



EMENS & WOLPER LAW FIRM

A LEGAL PROFESSIONAL ASSOCIATION

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Ohio Shale & Pipeline Update November 2015

Dear Clients, Friends and Colleagues:

The oil and gas industry is under major pressure to find creative ways to cut spending and make money due to the oil and gas commodity prices continued depression. We are seeing oil and gas companies adapting to the depressed prices by drilling fewer, but longer shale wells on each pad and focusing their operations in areas where their oil and gas leases are set to expire. The depressed prices are also having an impact on Ohio landowners. Many of the recent royalty checks we have reviewed are significantly lower than previous months, and we are seeing oil and gas companies dramatically reducing the per acre upfront lease bonus payment and royalty percentages. However, the Rover, Utopia and Nexus pipelines continue to move forward with their plans.

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, Kelly, Michael, Sean



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



Pipeline Easements - Pipeline companies are continuing efforts to acquire pipeline easements from Ohio landowners. Easements usually last forever; and they should be thought of as a sale of land rather than a lease of land. The easement must contain language that will protect landowners. The “form” easements landowners initially receive from pipeline companies lack essential landowner protections and provide insufficient compensation. Before discussing terms or compensation with a pipeline company, or agent, please call a knowledgeable attorney!

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.



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EMENS & WOLPER UPCOMING PRESENTATIONS

November 9 @ 6:30 pm - 9:00 pm

Utopia & Nexus Landowners
Pipeline Meeting
Clyde High School Auditorium
1015 Race Street
Clyde, OH 43206

November 10 @ 5:30 pm - 7:00 pm

Rover Pipeline Update
Holiday Inn Express
1392 Enterprise Parkway
Ashland, OH 44805

November 10 @ 7:00 pm - 9:00 pm

Utopia & Nexus Landowners
Pipeline Meeting
Holiday Inn Express
1392 Enterprise Parkway
Ashland, OH 44805

November 11 @ 6:30 pm - 9:00 pm

Utopia & Nexus Landowners
Pipeline Meeting
Swanton American Legion
200 S. Hallett Avenue
Swanton, OH 43558

November 12 @ 6:30 pm

Rover Pipeline Update
American Legion Hall
500 Glenwood Ave
Napoleon, OH 43545

December 10 @ 12:45 pm

The Landowner Client: Focus on
Oil and Gas
Ohio State Bar Association
Headquarters
1700 Lake Shore Drive
Columbus, OH 43204

EXPLORATION AND DEVELOPMENT UPDATE

Horizontal Drilling Technology Coming to Central Ohio: Morrow County, Ohio is set to see its first horizontal well. Morrow County residents are familiar with traditional oil and gas vertical wells due to the 1960's Morrow County oil boom. In October of 2015, EOR Technology LLC of Houston, Texas received a well permit from the Ohio Department of Natural Resources to drill horizontally in the Trempealeau formation (which is the same oil rich formation produced in the Morrow County oil boom). The well will be located in Canaan Township, Morrow County and is called the Morton #1 Well. It appears construction has begun on the access road for the pad site. This well is located about 45 miles northeast of Columbus. For more information, see <http://galioninquirer.com/news/4534/morrow-countys-first-horizontal-frack-well-under-construction>.

EOR's proposed use of horizontal well technology in a formation previously developed with vertical wells is exciting and consistent with other companies' uses of this technology throughout Ohio. Several months ago, we reported that we were seeing company's using horizontal drilling technology in the historically productive Clinton Sandstone formation within Ohio (most of the vertical wells drilled in Ohio in the last century were in the Clinton formation). If this horizontal drilling technology is successful in the Trempealeau, Clinton Sandstone, Rose Run/Beekmantown, and Trenton formations, Ohio could see even more oil and gas activity.

Low Oil & Gas Prices Having Major Impact on Development: In the past few months, the low oil and gas prices has taken its toll on Ohio: (1) we have seen the number of drilling rigs drop from around 60 in December of 2014 to about 20 rigs now, (2) we are seeing oil and gas companies laying off massive amounts of their work force, and (3) oil and gas companies scrambling to find a way to make money. Chesapeake (Ohio's largest operator in the Utica/Point Pleasant Shale) recently announced it was cutting 15% of its workforce, or about 740 employees. American Energy Partners (now Ascent Resources – Utica in Ohio) has stated it hired investment bankers to help find ways to make money and shore up the finances. Hess Corp. is looking to sell its Utica Shale land. We believe all these actions are a direct result of the low commodity prices. For more information, see <http://www.bizjournals.com/columbus/blog/ohio-energy-inc/2015/10/driller-looking-to-sell-off-utica-shale-land.html>, <http://www.ohio.com/blogs/drilling/ohio-utica-shale-1.291290/american-energy-partners-seeks-help-from-investment-bankers-1.634816>, <http://www.bizjournals.com/columbus/blog/ohio-energy-inc/2015/09/states-biggest-oil-and-gas-driller-cuts-15-of-its.html>.

While nationally the commodity prices are low, the Appalachian Basin is experience excessively low prices due to the amount of production. Nationally, natural gas prices are hovering around \$2.50 - \$2.70 per MCF. In Ohio, based on royalty checks we are reviewing, we are seeing producers receive less than \$2.00 per MCF, and it is reported that after costs are factored in, companies might get around \$1.00 per MCF. Ohio drillers are receiving less than the national averages for gas production due to the excess amount of gas located in Appalachia and no infrastructure (pipelines) to move the gas out of Appalachia to other markets. For example, currently Spectra Energy's OPEN pipeline project is being installed in eastern Ohio, and Chesapeake has stated that once this project is operational it will receive realize a significant uplift in prices as it will be able to fetch Gulf Coast prices. See <http://www.indeonline.com/article/20150808/NEWS/150809401> and <http://seekingalpha.com/article/3492266-spectra-energy-opens-up-the-gulf-to-chesapeake-energy> for more information.



EMENS & WOLPER LAW FIRM

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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 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

Weathering the Storm of Low Prices - Moving to Dry Gas: We are seeing many of the large drillers operating in Ohio shift focus from the “liquids” window of Carroll, Harrison, Guernsey, Noble counties to the “dry” gas window in Jefferson, Belmont, and Monroe counties. Of the 20 rigs currently operating in Ohio, 14 of the rigs are targeting natural gas. This shift is likely due to a combined low liquids price (liquids pricing is tied to oil prices) and record breaking dry gas wells being drilled. For more information, see <http://www.naturalgasintel.com/articles/103255-gulfport-getting-more-from-utica-dry-gas-window>, and <https://rbnenergy.com/dry-county-utica-dry-gas-wells-headline-third-quarter-production-spurt>.

Companies Charging Landowners For Losses!: In our review of landowner’s royalty checks in recent months, we have noticed several oil and gas companies reporting a net loss on the production of natural gas liquids and passing that loss on to the landowner by reducing the overall royalty check (netting the loss against the positive production). While an oil and gas company may have the right under an oil and gas lease to take “post-production” costs out of the royalty, we do not believe, in any case, companies have the right to pass on losses to the landowner who only has a royalty interest. If operations for oil and gas result in a loss (which several Ohio drillers are claiming), that loss should be borne by the company that drilled and has a working interest. We know royalty statements are confusing, but landowners should look closely at the price the company is calculating the natural gas liquids on the royalty statements.

More Movement Towards Belmont County Ethane Cracker: The American subsidiary of PTT Global Chemical (PTTGC), Thailand’s largest integrated petrochemical and refining company, recently announced that it is ready to invest \$100 million to conduct detailed engineering design for a world-scale cracker on a site on the west bank of the Ohio River in Belmont County. PTTGC America will take up to the next 12 months to determine the feasibility of a world-scale petrochemical complex, also known as an ethane cracker, in Mead Township on the west bank of the Ohio River. If constructed the project would represent a multibillion-dollar investment, and thousands of construction jobs, and hundreds of permanent jobs. The investment would also redevelop the site of the FirstEnergy’s former Burger Power Plant, which was retired in late 2011. For more information, see <http://www.ohio.com/blogs/drilling/ohio-utica-shale-1.291290/company-to-invest-100-million-on-ohio-cracker-plant-design-1.621482>.

Ohio Reaches 2000 Utica Shale Well Permits: In early September, the Ohio Department of Natural Resources (ODNR) has issued 2002 permits to horizontally drill in the Utica/Point Pleasant Shale in Ohio. Ohio has about 1000 Utica/Point Pleasant Shale wells producing. For more information, see <http://www.bizjournals.com/columbus/blog/ohio-energy-inc/2015/09/ohio-issues-permit-no-2000-for-utica-shale.html>.



***Landowner Groups and
Other Ohio Counties
Where Emens & Wolper
has Assisted 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, Erie, Fayette,
Franklin, Fulton, Geauga,
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.

PIPELINE UPDATE

Huge Investments Proposed in Dry Gas Gathering Systems: Consistent with the article above discussing drillers moving the dry gas window of the Utica/Point Pleasant shale, there are two major gathering systems proposals. First, MarkWest Energy Partners and The Energy & Minerals Group (EMG) announced plans to develop a large-scale dry gas gathering system in eastern Ohio. The new system will be designed to transport 2 BCFG/D and could result in more than 250 miles of pipeline laid at a cost of more than \$1 billion. Ascent Resources had dedicated approximately 100,000 gross acres in Belmont and Jefferson counties to this new system. For more information, see <http://www.worldoil.com/news/2015/8/14/utica-shale-set-for-new-dry-gas-gathering-system>.

Second, Gulfport and Rice Energy entered into a letter of intent for a joint venture between the two companies to develop a dry gas gathering system in Belmont and Monroe counties with capacity to gather over 1.8 MMDth/d of natural gas through about 165 miles of high and low pressure 12 in. to 30 in. pipelines that interconnect to other pipelines like: Rockies Express, ET Rover, TETCO and Dominion East Ohio. Gulfport has agreed to dedicate about 77,000 leasehold acres. The companies plan to invest approximately \$520 million to develop the gathering system over the next six years. For more information, see <http://www.worldoil.com/news/2015/10/12/gulfport-energy-rice-energy-in-utica-shale-joint-venture>.

Ohio State University to Study Pipeline Impact to Crops: We have heard from many landowners concerned about the potential long-term crop yield loss due to pipeline construction. We have done significant research on this issue, and have found a few national studies on this issue. Fortunately, with several major pipeline projects posed to cross some of the most productive cropland in Ohio, OSU has decided to study crop yield loss due to pipeline construction. Mr. Steve Culman, an Ohio State University Extension specialist in soil fertility, is starting a pilot study to document the effects of pipeline installations on crop productivity over several years. OSU is looking for 20 to 30 farmers with pipelines in their fields to participate in the study over the next three to five years. This study is incredibly important for landowners faced with a pipeline and landowners get just one opportunity to negotiate for the long term crop loss. For more information, see <http://cfaes.osu.edu/news/articles/researchers-studying-the-potential-impact-pipeline-installation-farm-soil>.

Rover Pipeline Discussions. Emens & Wolper and its co-counsel represent about 100 miles of pipeline on the ET Rover Pipeline Project planned to be installed across the northern half of Ohio. Discussions with Rover continue to attempt to obtain landowner “friendly” language in the easements.

Utopia, Kinder Morgan Approach, Initial Offers. Kinder Morgan, on its Utopia Pipeline Project, appears to be secretive in the information it plans to disclose to the public. Being a non-FERC regulated pipeline, Kinder Morgan has little regulation or requirements to disclose information. We continue to grow the number of landowners we represent on this pipeline and are doing public information meetings in northern Ohio to educate landowners on pipelines. We understand landowners are starting to receive initial offers from Kinder Morgan in the range of \$15 to \$17 per foot. We do not believe this offer adequately compensates landowners nor do we believe the proposed easement is landowner friendly. See page 2 and our website for a schedule of meetings.



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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)

Contact for Emens & Wolper Law Firm

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Chris Hodakievic, Assistant to
Dick Emens

LEGAL UPDATE

Major Win for Landowners In Forced Unitization: In Ohio, when oil and gas companies are faced with landowners that refuse to lease their land for oil and gas development the company can file an application with the Ohio Department of Natural Resources (ODNR) under Ohio's forced unitization statute O.R.C. § 1509.28. Our firm has helped many landowners in this process. The first appeal to the Oil and Gas Commission of an ODNR's Order under forced unitization was argued (by our firm representing the landowner in Carroll County) this past summer. On September 17, 2015, the Ohio Oil and Gas Commission (the "Commission") issued an Order in *Gary L. Teeter Revocable Trust v. Division of Oil & Gas Resources Management* (Appeal No. 895). While the decision by the Commission (the "Order") upheld some aspects of the Chief's Order 2014-544 issued by ODNR, in an important victory for Ohio landowners the Commission's Order significantly increased the landowner royalty amount from 12.5% gross to **20% gross**. The decision also included language commenting negatively on R.E. Gas Development, LLC ("Rex") leasing efforts with landowners, stating that "it is clear improvements in Rex's leasing protocols may be warranted." This is a major win for landowners faced with their rights being taken from them. The Commission's Order has been appealed to the court of common pleas of Franklin County Ohio pursuant to R.C § 1509.37.

Courts Interpreting Lease Terms Strictly: The United States District Court, S.D. Ohio, Eastern Division, in *Filicky v. American Energy-Utica, LLC*, 2015 WL 4068777 (S.D. Ohio July 2, 2015) held that an oil and gas lease taken in 2006 and assigned to American Energy-Utica, LLC ("AEU") had terminated because a declaration of pooled unit was not filed with the Belmont County recorder for the one well on which AEU based its argument for lease extension. On September 26, 2006 the Plaintiff, Nikki Filicky, signed a five year oil and gas lease with Solid Rock Energy, Inc. ("Solid Rock") covering 168.24 acres in Belmont County, Ohio (the "Lease"). Id. In 2010 the Plaintiff signed an amendment with an assignee of Solid Rock extending the term of the Lease to September 26, 2014 (the "2010 Amendment"). Id. The 2010 Amendment included a new pooling clause which contained the following language, "Each unit or reformation thereof may be created by governmental authority or by Lessee recording in the county recorder's office a Declaration containing a description of the pooled acreage." Id. Ten days prior to the lease expiring, AEU obtained a drilling permit to drill a well. However, prior to the lease expiring, AEU did not record a declaration of pooling for this well. The Court held that "[c]lose enough is not good enough under the lease involved here, which requires a declaration to create each pooled unit." Id. Since the Lease required AEU to file a declaration for any new or reformed unit with the Belmont County recorder and AEU failed to do so the Court granted Plaintiff's motion for summary judgment. Id.

AEU is appealing this decision to the Sixth Circuit U.S. Court of Appeals. If this decision is upheld on appeal, it will further emphasize the importance of oil and gas companies strictly complying with lease language. The language in the pooling clause at issue, providing that a unit can be created by lessee filing a declaration at the county recorder's office, is contained in a number of Ohio leases and Ohio operators will need to make sure that declarations for the specific units identified in their well permit applications are accurate and promptly recorded.



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UTICA HORIZONTAL WELL STATUS THROUGH 10/03/2015

- ★ PRODUCING (1,018)
- ▲ DRILLING, DRILLED (588)
- PERMITTED OR NOT DRILLED (422)

| OPERATOR | LEL | PROD | PMT | DRLG | TOT |
|--------------------------------|-------------|------------|------------|------------|-------------|
| AMERICAN ENERGY UTICA LLC | 1 | 2 | 1 | 5 | 9 |
| AMARCO E & P ONSHORE LLC | 0 | 2 | 0 | 0 | 2 |
| AMERICAN PETROLEUM PRTR OH LLC | 0 | 2 | 0 | 0 | 2 |
| ANTERO RESOURCES CORPORATION | 81 | 26 | 27 | 40 | 174 |
| ASCENT RESOURCES UTICA LLC | 38 | 4 | 52 | 53 | 147 |
| ARTEX OIL COMPANY | 6 | 3 | 0 | 0 | 9 |
| ATLAS MOBILE LLC | 12 | 0 | 0 | 0 | 12 |
| BELUS ENERGY LLC | 0 | 1 | 0 | 0 | 1 |
| BP AMERICA PRODUCTION COMPANY | 0 | 0 | 0 | 1 | 1 |
| BRAMMER ENGINEERING INC | 0 | 0 | 0 | 2 | 2 |
| CHESSAPEAKE EXPLORATION LLC | 509 | 125 | 16 | 149 | 799 |
| CHK GAS COMPANY LLC | 30 | 15 | 5 | 13 | 63 |
| CRZD | 4 | 5 | 6 | 0 | 15 |
| CHEVRON APPALACHA LLC | 5 | 2 | 0 | 3 | 10 |
| DEVON ENERGY PRODUCTION CO | 0 | 5 | 0 | 7 | 13 |
| ECLIPSE RESOURCES LP | 43 | 35 | 17 | 26 | 123 |
| EM ENERGY OHIO LLC | 1 | 8 | 0 | 1 | 10 |
| ENVEST OPERATING LLC | 5 | 16 | 0 | 1 | 22 |
| EQT PRODUCTION COMPANY | 6 | 0 | 1 | 1 | 8 |
| FOURMINEER KEYSTONE LLC | 2 | 1 | 3 | 8 | 14 |
| NGO DEVELOPMENT CORP | 1 | 0 | 0 | 1 | 2 |
| GULFPORT ENERGY CORPORATION | 141 | 37 | 24 | 41 | 243 |
| HILCORP ENERGY COMPANY | 8 | 27 | 0 | 3 | 38 |
| HES OHIO DEVELOPMENTS LLC | 36 | 31 | 3 | 19 | 89 |
| HGE ENERGY LLC | 1 | 2 | 0 | 4 | 7 |
| HALOON OPERATING COMPANY INC | 7 | 5 | 1 | 0 | 13 |
| TRAD HUNTER LLC | 8 | 8 | 3 | 3 | 22 |
| PDC ENERGY INC | 19 | 13 | 6 | 1 | 41 |
| PROTEGE ENERGY III LLC | 0 | 0 | 0 | 1 | 1 |
| RICE DRILLING D LLC | 16 | 1 | 7 | 13 | 37 |
| R E GAS DEVELOPMENT LLC | 31 | 12 | 0 | 3 | 46 |
| SIERRA RESOURCES LLC | 0 | 3 | 0 | 0 | 3 |
| STATOIL USA ONSHORE PROP INC | 1 | 5 | 2 | 1 | 9 |
| SWEPI LP | 0 | 1 | 0 | 0 | 1 |
| XTO ENERGY INC | 5 | 22 | 4 | 14 | 45 |
| TOTALS: | 1018 | 422 | 178 | 410 | 2028 |

KEY
 PROD PRODUCING
 PMT PERMITTED
 DRLG DRILLING

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