



**Kentucky
Mineral
Law
Conference
Energy & Mineral
Law Foundation**

**October
19-21, 2011
Marriott
Griffin Gate
Resort
Lexington
Kentucky**



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Program schedule

Wednesday, October 19

Oil & Gas Track

7:45 a.m.-5:30 p.m. **Registration**

8:45-9:00 a.m. **Welcome and Introductions**

■ Maureen D. Carman, Program Chair, *Attorney at Law*, Versailles, KY

9:00-9:30 a.m. **Recent Decisions in Oil and Gas Law**

As an overview of the most recent decisions of the courts in Pennsylvania, Ohio, West Virginia and New York, this update provides insight on issues pertaining to oil and gas law, including such issues as title, leasing and royalty disputes, HBP and shut-in challenges, zoning, land use and municipal regulatory determinations, pooling and unitization, subsurface trespass, environmental and tort litigation.

■ Kevin L. Colosimo, *Burleson LLP*, Canonsburg, PA

9:30-10:30 a.m. **Permitting and Regulatory Issues with Respect to Marcellus & Utica Shale Wells in New York, Pennsylvania, West Virginia and Ohio**

Panelists practicing in these states will discuss hot topics in the regulatory and permitting arena with respect to Marcellus & Utica Shale natural gas development. Topics to be explored include water acquisition, withdrawal, disposal permits and issues, the well permitting process and obstacles that producers encounter during the permitting process, state hydro-fracturing laws and regulations, drilling, casing and cementing issues, setbacks for private & public water supplies, and the outlook for the current New York moratorium on Marcellus Shale development.

■ Moderator: A. George Mason, Jr., Attorney at Law, Lexington, KY

■ Robert L. Burns, *Buchanan Ingersoll & Rooney PC*, Pittsburgh, PA

■ Richard L. Gottlieb, *Lewis, Glasser, Casey & Rollins, PLLC*, Charleston, WV

■ R. Neal Pierce, *Steptoe & Johnson PLLC*, Columbus, OH

■ Thomas S. West, *The West Firm, PLLC*, Albany, NY

10:30-10:45 a.m. **Break**

10:45-11:15 a.m. **Panel on Permitting & Regulatory Issues Continues**

11:15 a.m.-Noon **Valuable (and Surprising) Bankruptcy Principles for Oil & Gas Attorneys — How to Protect Your Client from the Most Common Effects of Another's Bankruptcy**

This presentation touches on important issues at the intersection of oil and gas law and bankruptcy law, which are not intuitive. Topics include simple things to do to get paid and protect lien rights, whether operating agreements are “executory” contracts that can be assumed in a bankruptcy case, maximizing an oil and gas seller’s reclamation rights, the priority of royalty claims, unrecorded assignments of oil and gas interests, “safe harbors,” when liens can be filed after bankruptcy, and whether an oil and gas lease can be rejected in bankruptcy.

■ Mitchell E. Ayer and Matthew R. Reed, *Thompson & Knight LLP*, Houston, TX

Noon-1:15 p.m. **Luncheon**



Carman



Colosimo



Mason



Burns



Gottlieb



Pierce



West



Ayer



Reed

1:15-2:30 p.m. **Oil and Natural Gas Air Permitting Source Aggregation**

Oil and natural gas production, compression and transmission operations are spread over many miles and connected by pipelines, from the wellhead to the end user. These operations are subject to stationary source air permitting regulations and are typically permitted as minor sources due to their low emissions. However, recent contradictory decisions raised the possibility that emissions from natural gas production, gathering, and transmission activities might be aggregated in a way that would cause them to be permitted as major sources of air emissions, subject to Title V and Prevention of Significant Deterioration (PSD) permit review. This presentation will provide the most up-to-date information about source aggregation as it is being applied to the natural gas industry throughout the country.

- Moderator – Anne C. Blankenship, *Robinson & McElwee PLLC*, Charleston, WV
- Shyla Blackketter Dwyer, Associate Regulatory Attorney, *Chesapeake Energy Corporation*, Oklahoma City, OK
- John R. Jacus, *Davis Graham & Stubbs LLP*, Denver, CO
- Donald K. Shandy, *Ryan Whaley Coldiron Shandy PLLC*, Oklahoma City, OK
- Sean Urvan, Senior Attorney, *Anadarko Petroleum Corporation*, Houston, TX

2:30-3:20 p.m. **Anticipating Toxic Tort Litigation Related to Shale Development — How to Mitigate Your Risks**

With the emergence of Marcellus Shale and other shale plays, allegations relating to well contamination and related exposures are escalating. This presentation will address the best ways for operators to mitigate the risks associated with these potential claims.

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

3:20-3:40 p.m. **Break**

3:40-4:30 p.m. **Post-Production Natural Gas Contracts**

The presentation will survey some of the contractual arrangements associated with post-production aspects of the natural gas business. It will focus primarily on (1) gas gathering and transportation agreements; (2) gas treatment agreements; and (3) gas “stripping” agreements for production of natural gas liquids. The presentation will include a general overview of each of the types of agreements addressed, and will discuss the parties’ competing aims and negotiating points, as well as common issues and specific contract terms used to address them.

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

4:30-5:20 p.m. **Municipal Oil & Gas Regulation in the Marcellus Age**

Recent geological and technological discoveries have combined with economic considerations to cause a huge increase in oil and gas exploration in the United States, most notably in Appalachia’s Marcellus Shale play. Each mineral-producing state provides a patchwork of state and local laws intended to regulate drilling activities. This presentation will discuss the similarities and differences among the states regarding the power of municipalities in each to ban or regulate oil and gas drilling and potential issues that may arise as a result of new regulation. The discussion will also explore zoning and land-use issues, extra-territorial jurisdiction of municipalities, preemption issues, and constitutional arguments (such as takings).

- Al F. Sebok, *Jackson Kelly PLLC*, Charleston, WV

5:30-6:30 p.m. **Reception**

Thursday, October 20

General Session

9:00-9:30 a.m. ***AEP v. Connecticut* — What Does It Mean and What Is Next?**

This presentation will review the most recent decision from the U.S. Supreme Court rejecting an attempt to bring federal common law claims to curtail greenhouse gas emissions from utilities. While the decision closes one door for plaintiffs, others may open. This presentation will discuss the Supreme Court opinion, the implications, and the current status of other “climate change litigation” across the country.

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

9:30-10:15 a.m. **Jurisdictional Waters**

EPA and the Corps of Engineers have issued guidance explaining how they will identify waters protected under the federal Clean Water Act. It is the latest in a series of interpretations offered by the Corps of Engineers and EPA regarding the extent to which federal jurisdiction extends to head-of-hollow streams, isolated wetlands and other bodies of water that are not usually thought of as interstate or navigable waters. When finalized and approved, the guidance is expected to be the basis for future rulemaking that will affect many industries, including mining and natural gas operations. The rules will determine whether CWA Section 404 permits are needed for such activities as valley fills, or placement of gas transmission and gathering lines across small headwater streams. The extent to which EPA and the Corps has jurisdiction over these water bodies, rather than the state alone, will affect the manner in which the in-stream activity occurs, and the enforcement that will follow if it is not properly done.

- David L. Yaussy, *Robinson & McElwee PLLC*, Charleston, WV



Blankenship



Dwyer



Jacus



Shandy



Urvan



Condo



Greenwell



Sebok



Nathanson



Yaussy

Save the Dates!

February 12-14, 2012

Winter Workshops
on Energy Law
Lago Mar Resort
Fort Lauderdale
Florida

May 10-11, 2012

Abstracting and Mineral
Title Examination
Wheeling Island Resort
Wheeling
West Virginia

June 24-26, 2012

33rd Annual Institute
Charleston Place Hotel
Charleston
South Carolina

10:15-10:30 a.m. **Break**

10:30-11:00 a.m. **Powerful Advocacy Options for a Challenging Political Environment**

Energy producers now have expanded options to make their voices heard on policy and in elections, without limits on source or amount and often without the source being disclosed. The presentation will cover state and federal law, Federal Election Commission and First Amendment developments and tax aspects of what corporations can legally do and say in the post-Citizens United world, including: (1) features of federal and state political entities (PACs, 527, 501(c)(4), SuperPACs, etc.); (2) non-disclosure of contributors; (3) use of unlimited corporate funds; and (4) compliance risks such as coordination, use of corporate property by candidates, candidate appearances and endorsements.

■ D. Eric Lycan, *Steptoe & Johnson PLLC*, Lexington, KY

11:00 a.m.-Noon **Attorneys and Technology: Avoiding the Ethics Storms**

Attorneys' use of the latest technology, like cloud computing, continues to be a hot topic in legal ethics. What are the benefits? What are the risks? What are the ethics requirements? This session will explore the professional responsibility issues that apply to attorneys using the cloud, wireless networks, smartphones, tablets, and more.

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

12:15-1:30 p.m. **Luncheon & Guest Speaker**

■ Charles R. Patton, President and Chief Operating Officer, *Appalachian Power Company*, a unit of American Electric Power

Thursday Afternoon, October 20 General Session

1:30-2:15 p.m. **Planning for Mineral Production Near Cemeteries, Churches, Schools, Abandoned Railways, Lakes and Dams**

Do you want to know whether you can move a cemetery in order to extract the minerals thereunder or whether an abandoned railway becomes a public passway, thereby making it more difficult to extract any mineral that might lie beneath? Find out during this informative presentation in which unconventional property issues encountered when producing minerals near cemeteries, churches, schools, lakes, dams and abandoned railways will be explored. Having surveyed the law of various EMLF-member states, the presenters will compare and contrast the differing approaches to dealing with these issues adopted by legislatures, regulators and the courts.

■ Gwen R. Pinson, *Stoll Keenon Ogden PLLC*, Lexington, KY

■ K.T. Williams, *Stoll Keenon Ogden PLLC*, Henderson, KY

2:15-3:00 p.m. **EPA Greenhouse Gas Regulations and Their Impacts Upon Coal-Fired Power Plants**

This session will discuss the EPA's regulation of large stationary source emissions of greenhouse gases through the "Tailoring Rule." The EPA has issued regulations requiring large stationary sources to obtain permits and reduce their emissions. In September 2011, the EPA is further expected to release a proposed rule that would for the first time impose limitations on greenhouse gas emissions from power plants. This presentation will address these regulations, the proposed rule, and the issues that should be considered in developing a permit for large sources of greenhouse gas emissions, including coal-fired power plants.

■ H. Carl HornemanWyatt, *Tarrant & Combs, LLP*, Louisville, KY



Lycan



Ries



Patton



Pinson



Williams



Nichols

3:00-3:30 p.m. **Markets for Coal, Oil & Natural Gas – Impact of Gas and EPA Rules on Coal Consumption**

Under a court order to regulate hazardous air pollutants from coal-fired power plants, the EPA has released tough new emission standards for mercury and acid gases; the Clean Air Act requires that all coal plants comply by November 2014. Utilities have expressed concern that widespread coal plant retirements stemming from these regulations and others (such as those regulating coal combustion residuals and cooling water intake) will threaten electricity supply reliability and availability. It is clear the demand for coal will be dramatically affected as a result of regulatory moves. Offsetting the potential decline in domestic electricity generation coal demand has been the explosive growth in international coal exports (both steam and metallurgical), which looks certain to continue into the near future. To provide perspective in this unsteady market, BOYD will explore the effect on the US coal market from the impending rulings, the influence of low natural gas prices and the newfound opportunities for U.S. producers in the international export market.

- John T. Boyd II, President and CEO, *John T. Boyd Company*, Canonsburg, PA

3:30-3:45 p.m. **Break**

3:45-4:35 p.m. **Upstream Without a Paddle: Avoiding Parent and Affiliate Company Liability in Tort Actions Against Subsidiaries**

Formation of subsidiary corporations is a common and accepted mechanism employed by many companies to limit liability. However, litigants often seek to impute liability against upstream parent companies or affiliates. Although traditional “piercing the corporate veil” theories of recovery are still commonly alleged, there are other creative avenues that claimants can use to sue multiple defendants under the same corporate umbrella. This session surveys decisions across many jurisdictions and seeks to educate companies on the importance of respecting established boundaries in the parent-subsidiary relationship and the potential pitfalls of many common practices across the energy industry.

- Christopher A. Brumley, *Flaherty Sensabaugh & Bonasso, PLLC*, Charleston, WV
- Nathaniel K. Tawney, *Flaherty Sensabaugh & Bonasso, PLLC*, Charleston, WV

4:35-5:35 p.m. **In-House Counsel Round Table**

Have the circles of in-house and outside counsel been expanding or contracting? Listen in as a panel of corporate counsel discusses what makes successful working relationships among corporate clients, their in-house counsel and outside counsel engaged to advise them.

- Moderator – Daniel E. Stickler, *Jackson Kelly PLLC*, Charleston, WV
- J. Kevin Ellis, Manager, Administrative and Legal – WV, *Antero Resources Corporation*, Ellenboro, WV
- Vaughn R. Groves, Executive Vice President and General Counsel, *Alpha Natural Resources Services, LLC*, Abingdon, VA
- John (Jay) Hammond, Lead Senior Counsel, *Chevron North America Exploration and Production Company*, Moon Township, PA.
- Wyatt Hogan, Vice President and General Counsel, *Natural Resource Partners L.P.*, Houston, TX
- Kirk A. Moore, Associate General Counsel, *Noble Energy, Inc.*, Houston, TX
- Barkley J. Sturgill, Assistant General Counsel, *Arch Coal, Inc.*, St. Louis, MO
- Donald C. Supcoe, Senior Vice President, Corporate Secretary and General Counsel, *Energy Corporation of America*, Charleston, WV

6:00-7:30 p.m. **Welcome Reception**

Hosted by EMLF Members for Conference Registrants and Kentucky Coal Association Members, Speakers and Guests

Kentucky Mineral Law Conference

Friday Morning, October 21 — Coal Track

8:00-8:30 a.m. **Coal Law Update**

This session provides an update on the recent litigation and regulations affecting the coal industry.

- Stephanie L. Ojeda, Director and Assistant General Counsel – HR & Safety, CAPP North and CAPP Central, *Alpha Natural Resources*, Julian, WV



Boyd



Brumley



Tawney



Stickler



Groves



Hogan



Sturgill



Supcoe

