06/08/report-expanded-efficiency-opt-out-could-cost-ohioans-billions/.

LEGAL UPDATE

Court of Appeals for the Seventh District of Ohio further Defines Ohio Dormant Mineral Act Terms: On March 22, 1989, Ohio enacted the Dormant Mineral Act ("DMA"), Ohio Rev. Code Ann. § 5301.56, which was significantly amended on June 30, 2006 to include additional notice and filing requirements, *Id*. at § 5301.56(E), to provide that a mineral interest held by a severed mineral owner (that is not a public entity or owner of an interest in coal) "shall be deemed abandoned and vested in the owner of the surface" if none of the six enumerated "savings events" occurred within the preceding 20-year period. *Id.* § 5301.56(B). Specifically, one of these six enumerated "savings events" occurs when "[a] claim to preserve has been filed" and recorded by a "holder" of the mineral interest. *See id.* at § 5301.56(B)(3)(e) and (C)(1). In *Warner v. Palmer*, 2017-Ohio-1080 (7th Dist.), the Court of Appeals for the Seventh District of Ohio reversed a decision from the Common Pleas Court of Belmont County, Ohio, further developing the DMA by applying the term "holder" to include individuals with no specific record ownership because of no mineral listing in the reserving parties' probate estates.

In 1924, John W. and Helen S. Kirk, H.E. and Adeline Egger, and A.C. and Blanche Peters (collectively, "Reservers") reserved one-half of all oil and gas underlying a parcel of land in Belmont County, Ohio when conveying the surface. *Id*. at ¶ 3. Between 1981 and 2006, many of the Reservers, or their descendants or heirs, passed away without any of their estate inventories mentioning the oil and gas mineral reservation. *Id*. at ¶ 4. The surface owners of the property, Fred A. Warner and Jennifer K. Warner, as co-trustees of the Warner Family Trust, ("Surface Owners") attempted to utilize the 2006 version of the DMA by serving certified mail on "[t]hose for whom [they] had addresses" and by publishing notice of their intent to declare the oil and gas minerals abandoned. *Id*. at ¶ 5. In 2013, the Surface Owners filed a complaint to quiet title in the Common Pleas Court of Belmont County alleging that there were no holders who could file a claim to preserve under the 2006 version of the DMA because all of the Reservers were deceased and "the of lack of a recorded title transaction meant there were no *holders* who could file a claim to preserve." *Id*. at ¶ 5 (emphasis added).

"Holder" is specifically defined in the DMA, *Id*. at ¶ 25, as "the record holder of a mineral interest, and any person who derives the person's rights from, or has a common source with, the record holder and whose claim does not indicate, expressly or by clear implication, that it is adverse to the interest of the record holder." Ohio Rev. Code § 5301.56(A)(1). Thus, the DMA contains no obligation on a "holder" to be a "living holder" as the Surface Owners alleged and the trial court held. *See Warner*, ¶ 25. Because of the broad definition of a "holder," "an heir can be a holder as his rights can 'succeed to the rights of' the record holder." *Id*. Thus, the Reservers' descendants and heirs could rightfully file and record a claim to preserve their inheritance in the oil and gas minerals.

This decision is important because it is one of the first decisions in Ohio further developing the DMA after the Supreme Court of Ohio's surprising decision in *Corban v. Chesapeake Exploration, L.L.C.* Please see our additional *Corban* discussion on pages 3 and 8 of this Newsletter.

Ohio Division of Oil and Gas Resources Management ("ODOGRM") Adopts New Unitization Guidelines: We recently spoke on forced pooling/unitization for a nation-wide webinar. This subject is complicated; we have set forth below some information about how the applicable Ohio statutes work. If you would like more detailed information, just let us know.

"Pooling," in the oil and gas context, is the joining together or combination of separately owned tracts or portions of tracts to create sufficient acreage to receive a drilling permit under applicable state spacing rules and regulations, such that production costs are shared by all working interest owners, and production is shared by all of the oil and gas mineral interest owners in the pooled unit. Often, pooling is done voluntarily because most oil and gas leases contain provisions allowing the lessee to pool the acreage covered by the lease. However, for situations arising where a lease is not obtained from a landowner, "forced pooling" is available in many states, including Ohio. "Forced pooling" is the act of being forced by state law into participation in an oil and/or gas drilling unit.

LEGAL UPDATE (CONT.)

ODOGRM Adopts New Unitization Guidelines (Cont.): In Ohio, two statutory sections govern forced pooling: Ohio Rev. Code Ann. § 1509.27 and Ohio Rev. Code Ann. § 1509.28. The Ohio Oil and Gas Commission has determined the statutory scheme to be used depends on the size of the property to be forced pooled. Under § 1509.27, if a tract or tracts are of insufficient size or shape to meet the requirements for drilling a proposed well, and the owner has been unable to reach an agreement, the owner may apply for a mandatory pooling order. Under § 1509.28, if the owners overlaying a pool and the operator cannot come to voluntary terms for unitization of the pool, and if at least 65% of the land overlaying the pool is leased and controlled by the operator, then the operator can apply for an order for forced unit operations.

The ODOGRM has adopted Unitization Application Procedural Guidelines "designed to assist with the application process" of determining the need to operate a designated area as a unit under § 1509.28. **On May 3, 2017, the requirements under these guidelines were revised for statutory unitization applications.** These guidelines were updated in the following notable respects:

Processed on Rolling Basis: The 2017 revisions provide that forced unitization applications will now be processed by the ODORGM on a rolling basis. Prior to the 2017 revisions, the guidelines required that applications be submitted at least 120 days prior to the scheduled hearing date; now landowners and mineral owners may have only 45 days or less of notice prior to a hearing.

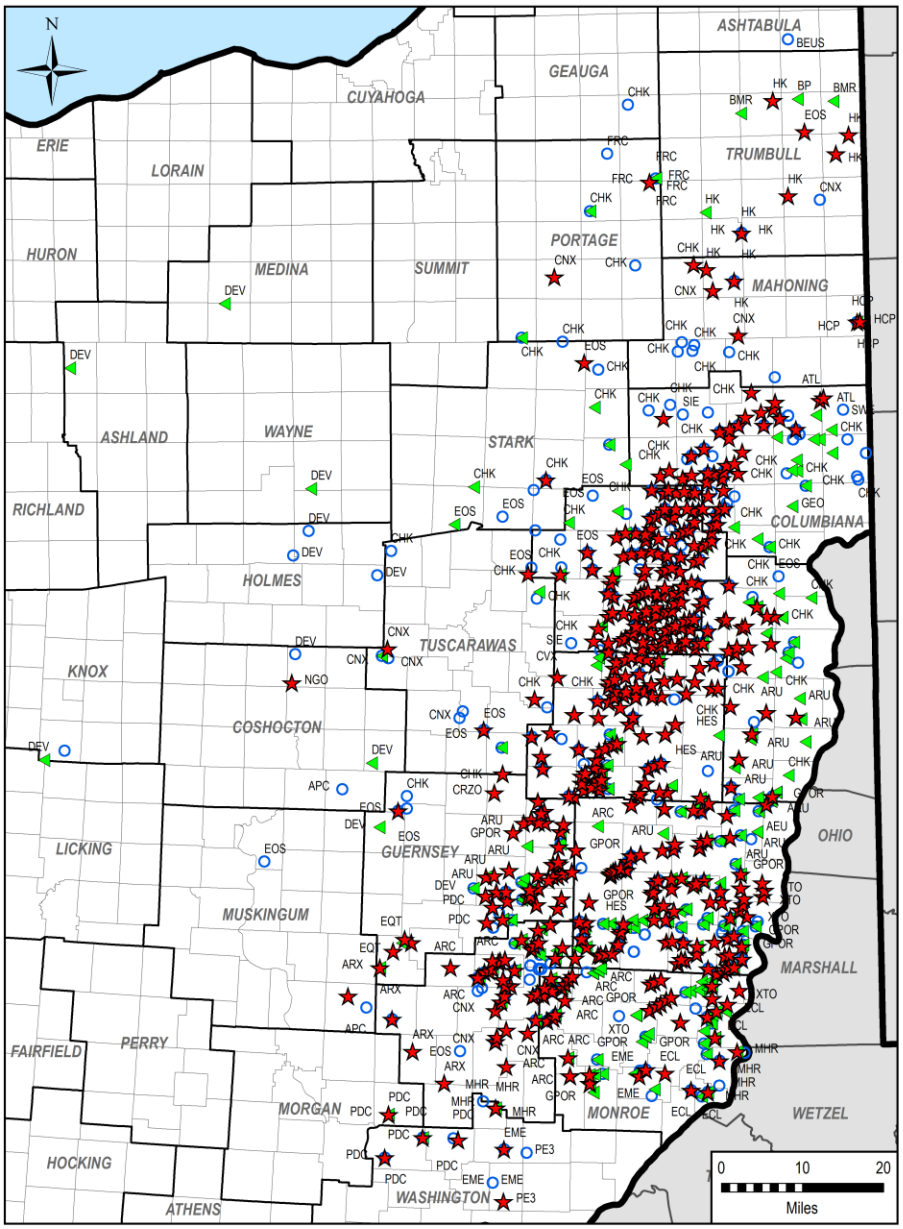
Application Requirements: In the 2017 revisions, applications must now contain additional requirements including (1) an identification of the amount of acreage included in the unit and an explanation of how the acreage was determined (i.e. by auditor's records, surveys, GIS, or other specified method); (2) the estimated value of the recovery, including the net present value of oil and gas for each well proposed to be drilled in the unit area; (3) the estimated cost to drill and operate each well in the proposed unit, including an explanation of what costs are included in the estimate; and (4) an affidavit attesting to a valid joint venture or other agreements for the unit that discloses all joint venture partners.

Required exhibits include, (1) as Exhibit A-1, a list of the names of each mineral owner, their current addresses, the affected parcel numbers, and respective acreages of the tracts, and, (2) as Exhibit A-6, a list identifying all parcels subject to disputes under the Ohio Dormant Mineral Act ("DMA"). Ohio Rev. Code Ann. § 5301.56.

Hearing Notification: The guidelines now require that notice be sent by certified mail to both leased and unleased mineral owners with publication allowed in either a weekly or daily newspaper as long as the other requirements are met. The previous guidelines only outlined notice in daily publication, and was silent about weekly publication. Weekly notice may now be used so long as the notice is published for at least 4 consecutive weeks at least 2 weeks before the scheduled hearing notice.

Hearing Procedures: The applicant is now required to provide the ODOGRM with 3 copies of an affidavit attesting to the fact that the applicant holds a valid lease agreement for all of the acreage claimed to be under lease and attesting to the fact that the applicant has the right to drill and produce from the unitized formation.

While all of the above-mentioned revisions are important, Exhibit A-6 is unique – requiring a list identifying all parcels subject to disputes under the DMA. Ohio Rev. Code Ann. § 5301.56. Because the Supreme Court of Ohio's surprising decision in *Corban v. Chesapeake Exploration, L.L.C.* (see our additional *Corban* discussion on pages 3 and 7 of this Newsletter) it can be unclear from whom an applicant should seek an oil and gas lease. The revised guidelines appear to be the ODOGRM's acknowledgement of this issue and requiring notice be sent all potential unleased mineral owners allows them an opportunity to be heard at the application hearing.



UTICA HORIZONTAL WELL STATUS THROUGH 7/1/2017

PRODUCING (1,587)

DRILLING; DRILLED (452)

PERMITTED OR NOT DRILLED (500)

OPERATOR	LBL	PROD	PMT	DRLG	DRLD	TOT
AMERICAN ENERGY UTICA LLC	AEU	0	2	0	3	5
ANADARKO E & P ONSHORE LLC	APC	0	4	0	0	4
AMERICAN PETROLEUM PRTR OH LLC	APP	0	2	0	0	2
ANTERO RESOURCES CORPORATION	ARC	172	29	19	32	252
ASCENT RESOURCES UTICA LLC	ARU	141	26	36	32	235
ARTEX OIL COMPANY	ARX	6	0	0	1	7
ATLAS NOBLE LLC	ATL	12	0	0	0	12
BEUSA ENERGY LLC	BEUS	0	1	0	0	1
BP AMERICA PRODUCTION COMPANY	BP	0	0	0	1	1
BRAMMER ENGINEERING INC	BMR	0	0	0	2	2
CHESAPEAKE EXPLORATION LLC	CHK	643	122	13	69	847
CNX GAS COMPANY LLC	CNX	39	12	5	23	79
CARRIZO (UTICA) LLC	CRZO	4	3	0	9	16
CHEVRON APPALACHIA LLC	CVX	8	2	0	0	10
DEVON ENERGY PRODUCTION CO	DEV	0	6	0	7	13
ECLIPSE RESOURCES I LP	ECL	77	41	20	3	141
EM ENERGY OHIO LLC	EME	4	11	4	2	21
ENERVEST OPERATING LLC	EOS	5	20	0	1	26
EQT PRODUCTION COMPANY	EQT	6	0	0	2	8
MOUNTAINEER KEYSTONE LLC	FRC	2	2	1	3	8
NGO DEVELOPMENT CORP	NGO	0	0	0	1	1
GEOPETRO LLC	GEO	0	0	0	2	2
GULFPORT ENERGY CORPORATION	GPOR	227	67	55	22	371
HILCORP ENERGY COMPANY	HCP	14	38	0	1	53
HESS OHIO DEVELOPMENTS LLC	HES	58	25	0	7	90
HG ENERGY LLC	HGE	0	3	0	4	7
HALCON OPERATING COMPANY INC	HK	8	3	1	1	13
TRIAD HUNTER LLC	MHR	8	13	1	4	26
PDC ENERGY INC	PDC	27	10	3	2	42
PROTÉGÉ ENERGY III LLC	PE3	1	1	0	0	2
RICE DRILLING D LLC	RDD	50	16	14	27	107
R E GAS DEVELOPMENT LLC	REG	30	12	0	1	43
SIERRA RESOURCES LLC	SIE	0	3	0	0	3
STATOIL USA ONSHORE PROP INC	STO	5	7	5	9	26
SWEPI LP	SWE	0	1	0	0	1
XTO ENERGY INC.	XTO	40	18	2	2	62
	TOTALS	1587	500	179	273	2539

KEY	DESCRIPTION
PROD	PRODUCING
PMT	PERMITTED
DRLG	DRILLING
DRLD	DRILLED

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Emens & Wolper would like to thank Marty Shumway for providing the Utica Status Map, above.