2014 Ohio Oil and Gas Law Review

Related Attorneys

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CLIENT ALERT

2014 was a year of continued growth and expansion for Ohio's oil and gas industry. Drilling and production increased dramatically, with more than 50 Utica rigs operating in Ohio at year end and over 550 new drilling permits having been issued as of October 2014, which is more than all of 2013. The Ohio Department of Natural Resources (ODNR) reports that through the first three quarters of 2014, total gas production is up 406% (from 56.9 Bcf of natural gas in 2013 to 288.1 Bcf in 2014), and total oil production is up 232% (from 2.2 MMbbls of oil in 2013 to 7.4 MMbbls in 2014). At year end, Bentek was reporting nearly 1.8 Bcfd of gas production from the Utica. Moreover, experts believe that this level of production is not a short-term phenomenon, with one analyst reporting that the shale under eastern Ohio will probably produce significant quantities of natural gas and liquids for the next 50 years.

This rapid growth in production will require a significant expansion of infrastructure, which was also evident in 2014. In late 2014, midstream operators were reporting that 2.5 Bcfd of gas processing capacity was operating for Ohio Utica production with 3.1 Bcfd of processing expected to be operating in 2015. They were also reporting 321,000 Bbls per day of fractionation operating in late 2014 for Ohio Utica liquids production, with 2015 expected to raise the fractionation capacity to 381,000 Bbls per day. Moreover, in December 2014, the Federal Energy Regulatory Commission (FERC) approved a $468.5 million eastern Ohio pipeline project to send natural gas from Ohio to the Gulf Coast. Texas Eastern Transmission LP plans to build a 76-mile pipeline extension called The Ohio Pipeline Energy Network. The pipeline will carry up to 550,000 dekatherms of gas from the Utica and Marcellus shales to delivery points at the Egan Hub in Louisiana and is scheduled to be operational by November 1, 2015. This is just one of the pipeline projects designed to take Utica production out of the area.

This infrastructure growth was not limited to the operational aspects of the industry. Ohio oil and gas law too was active, with numerous pieces of proposed legislation that would have impacted the industry, judicial decisions, and regulatory actions. To assist our clients and friends, we have summarized a number of those developments.

LEGSLATIVE DEVELOPMENTS

Substitute House Bill 375 (HB 375)

On May 15, 2014, the Ohio House of Representatives passed Substitute House Bill 375. This legislation proposed to levy a 2.5% severance tax on oil and natural gas production from horizontal wells to cover State regulatory efforts and idle and orphan well plugging. The Bill was supported by oil and gas producers but died in the Ohio Senate. It is expected that the severance tax debate will return in 2015.

Substitute House Bill 490 (HB 490)

This omnibus legislation, originally introduced as part of the governor's mid-biennium budget proposals, was passed by the Ohio House on November 19, 2014. Among other things, HB 490 addressed oil and gas regulatory updates in Ohio. This bill also died in the Ohio Senate but many of the concepts are expected to reappear 2015 – with a particular focus on making Ohio's statutory unitization process more efficient. Substitute House Bill 9 (HB 9) Signed by the Governor on December 19, 2014, HB 9 is set to go into effect on March 23, 2015. HB 9 includes a provision amending Ohio's lease recording statute (R.C. 5301.09) and clarifies that an oil and gas lease creates an interest in real property. Although this was the common belief in Ohio, on September 20, 2013, the court in *Wellington Resources Group v. Beck Energy Corp.*,[1] ruled that oil and gas leases merely constitute the right to search for oil and gas on a property and do not create an interest in real property. By including the amendment to R.C. 5301.09, HB 9 should supersede the court's decision and clearly establish that an oil and gas lease creates an interest in real property.

JUDICIAL DEVELOPMENTS

Litigation involving oil and gas related cases remained at the forefront of courts across Ohio in 2014. As the evolution of Ohio oil and gas law continues, we have selected several cases out of Ohio state and federal courts that we believe to be noteworthy and have provided a brief synopsis of each case.

Regulatory Authority. In one of the most notable cases of 2014 and early 2015, *State ex rel. Morrison v. Beck Energy Corp.,* the Supreme Court of Ohio reaffirmed the State of Ohio's "sole and exclusive" authority over the regulation of oil and gas operations in the state. In *Morrison*, the Court struck down five municipal ordinances enacted by the City of Munroe Falls, including a general zoning ordinance and four ordinances specifically relating to oil and gas drilling, because the ordinances *conflicted* with Ohio's oil and gas regulatory scheme codified in Revised Code Chapter 1509. Specifically, the ordinances ran afoul of the state statute in two respects. First, the municipal ordinances restricted activities permitted by the state—namely oil and gas development within the city's limits. The privileges afforded to the operator by the state-issued permit could not be extinguishment through the enforcement of the municipal ordinances. Second, the state's regulatory scheme reserved to the State of Ohio, to the exclusion of local governments, the right to regulate "all aspects" of the location, drilling and operation of oil and gas wells, including the permitting of such wells. The broad preemption language in the state statute superseded the city's attempt to regulate these aspects of oil and gas development through its own conflicting ordinances. By law, local police power regulations are enforceable except where they conflict with general laws of the state, in which case they are preempted by state law. Whether local laws conflict with general laws of the state is decided on a case by case basis, so there may be additional local challenges to oil and gas development in 2015 and beyond. However, *Morrison* represents a significant victory for state regulation and the industry.

Indefinite Secondary Term. In *Hupp v. Beck Energy Corporation*,[3] the court held that an oil and gas lease that contains an habendum clause with a primary and secondary term is not a "no-term" lease. Further, the court held that the phrase "are produced or are capable of being produced on the premises in paying quantities, *in the judgment of the lessee*," in the habendum clause, does not permit the lease to continue in perpetuity at the lessee's sole discretion. Rather, a good-faith standard is imposed upon the lessee regarding the paying quantities requirement, with or without the phrase "in the judgment of the lessee." Accordingly, the lease would continue so long as there was an established oil or gas well that was actually producing or capable of producing in paying quantities. The landowners have asked the Ohio Supreme Court to certify an appeal of the Hupp case. At the time of drafting this update, the Supreme Court had not decided whether to accept the case. The landowners have asked the Ohio Supreme Court to certify an appeal, which – at the time of this writing – has not yet been accepted by the Court.

Change In Ownership. The oil and gas lease in *Trico Land Co., LLC v. Kenoil Producing, LLC*,[4] contained a change-in-ownership clause stating that "no change in ownership of the land or assignment of rentals or royalties shall be binding on the lessee until after the lessee has been furnished with a written transfer or assignment or a true copy thereof." The original lessor conveyed the leased premises to Trico Land Company but failed to notify the lessee of the conveyance. The lessee then failed to timely pay delay rentals and Trico filed suit claiming that lease lapsed due to the lessee's failure to pay. The court held that the lessor's failure to notify the lessee of a change in ownership of the leased premises excused the lessee's failure to timely tender delay rentals, and thus, the lease remained in full force and effect.

Lease Formation. A group of landowners engaged attorneys to negotiate oil and gas leases on their behalf in *Bruzzese v. Chesapeake Exploration, LLC*.[5] Plaintiffs, who were part of the landowner group, signed an Agreement to Accept Lease Offer (the Agreement) and returned it to Chesapeake. However, the Plaintiffs never actually signed a lease. Plaintiffs later discovered that other energy companies were making better offers and informed their attorney they wished to back out of the landowner group and terminate the Agreement. The court held that even though Plaintiffs never signed an actual lease, by executing the Agreement the parties formed an enforceable contract and were bound by the terms of the lease with Chesapeake. The court stated, "Though parties ordinarily manifest their assent to a written contract by signing it, a party may manifest its assent by some other act or conduct." In this case, the other act or conduct was the execution of the Agreement.

Consent-to-Assign. In *Popa v. CNX Gas Co, LLC*,[6] the lessor of an oil and gas lease argued that the lease's granting clause restricted assignments of the lease by the lessee. The disputed clause stated that the lessor " . . . does hereby lease and let exclusively unto the Lessee, for the purpose of drilling, operating for, producing and removing oil and gas and all the constituents thereof . . . ." The court found that "the use of the term 'exclusively' is unrelated to the lessor's right to assign" and that it "lacks a specific reference to assignability." Ultimately, the court held that the granting clause language did not restrict assignments by the lessee.

The lease in *Hoop v. Kimble*[7] contained a consent-to-assign clause that was violated by the lessee. As a result, the court found there to be a breach of the lease but held that forfeiture was an improper remedy. Rather, the court invalidated the assignment because the lease was silent as to the remedy for breach of the consent-to-assign clause.

Assignment of Lease Depths. The Plaintiffs in *Marshall v. Beekay Co.*[8] argued that assignment of the interest in the shallow rights of an oil and gas lease essentially divided the lease and required both the shallow rights holder and the deep rights holder to comply with the habendum clause of the lease. The Plaintiffs further argued that because the holders of the deep rights had not developed their interest, this interest in the deep rights had been forfeited for failure to comply with the habendum clause.

The court cited to *Popa, supra* and held that the assignment of the shallow rights did not create new obligations under the lease and that the continuous production of the shallow rights held the lease for all depths. The court also found that the deep rights holders did not breach the implied covenant to develop because "there was no duty to further develop as long as gas and oil were being found in paying quantities."

Definition of Minerals. Historically, Ohio courts have not been entirely consistent on the definition of "minerals" when used in a deed of conveyance. The Seventh District Court of Appeals provided some clarity in *Coldwell v. Moore*[9] when it held that deeds allowing for the extraction of "other minerals" included oil and gas as there was no language in the deed that was inconsistent with the development of oil and gas.

Top Leases. In *Strahler v. Alliance Petroleum Corp.*,[10] the defendant-lessees were the owners of two oil and gas leases covering the same 400 acre parcel. The issue before the court was whether the second lease was a top lease, or alternatively, a novation that extinguished the first lease. The court found that the second lease did not satisfy the requirements of a novation, and was therefore a top lease. The court stated that a top lease "exists at its inception as a mere hope or expectancy in the extinction of existing superior leasehold rights, which extinction will confer upon the top lease owner the essence of a mineral lease, i.e., the right to explore for and produce minerals." The court also held that the producing well on the property held the entire 400 acres and not only the 40 acre drilling unit set forth in the ODNR well permit.

Lease Extensions. The U.S. Sixth Circuit Court of Appeals dealt with the extension and perpetuation of oil and gas leases in *Eastham v. Chesapeake Appalachia, L.L.C.* and *Henry v. Chesapeake Appalachia, L.L.C.* In *Eastham v. Chesapeake Appalachia, L.L.C*,[11] Paragraph 19 of the lease granted the lessee the right to extend or renew the lease. The court held that the plain meaning of the words "extend" and "renew" indicate that if the lessee chose to "extend" the lease it would simply be opting "to increase the length or duration of" the same lease, whereas if lessee chose to "renew" the lease it would be opting to "begin or take up again" a new lease. Therefore, by exercising the option to "extend" rather than "renew" the lease, the lessee lengthened the existing lease for a new term of five years.

In *Henry v. Chesapeake Appalachia, L.L.C.*,[12] the lease provided that it may be extended beyond its primary term upon the occurrence of certain conditions. One of those conditions was commencement of "operations," which the lease defined as "any acts in search for or in an endeavor to obtain, maintain or increase the production of oil and/or gas including, without limitation, injecting substances into a well." The court held that an operator's filing of a Declaration of Pooled Unit (DPU) constituted "operations" for the purposes of perpetuating the secondary term of an oil and gas lease because the recording of the DPU "was clearly an act similar to or incidentalto acts 'in search for or in an endeavor to obtain, maintain or increase the production of oil and/or gas' from the Plaintiffs' property."

An operator attempted to extend the terms of an oil and gas lease pursuant to a provision allowing an extension upon the payment or tender of a payment to the lessor in *Baile-Bairead, LLC v. Magnum Land Servs. LLC*.[13] The court found that although the operator breached the express terms of the lease by failing to tender the extension request to the correct address, the operator nonetheless "substantially complied" with the terms of the lease. Therefore, the extension was valid.

Implied Covenants. In *Yoder v. Artex Oil Company*,[14] Ohio's Fifth District Court of Appeals considered whether an oil and gas lease is subject to a covenant of good faith and fair dealing and evaluated the application of the lease's unitization provision. The court concluded that because an oil and gas lease is a contract, it is also subject to the implied covenant of good faith in fair dealing. However, the subject lease contained an express disclaimer of implied covenants. The court did not address this conflict because it held that (1) the lessee was required to include the lessor's property in the drilling unit pursuant to Ohio law, (2) the lessee acted as a prudent operator, and (3) that the unitization was proper under the express terms of the lease. Accordingly, the lessor's property was not unitized in bad faith and the lease remained in full force and effect pursuant to the drilling operations language in the habendum clause.

Marketable Title Act. The complainant in *Pollock v. Mooney*[15] requested a declaratory judgment extinguishing defendants' oil and gas royalty interest under the Marketable Title Act (the MTA). The court found that a royalty interest is personalty (not realty), which generally is not subject to the MTA. However, the court concluded that the MTA nonetheless applies to royalty interests because the MTA extinguishes "all interests, claims, or charges whatsoever . . ." which precede the root of title.

Arbitration. In *Riggs v. Patriot Energy Partners, LLC*,[16] the court held that the plaintiff property owners failed to demonstrate that an arbitration clause in their oil and gas leases was either procedurally or substantively unconscionable. The court noted that the plaintiffs failed to introduce relevant evidence on substantive and procedural unconscionability. Because the landowners had the opportunity to read and negotiate the lease, they were not contracts of adhesion, and the arbitration clause was valid. However, while most of plaintiffs' claims were subject to arbitration, the court determined that the plaintiffs' claim for quiet title was a "controversy involving title to or possession of real estate" and was not subject to arbitration pursuant to R.C. 2711.01.

Defective Acknowledgment. In *Cole v. EV Props., L.P.*,[17] the Sixth District Court of Appeals reconciled the conflicting decisions by the Supreme Court of Ohio in *Delfino v. Davies Chevrolet* (1965) and *Citizens National Bank v. Denison* (1956) regarding defective acknowledgments. The court held that *Citizens National Bank* controls by concluding that a defectively acknowledged oil and gas lease is enforceable between the parties and stated: "A careful reading of *Delfino* reveals that it did not supplant Ohio's long-standing rule that '[a] defectively executed instrument, *either a lease or a deed*, when made by the owner, may be enforced against him as a contract to make a lease or deed for the reason that it is his contract.'"

In *Bernard Philip Dedor Revocable Declaration of Trust v. Reserve Energy Exploration Co.*,[18] the Eleventh District Court of Appeals followed the court's holding in *Cole, supra* and held that a defectively acknowledged lease is valid between the parties.

The Court of Common Pleas in Trumbull County made a contradictory ruling in *Baxter v. Reserve Energy Exploration Co.*[19] when it held that the defectively acknowledged leases "will convert to a tenancy by operation of law for only the duration of the term." The court stated that because the leases were

improperly notarized they were terminable at the conclusion at the end of the five-year primary term. Because each of the lessors rejected payment tendered by the lessee for the subsequent five-year term, the court found the leases to be null and void. This case is currently under appeal.

Zoning Regulations. The alleged conflict between a township's zoning resolution and Ohio's statutory scheme regulating oil and gas was the central issue in *Osborne v. Leroy Twshp.*[20] The court held that because the township's zoning resolution precluding the storage of piles of concrete and asphalt debris to be used in repairing roadways associate with an oil and gas well was not vague and did not conflict with R. C. 1509, Ohio's statutory scheme governing oil and gas wells, the township's prohibition on storage was valid.

Dormant Minerals. Litigation over Ohio's Dormant Mineral Act (DMA), R.C. 5301.56, began slowly in 2012, but took center stage in numerous cases before Ohio's appellate and federal courts in 2014. Several decisions found that the 1989 version of the DMA was self-executing,[21] and that as a consequence, any attempt to preserve a mineral interest under the 2006 version of the DMA that had already vested in the surface owner was ineffective.[22] Ohio courts also found that the 1989 DMA creates a fixed look-back period rather than a rolling one, see *Eisenbarth v. Reusser*;[23] and that an oil and gas lease does qualify as a title transaction. The court in *Eisenbarth* found that notwithstanding whether or not an oil and gas lease conveys the fee title to oil and gas, it nonetheless affects title by encumbering the oil and gas akin to a mortgage (which is specifically enumerated as a title transaction). Additionally, Ohio courts have addressed whether a severed mineral interest was the "subject of" a title transaction under certain circumstances. In *Dodd v. Croskey*,[24] for example, the court found that in order for the severed mineral interest to be the "subject of" a title transaction, the mineral interest must itself be conveyed or retained by the grantor. The court also held that a severed mineral interest holder could successfully preserve the severed mineral interest by either timely filing a claim of preservation[25] or identifying the occurrence of a savings event within the twenty years preceding the notice of abandonment. Several of these issues are likely to be addressed in the near future by the Ohio Supreme Court.

REGULATORY DEVELOPMENTS

This past year saw continued development and advancement of regulations established by ODNR for the oil and gas industry. Effective January 1, 2014, storage, treatment and recycling facilities were required to obtain a permit or order issued by ODNR, pursuant to rules adopted by ODNR, in order to operate.[26] However, those rules have not yet been adopted. To implement the permit requirement in the interim, ODNR has been issuing temporary Orders authorizing the operation of these facilities. That procedure has been challenged in a lawsuit filed in the Franklin County Court of Common Pleas in case number 2014 AP 958, by the FreshWater Accountability Project and Food and Water Watch on November 19, 2014.

ODNR also announced new permit conditions for drilling near faults or areas of past seismic activity. New permits issued by ODNR for horizontal drilling within 3 miles of a known fault or area of seismic activity greater than a 2.0 magnitude require companies to install sensitive seismic monitors. If those monitors detect a seismic event in excess of 1.0 magnitude, activities are to pause while the cause is investigated. If the investigation reveals a probable connection to the hydraulic fracturing process, all well completion operations will be suspended. ODNR is currently developing new criteria and permit conditions for new applications in light of this change in policy. The department will also review previously issued permits that

have not been drilled.

Throughout the year, ODNR has also been developing a rules package pertaining to well pad construction for horizontal wells. The current version sets forth a comprehensive set of regulations for well pad construction that include, among other things, detailed drawings, plans for sediment and erosion control, requirements for a geotechnical report describing the conditions, design considerations and construction requirements of the proposed well site, the submission of a storm water hydraulic report, and the certification of a professional engineer. On January 23, 2014, that rule package was submitted to Ohio's Common Sense Initiative for review.

Applications for mandatory pooling also received considerable attention in 2014. In *City of North Royalton v. Division of Oil and Gas Resources Management*,[27] the Ohio Oil and Gas Commission (the "Commission") found that the Division's approval of the applicant-operator's pooling application did not comply with R.C. 1509.27, which requires that the applicant show that unsuccessful attempts to form a drilling unit through voluntary agreement were on a "just and equitable basis." While the statute does not provide a definition of "just and equitable basis," the Commission stated that the applicant must show that "all reasonable efforts" were used when attempting to enter into a lease.

The "all reasonable efforts" analysis must include more than whether a reasonable monetary offer was made by the applicant-operator. When the applicant is negotiating a lease with a municipality, there is also a safety requirement that will be considered. Specifically, whether the municipality was given the opportunity to negotiate for certain additional safeguards when leasing municipal-owned properties. The Commission found that the Division's approach of evaluating only whether the monetary offer of the applicant is just and equitable was too limited and remanded the matter to the Division for further hearing regarding the safety concerns raised by the city. This decision has been appealed.

Lastly, ODNR, together with Ohio EPA and the Ohio Department of Health (ODH) recently released a joint letter purporting to clarify jurisdictional issues and management practices for oil and gas wastes entitled, "Subject: Landfill acceptance and disposal of waste substances from horizontal wells – update." The letter addresses the acceptance and disposal of waste substances from horizontal wells at Ohio landfills. It also discusses the regulation of drilling wastes in light of the amendments to Ohio law under House Bill 59 (effective June 30, 2013), and addresses issues on waste stabilization, how to determine whether drill cuttings are earthen material or solid waste, and the applicability of NORM and TENORM regulations to drilling-related wastes. The Ohio EPA expects to release a rule package for interested party comments in the near future.

WHAT WE ANTICIPATE IN 2015

Though the Ohio Supreme Court hasn't yet issued any decisions related to the DMA, 2015 appears to be the year this will change. Not only is *Dodd* currently pending before the Court, but the U.S. District Court for the Southern District of Ohio in *Chesapeake v. Buell*[28] certified to the Ohio Supreme Court the questions of whether (1) a recorded oil and gas lease and (2) the expiration of an oil and gas lease are each a title transaction for purposes of the DMA. On August 20, 2014, the Ohio Supreme Court heard oral arguments on both *Dodd* and *Buell* but a decision has yet to be issued in either case.

During the past year, the Court also accepted three other DMA cases for review.[29] These cases have yet to be scheduled for oral argument. In addition, six more DMA cases have been appealed to the Ohio Supreme Court but have not yet been accepted for review.[30]

As Ohio's midstream sector continues to develop, we are likely to see more pipeline companies utilize eminent domain powers under the Natural Gas Act and Ohio Revised Code to secure lands on which to site their facilities. For example, Texas Eastern Transmission filed a complaint in the U.S. District Court for the Southern District of Ohio claiming that it is entitled to access private lands for pipeline development prior to the determination of the amount of just compensation that will be paid to the landowners.[31] This will continue to be an issue as production increases and the demand for pipeline infrastructure becomes greater.

Additionally, we anticipate litigation regarding the calculation of royalty payments as more wells are put into production, further advancement of Ohio case law on land and lease issues, and the continued development by ODNR of additional rule packages (in the past, the Division has stated its intent to institute rulemakings regarding waste recycling, treatment and storage; waste and freshwater impoundments; alternative disposal technologies; simultaneous operations; and secondary containment, to name just a few).

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[1] [1] S.D. Ohio No. 2:12-cv-104

[2] No. 2013-0465 (February 17, 2015).

[3] 7th Dist. Monroe Nos. 12MO2, 13MO6, 13MO3, 13MO11, 2014-Ohio-4255.

[4] 5th Dist. Holmes No. 13CA008, 2014-Ohio-1700.

[5] S.D. Ohio No. 2:12-cv-167 (Feb. 13, 2014).

[6] N.D. Ohio No. 4:14cv143, 2014 U.S. Dist LEXIS 103968 (July 30, 2014).

[7] Harrison C.P. No. CVH 2012-0016 (April 3, 2014).

[8] 11th Dist. Washington No. 14CA16.

[9] 7th Dist. Columbiana No. 13CO27, 2014-Ohio-5323.

[10] Washington C.P. No. 13 OT 174 (Oct. 17, 2014).

[11] 754 F.3d 356, 2014 U.S. App. LEXIS 10531 (6th Cir. 2014).

[12] 739 F.3d 909 (6th Cir. 2014).

[13] S.D. Ohio No. 2:12-CV-00957, 2014 U.S. Dist. LEXIS 65787 (May 13, 2014).

[14] 5th Dist. Guernsey No. 14 CA 4, 2014-Ohio-5130 (Nov. 13, 2014).

[15] 7th Dist. Monroe No. 13 MO 9, 2014-Ohio-4435.

[16] 7th Dist. Carroll No. 11 CA 877, 2014-Ohio-558.

[17] 563 Fed. Appx. 389 (6th Cir. 2014).

[18] 11th Dist. No. 2014-P-0001, 2014-Ohio 5383.

[19] Trumbull C.P. No. 2013 CV 2205 (Nov. 4, 2014).

[20] 11th Dist. Lake No. 2014-L-008, 2014-Ohio-5774.

[21] *See e.g. Walker v. Shondrick-Nau*, 7th Dist. Noble No. 13NO402, 2014-Ohio-1499; *discretionary appeal accepted* 2014-Ohio-3785 (Sept. 3, 2014); *Swartz v. Householder*, 7th Dist. Jefferson No. 13 JE 24, 13 JE 25, 2014-Ohio-2359; *Thompson v. Cluster*, 11th Dist. Trumbull No. 2014-T-0052, 2014-Ohio-5711; *Wendt v. Dickerson* , 5th Dist. Tuscarawas No. 2014 AP 01 0003, 2014-Ohio-4615; and *Carney v. Shockley*, 7th Dist. Jefferson Nos. 14 JE 8, 14 JE 9, 2014-Ohio-5829, and 2014-Ohio-5830.

[22] The self-executing nature of the 1989 DMA, as recognized by *Walker* and *Swartz*, was reaffirmed by the court's subsequent decisions of *Dahlgren v. Brown Farm Properties, L.L.C.*,7th Dist. Carroll No. 13 CA 896, 2014-Ohio-4001, *Farnsworth v. Burkhart,* 7th Dist. Monroe No. 13 MO 14, 2014-Ohio-4184, *Taylor v. Crosby*, 7th Dist. Belmont No. 13 BE 32, 2014-Ohio-4433.

[23] 7th Dist. Monroe No. 13MO10, 2014-Ohio-3792. In several subsequent decisions, *Farnsworth v. Burkhart, supra, Taylor v. Crosby, supra,* and *Carney v. Shockley*, *supra* the court reaffirmed its position that the 1989 DMA creates a fixed look-back period.

[24] 7th Dist. Harrison No. 12 HA 6, 2013-Ohio-4257; *discretionary appeal accepted* 138 Ohio St. 3d 1432 (Mar 12, 2014).

[25] *See Lipperman v. Batman*, 7th Dist. Belmont No. 14 BE 2, 2014-Ohio-5500, and *Albanese v. Batman*, 7th Dist. Harrison No. 14 BE 22, 2014-Ohio-5517.

[26] *See* R.C. 1509.22

[27] Oil and Gas Commission Appeal No. 856, Review of Chief's Order 2013-181 (Dec. 13, 2014).

[28] S.D. Ohio No. 2:12-cv-916 (Jan. 2, 2014), *certification of state law questions accepted*, 138 Ohio St. 3d 1446 (Mar. 26, 2014).

[29] The three other cases accepted by the Ohio Supreme Court are *Corban v. Chesapeake Exploration LLC,* S.D.Ohio No. 2:13-cv-246 (May 14, 2014), *certification of state law questions accepted*, 139 Ohio St. 3d 1482 (July 23, 2014); *Walker v. Shondrick-Nau, supra;* and *Householder v. Schwartz, supra*.

[30] *Dahlgren v. Brown Farm Properties, LLC, supra*; *Eisenbarth v. Reusser*, *supra*; *Taylor v. Crosby*, *supra*; *Farnsworth v. Burkhart, supra*; and *Tribett v. Shepherd,* 7th Dist. Belmont No. 13 BE 22, 2014-Ohio-4320 (Sept 29, 2014).

[31] *Texas Eastern Transmission, L.P. v. Barack,* S.D. Ohio No. 2:14-cv-336.