



32nd Mineral Law Conference

October 18-19, 2007 • Marriott Griffin Gate Resort • Lexington, Kentucky
Energy & Mineral Law Foundation

Program schedule

Thursday, October 18 — General Session

8:20 a.m. **Welcome and Introduction**

- Stephen G. Allen, Program Chairman, *Stites & Harbison, PLLC*, Lexington, KY

8:30 a.m. **From the Highest Court**

The recently active United States Supreme Court's most relevant decisions and their projected future ramifications on the mineral industry will be discussed.

- Helena E. Racin, *Wyatt, Tarrant & Combs, LLP*, Lexington, KY

9:00 a.m. **What Do Lawyers Do Right and What Do Lawyers Do Wrong in Dealing with Their Corporate Clients?**

- Moderator: Dan Stickler, *Jackson Kelly PLLC*, Charleston, WV
- Roger L. Nicholson, General Counsel, *International Coal Group, Inc.*, Scott Depot, WV
- Vaughn R. Groves, General Counsel, *Alpha Natural Resources, LLC*, Abingdon, VA
- Nicholas Glancy, President, *Rhino Energy LLC*, Pikeville, KY
- David Stetson, General Counsel, *Trinity Coal Partners LLC*, Scott Depot, WV
- Jeffrey W. Wagner, General Counsel, *Pardee Resources Co.*, Philadelphia, PA

10:00 a.m. Break

10:15 a.m. **Recent Developments in Reasonable Accommodation and Correlative Rights of Surface and Mineral Owners**

As property development extends into areas where mineral development is occurring or where severed estates exist, the long-standing issue of the surface owner's rights vis-à-vis the mineral owner's right to develop that mineral are in conflict. This presentation discusses current developments in the law of "reasonable accommodation" of both surface owner and mineral owner, such as the new legislation in the Western states which shifts the emphasis to the rights of surface owners.

- Martin J. Cunningham, III, *Greenebaum Doll & McDonald, PLLC*, Lexington, KY
- Sharon O. Flanery, *Steptoe & Johnson PLLC*, Charleston, WV
- Gary Slagel, Director of Government Affairs, *CONSOL Energy/CNX Gas*, Pittsburgh, PA

11:00 a.m. **Conflicts in Mineral Development**

In *American Energy Corp., et al. v. Charles Datkuliak, et al.*, Monroe County (OH), Court of Common Pleas, at issue was whether a mining company can force an owner to plug and cap a well that is not commercially productive, if it interferes with an operator's mining of its coal. Counsel for the coal company discusses this case and how the language of the deed affected the results.

- William M. Mattes, *Dinsmore & Shohl, LLP*, Columbus, OH

11:30 a.m. **Restrictive Covenants and Trade Secrets**

A review of the law governing the permissible limits of restrictive covenants in the employment law setting and the ever-increasing need to protect trade secrets.

- Kevin K. Douglass, *Babst, Calland, Clements & Zomnir, P.C.*, Pittsburgh, PA

Noon **Hosted Luncheon & Guest Speaker**

1:30 p.m. **Fundamentals of Carbon Capture and Sequestration**

There is much talk of carbon capture and sequestration (CS) in the mineral and power generation industries, as the key to the continued use of fossil fuels. This presentation is designed to provide a primer for lawyers on the CS process, its uses, limits and impacts on the environment.

- Michael J. Miller, P.E., *Marshall Miller & Associates*, Kingsport, TN

2:00 p.m. **Creative Strategies for State Level Regulation of Carbon Sequestration**

As Congress labors to define efforts to consider management of global warming and related carbon sequestration issues, states are also moving toward legislation to meet the needs and demands presented. This presentation will focus upon states' efforts and initiatives to define and promote carbon sequestration as a solution to management of carbon emissions.

- Kathy G. Beckett, *Jackson Kelly PLLC*, Charleston, WV

2:45 p.m. **Carbon Constraints and the Future of Coal**

This session examines Kentucky's vulnerability to the coming carbon mandate both as a producing state and one which relies almost entirely on fossil fuels for electric power generation, addressing the linkage between carbon management and coal's future. This presentation examines the potential for negative environmental impacts from the adoption of coal-based technology as a strategy to energy independence.

■ Tom FitzGerald, *Kentucky Resources Council*, Frankfort, KY

3:30 p.m. Break

3:45 p.m. **A Cautionary Tale: The AEP Jacksons Ferry–Wyoming 765 kV Electric Power Transmission Line**

Building the transmission line infrastructure necessary to supply the growing demand for electric power in the U.S. involves an array of obstacles and legal issues. This presentation describes the trials and tribulations of American Electric Power in building a 765 kV electric transmission line through parts of Virginia and West Virginia, which – from start to finish – took 16 years.

■ Kenneth E. McDonough, Assistant General Counsel – Real Estate, *American Electric Power Service Corporation*, Columbus, OH

4:30 p.m. Break

4:40 p.m. **Professional Ethics**

Serving Two Masters: Ethical Considerations for Employee Representatives in Regulatory Investigations. This session discusses the employees' right to representation and its implications under the Model Rules of Professional Conduct.

■ Robert I. Cusick, Director, *U. S. Office of Government Ethics*, Washington, DC

■ John M. Williams, *Rajkovich, Williams, Kilpatrick & True, PLLC*, Lexington, KY

6:00 p.m. **Welcome Reception Hosted by EMLF Members for Conference Registrants and Kentucky Coal Association Members, Speakers and Guests**

Friday Morning, October 19 — Concurrent Tracks

Oil & Gas Track

8:00 a.m. **Oil and Gas Law Update**

An update on the recent developments in the law of oil and gas.

■ R. Cordell Pierce, *Equitable Production Co.*, Charleston, WV

8:45 a.m. **Pipeline Appurtenances and Restrictions on These Servitudes**

What constitutes an appurtenance? This session covers under what authority or grant an appurtenance may be installed; the impact of the requirement that pipelines be placed below plow depth; the right to protect an appurtenance by fencing, etc., and recent court decisions that may narrow these servitudes.

■ Michael S. Dingman, *Reed Smith LLP*, Falls Church, VA

9:30 a.m. Break

9:45 a.m. **Urban Drilling and Local Regulation of Oil and Gas Operations**

As oil and gas drilling continue to expand to previously undeveloped areas, more and more attention is being focused on “urban drilling.” In May 2007, Chesapeake Energy Corporation began drilling at various locations on the Dallas/Fort Worth International Airport. Municipalities and other local governments are recognizing untapped revenue streams in these unconventional opportunities created as a result of recent advances in horizontal drilling and completion technology; other municipalities are attempting to restrictively zone mineral development. This presentation explores the legal issues that such drilling creates, and addresses conflicts that result when local governments use their powers to prevent mineral development.

■ John K. Keller, *Vorys, Sater, Seymour & Pease, LLP*, Columbus, OH

10:30 a.m. **Mineral Interest Conveyances: What Exactly Is the Mineral and How Much Was Conveyed?**

“Minerals” may have different meanings in identical deeds given at different times or under different circumstances, or in different jurisdictions. Mineral interests are often conveyed in fractional amounts. What if the owner of a fractional interest in turn conveys a fractional interest? What if the owner conveys more than is owned? How does the *Duhig* Rule apply in such situations? This session offers guidance in interpreting ambiguous mineral conveyances, interpreting terms like “mineral” or “oil, gas and other minerals” for the purposes of determining ownership, and interpreting ambiguous fractional conveyances.

■ Daniel A. Jensen, *Parr Waddoups Brown Gee & Loveless*, Salt Lake City, UT

11:15 a.m. **Regulation of Oil and Gas Partnerships and Securities**

Investors continue to focus on the energy industry, and oil and gas partnerships and securities have always had their share of fraud. This presentation will explore some of the tools and efforts being used to regulate these securities and will describe some of the issues involved in preventing abuse with these investments.

■ Colleen Keefe, Legal Counsel, *Office of Financial Institutions*, Frankfort, KY

Coal Track

8:00 a.m.

Coal Law Update

An update on the recent developments in coal law and regulation.

- Cameron S. Bell, *Penn, Stuart & Eskridge*, Abingdon, VA

8:30 a.m.

MSHA Update

This session focuses on new MSHA cases and regulations.

- Mark E. Heath, *Spilman, Thomas & Battle, PLLC*, Charleston, WV

9:00 a.m.

MSHA's 104(e) Enforcement

Does the recent imposition of 104(e) Pattern of Violations enforcement by the federal Mine Safety & Health Administration signal a permanent change, with states to follow, or is this an over-reaction in the current regulatory climate?

- Robert H. Beatty, Jr., *Dinsmore & Shohl LLP*, Morgantown, WV

9:30 a.m.

Break

Members of the Kentucky Coal Association joint session

9:45 a.m.

Developments in Black Lung Eligibility, Regulatory Issues and Successor Liability

This presentation will focus on recent developments in federal Black Lung eligibility, including interpretation and implementation of the regulations revised effective 2001. The session will also discuss recent statistics and studies from NIOSH relating to black lung. Finally, the presentation will review the rules assigning liability to operators and successors with suggestions for provisions in mergers and acquisitions to minimize liability.

- Timothy W. Gresham, *Penn, Stuart & Eskridge*, Abingdon, VA

10:15 a.m.

Coal Market Developments and the Impact on the Appalachian and Illinois Basins

Potential Coal-to-Liquids (CTL) legislation and incentives, alternative energy, greenhouse gas legislation, MSHA legislation and regulation, Corps of Engineers' authority and hollow fills, scrubbers coming on-line, a presidential election – what does it all mean for an operator in Appalachia or the Illinois Basin? And while CTL has been touted as the future of coal, it's been condemned by opponents as twice as bad as just burning the coal. This presentation will cut through the hype and explain what all this means to coal production.

- William P. Wolf, Market Study Specialist, *John T. Boyd Co.*, Canonsburg, PA

10:45 a.m.

Break

11:00 a.m.

Investing in Energy Projects

- Lynn LeMaster, Senior Vice President, *Edison Electric Institute*, Washington, DC

11:30 a.m.

MSHA Developments and the Likelihood of Further Regulation

In the current health and safety environment, the ratchet appears to be turning tightly in only one direction – more regulation and tighter enforcement. This presentation will bring recent developments up-to-date, including new penalty regulations, and project chances for passage of new legislation.

- Mark E. Heath, *Spilman, Thomas & Battle, PLLC*, Charleston, WV

Noon

Adjourn

12:30 p.m.

Kentucky Coal Association Luncheon

Separate reservation required

- Guest Speaker: Kenneth J. Nemeth, Executive Director, *Southern States Energy Board*, Norcross, GA

Save the Dates!

■ ***January 24-26, 2008***

Winter Workshops
on Energy Law
Sundial Beach
& Golf Resort
Sanibel Island, Florida
Group Reservations:
888.707.7888

■ ***May 18-20, 2008***

29th Annual Institute
Disney's
BoardWalk Resort
Lake Buena Vista, Florida
Group Reservations:
407.934.3372



Yes, I want to attend the 32nd Mineral Law Conference

Name _____ Title _____

Organization/firm _____ Daytime phone _____

Address _____ Fax # _____

City, state, zip _____

Email address _____

Friday's KCA luncheon (\$30) Total Payment _____

State(s) for CLE Credits _____

You may pay by _____ check or _____ credit card. EMLF accepts MasterCard, VISA or American Express.

Card # _____ Expiration date _____

Signature _____

Registration information

Conference Registration

EMLF full Conference registration fee includes meeting materials, refreshment breaks, hosted luncheon Thursday and hosted reception Thursday evening. Reservation and \$30 payment required for the Kentucky Coal Association luncheon on Friday.

	Through Sept. 26	After Sept. 26
General Registration fee	\$440	\$490
EMLF Member fee	340	390
Government/NPO/Landman	250	300
Young lawyer (3 years or less)	250	300
Law Faculty/Retiree	250	300
Law student	75	125
Materials only	100	100
<i>(Written materials will be sent following the conference; UPS shipping charges will be additional)</i>		
KCA Friday luncheon	30	30

Accommodations

Marriott Griffin Gate Resort

\$166 per night, single or double plus state and local taxes

1800 Newtown Pike, Lexington, KY 40511

Call hotel at 800.228.9290 or 859.231.5100 and ask for EMLF rate; room block closes September 26 or whenever sell-out occurs. Make your reservations early.

While in Lexington, enjoy racing at Keeneland, October 5-26, post time 1:15, visit the Kentucky Horse Park or tour the Bluegrass horse farms.

Three ways to register

- If registering online, go to <http://www.emlf.org/mineral.aspx>
- If registering by fax, dial 859.226.0485
- If registering by mail, send form and payment to EMLF, 340 South Broadway, Suite 101, Lexington, KY 40508

Cancellation policy

Full refunds less a \$75 administrative fee will be given for written registration cancellations received by September 30. No registration refunds will be made thereafter, but substitutions can be made by calling the Foundation at 859.231.0271. Persons not entitled to any refund will receive a copy of the handbook and meeting materials. EMLF members who cancel their registrations after September 30 may apply their registration fees, less \$75, to any future EMLF program.

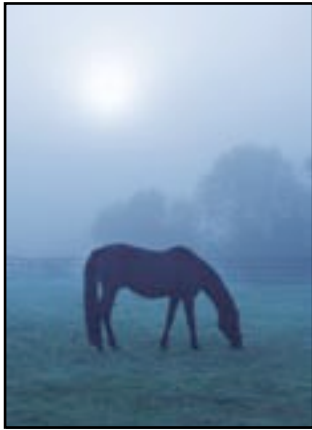
Mandatory CLE and Professional Credit

Conference accreditation is pending from states with mandatory Continuing Legal Education and with the AAPL. Please indicate on your registration form where you are seeking credit. The program contains 645 minutes of instruction, including 60 minutes of professional ethics. Approximately 12.9 CLE hours in 50-minute states and 10.75 hours in 60-minute states will be available. Complete information for reporting your credits will be available at the conference.

Program Planning Committee

- Stephen G. Allen, Program Chair, *Stites & Harbison, PLLC*, Lexington, KY
- John T. Boyd II, *John T. Boyd Co.*, Canonsburg, PA
- Maureen D. Carman, *Wyatt, Tarrant & Combs, LLP*, Lexington, KY
- Nick Carter, *Natural Resource Partners, L.P.*, Huntington, WV
- William K. Caylor, *Kentucky Coal Association*, Lexington, KY
- Wayne F. Collier, *Kinkead & Stilz, PLLC*, Lexington, KY
- Michael O. Conley, *Kentucky River Properties*, Hazard, KY
- Anna M. Dailey, *Dinsmore & Shohl, LLP*, Charleston, WV
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- Kevin K. Douglass, *Babst, Calland, Clements & Zonnir, PC*, Pittsburgh, PA
- Timothy W. Dowdy, *E.ON U.S. LLC*, Louisville, KY
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- Thomas Kleeh, *Steptoe & Johnson, PLLC*, Clarksburg, WV

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- G. Brian Wells, *Wyatt, Tarrant & Combs, LLP*, Lexington, KY
- John M. Williams, *Rajkovich Williams Kilpatrick & True, PLLC*, Lexington, KY
- Joseph J. Zaluski, *Wyatt, Tarrant & Combs, LLP*, Lexington, KY



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