

Who should attend the Winter Workshops?

The goal of the EMLF Winter Workshops is to provide attendees with a comprehensive understanding of selected legal issues, by presenting them within the context of business considerations and public policy concerns affecting the energy industry. To accomplish this, the EMLF Winter Workshops feature exceptional faculty from a variety of disciplines.

Intended Audience: Lawyers, business executives, consultants, venture capital and private equity investors, lenders and government officials

2011 Winter Workshops Program Committee

- Chair, Jerry M. Eyster, Senior Vice President, Investment Strategy, *GE Energy Financial Services, Inc.*, Stamford, CT
- Kirsten L Nathanson, EMLF President and partner at *Crowell & Moring LLP*, Washington, DC
- John T. Boyd II, President and CEO, *The John T. Boyd Co.*, Canonsburg, PA
- Bruce D. Reed, Counsel, *Berwind Natural Resources*, Philadelphia, PA
- Sharon J. Daniels, Executive Director, *Energy & Mineral Law Foundation*, Lexington, KY

Energy & Mineral Law Foundation **Winter Workshops on Energy Law**

February 10-12, 2011

Lago Mar Resort, Fort Lauderdale, Florida

Thursday Afternoon, February 10, 2011

1:25 p.m.

Welcome Remarks

- Kirsten L. Nathanson, Foundation President, *Crowell & Moring LLP*, Washington, DC

1:30-2:45 p.m.

Politics and Policy – Aftermath of the Mid-term Elections

How will the mid-term election change the balance of power in Washington? Will Congress and the Obama Administration work together? Do the Republicans just say “no” or do they work with the Obama Administration? Does Jackson have the political support she needs to carry out her EPA regulatory agenda? What stars are rising? What stars are setting? Is there going to be an energy bill, and if so, what elements are likely to get pieced together? Will Congress act to slow down EPA’s regulatory agenda? Will Congress consider the Carper Bill and shape it into a grand compromise on power industry environmental issues (CATR, HAPs, CO₂) without a cap and trade program?

- Stephanie N. Daigle, *Crowell & Moring LLP*, Washington, DC

- Patrick Robertson, *C2GROUP*, Washington, DC

2:45-3:00 p.m.

Break

3:00-4:00 p.m.

Handling Decision-Making in a World of Uncertainty

What if domestic shale gas production is not sufficient to keep the US in a low gas price world forever? What if electricity demand never returns to previous growth levels? What happens to the value of your energy investment and the value of your firm when you make a decision based on a point forecast that turns out to be wrong . . . again? Rather than depend on forecasts, doesn’t it make more sense to integrate risk management into your market view? What are the important drivers of uncertainty and risk for your project and, most importantly, how do you integrate the extreme uncertainty in today’s energy markets into a decision framework?

- Art Holland, Vice President, *Pace Global Energy Services LLC*, Fairfax, VA

4:00-5:00 p.m. **AEP Environmental and Energy Strategy Under Policy Uncertainty**

This session explores a power generator's response to "certain" uncertainty.

■ Bruce H. Braine, Vice President, Strategic Policy Analysis, *American Electric Power Service Corp.*, Columbus, OH

6:00-7:00 Hosted Poolside Reception

Friday Morning, February 11, 2011

8:00-10:00 a.m. **Natural Gas and the Coal Markets**

- **Coal Is Losing Market Share to Gas: Temporary Market Factor or the Start of a Trend?**

Coal-fired plant output in the US fell all the way back to 1995 levels last year. While most believe this was simply an outcome of the recession, the reality is that gas gained sizeable market share at the expense of coal. Is this simply the product of a temporary drop in gas prices, or could this be a more permanent competitive threat? How will this dynamic affect the coming environmental upgrade decisions for existing coal-fired plants?

■ Michael Zenker, Managing Director, Commodities Research, Barclays Capital, *North American Gas and Power Research*, San Francisco, CA

- **Shale Gas Has Forever Changed the U.S. Natural Gas Markets: How Has This Impacted Power Generation Companies?**

The presentation will provide an in-depth discussion on the developments in the U.S. shale plays, future investments, and the impact on power generation supply planning. With most shale plays in their early stages of development, many aspects of both the gas and power industry must be addressed:

- Natural gas storage has hit record levels for two years in a row. Will the trend continue? Is more storage needed or will some assets sit idle?
- With current gas prices, how much coal fired generation will be displaced?
- What is the current gas/coal generation mix and what will it be in the future?

■ These and other key topics will be addressed by Joseph G. Baran, Senior Market Analyst, of the *John T. Boyd Company*, Canonsburg, PA.

- **Growing the Demand for Natural Gas**

How do we accomplish it and how do large unconventional shale plays like the Marcellus play a role in increasing the demand for natural gas?

■ Ray Walker, Vice President, Marcellus Shale Division, *Range Resources Corporation*, Canonsburg, PA and Chair, Marcellus Shale Coalition, Pittsburgh, PA

10:00-10:15 a.m. Break

10:15 a.m.-12:15 p.m. **Coal Issues – Supply Side**

- **The Battle for Clean Water Act Permits for Coal Mining – *NMA v. Jackson* and Related Litigation**

Since assuming office in 2009, the Obama Administration has been executing policies aimed at reducing, if not eliminating, coal mining permitting under the Clean Water Act across the Appalachian region. The Administration's actions became the target of litigation by industry and state governments in 2010, with four suits currently pending in federal courts in Washington, D.C., West Virginia, and Kentucky. This presentation will provide an overview of the challenged agency actions and the legal issues presented in the litigation, along with a status report on the four suits and an analysis of current permitting conditions.

■ Karen C. Bennett, Vice President – Environmental Affairs, *National Mining Association*, Washington, DC

■ Kirsten L. Nathanson, *Crowell & Moring LLP*, Washington, DC

- **The Impact of Mine Safety Regulations on Coal Supply: The Post-Sago Squeeze**

Ever since the Sago Mine explosion on January 2, 2006, and the Aracoma Mine fire two weeks later, a flood of new regulatory restrictions and requirements have been imposed on the coal industry by Congress and MSHA. The confluence of those two disasters (not to mention the Darby explosion a few months later) and a Democratically controlled Congress resulted in intensified regulation and enforcement. Now, with an Obama administration that seems dedicated to phasing coal out of the nation's energy picture, the Upper Big Branch Mine explosion has triggered an ever-tightening hold by MSHA on the industry. This presentation will explore the impact and implications of these developments on the industry's ability to supply coal to the market.

■ Thomas C. "Tim" Means, Crowell & Moring LLP, Washington, DC

- **SMCRA Rewrite – An Overview of OSM's Proposed Stream Protection Rule**

In December of 2008, OSM published a final rule outlining which mining activities may be conducted in or near a perennial or intermittent stream. This rule was challenged in court, in part due to OSM's failure to consult with the Fish and Wildlife Service pursuant to the Endangered Species Act. The parties reached a settlement agreement requiring OSM to redo the rulemaking process and sign a final rule by June 29, 2012. OSM has begun that process. The new proposed rules are national in scope and encompass much more than mining activities allowed in or near streams, and include: provisions requiring more extensive baseline data collection for permit applications; a definition for the term "material damage to the hydrologic balance outside the permit area"; specific and more extensive water monitoring requirements; establishing corrective action thresholds based on monitoring results; revising rules relating to excess spoil disposal and approximate original contour; requiring reforestation of previously wooded areas; defining what constitutes a perennial, intermittent or ephemeral stream; requiring enhanced CWA and SMCRA permitting coordination; and codifying OSM's March 31, 1997 financial assurance policy statement. This presentation will provide an overview of these proposed rule changes and discuss the potential impacts on the coal industry.

■ Invited: Joseph G. Pizarchik, Director, Office of Surface Mining, Reclamation and Enforcement, *U.S. Department of Interior*, Washington, DC

■ Joseph J. Zaluski, Executive Vice President, *ECSI, LLC*, Lexington, KY

12:15-2:00 p.m.

Lunch Break on Your Own

Friday Afternoon, February 11, 2011

2:00-3:30 p.m.

SEC Issues for Energy Companies

- **Dodd-Frank Act Coal Company SEC Disclosures**

The Dodd-Frank Act represents a response to multiple recent crises affecting publicly-traded companies, including natural resources companies. The Act includes provisions which are a direct reaction to the Massey Upper Big Branch Mine disaster, with new provisions requiring public coal companies to include new disclosures in their SEC filings regarding the number of orders, citations, and violations instituted by MSHA across their businesses. This requirement has imposed significant new burdens upon public coal companies in terms of consolidated record-keeping and monitoring of any communications with, or actions taken by MSHA which may trigger almost immediate required public disclosure. How have publicly-traded coal companies responded to this requirement, and what has the requirement added to information available to investors? What risk management and other systems should coal companies consider putting in place to ensure timely and accurate disclosure of these matters and what are the challenges of doing so?

■ Benjamin G. Hadary, VP and Deputy General Counsel, *Alpha Natural Resources*, Abingdon, VA

- **Practical Problems Raised by Section 1504 of the Dodd-Frank Act: SEC Implementation of Extractive Resource Issuer Disclosure of Payments to Governments**

■ Sandra L. Flow, *Cleary Gottlieb Steen & Hamilton LLP*, New York, NY

- **Environmental and Climate Change Disclosure**

Public companies have been required to include certain environmental disclosures in their public filings with the Securities and Exchange Commission (SEC) for many years. The SEC regulations and guidance require disclosure of environmental capital costs incurred because of environmental regulations, litigation or administrative claims under environmental statutes or third party claims, environmental risks, and future potential risks under the Management Discussion and Analysis. These environmental disclosure requirements have been evolving over the years. More recently, climate change and greenhouse gas regulatory issues have become part of environmental financial disclosure and recently the SEC issued a guidance document on climate risk disclosure. How have coal companies responded to environmental and climate risk disclosure and what are some of the challenges in evaluating and preparing disclosures relating to these issues?

■ Scott D. Deatherage, *Patton Boggs LLP*, Dallas, TX

3:45-4:30 p.m. **Coal Issues – Demand Side**

- **Top Ten Threats to Coal Under the Clean Air Act**

This is a follow-up to Ms. Field's 1999 presentation: "What EPA's Emerging Series of Clean Air Act Regulations Tells the Coal Industry: You're Not Paranoid – We're Really After You!" Recognizing that more threats have emerged in the past decade, Ms. Field provides an overview of just 10 of those threats, including EPA's development of maximum available control technology (MACT) rules for electric generating units; EPA's rapid adoption and even more rapid implementation of new regional transport rules; EPA's promulgation of more stringent ambient standards for ozone, particulate matter, SO₂, and NO₂; EPA's implementation of regional haze rules; EPA's development of new source performance standards for a broad range of pollutants emitted by coal-fired units; EPA's making the new source permitting process increasingly more burdensome and complicated; and the Department of Justice's enforcement actions against a growing number of generating companies for alleged violations of any (or all) of the preceding regulatory programs.

■ Andrea Bear Field, *Hunton & Williams*, Washington, DC

6:00-7:00 p.m. **Hosted Poolside Reception**

Saturday Morning, February 12, 2011

7:30-8:30 a.m. **Ethics Update 2011**

See the beautiful Florida sunrise and learn about current developments in professional responsibility, including confidentiality, lawyer websites, outsourcing, and more.

■ David G. Ries, *Thorp Reed & Armstrong*, Pittsburgh, PA

8:45-10:15 a.m. **Coal Issues – Demand Side**

- **Coal Ash Regulation**

The U.S. Environmental Protection Agency (EPA) published a proposed rule this summer that would regulate the disposal of coal combustion residuals (CCRs) (fly ash, bottom ash, boiler slag, or flue gas desulfurization materials) from electric utilities and independent power producers under the Resource Conservation and Recovery Act (RCRA). Before the proposed rule was published, the Office of Management and Budget received a flurry of meeting requests on the controversial decision by the agency to propose the reversal of its May 2000 regulatory determination on CCRs, characterize the material as a "special waste," and regulate the materials as a hazardous waste under Subtitle C of RCRA. The proposed rule now contains a co-proposal of two regulatory options, including a hazardous waste regulatory program under Subtitle C and a non-hazardous waste regulatory program under Subtitle D of RCRA. This presentation will provide the mining industry's perspective on the proposed rule and how it may potentially impact the Department of Interior's Office of Surface Mining's authority to regulate CCRs under the Surface Mining Control and Reclamation Act and the ability of the mining industry to continue to beneficially use coal ash in mining and reclamation operations.

■ Tawny A. Bridgeford, Associate General Counsel, *National Mining Association*, Washington, DC

- **Coal: A "Retiring" Source of Generation?**

The electric power industry faces decisions on whether to spend capital on environmental retrofits at existing coal units. Regulatory uncertainty, tight compliance deadlines, high reserve margins, and low natural gas prices increase the likelihood that the older, smaller and less efficient coal units will be retired rather than retrofitted. Mr. Eyster will discuss the factors that go into a retirement decision by the various generation owners involved and how their decisions will impact the future market for coal.

■ Jerry M. Eyster, Senior Vice President, Investment Strategy, *GE Energy Financial Services*, Stamford, CT

10:30 a.m. **Hosted Brunch for all speakers, registrants and guests**



Yes, I want to attend the Winter Workshops on Energy Law

First Name _____ M.I. _____ Last Name _____ Title _____

Organization/firm _____ Daytime phone _____

Address _____ Fax # _____

City, state, zip _____

Email address _____

Guest _____ 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 _____ CVV code (security code) _____

Registration information

Conference Registration

EMLF full conference registration fee includes all educational sessions, meeting materials, hosted receptions on Thursday and Friday, one continental breakfast, refreshment breaks, Saturday morning brunch, and CD with all PowerPoint presentations.

Guest registration includes hosted receptions on Thursday and Friday, and Saturday morning brunch.

Through Jan. 20 After Jan. 20

General Registration fee \$1,095 \$1,195

EMLF Member fee 895 995

Guest 100 100

Accommodations

The conference is being held at Lago Mar Resort, 1700 South Ocean Lane, Fort Lauderdale, Florida 33316. Lago Mar is just five miles north of the Fort Lauderdale airport (about a ten minute ride), about 15 minutes from downtown Fort Lauderdale and about 45 minutes from Palm Beach and Miami. Directions for driving from the Fort Lauderdale airport and directions for driving from I-95 can be found on the resort's website at <http://www.lagomar.com/findus/index.php>. We have a room block at a rate of \$225 for a one-bedroom suite. Rooms at that rate are available through January 9 or sellout. Be sure to ask for the Energy & Mineral Law Foundation room block. The direct number for the reservations department is (954) 523-6511 or 800-LAG-OMAR. Individual reservations may be canceled without penalty seven days or more prior to the confirmed arrival date. Cancellations occurring less than seven days prior to arrival date shall be charged a one night's room occupancy and tax.

Three ways to register

- If registering online, go to www.emlf.org
- If registering by fax, call 859.226.0485
- If registering by mail, send form and payment to EMLF, 340 South Broadway, Suite 101 Lexington, KY 40508

Cancellation policy

Refunds less a \$100 administrative fee will be given for written registration cancellations received by January 20. No registration refunds will be made thereafter, but substitutions can be made without charge. Persons who must cancel their registration after January 20 may claim a \$500 credit toward any future EMLF educational program.

Mandatory CLE and Professional Credit

Conference accreditation is pending from states with mandatory Continuing Legal Education. Conference consists of 645 minutes, including 60 ethics minutes (10.75 hours in 60-minute states and 12.9 hours in 50-minute states). Registrants may be required to reimburse EMLF for MCLE filing fees for certain states. Please list the states or organization where you will be seeking professional education credits.