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In This Issue

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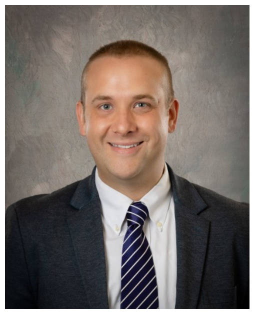
Message from the Chairperson…



2025 has started off very well for the leasing and mineral sales market. We continue to market our clients' minerals for leases and sales, and we see the markets continuing to be productive for mineral owners interested in leasing or sales. The market has grown beyond its initial limit of dealing solely with drilling companies, meaning those oil and gas companies who drill, complete, and produce the wells. There is a substantial number of non-operating leasing companies in the market. These companies may not drill and operate wells in the Utica shale play but they certainly inject significant capital into the market through leasing. We see the availability of these non-operators increasing over the next several years. We are actively marketing thousands of acres throughout Ohio and if you, or someone you know, has unleased minerals and wants to explore leasing opportunities please contact us.

Ohio's energy development strategy continues to build outside the oil and gas industry. We are seeing increases in solar farm leases and development. These negotiations can seem to mirror the negotiation of oil and gas leases, such as containing defined construction and operation periods and financial compensation for the landowner. But their differences are greater than their similarities and landowners should seek competent legal counsel to review and negotiate the solar lease offer. Our firm has negotiated several solar leases within the last year and we have successfully leveraged our experience with the oil and gas leasing and sales to support our clients wishing to lease their surface for solar development.

The Ohio General Assembly reintroduced legislation seeking to create a statewide program to permit and regulate Class VI injection wells, meaning those wells used for carbon sequestration. The General Assembly introduced the same bill in 2024, but the legislative year ended before the bill could leave committee. Ohio Senate Bill 136, sponsored by Senators Brian Chavez and Tim Schaffer, and Ohio House Bill 170, sponsored by Representatives Monica Robb Blasdell and Bob Peterson, were officially introduced. Both bills will establish a process to regulate carbon capture and storage technologies and the geologic sequestration of carbon dioxide for long-term storage.

Of note to mineral owners are the following elements: (1) statewide uniform standards for ownership of the pore space—the physical pores into which the carbon is injected, (2) statewide uniform standards for conveying or retaining ownership of pore space, (3) making oil and gas development dominant over competing carbon capture and sequestration operations, and (4) creating a forced unitization program for carbon sequestration well units much like the program for forced unitization of oil and gas rights. Landowners should keep an eye on this program to protect their interests and to determine whether they maximize their minerals and pore space.

Matthew W. Onest
Attorney at Law

Information on Contacting Your Elected Officials

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Governor's Office
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Columbus, Ohio 43215-6117
614-644-4357

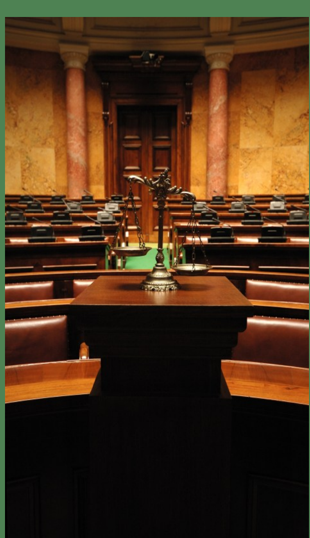
Dave Yost
Ohio Attorney General
30 E. Broad Street, 14th Floor
Columbus, Ohio 43215
800-282-0515

Senator Brian Chavez
Senate Building
1 Capitol Square, 1st Floor
Columbus, Ohio 43215
614-466-6508
Represents Washington, Athens, Belmont, Meigs, Morgan, Monroe, Noble, Harrison and Jefferson counties and part of Guernsey County

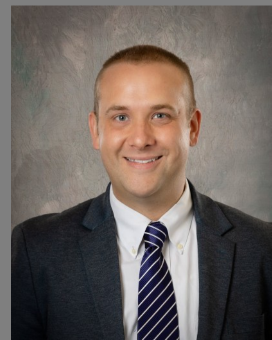
Senator Al Cutrona
Represents the 33rd District
Mahoning, Columbiana and Carroll Counties
614-466-8285

Senator Al Landis
Represents 31st District
Tuscarawas, Wayne and Muskingum Counties, parts of Stark and Guernsey Counties
614-466-5838

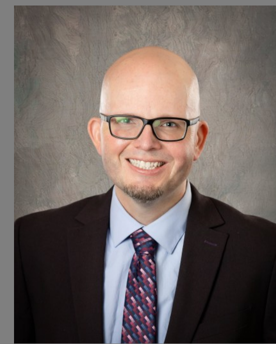
Senator Jane Timken
Represents 29th District
Canton area and most of Stark County
614-466-0626



The Utica Shale & Pipeline articles have been collaboratively written by these members of the KWGD Oil, Gas, and Mineral Law Practice Section Team unless otherwise indicated.



Matthew W. Onest, Esq.



Wayne A. Boyer, Esq.

The Sixth Circuit Court of Appeals (a federal court) Sides with Landowners on Interpreting a Market Enhancement Clause.

By Matthew W. Onest, Esq.

The Sixth Circuit Court of Appeals, the Federal Appellate Court based out of Cincinnati, Ohio, recently sided with the landowners against Antero Resources on a royalty dispute. The leases at issue contained a market enhancement clause. The landowners brought class action against Antero for breach of contract, alleging Antero improperly deducted processing and fractionation costs from royalty payments. Antero argued that it was authorized to deduct costs its subsidiary incurred sending unrefined natural gas to processing factory because, in part, the gas stream was marketable when it came out of the wellhead.

The Appellate Court held that (1) the costs Antero incurred separating methane from non-methane gases was not deductible from royalty payments, and (2) the costs Antero incurred separating non-methane gases from each other was not deductible from royalty payments. The "Market Enhancement Clause" in each lease permitted Antero to deduct some value-enhancing costs from the landowners' royalty payments. But the same clause said that Antero may not deduct the costs of "transform [ing] the product into marketable form. Antero deducted three costs from the landowners' royalties: the "processing" costs of separating purified natural gas from the remaining non-methane gas mixture, the "fractionation" costs of isolating each discrete gas from that mixture, and the transportation costs of distributing the final products. In deciding that Antero could not deduct processing and fractionation costs under the market enhancement clause the Appellate Court made a significant finding:

> "The text of the lease, the various forms of gas products covered by the lease, and the market realities of this operation all show that 'processing' and 'fractionation' are essential parts of transforming the unrefined gas into marketable natural gas and of transforming the Y-Grade non-methane gas mixture into marketable gas products (ethane, propane, butane, and natural gasoline). Antero thus may not deduct these costs from the royalties."

By finding Antero's practice of deducting these costs were not proper under "the market realities of this operation" the Appellate Court has, in our opinion, set a standard applicable to most, if not all, market enhancement clauses. If the landowner's royalties are being reduced for processing and fractionation charges then the production is not marketable before those costs are incurred. That means those charges cannot be assessed under the typical market enhancement. I would expect more cases to be brought based on this decision, including cases against other producers with market enhancement clauses.

The case is named *The Grissoms, LLC v. Antero Resources Corp.*, 2025 WL 984418 (6th Cir. Apr. 2, 2025).

Tenth District Court of Appeals Dismisses Appeal of Ohio Oil and Gas Land Management Commission's Decision to Lease State Lands

By Wayne A. Boyer, Esq.

In a March 13, 2025 decision, the Tenth District Court of Appeals of Ohio dismissed an appeal by various activist groups objecting to the Ohio Oil and Gas Land Management Commission's (the "Commission") decision to lease various state lands for oil and gas exploration and development.

In *Save Oil Parks vs. Oil & Gas Land Management Commission*, 2025-Ohio-847, the Tenth District Court of Appeals ("Court") considered a challenge from certain activist groups (Earthjustice, Save Ohio Parks, Backcountry Hunters & Anglers, Buckeye Environmental Council, and Ohio Environmental Council) seeking to prevent the Commission from subjecting state owned lands, including Salt Fork State Park, to bidding for oil and gas leases, on the basis that such leasing would harm the activist groups by preventing them from enjoying the lands and endangering the lands and the various wildlife and flora growing on those lands.

In dismissing the appeal and upholding the Commission's decision to submit the state lands to bidding for oil and gas leasing purposes, the Court focused on two main factors. First, the Court noted that the activist groups could not appeal the decision as a procedural matter. Since the Commission was not issuing, renewing, revoking, or suspending a license as part of its statutorily-created licensing functions, the activist groups could not appeal any decisions under Ohio Revised Code Section 119.12.

More notably, the Court noted that the activist groups did not have standing to challenge these decisions, as the harm they alleged was speculative at best as that harm "may" occur in the future. In dismissing the appeals, the Court found that the "emotional impact from, loss of faith in, or personal distaste for a particular situation, law, or governmental proceeding, without more, does not satisfy the legal concept of 'adversely affected' or 'aggrieved' for purposes of standing." The Court went on to state that general interests of a citizen in the use of state-owned lands does not convert into the ability to sue a governmental agency when that individual suffers no distinct harm. Therefore, the Court dismissed the activist groups' appeal.

This decision directly impacts those landowners that are adjacent to Salt Fork State Park and other state-owned lands that have recently been leased, as the court's decision allows the Commission to continue forward with leasing activities, which will allow previously unleased and undeveloped acreage surrounding the state-owned lands to be placed into drilling units for the first time.

Ohio Utica Shale Production Update

By Wayne A. Boyer, Esq.

The Ohio Department of Natural Resources ("ODNR") reported that as of April 12, 2025, it had issued a total of 4,301 permits to drill horizontally through the Utica Shale and further reported that a total of 3,734 horizontal wells have been drilled to the Utica Shale. As of April 12, 2025, 3,467 wells were listed as producing (which includes wells that have been plugged back) from the Utica Shale (source: ohiodnr.gov). ODNR reported that, during the fourth quarter of 2024, there was a total oil production of more than 10.195 million barrels and gas production of more than 535 billion cubic feet. ODNR reported that as of April 12, 2025, there were 12 active rigs operating in Ohio.

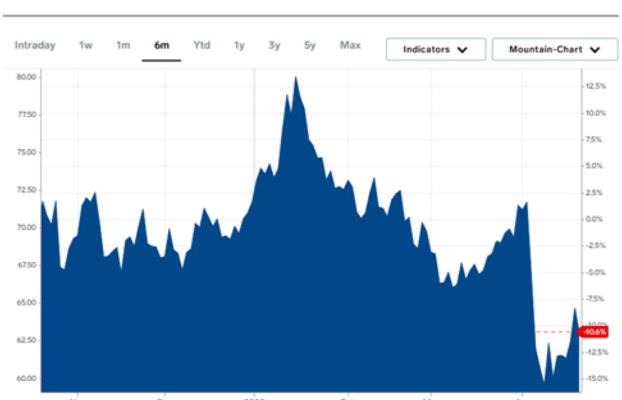
Top Oil Producing Wells in the State of Ohio as of 4th Quarter 2024

WELL NAME	WELL NUM-BER	OWNER NAME	COUNTY	TOWNSHIP	OIL PRODUCED
Larke CR BRN	6H	EAP OHIO LLC	CARROLL	BROWN	132,220
Lodge NE WSG GR	7H	ASCENT	GUERNSEY	WASHINGTON	129,964
Wolverine HFP07	4A	EOG RE-SOURCES	HARRISON	FREEPORT	129,610
Larke CR BRN	206H	EAP OHIO LLC	CARROLL	BROWN	122,578

Top Gas Producing Wells in the State of Ohio as of 4th Quarter 2024

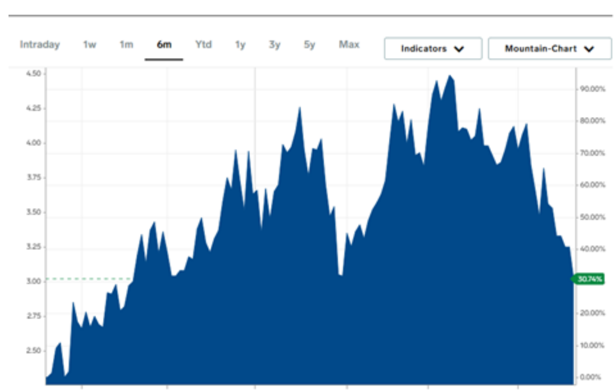
WELL NAME	WELL NUM-BER	OWNER NAME	COUNTY	TOWNSHIP	GAS PRODUCED
Pearl NW WEL JF	1H	ASCENT	JEFFERSON	WELLS	3,547,296
Pearl W WEL JF	3H	ASCENT	JEFFERSON	WELLS	3,519,678
PEARL N WEL JF	5H	ASCENT	JEFFERSON	WELLS	3,324,765
PEARL E WEL JF	7H	ASCENT	JEFFERSON	WELLS	3,194,313

WTI Crude and Natural Gas Market Prices – Six Month Lookback



Current Price: $74.47/barrel

Source: CSX:NMX nasdaq.com as of 8/21/24.



Current Price: $2.17/mcf

Source: NG:NMX nasdaq.com as of 8/21/24.

The Court of Appeals Sides with Producer on Claims Alleging Underpayment of Royalties

By Matthew W. Onest, Esq.

In *Dream Big Energy, LLC v. Eclipse Resources-Ohio, LLC*, 5th Dist. Guernsey No. 24CA00011, 2024-Ohio-5953 (Case No. 24CA00011), the Fifth District Court of Appeals, which oversees counties such as Guernsey, Stark, and Tuscarawas, ruled in favor of the producer in a royalty underpayment case. This case involved many issues, including claims about underreported production volumes relating to royalties.

The wells at issue, operated by SWN Operating, had all of their production flow through a flow line at each wellhead. The production was a mixture including oil, natural gas, natural gas liquids, water, and brine. The production was taken to a Gas Processing Unit and was separated into three mixtures both for purposes of allocation of royalties to each well, as well as for regulatory reporting requirements to ODNR. The reported volumes to ODNR were: (1) brine, or production water, (2) gas, a mixture of gas and natural gas liquids, and (3) oil, a liquid mixture of oil and natural gas liquids, and gas. ODNR requires the volume of each of the three mixtures be reported at the nearest point from which it is removed from the ground. After SWN reported the liquid mixture as oil to ODNR, the natural gas and natural gas liquids are removed from the mixture, and the stabilized condensate which remains was sold as oil.

The lessor alleged Eclipse (SWN) breached the lease agreement by (1) adjusting royalties for expenses which were not authorized by the lease, and (2) failing to pay royalties on all oil and gas sold, as shown by a discrepancy between the amounts of products reported to ODNR and the amounts of products on which royalties were paid.

The lease's royalty clause said, "[I]f the revenue received by Lessee from a third party who is not an Affiliate of Lessee is adjusted for the costs of gathering, storing, transporting, separating, treating, dehydrating, compressing, processing or marketing, Lessee may calculate Lessor's royalty as a percentage of the revenue Lessee received." SWN showed that all deductions taken from royalty payments for oil were for gathering, storing, transporting, separating, treating, dehydrating, compressing, processing, or marketing the oil. The lessor argued that the deductions were excessive because the deductions taken by Eclipse totaled more than three times the deductions taken by SWN. The appellate court held that the mere fact that a predecessor deducted more expenses from royalty payments than the current producer is insufficient to rebut the producer's evidence supporting the deductions.

As to the volume discrepancy issue, the court sided with SWN based on its unrebutted evidence showing that (1) all of the hydrocarbons from the wells come up through the flow line at each wellhead, (2) the flowstream continues to the gas processing unit, where it is separated into three mixtures which are used both for allocation purposes regarding the payment of royalties, and for reporting requirements to ODNR, and (3) the wells initially produced more natural gas liquids and natural gas in the separated liquid mixture, and the difference between the "oil" mixture reported to ODNR and the condensate oil sold and reported on the royalty statements was a result of the natural gas and natural gas liquids coming out of the liquid hydrocarbon mixture previously reported to ODNR as "oil."

What this case shows is that royalty underpayment claims can be difficult. In particular, the case shows why one cannot merely compare the production volume on one's royalty statements with the production volume reported to the ODNR and claim, without other proof, that the lessor is being underpaid.

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We have expanded into Mahoning County!
The office is staffed by Attorney Matthew W. Onest and Paralegal Diana Tschantz. They can also meet clients in any of our other offices as needed.

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