"The Landowners Law Firm" SM "The Family Business Law Firm" SM

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IN THIS ISSUE

| EXPLORATION AND |
|---|
| DEVELOPMENT UPDATE Page 2 |
| Cabot Announces Plans to Stop |
| Drilling in Ashland and Surrounding |
| CountiesPage 2 |
| Encino Announces Plan to Take Over |
| for Chesapeake in May 2019Page 2 |
| Salt Fork Merged Into ARUPage 3 |
| Gulfport Utica Production Increases |
| Over Last YearPage 3 |
| Plans are Still Being Discussed for a |
| "Cracker" Plant in Belmont CountyPage 3 |
| Marathon Considering Building Gas |
| Storage Caverns in Harrison County Page 3 |
| The ODNR Expects Oil and Gas |
| Development to Continue to Increase |
| Over the Next Few YearsPage 3 |
| Top 25 Producing Utica Shale Wells |
| <i>in Q4 of 2018</i> Page 4 |
| Oil and Gas Landmen Must Comply |
| |

Obtain Real Estate License or Comply with Exception Contained in New Law...Page 4

Antero's 2018 Production Up From 2017, But Profits Are Down......Page 5

PIPELINE UPDATE..... Page 5

Rover Files Condemnation Lawsuit Against Landowners in Federal Southern District CourtPage 5

Enbridge Natural Gas Pipeline Explodes in Noble County Page 5

WIND AND SOLAR ENERGY UPDATE..... Page 6

PUCO Recommends Against AEP Solar Power Plan in Highland County... Page 6

| LEGAL UPDATE Page 6 | |
|------------------------------------|--|
| Utica Horizontal Well StatusPage 7 | |

Oil & Gas, Solar, Pipeline, and Energy Newsletter April 2019

Dear Clients, Friends, and Colleagues:

We continue to provide information for landowners related to oil and gas, solar, pipelines, probate, and estate planning on our website, www.EmensWolperLaw.com. Recent articles on our website include:

- Landowner Dangers with Solar Options, Solar Leases and Solar Easements
- Easements and Rights of Way Landowners Beware!
- Important Differences Between Sale of Oil and Gas Minerals and an Oil and Gas Lease
- Protecting Landowners in Transactions with Oil and Gas Companies
- Ohio Supreme Court Interprets the Marketable Title Act

Please see information about an upcoming presentation on Page 2.

Sincerely,

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

Landowner Alert Regarding Encino's Royalty Plans After Taking Over for Chesapeake: Please see our comments related to Encino's royalty payment plans on page 2 of this Newsletter.

Landowner Alert Regarding Rover and Temporary Workspaces: Please see our comments related to Rover Pipeline LLC's recent condemnation action against landowners to extend temporary workspaces on page 5 of this Newsletter.

Landowner Alert Regarding Oil and Gas Landmen: A new Ohio law that requires oil and gas landmen to have a real estate license or otherwise comply with the law. If you, as a landowner, are approached to lease your land for oil and gas or to grant a pipeline easement, we recommend you ask whether the person has complied with the new law. See page 4 of this Newsletter for details.

COLUMBUS

1 Easton Oval • Suite 550 Columbus, Ohio 43219 Phone: 614-414-0888 • Fax: 614-414-0898 **ST. CLAIRSVILLE** 250 West Main Street • Suite A St. Clairsville, Ohio 43950 Phone: 740-238-5400 • Fax: 740-695-9551

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UPCOMING MEETINGS AND PRESENTATIONS WHERE EMENS & WOLPER IS SPEAKING

What:

Educational Meeting Regarding "Financial Strategies and Planning Techniques for Oil and Gas Landowners"

Where:

Belmont Hills Country Club 47080 National Rd W St Clairsville, OH 43950

When:

June 4, 2019 Doors open at 5:30 with the program to start at 6:00

Speakers:

 Heidi R. Kemp, Emens & Wolper Law Firm;
 Julie Vavra Daley, Commonwealth Financial Services; and
 Diana L. Kennon, Perry & Associates, CPAs

RSVP To:

Emens & Wolper Law Firm (740) 238-5400 <u>dhoman@emenwolperlaw.com</u>

Light refreshments will be served.

EXPLORATION AND DEVELOPMENT UPDATE

Cabot Oil and Gas Corporation ("Cabot") Announces Plans to Stop Drilling in Ashland and Surrounding Counties: We originally notified landowners in the September 2018 Edition of this Newsletter that Cabot was planning to drill exploratory oil and gas wells in the north central portion of Ohio. It appeared, based on the permit applications filed by Cabot, that Cabot intended to test the Knox geological formation. Cabot has now drilled exploratory wells in Green, Mohican, and Vermillion Townships in Ashland County and in Monroe Township in Richland County. Cabot has announced its plans to stop drilling in Ashland and Richland Counties. Dan Dinges, CEO of Cabot, stated that "After further evaluation of our remaining exploration prospect, we have determined that this area is unlikely to yield results that generate long-term value creation for our shareholders." It appears Cabot drilled its four under a sublease agreement with Columbia Gas which allowed Cabot to seek amendments and ratifications of Columbia Gas' historic gas storage leases. The proposed amendments and ratifications our firm has reviewed not only benefitted Cabot, but also heavily benefited Columbia Gas to the detriment of landowners. For more information see https://marcellusdrilling.com/2019/02/cabot-pulls-the-plug-on-drilling-inohios-knox-laver/ and https://www.richlandsource.com/news/cabot-halts-drilling-inrichland-ashland-counties/article 42c38416-c524-5fa1-b55d-4aab25c5468e.html.

EQT Recently Announced a \$2.2 Billion Loss in 2018: Toby Rice and Derek Rice (brothers formerly with Rice Energy which was sold to EQT) have been pressuring EQT to hold its annual shareholder meeting in April 2019. The Rice brothers have stated that their current plan is to push out and replace the current management team of EQT with former Rice executives, including Toby Rice as CEO. In early 2019, EQT announced its plans to cut \$50 Million in spending by cutting 15% of its workforce. EQT has also announced that it plans to drill additional wells in Ohio and West Virginia in 2019 while cutting the number of wells drilled in Pennsylvania when compared to 2018. For more information see https://marcellusdrilling.com/2019/02/eqt-2018-2-2b-loss-ceo-ridicules-rice-plan-no-magic-app/.

Encino Acquisition Partners ("Encino") Announces Plan to Take Over for Chesapeake Exploration, L.L.C. ("Chesapeake") in May 2019: Recently, Encino issued information to landowners who had leased to Chesapeake as part of Encino's \$2 Billion purchase of Chesapeake last year. The information appears to describe how Encino plans to make royalty payments to landowners. In the documentation, Encino asks landowners to provide a completed W-9 form and a form for direct deposit of royalty payments. While landowners will likely want to timely provide Encino with a completed W-9 form (because, otherwise, Encino claims it will withhold 24% of royalty payments for federal tax purposes), we recommend landowners not sign and return the direct deposit form. We believe that landowners will want to receive a physical check from Encino. Chesapeake, who sold its Utica assets to Encino, has been sued numerous times over royalty payment issues. We believe landowners will want to review any royalty checks and accompanying information to ensure that the royalty payments were made correctly prior to the monies being deposited in their accounts – and if there is a question of accuracy, the landowner will want to take appropriate action prior to depositing the check.

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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, 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 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;
- We assist with litigation on all of these matters;
- We work closely with geologists and engineers to obtain their evaluations of oil, gas, gravel, and sand reserves.

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.

April 2019 Edition Page 3

EXPLORATION AND DEVELOPMENT UPDATE (CONT.)

Salt Fork Resources ("Salt Fork") Merged Into Ascent Resources – Utica, LLC ("ARU"): When we last discussed Salt Fork in this Newsletter, we stated that it appeared that Salt Fork had obtained an equity commitment from Riverstone Holdings LLC to acquire leases and focus on the development of oil and gas interests in Ohio and West Virginia. It appears this is no longer the case. On August 30, 2018, Salt Fork was merged out of existence. Salt Fork and ARU merged into one company with ARU being the surviving company. This merger appears to increase ARU's presence in Jefferson, Harrison, and Belmont Counties in Ohio. For more information related to Salt Fork's and ARU's business filing please contact the Delaware and Oklahoma Secretaries of State.

Gulfport Energy Corporation's ("Gulfport") Announced Utica Production Increases Over Last Year: It is estimated that Gulfport currently has 210,000 Utica-Shale acres leased. Last year, Gulfport drilled 23 wells and began producing from 35 wells in the Utica Shale area. In 2018, Gulfport's Utica Shale wells produced a total of 1.1 Bcf/day of natural gas equivalent which accounted for 80% of the company's total natural gas production for the year. This production was one factor which helped Gulfport to report a total profit of \$430.6 million in 2018. In 2019, Gulfport plans to expand its Utica Shale production by drilling an additional 15 wells and placing 51 wells using into production one horizontal rig. For more information see https://www.timesreporter.com/news/20190228/gulfport-grows-utica-shale-production.

Plans are Still Being Discussed for a "Cracker" Plant in Belmont County: There has been no official announced decision of whether Asian petrochemical company, PTT Global Chemical, will invest \$9 billion to construct a "cracker plant" in Belmont County. However, JobsOhio recently disclosed that it has spent \$14 million to reimburse some of the costs of cleaning up and preparing a site for the potential project. The "cracker" plant is currently expected to be built near Shadyside, Ohio if the project is completed. For more information see The Columbus Dispatch, December 7, 2019 and http://www.theintelligencer.net/news/community/2019/03/u-s-rep-bill-johnson-says-belmont-county-cracker-plant-is-on-track-during-event-at-the-highlands/.

Marathon Pipe Line ("Marathon") Announces Considering Building Gas Storage Caverns in Harrison County: Late last year, Marathon completed core samples in northeastern Harrison County. Recently, Jason Stechschulte, Commercial Development Manager of Marathon stated that Marathon believes the core samples have shown that building gas storage caverns in the area could be viable. If constructed, the caverns would be used to store the heavier components of natural gas (ethane, butane, and propane) which are liquids under pressure. Stechschulte has said that while the Utica Shale region has pipelines and processing plants to transport natural gas liquids, chemical plants need a reliable source and a storage facility could increase reliability. For more information see https://www.cantonrep.com/news/20190321/marathon-could-build-storage-caverns-in-harrison-co.

The Ohio Department of Natural Resources ("ODNR") Expects Oil and Gas Development to Continue to Increase Over the Next Few Years: Chief of Ohio's Division of Oil and Gas Resource Management, Richard Simmers, recently spoke at the Utica Midstream Conference in North Canton. He stated that in 2018 there were 358 new horizontal oil and gas wells drilled in Ohio. Simmers then stated "These numbers, we project, are going to be pretty consistent for the next two years." Ohio natural gas production has increased every quarter since the ODNR began tracking in 2013. Ohio went from producing less than 14% of what it consumed in 2011 to producing over double what it consumed in 2018. For more information see https://marcellusdrilling.com/2019/04/odnr-says-to-expect-350-new-utica-wells-per-year-next-few-years/.

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

Black River Landowners Association—Lorain County

<u>Central Ohio Landowners</u> <u>Association</u>—Richland and Ashland Counties

<u>Coshocton County</u> <u>Landowners Group</u>— Coshocton and Northeastern Muskingum Counties

<u>Jefferson County Landowners</u> <u>Group</u>—Jefferson County

<u>Mohican Basin Landowners</u> <u>Group</u>—Ashland, Wayne, and Holmes Counties

<u>Muskingum Hills</u> <u>Landowners</u>—Southeastern Muskingum County

<u>Perry County Landowners</u>— Perry County

<u>Resources Land Group</u>— 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.

April 2019 Edition Page 4

EXPLORATION AND DEVELOPMENT UPDATE (CONT.)

Top 25 Gas Producing Utica Shale Wells in Q4 of 2018: Natural gas production in the Fourth Quarter of 2018 was up 32% over the Fourth Quarter of 2017. This increased production (which amounted to 663.5 Bcf) was announced to be an all-time high for gas produced in any quarter in Ohio. Ascent Resources – Utica, LLC continues to own a majority of the top 25 gas-producing wells in the state. Currently Ascent owns 15 of the top 25 gas-producing wells. More information on these top 25 gas-producing wells can be found below and at https://marcellusdrilling.com/2019/03/ohio-utica-og-production-rockets-in-4q18-top-25-wells/.

| OWNER NAME | COUNTY | WELL NAME | GAS (MCF) |
|--------------------------------|-----------|-----------------------------|-----------|
| ECLIPSE RESOURCES I LP | MONROE | YELLOW ROSE A 2H | 3,789,740 |
| ECLIPSE RESOURCES I LP | MONROE | WILEY D 8H | 3,517,120 |
| ASCENT RESOURCES UTICA LLC | JEFFERSON | NOLAN NW CRC JF 1H | 3,329,546 |
| ECLIPSE RESOURCES I LP | MONROE | ROLLAND C 5H | 3,161,500 |
| ECLIPSE RESOURCES I LP | MONROE | YELLOW ROSE B 4H | 2,917,721 |
| ECLIPSE RESOURCES I LP | MONROE | YELLOW ROSE C 6H | 2,765,363 |
| ASCENT RESOURCES UTICA LLC | JEFFERSON | ELITE E MTP JF 5H | 2,720,925 |
| ASCENT RESOURCES UTICA LLC | BELMONT | WHEELING VALLEY W WHL BL 2H | 2,653,879 |
| ASCENT RESOURCES UTICA LLC | BELMONT | EARLEY- ROSE CLR BL 8H | 2,647,314 |
| CHESAPEAKE EXPLORATION LLC | HARRISON | PICKENS 21-11-4 10H | 2,613,963 |
| ASCENT RESOURCES UTICA LLC | JEFFERSON | ELITE W MTP JF 1H | 2,604,954 |
| CHESAPEAKE EXPLORATION LLC | HARRISON | PICKENS 21-11-4 8H | 2,566,650 |
| ASCENT RESOURCES UTICA LLC | JEFFERSON | ELITE W MTP JF 3H | 2,514,684 |
| ASCENT RESOURCES UTICA LLC | BELMONT | WHEELING VALLEY W WHL BL 4H | 2,505,932 |
| ASCENT RESOURCES UTICA LLC | BELMONT | LORRAINE CLR BL 4H | 2,494,499 |
| ASCENT RESOURCES UTICA LLC | JEFFERSON | NOLAN NE CRC JF 3H | 2,439,971 |
| ASCENT RESOURCES UTICA LLC | JEFFERSON | GIUSTO W CRC JF 2H | 2,396,730 |
| ASCENT RESOURCES UTICA LLC | JEFFERSON | MARQUARD W MTP JF 1H | 2,353,491 |
| RICE DRILLING D LLC | BELMONT | BOUNTY HUNTER 3 | 2,271,180 |
| ASCENT RESOURCES UTICA LLC | BELMONT | LORRAINE CLR BL 6H | 2,252,528 |
| ASCENT RESOURCES UTICA LLC | JEFFERSON | MARQUARD W MTP JF 3H | 2,196,484 |
| EQUINOR USA ONSHORE PROPERTIES | MONROE | FAUNDA S U4H | 2,194,669 |
| RICE DRILLING D LLC | BELMONT | BOUNTY HUNTER 5 | 2,181,467 |
| ASCENT RESOURCES UTICA LLC | JEFFERSON | NOLAN S CRC JF 6H | 2,141,579 |
| ASCENT RESOURCES UTICA LLC | JEFFERSON | NOLAN S CRC JF 2H | 2,137,334 |
| | | | |

Oil and Gas Landmen Must Comply Obtain Real Estate License or Comply with Exception Contained in New Law: In September 2018, the Supreme Court of Ohio interpreted Ohio law to require oil and gas landmen to obtain a real estate broker's license before negotiating an oil and gas lease with a landowner. *See Dundics v. Eric Petroleum Corp.*, No. 2017-0448, 2018 WL 4727711 (Ohio Sept. 25, 2018). Recently, former Ohio Governor, John Kasich, signed a new Ohio bill which exempted oil and gas landmen from the licensing requirements. However, in order to be exempted from obtaining a real estate broker's license, the oil and gas landmen must comply with three requirements: (1) register annually with the superintendent of real estate and pay an annual fee of not more than \$100; (2) maintain a membership in an established professional organization which develops ethical standards for such landmen; and (3) provide certain disclosures approved by the superintendent of real estate - otherwise the landmen will still be required to obtain a real estate license. This new law became effective on March 19, 2019.

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- Do I Need to Avoid Probate?
- Landowner Dangers with Solar Options, Solar Leases and Solar Easements
- Easements and Rights of Way Landowners Beware!
- Important Differences Between Sale of Oil and Gas Minerals and an Oil and Gas Lease
- 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

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and

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EXPLORATION AND DEVELOPMENT UPDATE (CONT.)

Antero Resource Corporation's ("Antero") 2018 Production Up From 2017, But Profits Are Down: Recently, Antero released its full year and 4th Quarter 2018 production report. Over 2018, Antero reported an overall production average of 2.7 Bcf/day. This average is up over 20% from the 2017 average. Furthermore, in the 4th Quarter of 2018, Antero reported a production average of 3.2 Bcf/day. This average is up over 37% from the 4th Quarter of 2017. Despite the increased production, Antero still reported losses financially. Over 2018, Antero reported losses of \$398 million. Over 2017, Antero reported a profit of \$615 million. In the 4th Quarter of 2018, Antero reported losses of \$122 million while reporting a profit of \$609 million in the Fourth Quarter of 2017.

Antero CFO, Glen Warren, believes that Antero's financial outlook will improve when the Mariner East 2 Pipeline begins full service in December 2019. To meet its expected oil and gas demand, Antero plans to continue to operate five drilling rigs, including four large rigs, and an average of four completion crews. This is expected to allow Antero to drill an additional 120-130 wells and place 115-125 wells in service by 2020. For more information see https://marcellusdrilling.com/2019/02/antero-resources-2018-398m-loss-production-up-20/.

PIPELINE UPDATE

Rover Pipeline LLC ("Rover") Files Condemnation Lawsuit Against Landowners in Federal Southern District Court: Rover began construction of its natural gas pipeline after receiving a Certificate from the Federal Energy Regulatory Commission ("FERC") in February of 2017. Many easements obtained by Rover provided Rover with 24 months to use a temporary workspace to aid with construction and restoration activities. Many of those temporary workspace agreements have begun to expire, even though Rover has failed to complete its restoration of landowners' properties. Recently, Rover has filed condemnation actions against landowners to extend the temporary workspaces for an additional 24 months. We urge landowners who are approached by Rover to have knowledgeable legal counsel review any documents presented to them before signing. Many offers we have reviewed contain landowner-unfriendly provisions including waivers of damages – including waivers of any future damages resulting from future uses of the property. For more information see *Rover Pipeline LLC v. 5.46 Acres of Land, More or Less, in Belmont County, Ohio, et al.*, Case No. 2:17-cv-00105 which has been filed in the Federal District Court for the Southern District of Ohio.

Enbridge, Inc. ("Enbridge") Natural Gas Pipeline Explodes in Noble County: The Texas Eastern Pipeline system, which traverses through Noble County, exploded earlier this year. Enbridge, the owner of the Texas Eastern Pipeline, stated after the explosion that two people were injured and two structures were damaged as a result of the blast. Chastity Schmelzenbach, Emergency Management Director for Noble County, stated that she received reports that flame from the explosion were "shooting up" 80-100 feet. For more information see https://www.reuters.com/article/us-enbridge-gas/enbridge-gas-pipeline-explosion-causes-fireball-in-ohio-idUSKCN1PF23Q.

April 2019 Edition Page 5 Emens & Wolper Law Firm

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WIND AND SOLAR ENERGY UPDATE

Ohio Farm Bureau's Dale Arnold Gives Landowners Advice Regarding Ohio Solar Projects: Dale Arnold, Director of Energy Policy at the Ohio Farm Bureau has recently told Buckeye Farm News Magazine that "[The Ohio Farm Bureau is] seeing 12 different solar projects right now in various staged of development." As coal-fired energy plants are fazed-out, Arnold expects to continue to see additional solar development. Arnold stated that Farm Bureau Members' main concerns with solar leases relate to "what to look for in a lease" and "company transparency." When it comes to these issues, Arnold recommends that landowners consult with an attorney knowledgeable about solar leases and solar companies. For more information, see BUCKEYE FARM NEWS MAGAZINE, April 2019.

Public Utilities Commission of Ohio ("PUCO") Recommends Against American Electric Power ("AEP") Solar Power Plan in Highland County: As part of AEP's commitment in 2015 to develop 900 MW of renewable power in Ohio, AEP planned to construct a 400 MW solar power generating facility in Highland County. However, the PUCO recently recommended against the project saying, "there is no need for it." Timothy Benedict, Senior Utility Specialist with the PUCO, stated that the solar project is not necessary to meet the needs of AEP customers. "Having determined that [current] supply is sufficient to meet the needs of (AEP Ohio) customers and to ensure that resource adequately is maintained, staff therefore finds the company has not demonstrated a need to construct any additional resources at this time." AEP appears to be facing other objections, as well. If constructed, it is estimated that a typical resident who uses 1,000 kw-hr of electricity a month would pay an additional \$0.28 cents initially. Some believe that this means customers will effectively pay for the solar generating facility's construction. For more information see THE COLUMBUS DISPATCH, January 11, 2019.

LEGAL UPDATE

Royalty Legislation Amendment Proposed in Ohio House: Ohio Representative, Jack Cera (D), recently proposed legislation in the Ohio House which would require oil and gas companies to provide royalty owners with additional information when making royalty payments to such owner. *See* Ohio House Bill 55, 133rd General Assembly, which would revise Ohio Revised Code Section 1509.30. Currently, Ohio Revised Code Section 1509.30 only requires *gas producers* to supply royalty owners with: "(A) The volume of natural gas for which he was or is being paid for the most recent period in his contract with the owner, and for any other previous periods within two years of the date of production for which the owner has not already given him such a report; (B) The price per thousand cubic feet paid to the holder for such gas; (C) The volume of natural gas which was shown to have passed through the owner's meter for the field containing the holder's well."

The bill's summary page indicates the amendment would have the effect of:

- 1. Applying reporting requirements to owners of *oil and gas wells* rather than *only* to owners of *gas wells* as in the current law.
- 2. Revising and expanding the current information that oil and gas producers are required to report to the holder of a royalty interest in a well.
- **3.** Requiring oil and gas producers to report the information, above, when royalty payments are made to the holder of a royalty interest in a well instead of requiring the holder to request such information.
- 4. Authorizing the holder of a royalty interest in a well to bring a civil lawsuit against an oil and gas producer who fails to report the information, above.
- 5. Providing penalties to any oil and gas producer who violates the reporting requirements of the amended law.

At least two Ohio House Republicans have co-sponsored Ohio House Bill 55. The full text of the bill and the summary thereof may be found at https://www.legislature.ohio.gov/legislation/legislation-documents?id=GA133-HB-55.

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UTICA HORIZONTAL WELL STATUS MAP



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

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