

October 23-25, 2013
Hyatt Regency
Lexington, Kentucky
Kentucky Mineral Law Conference
Energy & Mineral Law Foundation





Program Schedule

Wednesday, October 23 — General Session

Noon Registration Opens – Bluegrass Ballroom Foyer, Lexington Center

Noon – 2:00 p.m. Executive Committee Meeting – Mary Todd Lincoln Room, Hyatt

2:00 – 2:10 p.m. Welcome and Introductions – Bluegrass Ballroom, Lexington Center

- Sharon O. Flanery, Foundation President, *Steptoe & Johnson PLLC*, Charleston, WV
- C. David Morrison, Program Chair, *Steptoe & Johnson PLLC*, Bridgeport, WV
- J. Kevin Ellis, Oil & Gas Chair, *Antero Resources Corporation*, Ellenboro, WV
- Eric R. Waller, Coal Chair, *Patriot Coal Services LLC*, Charleston, WV

2:10 – 3:00 p.m. The Energy Markets: Steam/ Met Coal, and Natural Gas
Where have the coal markets gone? Where is gas headed and will it be exported? Can natural gas, and particularly shale gas, stay at these low levels? What caused the collapse of the metallurgical coal markets and how long will the market stay down? Are we likely to see any rebound in met and steam markets – export and domestic?

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

3:00 – 3:50 p.m. EPCRA Is Blowing Up: How the U.S. EPA Is Setting Its Sights on “Minimal Hazards & Minimal Risks” in the Mineral & Coal Industries

In the aftermath of a deadly gas leak in Bhopal, India, Congress passed the Emergency Planning & Community Right-To-Know Act (EPCRA) to require companies that handle extremely hazardous chemicals and hazardous chemicals to register and file reports with emergency response providers and the public. But is sand a hazardous substance of concern to emergency response providers? Gravel? Rock salt? Slag? Or other substances with “minimal hazards and minimal risks”? The civil penalties that EPA is seeking from industry present a clear and present danger to industries who must pay for failures to file the forms required by EPCRA. This session will provide information on this growing trend and pointers on how to deal with it.

- Kevin P. Braig and Timothy D. Hoffman, *Dinsmore & Shohl LLP*, Columbus and Dayton, OH

3:50 – 4:15 p.m. Break

4:15 – 5:15 p.m. General Counsel Roundtable (may not be accredited in all states)
General Counsel are uniquely positioned at the intersection of business and law, giving them valuable insight on issues important to their clients. Here’s a lively discussion of the relationship between in-house and outside counsel, with advice on how outside counsel can effectively assist their in-house counterparts as clients navigate the issues facing energy producers.

- Moderator: Natalie N. Jefferis, *EQT Midstream*, Pittsburgh, PA
- Vaughn R. Groves, General Counsel, *Alpha Natural Resources*, Bristol, VA
- James A. Jarrell, General Counsel, *Triana Energy, LLC*, Charleston, WV
- David P. Poole, Sr. Vice President – General Counsel, *Range Resources*, Fort Worth, TX
- Donald C. Supcoe, General Counsel, *Energy Corporation of America*, Charleston, WV
- Jeffrey W. Wagner, General Counsel, *Pardee Resources Company*, Philadelphia, PA

5:30 – 6:30 p.m. Hosted Reception – Bluegrass Ballroom Foyer, Lexington Center

Thursday, October 24

7:30 a.m. Registration and Continental Breakfast – Bluegrass Ballroom Foyer

7:30 – 9:00 a.m. Law Student Attendees Hosted Breakfast – Kentucky Room, Hyatt

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Charleston, WV



Flanery



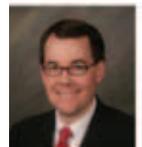
Morrison



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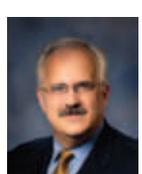
Hoffman



Groves



Jefferis



Poole



Wagner

Coal Track – Thursday Morning – Bluegrass Room 1, Lexington Center

9:00 – 9:55 a.m. The New Mountain Feud: Environmental Groups vs. Mineral Owners

Environmental groups have long been litigating against coal companies, often with considerable success. Now they are targeting mineral owners, filing a number of selenium liability suits directly against mineral owners, while obtaining agreements from coal companies not to engage in large scale surface mining – effectively sterilizing millions of tons of coal reserves for the foreseeable future. What environmental groups see as “a great victory for . . . Appalachia” is a stunning loss for mineral owners. This session will address legal questions that have not been answered, including the extent of responsibility environmental groups may have to mineral owners for causing coal companies to violate their coal leases, under theories of tortious interference, conspiracy, and intentional destruction of property rights.

■ Richard J. Bolen, *Huddleston Bolen LLP*, Huntington, WV

9:55 – 10:45 a.m. Coal Transaction Agreements in the Current Coal Market

This presentation will focus on recent developments in coal sales transactions that have been observed in light of recent coal market volatility. As spot coal prices have declined in recent years, market volatility has also created a demand for shorter contract durations and inclusion of certain risk mitigation tools such as price reopeners, cost sharing provisions, and performance guarantees. Many domestic coal suppliers are venturing into international markets to compensate for reduced domestic demand for coal. The presentation will highlight areas of concern for the practitioner, including the Foreign Corrupt Practices Act, international arbitration rules, choice of law considerations, payment terms, and other considerations unique to international transactions.

■ Daniel C. Garfinkel, *Buchanan Ingersoll & Rooney PC*, Pittsburgh, PA

10:45 – 11:00 a.m. Break

11:00 – Noon The Right to a *De Novo* Hearing in Mine Plan Disputes at Underground Coal Mines

Although the rule has long been recognized that operators are entitled to a *de novo* hearing in enforcement litigation before the Federal Mine Safety and Health Review Commission, at which the Mine Safety and Health Administration (MSHA) bears the burden of proof, where mine plan disputes arise, MSHA takes the view that the hearing is not *de novo* and that it need only show that its district manager did not act in an arbitrary or capricious manner or abuse his discretion in denying some or all of a plan. This has huge implications for an underground coal mine operator, not only regarding the scope of evidence and expert testimony that an operator is allowed to introduce at trial, but first and foremost how the operator presents its proposed mine plan to the district manager in the first place. Whether MSHA is entitled to this deferential standard of review was the subject of a 2012 decision in which, by a 3-2 majority, the Commission in *Mach Mining* sided with MSHA on the question. An appeal to the U.S. Court of Appeals for the 7th Circuit has been argued and is awaiting decision. If MSHA's view is upheld, operators will be effectively left without a meaningful avenue for judicial relief in plan disputes; if the court reverses, the decision will go far to restoring faith in the independence of the Commission litigation process, as Congress intended.

■ Daniel W. Wolff, *Crowell & Moring LLP*, Washington, DC

Noon – 1:45 p.m. Luncheon with Guest Speaker – Hyatt Regency Ballroom

■ Charles R. Patton, President and COO, *Appalachian Power*, Charleston, WV

Coal Track – Thursday Afternoon

1:45 – 2:35 p.m. Coal Law Update

This session will cover recent litigation, including decisions by the Federal Mine Safety and Health Review Commission and labor-related decisions in the Patriot bankruptcy.

■ Todd C. Myers, *Rajkovich Williams Kilpatrick & True, PLLC*, Lexington, KY

2:35 – 3:30 p.m. Respirable Dust Sampling: What MSHA Can Do to You Without New Rules

While the industry waits for the Mine Safety and Health Administration (MSHA) to promulgate new respirable dust standards, MSHA has taken significant steps to ramp up the pressure on coal companies through the use of policy documents, ventilation plans, Section 110(c) investigations, and decertification actions against individual dust samplers. This presentation will address those efforts and how they might be combatted or mitigated, and will address the research that has been done on the personal dust monitors that are the cornerstone of any potential new dust standard.

■ R. Henry Moore, *Jackson Kelly PLLC*, Pittsburgh, PA

3:30 – 3:45 p.m. Break

3:45 – 4:35 p.m. Purchasing Assets from Bankrupt Sellers

This presentation analyzes some of the challenges associated with purchasing assets from a debtor in bankruptcy and the pitfalls to avoid. The program will highlight limitations and procedures regarding such purchases that are unique to the bankruptcy process. In addition, specific sections of the Bankruptcy Code will be examined to show how they can assist (or harm) potential buyers.

■ Mary L. Fullington, *Wyatt, Tarrant & Combs, LLP*, Lexington, KY



Wagner



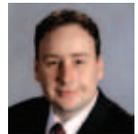
Jarrell



Supcoe



Bolen



Garfinkel



Wolff



Patton



Myers



Moore



Fullington

4:35 – 5:30 p.m. Emerging Issues in Coal Dust Litigation

Coal operators have been dealing with a variety of lawsuits in recent years alleging claims for damages related to “fugitive” coal dust emissions from mines, processing plants, and coal trucks. These lawsuits have raised a host of novel and developing issues, including whether dust claims give rise to claims for assault and battery, the proper measure of damages for nuisance and trespass claims, and the availability of punitive damages. This presentation reports on several recent cases and provides advice to companies and practitioners dealing with coal dust claims.

■ Brian M. Johnson, *Bingham Greenebaum Doll LLP*, Lexington, KY



Johnson

Oil & Gas Track – Thursday Morning Bluegrass Room 2, Lexington Center

9:00 – 9:35 a.m. Oil and Gas Update

An update on recent oil and gas cases, including court decisions on royalty class actions, the Ohio Dormant Mineral Act, preferential rights, dual purpose leases, challenges to the validity of oil and gas leases, and disputes over ownership.

■ Kevin C. Abbott, *Reed Smith LLP*, Pittsburgh, PA



Abbott

9:35 – 10:05 a.m. Misclassifications of Workers in the Oil and Gas Industry

A new “Misclassification Initiative” launched by the IRS and U.S. Department of Labor is targeting employers with more audits and closer scrutiny. The IRS estimates that 80% of workers classified as “independent contractors” are actually employees, with a good bit of litigation in Texas about misclassifying drilling rig employees for overtime purposes, and a number of DOL audits of drilling companies, prompting more independent contractors — and their attorneys — to challenge their classifications in court. This session discusses the cases that have been decided, addresses what employers should do to avoid liability, and what an employer can do when it finds out that it has been violating the law, thereby owing large sums of money to its current employees.

■ Joseph U. Leonoro, *Steptoe & Johnson PLLC*, Charleston, WV



Leonoro

10:05 – 10:55 a.m. HBP Leases: Issues with Acreage Held By Production

Given the economics of drilling a modern day horizontal well, the risk of engaging in new development under an “HBP lease” is magnified. This presentation will explore the often murky waters of what acts are required to “hold” an oil gas lease in its secondary term and what can be done to assure a lease’s continued validity. We will analyze the issues under various lease terms and other provisions, including “so long as,” “dual-purpose,” and more modern forms which may have “drilling requirements” or “unitization and pooling” provisions.

■ Britt A. Freund, *Bowles Rice LLP*, Canonsburg, PA



Freund

10:55 – 11:10 a.m. Break

11:10 – Noon Transportation of Natural Gas Liquids in Ohio

This session covers ambiguities in Ohio law (regulatory, tax and condemnation/ eminent domain) that may affect mid-stream pipelines transporting mixed stream and finished products natural gas liquids, and suggests potential legislative remedies.

■ Andrew J. Sonderman, *Kegler Brown Hill & Ritter, LPA*, Columbus, OH



Sonderman



Colosimo

Noon – 1:45 p.m. Luncheon with Guest Speaker

■ Charles R. Patton, President and COO, *Appalachian Power*, Charleston, WV

Oil & Gas Track – Thursday Afternoon

1:45 – 2:35 p.m. Jurisdiction of the Oil and Gas Case

The advent of the shale plays brings oil and gas transactions and disputes to an increasing number of states, and despite the best efforts of artful scriveners, the forum and venue for dispute resolution often frustrates even the most seasoned oil and gas practitioners. Many are surprised to learn that Texas law doesn’t always apply! This presentation begins as primer on jurisdiction of matters before state and federal courts, discussing traditional diversity of citizenship jurisdiction, issues within the exclusive purview of state courts, and the dreaded state of the law on minimum contacts. The presentation evolves to consider unique issues such as jurisdiction under the Class Action Fairness Act, how to treat modern business entities like Master Limited Partnerships and offshore entities, Joint Operating Agreements (JOAs), and arbitrations. Jurisdiction at three levels – business organization, contract drafting, and litigation of disputes will be considered, along with practice points and examples from oil and gas jurisprudence from around the country.

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

2:35 – 3:25 p.m. Recent Trends in Oil and Gas Transactions

With the advent of the new “shale world,” tremendous capital is required to develop these new reserves. Given these capital requirements and attendant risk in drilling new shale reserves, companies have raised capital through joint ventures versus traditional means such as bank debt or mezzanine capital. This discussion will focus on several different structures used in these transactions, including LLCs and Joint Development and Participation Agreements, and will address certain additional issues that can arise when a joint venture partner is a foreign oil company. Finally, the paper will address diligence and acquisition issues related to such structures, including title, contract, and environmental diligence, taxes, risk allocation, employees and service agreements.

■ Arthur J. Wright and Lucas A. LaVoy, *Thompson & Knight LLP*, Dallas and Houston, TX



Wright



LaVoy

3:25 – 3:40 p.m. Break

3:40 – 4:40 p.m. Mineral Development in the Illinois Basin

This session focuses on development issues in the Illinois Basin – Illinois, Indiana, and Western Kentucky, including discussion of the recently passed Illinois Hydraulic Fracturing Regulatory Act, to facilitate development of oil and gas in the New Albany shale formation. The practical side of development – working with landowners in obtaining leases and surface access – will also be discussed.

■ Chad J. Sullivan and Brandon S. Renner, *Jackson Kelly PLLC*, Evansville, IN



Sullivan

4:40 – 5:30 p.m. 404 Permitting and Enforcement for Oil and Gas Operations

This session covers permitting issues and federal enforcement (a priority area for EPA) for oil and gas operations in an era of heightened agency and third party scrutiny and larger Marcellus development sites.

■ Allyn G. Turner, *Spilman Thomas & Battle, PLLC*, Charleston, WV



Renner

6:00 – 7:30 p.m. Reception – Bluegrass Ballroom Foyer, Lexington Center

Hosted reception for all speakers, registrants, and Kentucky Coal Association attendees

Friday Morning, October 25 – General Session Bluegrass Ballroom, Lexington Center

7:30 – 8:30 a.m. Continental Breakfast

8:30 – 9:30 a.m. Multijurisdictional Practice: Lawyering Here, There, and Everywhere

The practice of law for most environmental and energy attorneys in the United States today is truly multijurisdictional, with legal services and their impacts in multiple states. It covers services by a lawyer physically present in a jurisdiction where he or she is not admitted to practice, and may include a lawyer’s “virtual presence” – phone, teleconference, e-mail, Internet, etc. MJP raises serious issues such as potential unauthorized practice of law, violation of ethics rules, and choice of law for ethics rules and disciplinary proceedings. This session will cover the latest developments in this evolving area of the law.

■ David G. Ries, *Clark Hill Thorp Reed*, Pittsburgh, PA



Turner



Ries

9:30 – 10:45 a.m. Setting the Right Balance: Exploring the Challenges and Considering Policy Resolutions to Common Conflicts Between Coal Operators and Oil and Gas Operators

This session opens with an overview of the law in Kentucky, Ohio, Pennsylvania, and West Virginia vis-à-vis coal and oil and gas development, followed by panelists discussing what’s really happening with surface sharing and subsurface issues, how folks have worked through the existing legal regime, and their thoughts on policy and legal changes to facilitate development.

■ Ryan J. Morgan, Moderator, *Steptoe & Johnson PLLC*, Charleston, WV

■ Michael O. Conley, *KRCC Oil & Gas, LLC*, Hazard, KY

■ A. George Mason, *George Mason Law Firm, PSC*, Lexington, KY

■ Richard T. Miller, *Coal and Gas Energy Services, LLC*, Ellicott City, MD

■ Roger L. Nicholson, *Attorney at Law*, Charleston, WV



Morgan



Conley

10:45 a.m. Adjourn



Mason



Located at the heart of Central Kentucky's famed scenic Bluegrass Region, Lexington is known around the world for its role in producing champion racehorses and fine bourbon. The location of the conference hotel brings you close to a lot of activities in the area.

In the Bluegrass, you can meet previous Derby champions — or perhaps catch a glimpse of a future winner on the world's most famous horse farms. The fall season for Keeneland Race Course, a beautiful park reminiscent of those in England, runs from October 4 through 26.

Or visit the home of true Kentucky bourbon. The time-honored methods developed in the early 19th century are still used in the distilleries today. The course of bourbon history has changed as Alltech opened its \$9.2 million distillery, the first to be built in Lexington in more than 100 years. Located next to the company's brewery at the corner of Maxwell and Cross Streets (close to the conference hotel), it is believed to be one of only a few sites in the world

with both a distillery and brewery. Tours are available seven days a week, 10 a.m. to 4 p.m. and last approximately 45 minutes.

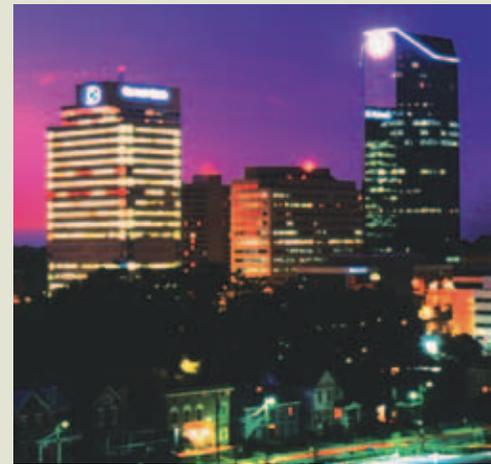
Speaking of bourbon, The Bourbon Barrel Project on Town Branch will place authentic bourbon barrels embellished by area artists through downtown Lexington to highlight the waterway that flows under Vine Street and Midland Avenue. The barrels will be displayed in the same way they are when they are working and the bourbon is aging — on their sides in stands which will include signs with QR codes that will allow viewers to get more information on the pieces and on the portion of Town Branch where they are.

If you are looking for something different to do, Thursday is a good day to explore the Lexington Farmers' Market at South Broadway and Maxwell from 7 a.m. to 4 p.m. and then head on over to Thursday Night Live at the Fifth Third Pavilion at Cheapside Park (between West Main Street and West Short Street, just west of Upper Street) from 4:30 to 8 p.m. for beverages, food from local restaurants and of course, great music by live bands! There is no admission charge to come and listen to the bands play — food and beverages are available for purchase on a cash basis.

Or go to <http://beyondgrits.com/> to discover some of Lexington's finest restaurants, many of which have opened downtown close to the Hyatt if you are looking for a nice evening of fine dining.

Getting to Lexington is easy! Centrally located at the junction of Interstates 75 and 64, Lexington is the perfect driving destination. By air, arriving in Lexington is accessible and economical. Thirteen cities with large hub airports and six airlines maintain daily flights into and out of Lexington.

Once in Lexington, the central location makes an ideal base from which to explore the entire Bluegrass Region. Within a short drive you'll find pioneer forts, outdoor theatres, crafts fairs, historic railways, scenic byways and much more!



Photos by Jeff Rogers and Gene Burch, courtesy of the Lexington Convention and Visitors Bureau.

Enjoy Lexington

Above, there are more than 50 vendors offering food, fresh produce and flowers at Lexington's popular Farmers' Market. The October schedule includes a market at South Broadway and Maxwell on Thursdays. At right, Town Branch Distillery, conveniently located near the conference hotel and available for touring.

Photo courtesy of Alltech





Yes, I want to attend the Kentucky Mineral Law Conference

The full conference registration includes both a 3-ring notebook and a CD with meeting materials, continental breakfasts, refreshment breaks and hosted receptions on Wednesday and Thursday. Payments are required for the Thursday luncheon at the Hyatt and the Friday Kentucky Coal Association luncheon at the Hilton.

Registration fees	Conference through Oct. 1	Conference after Oct. 1
Non-member Registration Fee.....	\$590	\$650
EMLF Member	\$440	\$490
Young Lawyer (3 years or less)	\$340	\$390
Law Student	\$50*	\$50
EMLF Thursday Luncheon (Hyatt)	\$32	\$32
KCA Friday Luncheon (Hilton)	\$32	\$32

*Registration fee is waived for the first 5 law students who register from an EMLF member law school. Luncheon is a separate fee.

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

Organization/Firm _____ Title _____

Address _____

City, State, Zip _____

Daytime Phone _____ Fax # _____

Email Address _____

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

Fees:

Conference Registration \$ _____

EMLF Thursday Luncheon \$ _____

KCA Friday Luncheon \$ _____

Total \$ _____

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. Application will be made for 610 minutes of continuing education, including 60 minutes of ethics. In states which calculate 50 minutes as a CLE hour, this will be 12.2 hours of CLE. In states which calculate 60 minutes for a CLE hour, this will be 10.0 hours of CLE credit. Complete information for reporting your credits will be available at the conference. Additional fees may be required for certain states/organizations.

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

Card # _____ Expiration date _____

Signature _____ CVV code (security code) _____

Cancellation policy

Full refunds less a \$75 administrative fee will be given for written registration cancellations received by October 1. 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 meeting materials. EMLF members who cancel their registrations after October 1 receive materials and a \$100 credit toward a future program.

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

Look for information about the conference hotel elsewhere in this brochure



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

Kentucky Mineral Law Conference

October 23-25, 2013

**Hyatt Regency
Lexington
Lexington, KY**

Conference Hotel

Accommodations for the conference are at the Hyatt Regency Lexington, 401 West High Street, Lexington, KY 40507. The room rate is \$185 plus tax, currently at 13.4 percent, for reservations made through October 1 or sell out.

Call 1.800.233.1234 and ask for the EMLF Group rate. Check-in time is 3 p.m. and check-out time is noon. Cancellations must be made by 3 p.m. the day prior to arrival. Failure to cancel a guaranteed reservation prior to 3 p.m. on the day prior to arrival will result in a no-show charge.

Parking for the Hyatt Regency is provided in the Lexington Convention Center parking lot directly across the street from the hotel. Parking is complimentary for overnight guests of the hotel only and meeting attendees at the Hyatt, based on availability.

Airport shuttle: The Hyatt Regency Lexington offers complimentary shuttle transportation to and from Lexington Bluegrass Airport on a first come, first serve basis. Airport transportation is not guaranteed.

Please note: If you have special needs addressed by the Americans with Disabilities Act, please let us know two weeks prior to the program. Also, please advise us if you have special dietary needs.

Save the Dates!

■ *February 9-11, 2014*

Winter Workshops
on Energy Law
Lago Mar Resort and Club
Fort Lauderdale
Florida

■ *June 1-3, 2014*

EMLF 35th Annual Institute
The Greenbrier
White Sulphur Springs
West Virginia