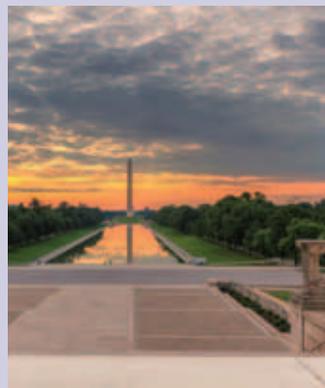




Washington DC

**40th Annual Institute
Energy & Mineral Law
Foundation
June 9-11, 2019**



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Program Schedule

Sunday, June 9, 2019

- 1:30 p.m. – 3:00 p.m. **Executive Committee Meeting**
- 2:00 p.m. **Registration Opens**
- 3:00 p.m. – 4:30 p.m. **Board of Trustees Meeting**
- 5:00 p.m. – 6:45 p.m. **Hosted Welcome Reception**

Monday, June 10, 2019 – General Session

- 7:00 a.m. **Registration Opens**
- 7:30 a.m. – 8:30 a.m. **Continental Breakfast/First Timers' Breakfast**
- 8:30 a.m. – 8:45 a.m. **Welcome/Introductions**
- Natalie N. Jefferis, EMLF President, *EQT Production Company*, Pittsburgh, PA
 - R. Timothy McCrum, Program Chair, *Crowell & Moring LLP*, Washington, DC
- 8:45 a.m. – 9:15 a.m. **Keynote Speaker** – Steven E. Winberg, Assistant Secretary for Fossil Energy, *U.S. Department of Energy*, Washington, DC
- This presentation will provide an overview of the current market, and development trends for coal, oil and natural gas, especially in the Eastern United States. This will cover U.S. production, consumption, export trends, and the outlook for the future.
- 9:15 a.m. – 10:15 a.m. **The Eastern U.S. Pipeline Siting Controversies**
- Michael R. Pincus, *Van Ness Feldman LLP*, Washington, DC
- The siting and construction of natural gas pipelines has become increasingly controversial, especially in the Northeast, Mid-Atlantic and Appalachian regions. Challenges to pipeline projects come in various forms, including direct challenges to Federal Energy Regulatory Commission approvals and attacks on environmental permits. This presentation will cover recent FERC and federal court decisions affecting interstate natural gas pipelines in the East.
- 10:15 a.m. – 10:30 a.m. **Break**
- 10:30 a.m. – 11:00 a.m. **State Supreme Court Update**
- The Honorable Elizabeth A. McClanahan, *Supreme Court of Virginia*, Richmond, VA
- Virginia Supreme Court Justice Elizabeth A. McClanahan will provide an overview of notable state Supreme Court cases in the Appalachian Basin rendered in recent years affecting the energy industry sectors.
- 11:00 a.m.- 11:45 a.m. **Weed in the Workplace: The Impact of Medical and Recreational Marijuana on Employers' Rights**
- Karina R. Conley, *McDonald Hopkins, LLC*, Cleveland, OH
 - Erin E. Magee, *Jackson Kelly PLLC*, Charleston WV
- The increasing number of states legalizing medical and recreational cannabis is leading to uncertainty among employers, particularly those in the energy industry employing significant numbers of people in safety-sensitive positions. Example issues include whether an employer must accommodate the use of the drug for medical purposes and whether an employer can keep marijuana on its drug testing lists. This presentation will outline the status of state cannabis laws in states within the EMLF's footprint and provide guidance for employers to address leave and accommodation issues, as well as DOT, OSHA and MSHA implications.
- 11:45 a.m. – 12:00 p.m. **EMLF Announcements**
- 12:00 p.m. – 1:30 p.m. **Lunch on Your Own**

1:30 p.m. – 2:15 p.m. **Practical Tips for Deposing and Cross-Examining Expert Witnesses**

■ Philip F. Downey, *Vorys, Sater, Seymour & Pease LLP*, Akron, OH

■ John C. Palmer IV, *Robinson & McElwee PLLC*, Charleston, WV

This presentation will address practical tips for presenting and cross-examining expert witnesses in litigation involving the energy industries. The presentation will cover ethical considerations, rules governing discovery and admissibility of expert evidence, selecting the right expert, expert reports and reliance materials, taking and defending expert depositions, trial examinations of experts, direct and cross, best practices for expert witnesses, applicable rules of civil procedure and evidence, with descriptions of common challenges and opportunities which often arise in cases. It will also pay homage to the aphorisms of baseball legend Yogi Berra, humorist Will Rogers and author Mark Twain. The presenters are highly experienced litigators who have handled complex cases over many years.

2:15 p.m. – 3:00 p.m. **The Subpoenas are Coming! The Effect of Congressional Investigations on Private Companies**

■ Barry M. Hartman, *K&L Gates LLP*, Washington, DC

■ Andrew M. Wright, *K&L Gates LLP*, Washington, DC

The Democratic Party recently took control of the U.S. House of Representatives and has promised an agenda of investigations and oversight. Although the majority is slim, Democrats now chair committees, determine which investigations to pursue and hearings to hold, and wield subpoena power. Given the opposition to the Trump administration's revision or reduction of regulations pertaining to the oil and gas industry, it is almost inevitable that oil and gas companies will be swept up into oversight investigations. As a result, companies should proactively implement strategies that will prevent them from becoming collateral damage.

This proposed topic and presentation will survey (i) the possibilities for parallel agency or enforcement based investigations to accompany congressional investigations, (ii) the reputational, regulatory, or criminal risk that could result from ill-prepared testimony before Congress, and (iii) the political nature of congressional investigations, including strategies to avoid being targeted or skillfully navigating the investigation successfully. Historical and current investigation examples and practitioner experience will be utilized.

3:00 – 3:15 p.m. **Break**

3:15 – 4:00 p.m. **If You Build It . . . Top Ten Considerations in Energy Projects**

■ Sheila Nolan Gartland, *Vorys, Sater, Seymour and Pease LLP*, Columbus, OH

■ Michael J. Settineri, *Vorys, Sater, Seymour and Pease LLP*, Columbus, OH

Natural gas fired generation power plants and renewable energy sources continue to be developed. Natural gas is now the dominant fuel source for U.S. power generation and renewable energy sources such as wind and solar have also increased. The continued development of renewable energy projects and natural gas fired generation projects leads to this session's topic — the top ten considerations when developing renewable energy and natural gas-fired generation projects. From siting considerations through construction and operation, this session seeks to present an overview of issues that can arise during a development project and tips for addressing/avoiding such issues.

4:00 – 4:45 p.m. **Labor Union Perspectives on U.S. Regulatory Developments Affecting Energy**

■ Eugene M. Trisko, Attorney at Law, Atlantic Beach, FL

The U.S. House of Representatives has reestablished a new Select Committee on the Climate Crisis. Some members of the U.S. Congress are advocating for a "Green New Deal." U.S. Labor interests are already mobilizing to form a response which emphasizes the critical importance of fossil fuels to the U.S. economy, manufacturing and energy industries. This presentation will address these competing objectives from the perspectives of U.S. labor organizations.

4:45 p.m. – 5:30 p.m. **Mexico's Oil Industry Reform — Five Years Later**

■ Juan Carlos Machorro, *Santamarina y Steta SC*, Mexico City, Mexico

It's been five years since Mexico announced reform was coming to the oil industry. Mexico wanted to attract foreign investment and bolster its aging infrastructure by allowing foreign oil companies to bid and compete on an equal footing with PEMEX, Mexico's state-owned oil company. This presentation looks back at what brought about those changes and discusses the progress and challenges Mexico has faced during this period of de-nationalization.

5:30 p.m. – 6:30 p.m. **Hosted Reception**

7:00 p.m. **Community Dinners – Young Lawyers and Law Students**

Tuesday, June 11, 2019

7:00 a.m.

Registration and Continental Breakfast

Track 1

8:30 a.m. – 9:15 a.m.

Metallurgical Coal v. Steam Coal: Market Outlook, Distinctions, and Legal Considerations

- R. Clay Larkin, *Bingham Greenebaum Doll LLP*, Lexington, KY
- Jesse M. Parrish, CFO, *Blackhawk Mining, LLC*, Lexington, KY

There are distinct differences between the metallurgical and steam coal markets, and these differences extend beyond the higher prices commanded by met coal. This presentation will examine the current strength and future outlook of the metallurgical and steam coal markets, particularly with respect to exports, and legal considerations arising from the differences between these two coal markets.

9:15 a.m. – 10:15 a.m.

MSHA/OSHA Update: Hot Topics in Safety Law

- Mark E. Heath, *Spilman, Thomas & Battle, PLLC*, Charleston, WV
- Melanie J. Kilpatrick, *Williams, Kilpatrick, & True, PLLC*, Lexington, KY

This session will look at four current safety issues: 1) Pattern of Violations and MSHA's ability to end a POV in light of the Affinity Mine litigation; 2) The proper standard to be used in challenges to MSHA plan denials, including burdens of proof, presumptions and standards of review; 3) What is the appropriate standard of review for penalties, including special assessments, the decision to issue a special assessment and how ALJs should calculate penalties if a special assessment is rejected; and 4) OSHA current enforcement trends and areas of special emphasis like trenching applicable to oil and gas and pipeline companies.

10:15 a.m. – 10:30 a.m.

Break

10:30 a.m. – 11:00 a.m.

The Surface Mining Control and Reclamation Act and the Endangered Species Act: Challenges and Potential Implications for Other Agencies and Industry Sectors

- Adam Eckman, Associate General Counsel, *National Mining Association*, Washington, DC

OSM has long-relied on a 1996 Biological Opinion as the basis for discharging its obligations under the Endangered Species Act. In 2016 the Obama Administration replaced the 1996 Biological Opinion with a new opinion accompanying the Stream Protection Rule, which was subsequently voided by a 2017 resolution under the Congressional Review Act. With the 2016 biological opinion now void, the Office of Surface Mining Reclamation and Enforcement and the U.S. Fish and Wildlife Service are in consultation under the ESA to develop a new biological opinion for the SMCRA program. Challenges have been presented regarding how to craft a new biological opinion without the inclusion of the greatly expanded role for FWS that was the crux of the Stream Protection Rule and later rejected by Congress. This presentation would also address potential implications of this issue for other federal agencies and industry sectors.

11:00 a.m. – 11:45 a.m.

SMCRA and the “Not Started” Permits Controversy

- M. Shane Harvey, *Jackson Kelly PLLC*, Charleston, WV
- Christopher M. Hunter, *Jackson Kelly PLLC*, Charleston, WV

SMCRA permits are typically issued for five years with successive rights of renewal. However, in the case of new permits, SMCRA and its approved state programs require that within three years of permit issuance, the permittee either obtain an extension on the permit or commence operations. Citizens groups in Alaska and West Virginia have sought to declare that permits used in violation of these provisions are void and the permittees that are relying on them are mining unlawfully. In Alaska, citizen groups have sued both a coal operator and OSM in separate actions. In West Virginia, groups sued OSM in the DC District Court and recently sued a permittee in the Southern District of West Virginia. There are likely other permits in other states that are susceptible to similar challenges and they should be thinking now of ways to mitigate the risk.

Track 2

8:30 a.m. – 9:15 a.m.

Certification of Royalty Claims Under Oil and Gas Leases as Class Actions

- Kevin C. Abbott, *Reed Smith LLP*, Pittsburgh, PA
- Nicolle R. Snyder Bagnell, *Reed Smith LLP*, Pittsburgh, PA

The class action vehicle was designed to provide a remedy where individual claims were too small to warrant the expense of individual suits, but important enough for society to allow one or more representatives to act for all persons with the same claims. While that vehicle works well for consumer claims, is it appropriate for royalty claims under oil and gas leases? Courts have recently taken a more critical view of such claims. This presentation will analyze the application of the elements of class certification to royalty claims as analyzed by the courts.

9:15 a.m. – 10:15 a.m. **The Modern Title Opinion**

- Patrick R. McQuiggan, Moderator, *Gemondo & McQuiggan, LLP*, Pittsburgh, PA
- Orla Powderly Lavender, Director of Title and Land Records, *Arsenal Resources, LLC*, Wexford, PA
- R. Ray Lovejoy, *Greylock Energy LLC*, Charleston, WV
- Tracy Miskofsky, Director – Field Land, *Montage Resources Corporation*, Marietta, OH
- Jeff Wilson, Land Area Manager, *Chevron N.A. Exploration and Production Company*, Moon Township, PA

The discussion will initially focus on technology and how that has affected the preparation of title opinions. We will then transition into the preferred opinion format of each client and seek to identify trends and differences between historical work product, and that which the clients are receiving today. This group should also offer comparative insight at how in-house personnel from E&Ps, both large and small, handle title opinions once they are received. We will go through the modern title opinion, the good and bad designs they have seen. The panel will then address the do's and don'ts of curative writing. Lastly, we will take on some modern legal changes and how to present the issues within the opinion.

10:15 a.m. – 10:30 a.m. **Break**

10:30 a.m. – 11:00 a.m. **Incorporating Solar Energy into the Appalachian Grid**

- James M. Van Nostrand, Director, Center for Energy and Sustainable Development, *West Virginia University College of Law*, Morgantown, WV

As interest in solar energy continues to rise in the United States, states and utilities with significant solar generation are faced with difficult policy decisions on how to incorporate distributed solar energy into their existing electricity grids. Some utilities are experiencing declining sales, as customers are purchasing less energy due to distributed solar and the impact of energy efficiency programs. This problem is exacerbated by state “net metering” programs, which generally require utilities to pay the full retail rate for electricity generated by customers’ rooftop solar systems. Many states — particularly the high solar saturation states, such as in the southwestern U.S. — have revisited their net metering policies to reduce the rates that utilities must pay for distributed solar. As solar installations in Appalachia have increased in recent years, and with significant solar potential yet to be realized, states and utilities in our region are now facing similar challenges. This presentation will survey the Appalachian states to examine policies for incorporating solar into the grid, focusing primarily on the rate at which utilities are required to compensate customers for excess electricity generated by rooftop solar, as well as the availability of third-party PPAs and other policies that affect the incorporation of solar energy into the grid.

11:00 a.m. – 11:45 a.m. **Considerations for What Your Lease Doesn't Say**

- Travis L. Brannon, *K&L Gates LLP*, Pittsburgh, PA
- Thomas C. Ryan, *K&L Gates LLP*, Pittsburgh, PA
- Emily C. Weiss, *K&L Gates LLP*, Pittsburgh, PA

The U.S. District Court for the Northern District of West Virginia recently rejected a cause of action for breach of the implied covenant to further explore and, as a result, dismissed a claim that the lessee failed to reasonably develop a horizontal well on property with an already producing vertical well. The court clarified that such allegations were an attempt to bring a claim for breach of the implied covenant to further explore, which is not recognized in West Virginia. The court's clarification is important for oil and gas operators in Appalachia and prompts inquiry into the status of other implied duties and covenants that may be at play in the region.

This presentation will (i) provide an update on cases in West Virginia, Pennsylvania, and Ohio that have rejected the duty to further explore; (ii) analyze other implied covenants that have recently been litigated in those states; and (iii) discuss which implied covenants may be disclaimed by lease language and provide tips for such disclaimers.

11:45 a.m. – 1:15 p.m. **Lunch on Your Own**

General Session

1:15 p.m. – 2:15 p.m. **Beyond the Beltway: Ethics for the Rest of Us**

- Kevin L. Colosimo, *Frost Brown Todd LLC*, Pittsburgh, PA

Though it may seem every legal ethics dilemma today is in Washington, DC, rest assured there are plenty of American lawyers beyond the beltway and beneath the headlines facing ethical scrutiny. This program explores some of the more recent mishaps of American lawyers pushing the boundaries of the profession and the lessons to be learned therefrom. From cryptocurrency to so called “limited scope engagements” to multi-jurisdictional practice and social media, lawyers face the everyday challenges of serving the interests of justice while maintaining the integrity of the profession in the face of changing social, cultural and geopolitical landscapes.

2:15 p.m. – 2:45 p.m. **Greenhouse Gas Reporting Requirements**

■ LeAnn Johnson Koch, *Perkins Coie LLP*, Washington, DC

This speaker will discuss current reporting requirements, how they may be enforced by regulators, state attorneys general and third parties, how they may change through SEC guidance or legislation, best practices for GHG reporting, and steps companies can take to minimize their risk of exposure.

2:45 p.m. – 3:00 p.m. **Break**

3:00 p.m. – 3:45 p.m. **Opposition to Shale Gas and Other Extractive Industries Continues to Grow at the Local Level**

■ Blaine A. Lucas, *Babst Calland*, Pittsburgh, PA

■ Kathy K. Condo, *Babst Calland*, Pittsburgh, PA

Townhall settings have become ground zero for efforts to restrict unconventional shale development. NGOs have used Pennsylvania's Environmental Rights Amendment to not only oppose operator zoning applications, but also to seek the invalidation of ordinances permitting industry activity. Many of these proceedings have evolved into battles of the experts, without the procedural safeguards existing in civil litigation. In West Virginia, local governments have attempted to restrict or ban extractive industries by adopting nuisance ordinances. Ohio activists continue to use referenda to implement restrictive ordinances. Federal and state preemption of local regulation has been the subject of litigation in many jurisdictions. This program will provide an overview of the case law addressing these issues.

3:45 p.m. – 4:30 p.m. **Building Bipartisan Support for U.S. Energy Projects and Initiatives**

■ James G. Flood, Moderator, *Crowell & Moring LLP*, Washington, DC

■ Cecile M. Conroy, Director, Government Affairs Dept., *International Brotherhood of Boilermakers*, Washington, DC

■ W. Scott Douglas, *Crowell & Moring LLP*, Washington, DC

■ Gary E. Slagel, Government Relations Coordinator – PA, Board Chairman, *PIOGA Steptoe & Johnson PLLC*, Canonsburg, PA

■ Derrick Morgan, Senior Vice President, Federal & Regulatory Affairs, *American Fuel and Petrochemical Manufacturers Association (AFPM)*, Washington, DC

This panel presentation would offer views about building bipartisan public and political support for energy projects and associated regulatory and legislative efforts. At the project permitting level, this presentation will cover ensuring that the project purposes and needs are well understood, along with social and economic benefits, through the environmental impact statement process. Judicial precedent in the Appalachian region and elsewhere will be considered to address how diverse community and social-economic support for energy projects can help projects withstand preliminary injunction proceedings in the context of judicial review. The presentation will also cover the development of effective media and public affairs strategies.



2019 EMLF POWER PATRON



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Yes, I want to attend the 40th Annual Institute.

Registration fee includes all sessions and meeting materials in electronic format, receptions Sunday and Monday evenings, continental breakfasts and refreshment breaks. Guest registration fee covers hosted receptions on Sunday and Monday.

<i>Registration fees</i>	<i>Early Bird by May 17</i>	<i>After May 17</i>
Non-member Registration Fee	\$800	\$900
EMLF Member	\$600	\$700
Young Lawyer (3 years or less), EMLF Landman, Full-Time Law Faculty and Government Attorneys	\$375	\$475
Speaker Registration Fee	\$200	\$200
Law Student Registration Fee	\$120	\$120
Guest Registration Fee	\$100	\$100

First Name _____ M.I. ____ Last Name _____ Badge name _____

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State(s) for CLE Credits? _____ Do you need AAPL Credit? _____

Fees:

Conference registration \$ _____

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Total \$ _____

Conference accreditation is to be determined from states with mandatory Continuing Legal Education and with the AAPL. Please indicate on your registration form where you are seeking credit. Complete information for reporting your credits will be available at the conference. Additional fees may be required for certain states/organizations. There is a possible 720 minutes. In 60 minute states, there are 12 total hours including 1 hour of ethics; in 50 minutes states, there are 14.4 total hours, which includes 1 hour of ethics.

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

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Signature _____ CVV code (security code) _____

Cancellation policy

Cancellations received by May 29 will receive a full refund less a \$75 administrative fee. No refunds for cancellations after May 29. Substitutions can be made at any time at no charge. EMLF members who cancel after May 29 receive a \$200 credit toward a future program, plus meeting materials.

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

Energy & Mineral Law Foundation
340 South Broadway, Suite 101
Lexington, KY 40508



40th Annual Institute

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Conference Accommodations

The host hotel for the Annual Institute is the Westin Washington D.C. City Center, 1400 M Street N.W., Washington, DC 20005.

Room rate for single/double is \$299 a night, not including taxes and fees. Cut-off date for discounted room rate is May 17, 2019.

For reservations call 888.627.9035. You should identify yourself as a registrant for Energy & Mineral Law Foundation or by the title of the meeting, 40th Annual Institute. You can also reserve rooms from the hotel link on the EMLF website.