



EMENS & WOLPER LAW FIRM

A LEGAL PROFESSIONAL ASSOCIATION

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Ohio Shale & Pipeline Update August 2015

Dear Clients, Friends and Colleagues:

With oil and gas commodity prices depressed, we are seeing a slow-down in the oil and gas drilling activities throughout Eastern Ohio. However, we continue to see strong activity with pipelines, and drilling activity in areas where oil and gas leases are set to expire soon. In the past few months, we have seen landowners threatened with new approaches by land agents attempting to obtain easements as we describe on page 4. We also have seen several pipeline companies file lawsuits for survey permission and eminent domain against Ohio landowners. Unfortunately, as driller and pipeline company budgets continue to shrink, we expect this type of activity to continue.

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.



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EMENS & WOLPER UPCOMING PRESENTATIONS

Tuesday, August 4, 2015

6:30 PM Pipeline Presentation

Gibsonburg High School
740 S. Main Street
Gibsonburg, OH 43431
(Sandusky County)

Thursday, August 6, 2015

(Individual landowner meetings)

At Landowner Properties
(Wayne & Ashland Counties)

Tuesday, August 11, 2015

6:30 PM Pipeline Presentation

Swanton High School
601 North Main St.
Swanton, OH 43416
(Fulton County)

Wednesday, August 12, 2015

6:30 PM Pipeline Presentation

Bellevue High School
200 Oakland Avenue
Bellevue, OH 44811
(Erie, Huron and Sandusky counties)

Wednesday, August 12, 2015

(Individual landowner meetings)

At Landowner Properties
(Crawford County)

Pipeline Presentation

Date To Be Announced
Northwestern High School
7571 N. Elyria Road
West Salem, Ohio 44287

Pipeline Presentation

Date To Be Announced
Freedom Fellowship Church
6209 S. Carr Road
Apple Creek, Ohio 44606

EXPLORATION AND DEVELOPMENT UPDATE

Current Activity with Prices Low. We are seeing a significant slowdown in drilling activity, which appears to be attributed to the decline in oil and gas commodity prices. We expect drilling to continue to be slow until prices rise. We expect the Third and Fourth Quarter of 2015 will show an even sharper decline in well permits. Although drilling is slowing in Ohio, we are still seeing a significant amount of infrastructure being built. Pipeline companies are continuing their efforts to obtain easements.

Below is a chart depicting the number of wells for each county and the number of new permits in June 2015 based on ODNR records.

County	New permits	Total permits	Drilled wells	Producing wells
Ashland	0	1	1	—
Ashtabula	0	1	—	—
Belmont	2	239	86	83
Carroll	6	487	68	364
Columbiana	12	130	22	52
Coshocton	0	5	1	1
Geauga	0	1	0	0
Guernsey	0	182	68	85
Harrison	14	359	143	154
Holmes	0	3	—	—
Jefferson	0	54	29	13
Knox	0	2	1	—
Mahoning	0	29	1	13
Medina	0	1	1	—
Monroe	0	189	112	48
Morgan	0	3	1	2
Muskingum	0	3	—	1
Noble	0	166	55	71
Portage	0	15	6	3
Stark	0	12	5	2
Trumbull	0	14	4	7
Tuscarawas	0	20	4	5
Washington	0	17	3	6
Wayne	0	1	1	—

Source: ODNR
Jun 30, 2015

As of July 18, 2015, the Ohio Department of Natural Resources (ODNR) reported on the Utica formations a total of 445 wells were permitted, 419 wells drilled, 191 wells being drilled, 925 wells producing, 25 inactive wells, 24 wells in final restoration and three abandoned wells in Ohio's Utica formation. This brings the total number to 1,980.

Marcellus Shale Ohio information is: 15 wells permitted, 11 drilled, 17 wells producing and one well inactive for a total of 44. For more information, please see

<https://marcellus.com/news/id/126355/utica-and-marcellus-activity-in-ohio-3/>.



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

WVU Utica Shale Study. The Appalachian Oil and Natural Gas Research Consortium, a program of the National Research Center for Coal and Energy at West Virginia University (WVU), gathered information on Utica Shale in a 2-year geological study that was presented at an energy industry workshop recently in Canonsburg, Pennsylvania. The findings of this study indicate that the Utica Shale contains 782 trillion cubic feet of recoverable natural gas, a much higher projection than previously. Also, about 1,960 million barrels of oil could be recovered, the study indicates. That compares to the previously thought amount of 940 million barrels. For more information, see <http://wvmetronews.com/2015/07/19/wvu-leading-utica-shale-study/> and http://www.theet.com/opinion/editorials/good-news-for-natural-gas-is-good-news-for-w/article_ca868b4e-7419-589d-aea0-da279b1c9c17.html.

Gulfport Continues to Expand Its Acreage Position. In June, Gulfport Energy acquired 35,325 net acres in Monroe, Belmont, and Jefferson counties, Ohio from American Energy-Utica, LLC for \$319,000,000. This newly acquired acreage is contiguous to Gulfport's existing acreage and is expected to add about 200 additional drilling locations for Gulfport. With this deal, Gulfport has about 262,000 acres under lease in Ohio. For more information, see <http://www.ogfj.com/articles/2015/06/gulfport-acquires-additional-acreage-in-utica-shale-play.html>.

Waterless Frac Well Update. In previous newsletters, we discussed that companies were exploring the use of a waterless fracturing technique in Ohio wells. Recently, EV Energy Partners, the company that drilled the Nettles Well in Tuscarawas County, Ohio provided an update. EV Energy indicated that the waterless fracking well tested in Eastern Ohio has produced disappointing results, dealing a blow to the innovative technology that could help use less water in oil and gas operations and open up Ohio's oil window. The \$22 million test well in Tuscarawas County, has produced for 90 days. The well produced half the amount of oil as a nearby well fracked using large volumes of water. While the technology is not dead, this is important information for industry. For more information, see <http://www.bizjournals.com/columbus/blog/ohio-energy-inc/2015/05/ohio-waterless-fracking-wells-output-lagging.html>.

Lease Expirations. In Ohio, many landowners signed oil and gas leases in 2010 and 2011 that had a 5 year primary term. We are starting to receive calls from landowners asking about what happens at the end of the 5 year period. Most oil and gas leases give the oil and gas companies the right to extend the original 5 year period for an additional amount of time (usually another 3 or 5 years) to drill IF the company pays some additional money. If your lease term is going to expire soon, it is important to review the terms of your lease and determine what rights the company has to extend the lease term and what obligations the company must satisfy to extend the lease term. Know that the oil and gas companies would prefer NOT to pay you again if they do not have to.

Less Wells, But Drilling Continues Where Leases Expiring. We are seeing several of the large oil and gas companies being very active in areas where oil and gas lease are set to expire. Many of these companies are forming larger drilling units, constructing pad sites, and installing pipelines. However, the companies appear to be planning on only drilling one or maybe two wells within the unit, rather than fully developing all the acreage by drilling four or more wells. If your land is included in a unit where the company does not fully develop all the acreage, you may have rights under your lease to request additional drilling or a release of undeveloped acreage from the lease.



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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

NGL Pipeline Companies File Suit for Eminent Domain in Ohio. Recently, Marathon and Sunoco Logistics filed separate lawsuits against several Ohio landowners in Jefferson and Harrison Counties to install natural gas liquids pipeline. There is some question as to whether or not Ohio law permits eminent domain when the project is for a natural gas liquids pipeline. If a pipeline company does not have eminent domain, the landowner has the power to say “no” to the project. Often, the pipeline companies try to intimidate landowners by stating they will just take the property if the landowner does not agree. (See recent Ohio Farm Bureau “Buckeye News” on this subject). These cases will have a significant impact on these and future pipeline projects in Ohio.

On August 4, 2015, the Jefferson County Court of Common Pleas is scheduled to hear arguments from the landowners (represented by Emens & Wolper and White Law Office) as to why Sunoco Logistics does not have the right of eminent domain. In September, 2015, Harrison County Court of Common Pleas is scheduled to hear arguments from landowners (represented by Emens & Wolper and White Law Office) as to why Sunoco Logistics and Marathon does not have the right of eminent domain.

A Kentucky Court of Appeals recently upheld a trial court’s decision of no-eminent domain for a natural gas liquids pipeline. In December of 2013, a group of people opposed to the Bluegrass natural gas liquids (NGL) pipeline sued Bluegrass, a joint venture of Williams and Boardwalk Pipeline Partners, to prevent them from using eminent domain. The argument was that the NGLs flowing through the pipeline just pass through Kentucky and don’t benefit local Kentuckians, therefore the pipeline has no right to use the state’s eminent domain law to force landowners to accept the pipeline. In March 2014, a circuit court judge agreed with the landowners and told Bluegrass they could not use eminent domain. Recently a Kentucky Appellate Court upheld the previous no-eminent domain decision. For more information, see http://marcellusdrilling.com/2015/05/ky-court-decision-goes-against-pipelines-re-eminent-domain/?utm_source=Marcellus+Drilling+News&utm_campaign=57c7e98144-MDN_Daily_Alert&utm_medium=email&utm_term=0_5c988009b6-57c7e98144-387745629.

A similar situation happened in Georgia. The Georgia Department of Transportation decided that Kinder Morgan could not forcibly take landowner’s property to install a pipeline that will transport refined petroleum products. Georgia law requires companies to obtain a permit from the DOT before being able to invoke eminent domain. Kinder Morgan has filed a petition in the Superior Court of Fulton County, Georgia, regarding the DOT’s decision to deny Kinder Morgan’s application for a Certificate of Public Convenience and Necessity. For more information, please see <http://www.wrdw.com/home/headlines/Georgias-Governor-says-the-state-is-against-pipeline-project-302923041.html>.

Pipeline Companies Threaten Using Lease Terms. As commodity prices continue to fall and budgets continue to shrink for the oil and gas drillers and pipeline companies, we are starting to see pipeline companies threaten landowners who are not agreeable to a pipeline easement on the pipeline company’s terms that “we will just install the pipeline under the terms of the oil and gas lease and all you will get is damages. We do not need an easement.” Depending on the terms of your oil and gas lease, this may or may not be true. However, know that the pipeline company really does not want to use the lease as the document for the pipeline and would prefer an easement. So, if a pipeline company threatens to use your lease as the means to install a pipeline, call an experienced oil and gas attorney to help assist you.



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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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PIPELINE UPDATE CONTINUED

Rover Discussions. Emens & Wolper and its co-counsel represent about 90 miles of pipeline on the ET Rover Pipeline Project planned to be installed across the northern half of Ohio. Discussions with Rover continue to be ongoing attempting 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 \$5,000 - \$6,500 per acre plus damages. 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 schedule of meetings.

Marathon to Acquire MarkWest. MarkWest Energy Partners LP, one of the biggest natural gas processors in the Marcellus and Utica shales, will be acquired by the MPLX LP master limited partnership created by Marathon Petroleum Corp. in a \$15.6 billion deal. The new company, which MarkWest and MPLX said will have a market capitalization of \$21 billion, is to become the fourth-largest MLP in the energy business. For more information, see <http://www.bizjournals.com/pittsburgh/blog/energy/2015/07/markwest-energy-partners-to-be-acquired-by.html/>.

LEGAL UPDATE

First Forced Unitization Appeal. As we have discussed in previous newsletters, Ohio law is being interpreted by ODNR to permit Oil and Gas Companies to force an unleased landowner/mineral owner into a drilling unit by utilizing Ohio Revised Code Sec. 1509.28. We have assisted many mineral owners going through this process in trying to secure the best possible outcome. About a year ago, our firm assisted a Carroll County mineral in this process against R.E. Gas Development (or REX). The Department of Natural Resources issued an Order authorizing REX to drill beneath our client's property even though REX did not have an oil and gas lease. We did not believe the Order treated the landowner justly or reasonably. Our client appealed the Order to the Ohio Oil and Gas Commission, which recently held a hearing on the matter in Columbus. This was the first hearing on such an appeal related to forced unitization. We are awaiting the outcome on the appeal.

Ohio Supreme Court Begins to Interpret Ohio Dormant Mineral Acts. The Ohio Supreme Court in *Dodd v. Croskey*, Slip Opinion No. 2015-Ohio-2362, upheld the Seventh District Court of Appeals decision that under the 2006 DMA a severed mineral interest holder has sixty (60) days from the date notice was served by the owner of the surface estate to either file a claim to preserve the mineral interest or file an affidavit that identifies a savings event in the twenty years preceding the date of service of notice. This decision was a victory for severed mineral interest holders in Ohio. With this decision, even if no savings events have occurred (and severed mineral interest holders do not take any action to protect their interests) for more than twenty years, they will still have 60 days after receiving notice from the surface owner to file an affidavit and protect their interest before it can be deemed abandoned and vested with the surface.



LEGAL UPDATE CONTINUED

Express Forfeiture Term in Oil and Gas Lease Upheld. The Ohio Fourth District Court of Appeals in *Sims v. Anderson*, 2015-Ohio-2727 (June 30, 2015) overturned the trial court's decision granting summary judgement to a lessee because the trial court failed to enforce the lease's express termination provision. The Appellants, Erik and Michelle Sims (the "Sims"), owned approximately 30 acres of land in Washington County, Ohio that they leased to the Appellee, Allen Anderson, in 1976. After the one-half year primary term the lease provided that it could be kept in effect by production in paying quantities and provided that "[i]t is mutually agreed by the Lessors and the Lessee that the term 'paying quantities' as used in this lease shall mean production sufficient to net the Lessors a minimum of \$400 royalty per year." In overturning the decision of the trial court, the Fourth District Court of Appeals focused on the express forfeiture clause contained in the Lease. The Court held that when a lease contains an express forfeiture clause, that clause must be enforced to give effect to the parties' intentions as reflected by their express agreement absent some viable affirmative defense. In addition to further emphasizing the importance of the language practitioners choose to include in leases, this decision also provides further support for the position that landowners will not be estopped from bringing claims for lease termination by cashing royalty checks after the termination has occurred.

Mechanic's Liens. With the drop in oil and gas prices over the past year, we have noticed a substantial increase in the number of mechanic's lien affidavits being filed on oil and gas properties (and we have filed a number of such liens on behalf of clients we represent). We expect this to result in an increase in litigation concerning these lien affidavits—which are typically being filed pursuant to Ohio Revised Code (R.C.) Sections 1311.021 and 1311.06. These decisions will hopefully provide clarity as to these statutes in the context of shale development, as there is currently little Ohio appellate case law in this area.

Failure to Pay Signing Bonus. About 50 Jefferson County landowners have joined together and filed a lawsuit citing breach of contract and seeking more than \$9.2 million against American Energy Utica and Great River Energy for failing to pay for overdue lease signing bonuses and attorney fees. The lawsuit contends that American Energy Utica contracted with Great River Energy for help in acting as a land agent on its behalf, and that Great River Energy entered into leases for American Energy Utica. The leases were signed in 2013 and 2014 for a five-year primary term. According to the court documents, Great River Energy was supposed to pay the lease signing bonuses and fees within 120 days of the lease signing, unless a problem was found with a title. Many of the plaintiffs did not receive payment within 120 days and were not notified of problems with the titles to their properties. A second group of landowners contend in the lawsuit that they did not receive payment within 120 days, and Great River tried to identify title defects after the 120-day time limit.

Without reviewing each of the leases, it is difficult to comment on this litigation. However, in our experience, typically oil and gas leases and orders of payment, are written favorably to the oil and gas company, and usually give the company broad discretion whether or not to pay.