



26th Annual Institute
May 15-17, 2005
Amelia Island, Florida

**Energy & Mineral
Law Foundation**



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Topics for the 26th Annual Institute were selected from dozens of proposals generated by EMLF Members who attended planning meetings in Lexington, Kentucky, Charleston, West Virginia, and Washington, DC. Many thanks to the Members for submitting these excellent topics, and to the speakers who have generously agreed to present them at the 26th Annual Institute.

Web site
<http://www.emlf.org>

E-mail
emlf@aol.com

Program schedule

Sunday, May 15

Morning **Golf Outing coordinated by Nick Carter**
4:00 - 6:00 **EMLF Registration Desk Open**
7:00 **Welcome Reception and Western Steak Fry**
Hosted by Annual Institute Patrons

Monday, May 16

8:00 - 8:05 **Welcome Remarks**
Timothy W. Gresham, Foundation President

8:05 - 8:45 **Fired Up: Fuel Supply, Law, Choices and Changes Impacting the Natural Resource Lawyer**

North American electric generation fuel supply is an essential component of the American economy. Generation from traditional sources including coal, natural gas, hydroelectric, and nuclear make up the majority of the mix, yet pressures from Federal and State regulators may change this mix in the foreseeable future. Decisions driving the electric markets include regional transmission organizations (RTOs) and the interaction between generation and transmission, and lawyers need to understand the trading elements and the influence of the financial players (along with the traditional energy players) – plus the environmental considerations that come into play. This session brings these evolving issues to the forefront.

■ Sheila Slocum Hollis, *Duane Morris LLP*, Washington, DC

8:45 - 9:25 **What Every Natural Resources Lawyer Needs to Know About Energy Policy Considerations**

Four years ago the Bush Administration released the national energy plan prepared by Vice-President Cheney's task force, and efforts continue to get a package through Congress that will implement aspects of the plan which can't be achieved administratively. The energy plan ultimately passed by Congress will likely affect both what domestic resources are produced, and the technology needed to utilize them. Major international developments with the potential to impact domestic energy policy and resource development choices will also be discussed.

■ Barry K. Worthington, *US Energy Association*, Washington, DC

9:25 - 10:10 **Mandates for Renewable Energy – Public Policy, Renewable Portfolio Standards (RPS), and Why You Will Never Please Everyone**

As the international community urges reductions in greenhouse gas emissions, a growing number of States are acting to curb fossil fuel use by mandating that electric power companies include renewables in their fuel mix. Professor Smith explains this growing trend, and using wind energy as the example, highlights some of the attendant problems in developing wind farms – which are not as bucolic as the uninformed might imagine. Siting issues familiar to the extractive industry impede development, as bats' rights are threatened and renewable energy advocates find that the "NIMBY" principle is alive and well – from the pristine prairies of Kansas to the Nantucket Shoals.

■ Professor Ernest E. Smith, *University of Texas School of Law*, Austin, TX

10:10 **Break**

10:30 - 11:15 **The Impact of Homeland Security Initiatives on the Privacy and Security of the Energy Industry's Sensitive Business, Customer, and Employee Information**

A critical component of the nation's homeland security efforts is information, including information about the nation's infrastructures and information about individuals. While crucial to homeland security efforts, the focus on sensitive business and personal information has raised issues involving privacy and security, which will be addressed in this session.

■ Susan Haller Pauley, *Steptoe & Johnson*, Clarksburg, WV

11:15 - noon **Intellectual Property and the Energy Lawyer – Patents, Trademarks, Copyrights, Trade Secrets and Confidential Business Information**

This session provides a general overview of patents, trademarks, copyrights, trade secrets and confidential business information, focusing on the scope of protection under each of the different types of intellectual property, the means for obtaining such protection, and issues relating to infringement of intellectual property.

■ Monika J. Hussell, *Jackson Kelly PLLC*, Charleston, WV

Noon-12:45 **Executory Contracts and Leases in Coal and Mineral Bankruptcy Cases**

This session provides an overview for operators, landowners, purchasers and contract parties whose interests are impacted by bankruptcy laws.

■ Ronald E. Gold, *Frost Brown Todd, LLC*, Cincinnati, OH

1:00 p.m. **Board of Trustees Luncheon and Annual Meeting**

6:30 - 7:30 **Reception Hosted by Annual Institute Patrons**

Tuesday Morning, May 17 – Concurrent Sessions A & B

Concurrent Session A

8:00 - 8:35 **SEC Issues in Coal, Oil and Gas Offerings**

Capital is traditionally raised in part through private investment and the sale of securities. Given the recent scrutiny of corporate governance and securities transactions, it's time to reexamine the impact of state and federal securities laws. With emphasis on capital formation and the fair treatment of investors, this session examines federal and state laws and regulations relevant to development of exploration programs, identifies the persons subject to regulation, and the exemptions that may be available. Practical implications of securities regulation and best practices for avoiding liability under the securities laws while operating a profitable venture will be emphasized.

■ Marc R. Weintraub, *Steptoe & Johnson, PLLC*, Charleston, WV

8:35 - 9:10 **Defining Gas Gathering — What a Long, Strange Trip It's Been . . .**

Historically, the gathering of natural gas in rural areas has been exempt from regulation under the Natural Gas Pipeline Safety Act of 1968. Producers and regulators, however, have often disagreed over whether a rural line is gathering, and therefore unregulated, or transmission, and therefore regulated. The difference can mean thousands of dollars in often unneeded system upgrades and compliance costs alone, not to mention the costs associated with an enforcement action. This presentation reviews how gathering has been characterized historically and how recent rulemaking activities at the U.S. Department of Transportation are likely to change gathering line definitions in the future.

■ Gregory D. Russell, *Vorys, Sater, Seymour and Pease LLP*, Columbus, OH

9:10 - 9:45 **Oil and Gas Law Update**

This session provides the annual update on decisions, pending litigation and regulations impacting the oil and gas industry.

■ Benjamin Sullivan, *Lewis Glasser Casey & Rollins*, Charleston, WV

9:45 **Break**

10:00 - 10:35 **Gas Pipeline Relocation Issues**

Multiple issues arise when a request is made to relocate a pipeline: when and if the pipeline must be relocated; the mechanics of relocation; and who will pay for the relocation. This session explores whether an owner can be forced to relocate its pipeline and what must be done in order to relocate the pipeline (i.e., acquiring new right-of-way and/or abandoning the old right-of-way). Factors which courts apply to determine who is responsible for relocation costs under circumstances such as road construction, mining, and development projects near natural gas pipelines will also be discussed.

■ Nicolle R. Bagnell, *Reed Smith, LLP*, Pittsburgh, PA

10:35 - 11:0 **Trespass on Easements**

This session includes legal and practical advice on keeping trespassers off utility or other easements, and a discussion on potential liabilities of the easement holder, ranging from complaining landowners to holders of shared easements to injured trespassers.

■ Beth R. Minear, *Minear & Associates, L.C.*, Charleston, WV

11:10 - 11:45 **Can I Use that Hole in the Ground? Ownership and Uses for Underground Voids and Subterranean Space**

The development of new uses for subterranean voids (such as abandoned mine works or depleted oil or gas formations) has focused new attention on the perennial question about their ownership, control and use. This session focuses on the legal questions of ownership and use of underground voids in the context of gas storage, combustion by-products disposal, and carbon sequestration.

■ Karen J. Greenwell, *Wyatt, Tarrant & Combs, LLP*, Lexington, KY

Concurrent Session B

8:00 - 8:30 **MSHA's FOIA Policy and Challenging a Denial of a FOIA Request and Federal Mine Safety and Health Review Commission Case Law Update**

An overview of the federal Mine Safety & Health Administration's new FOIA (Freedom of Information Act) policy and information on challenge procedures to a FOIA denial by MSHA will be presented. Recent MSHA cases decided by the Administrative Law Judges, the Federal Mine Safety and Health Review Commission, and the Circuit Courts will be discussed.

■ Julia K. Shreve, *Jackson Kelly PLLC*, Charleston, WV

8:30 - 9:10 **Legal Liability for Inadequate Training Under the Federal Mine Safety and Health Act of 1977**

Recent decisions of the Federal Mine Safety and Health Review Commission have highlighted the confusing and ambiguous provisions of MSHA's regulations implementing the training requirements of the Mine Act, which are enforced by civil and criminal penalties for mine operators, independent contractors, and individuals who conduct training. This session reviews the training requirements, focusing on the case law applying them, including the cases which have imposed unwarrantable failure sanctions and criminal penalties, and discusses strategies for defending against such charges.

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

9:10 - 9:45 **Post-Accident Drug and Alcohol Testing**

Sam and Niall will provide an overview of drug and alcohol testing of employees with particular emphasis on post-accident testing. When to test and when not to test, how to test and other issues in developing a post-accident testing program will be covered.

■ Samuel M. Brock and Niall A. Paul, *Spilman, Thomas & Battle, PLLC*, Charleston, WV

9:45 - 10:00 **Break**

10:00 - 10:30 **Coal Law Update**

This session provides the annual update on decisions, pending litigation and regulations impacting the coal industry.

■ Robert M. Stonestreet, *Dinsmore & Shohl, LLP*, Charleston, WV

10:30 - 11:15 **Force Majeure Under Coal Supply Contracts**

In times of rapidly changing coal market prices, buyers and sellers often look more closely at the contract's provisions that permit excuse for non-performance. This session covers what you should know before you invoke force majeure under coal supply contracts.

■ Stephen G. Allen, *Stites & Harbison, PLLC*, Lexington, KY

11:15 - 11:45 **Industry's Role in Challenging the TMDL (Total Maximum Daily Load) Process**

This session provides an overview on the status of TMDL programs in the Appalachian region, how they are impacting the mineral extraction industry, and discusses how and when you should challenge agency determinations.

■ M. Ann Bradley, *Spilman, Thomas & Battle, PLLC*, Charleston, WV

Noon to 1:30 **Luncheon — Presentations and Awards**

Afternoon General Session

1:40 - 2:30 **Water Law in the Eastern United States: No Longer a Hypothetical Issue**

With recurring and intensifying droughts, the eastern states now have litigation, legislation, and regulations addressing water usage to a degree that would have been unthinkable only 20 years ago. Disputes have involved competing private water users, competing municipalities, and competing states. This session examines these developments and considers what the future might hold for lawyers and their clients regarding access to and use of water.

■ Professor Joseph W. Dellapenna, *Villanova University School of Law*, Villanova, PA

2:30 - 3:00 **Status of Nationwide Permit 21 Litigation and State Permitting Initiatives: What May the Future Hold?**

This session addresses the status of litigation under the Clean Water Act that saw the invalidation of the use of Nationwide Permit 21 for surface mining in West Virginia, and recently filed litigation in Kentucky seeking the same result. Recent efforts in several states to find alternatives to Nationwide Permit 21 include state assumption of permitting under Section 404 of the CWA, and the potential use of regional general permits for surface mining activities.

■ Timothy J. Hagerty, *Frost Brown Todd LLC*, Louisville, KY

3:00 - 3:30 **West Virginia's Flood Litigation: Are Other States at Risk?**

Devastating floods following torrential rains in 2001 and 2002 spawned widespread litigation now consolidated before a Mass Litigation Panel. The plaintiffs say "look to the hills" for the cause of their damage, assailing all land use activity, including mining, oil and gas, and timber development. The West Virginia Supreme Court of Appeals answered nine certified questions of law addressing both traditional and novel theories of liability, of concern for all landowners, lessors, lessees and operators. The session analyzes the legal theories of liability, the portability of those theories to other jurisdictions, and the potential impact on existing and future mineral and land development.

■ Timothy M. Miller, *Robinson & McElwee*, Charleston, WV

3:30 **Break**

3:45 - 4:45 **Professional Ethics for Energy and Mineral Lawyers**

Using a hypothetical scenario incorporating some of the issues faced by energy and mineral lawyers, this distinguished panel of ethics lecturers will examine and discuss the scenario, including the issues arising under the ABA Model Rules.

■ John R. Leathers, Moderator and Provocateur, *Buchanan Ingersoll PC*, Pittsburgh, PA

■ Professor Rob E. Atkinson, Jr., *Florida State University College of Law*, Tallahassee, FL

■ J. Thomas Lane, *Bowles Rice McDavid Graff & Love*, Charleston, WV

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

Adjourn

Noted for its environmentally conscious development, Amelia Island Plantation is Florida's greenest resort. This 1,350-acre privately-owned resort and residential community features miles of wide, shell-strewn beaches; world-renowned golf and tennis facilities; 13,200 square foot luxury spa featuring the signature treatment of Ionotherapy and Watsu®; fine dining; family recreation; entertainment; shopping; and a complimentary on-property transportation system.

Located on Amelia Island, the southern most of the Atlantic barrier islands in extreme northeast Florida, across the St. Mary's River from Georgia, Amelia Island Plantation overlooks the azure blue waters of the Atlantic Ocean on the east and abundant green marshland on the west. The resort is just a short 45-minute drive from downtown Jacksonville, and 29 miles from Jacksonville International Airport.



The resort suggests cool, comfortable clothing for your stay. Average temperatures for May range from a low in the mid-60s to a high in the low 80s. Appropriate attire includes swimwear, shorts, cover ups, sandals and flip flops during the day, especially if you are lounging around the pool and beach. Be sure to bring plenty of sunscreen, sun glasses, hats and visors to protect you from the sun. For golfers be sure to pack collared shirts, shorts and soft-soled shoes or golf shoes for the course. The resort asks for soft spikes only on your golf shoes and will be happy to install these on your shoes when you get here. In the evenings or for dining out, resort casual clothing is welcome in all of the dining facilities. Sun dresses, comfortable shirts, slacks are great for the women and shorts, collared shirts, slacks are perfect for the men.

Dining at Amelia Island ranges from a more dressy resort casual atmosphere to family casual, plus there is 24-hour room service. Full breakfast, lunch and dinner service and a late night menu is available. Roberto's Pizza specializes in homemade pizza and is offered daily through room service from 11:30 a.m. to midnight.

The Dining Room at the Amelia Inn & Beach Club features oceanside dining with a flair. Featured entrees include aged prime beef and succulent fresh seafood. The Dining Room also features a superb Sunday brunch and daily breakfast buffets. Chef's selections of the day are followed by award-winning desserts and liqueurs. The atmosphere is tropical chic and the dress is a bit more than casual.

The Verandah is a fresh seafood and family style restaurant, featuring delicious entrees including the freshest local seafood and pasta specialties. Children enjoy choosing from their own menu offering kid-pleasing selections such as Fernandina Shrimp, a signature item of the restaurant. The dress code is resort casual and the Verandah is open nightly. Then there's the Beach Club Grill which features casual family dining inside or outside by the pool. A diverse menu offers wings, salads, sandwiches and more in a sports-themed atmosphere.

Marché Burette is an old-fashioned gourmet food market offering fresh fruits and vegetables, freshly cut meats, wine and specialty snacks. In addition, indoor/outdoor seating is available to enjoy deli sandwiches and salads, soup specials and fabulous brick-oven pizzas.

Falcon's Nest, an aviation-themed nightspot, is decorated with memorabilia from "Old War Birds" to aviation icons of modern day flight. The place to "see and be seen" on Amelia Island, Falcon's offers live and recorded music, food (try the fried green beans!) and a full service bar.

The Golf Shop Restaurant is adjacent to the Amelia Links Pro Shop. Breakfast and lunch are served daily. Beer, wine and spirits are available. The restaurant is a perfect place to start, or finish a round of golf. Enjoy your meal overlooking the beautiful greens of Amelia.

There is a spa which takes you miles from stress but just footsteps from the sea. The new Spa at Amelia Island Plantation is a 13,200 square foot facility built in the old Florida architectural style to blend with the natural surroundings. The world-class spa features 25 treatment rooms, a meditation garden, sweeping views of lagoons and moss-draped oaks. The signature treatment is Ionotherapy and Watsu®, a unique signature concept for rejuvenation and wellness, designed exclusively for The Spa at Amelia Island Plantation. There are other unique treatments available.

In addition to the spa, there are 11 exquisite boutiques, gourmet food and weekly events for everyone. Shops range from clothing to jewelry to gifts for your home.

Recreational activities are numerous, including 54 holes of golf, 23 tennis courts, 23 swimming pools and of course, the beach—over three miles of it. Plus there are biking and nature trails (more than seven miles), health and fitness center, fishing and sailing, horseback riding, natural tours and kayaking.



Annual Institute Accommodations

The Annual Institute is being held at Amelia Island Plantation, 6800 First Coast Highway, Amelia Island, FL 32034.

Accommodations per night are \$198 for an oceanview room in the Amelia Inn; \$248 for an oceanview 1-bedroom suite; \$381 for a 2-bedroom suite or \$291 for a resort view 2-bedroom villa. Resort service fees are additional, in the amount of \$8 per day per adult over 16 years of age, covering housekeeping and transportation gratuities, unlimited on-property shuttle transportation, self parking, unlimited use of health and fitness center, 1 hour of tennis court usage, 1 bucket of range balls, in-room coffee service and 24/7 public safety staff.



Reservations should be made by calling the Group Reservations Department at 888.261.6165 and requesting the EMLF room rate, group number 8AG05G. The room block will be held through April 19, 2005. Reservations after that date will be accepted at the prevailing hotel rate. Group rates will be honored three days before and three days after the program, based on availability. Check-in time is 4:00 p.m. and check-out time is 11:00 a.m.



Join the Foundation at a reduced rate and register at the Member Rate! 2005 individual membership dues \$425
 Combined individual membership dues and Annual Institute registration \$800 by April 8, \$900 after April 8



**Yes, I want to attend the 26th Annual Institute May 15-17, 2005
 at Amelia Island Plantation, Amelia Island, Florida**

Registration fee includes all educational sessions, meeting materials and handbook, Sunday evening welcome reception and picnic, and Monday evening reception. Guest registration includes Sunday evening reception and picnic and Monday evening reception. Separate fee for Tuesday luncheon; guests are welcome to attend the luncheon program at a separate \$30 fee.

<i>Registration fees</i>	<i>Early Bird (by April 8)</i>	<i>Regular</i>
EMLF member.....	\$520	\$590
New membership/Annual Institute registration	\$800	\$900
General Registration	\$770	\$840
Government.....	\$350	\$420
Law Faculty, Young Lawyer, Retiree, Landman.....	\$350	\$420
Guest registration	\$125	\$125

Multiple registrants from the same firm or company can deduct \$50 for the second registrant and each registrant thereafter.

Additional events

Golf outing (per person).....\$155	Number of golfers	_____	Sunday, May 15
Board of Trustees luncheon meeting	I will attend	_____	Monday, May 16
Luncheon program.....\$30	Number of tickets.....	_____	Tuesday, May 17

Name _____ Title _____

Organization/firm _____ Daytime phone _____

Address _____ Fax # _____

City, state, zip _____ Email _____

Guest name(s) _____

Fees:

Conference registration \$ _____

New Membership/Registration \$ _____

Guest registration \$ _____

Additional events \$ _____

Total \$ _____

Mandatory CLE and Professional Credit

EMLF programs are presumptively accredited for mandatory CLE credits in most states and by the AAPL. This program has 640 minutes including 60 ethics minutes. Full attendance of the program provides 12.8 hours of Continuing Legal Education in states which calculate 50-minute hours and 10.66 hours in states which calculate 60-minute hours. Please indicate state(s) where you are requesting MCLE credits:

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

Card # _____ Expiration date _____

Signature _____

Cancellation policy

Refunds less a \$100 administrative fee will be given for written registration cancellations received by April 29. No registration refunds will be made thereafter, but substitutions can be made without charge. Persons cancelling after April 29 are not entitled to any refund but will receive the handbook and all course materials. *No refunds will be given* for the golf outing unless another participant can be substituted.

Four ways to register

- If registering online, go to www.emlf.org
- If registering by phone, call 859.231.0271
- 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

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

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May 15-17, 2005

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Amelia Island, Florida**

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