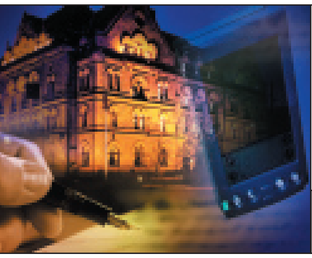

Bricker & Eckler Bulletin

Keeping clients and friends informed of breaking legal developments

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Utica and Marcellus Shale Natural Gas Development Presents New Opportunities, New Challenges for the State of Ohio

Recent technological advancements have made it possible to produce natural gas from deep shale reservoirs in the State of Ohio. The first, known as the Marcellus Shale, is located approximately 3,000-4,000 feet below the surface in southeastern Ohio, eastern West Virginia, much of Pennsylvania, and portions of New York and Maryland. As one of the largest deposits of natural gas in the United States, the Marcellus Shale reservoir is estimated to contain enough gas to meet the entire energy demand in the United States for the next few decades. Marcellus Shale natural gas wells already have been drilled in the southeastern Ohio counties of Jefferson, Belmont, Monroe, Noble, Washington and Athens. Additional development is anticipated in Carroll, Columbiana, Mahoning, Harrison and Guernsey Counties.

Located approximately 7,000 feet below the surface, the Utica Shale is rich in both natural gas and liquid hydrocarbons. The Utica Shale stretches across significant portions of eastern and central Ohio, with small pockets in northwestern Ohio. Utica Shale wells have been drilled in Muskingum, Fairfield, Hocking, Hancock and Henry Counties, among others. Additional Utica development in Delaware, Wayne, Stark, Tuscarawas, Mahoning, Carroll, Harrison, Jefferson, and Belmont Counties is expected in 2011.

Large landowners in these and other Ohio counties will be approached by oil and gas companies and others to lease their oil and gas rights. Larger, nationally based oil and gas developers have entered the region and are competing for development rights. These mineral rights leases offer substantial revenue opportunities for landowners, including the State of Ohio. As recently as October 2010, the Ohio Department of Natural Resources noted that lease prices for Marcellus Shale reached $6,000/acre, with a 15–20% royalty for gas produced on the property—both of which are significantly higher than conventional oil and gas leases. Based upon the General Assembly's recent introduction of House Bill 133, which promotes oil and gas development on state-owned lands, it appears that the State of Ohio may take advantage of these potentially lucrative development opportunities.

Along with these opportunities, however, come new challenges. Unlike conventional, shallower oil and gas operations, the leasing and development of Utica and Marcellus Shale mineral rights is more complex. The assistance of experienced legal counsel can be valuable in navigating the development process, negotiating a fair and potentially lucrative lease, and providing appropriate protection to landowners in connection with the drilling and operation of wells on their property, including environmental issues associated with them. There are many factors a large property owner should consider before entering into a Marcellus or Utica Shale lease.(See chart below.)

Some considerations for large property owners before entering into a Utica or Marcellus Shale lease	
• The geological horizons being leased (e.g., Marcellus Shale, Utica Shale)	• The method of verifying royalty payments
• Whether the lease will be a drilling or non-drilling lease	• Rights of assignment of the lease
• Duration of the lease, including forfeiture provisions	• Easements and rights of way for gas pipelines, other infrastructure, and ingress/egress
• The size of the drilling unit, if applicable	• Conditions for pre-drilling environmental and water testing
• Amounts of natural gas royalty payments and upfront bonus payments	• Use of water limitations
• Environmental and other indemnity provisions	• Insurance provisions
• Restoration/damage/non-disturbance provisions	• Subordination of mortgages
• Adjoining landowner issues	• Use prohibitions

Utica and Marcellus Shale development also presents special challenges in terms of community relations and the rights of adjoining landowners based on its use of a publicly debated process known as hydraulic fracturing. Hydraulic fracturing is the process of injecting a highly pressurized mixture of water, sand and chemicals into shale formations to expand them in order to stimulate gas production. It is reasonable to anticipate that oil and gas developers may face opposition to this form of drilling and the treatment of wastewater discharges from the horizontal drilling operations from local residents and environmental groups. In order to effectively address and resolve these issues if they arise, it will be important for large property owners to have the assistance of legal counsel with expertise in environmental law issues.

Bricker & Eckler's Energy and Public Utilities Group has nine lawyers dedicated to energy law. Four of our partners are listed in the current edition of Best Lawyers in America in the areas of energy, oil and gas, and/or public utilities law. They are frequently assisted in these matters by the ten lawyers of Bricker & Eckler's Environmental Law Group.

For more information on Utica or Marcellus Shale development, assistance in leasing negotiations, or environmental concerns, please contact Glenn S. Krassen/216.523.5469 at gkrassen@bricker.com, Matt Warnock/614.227.2388 at mwarnock@bricker.com, or Frank Merrill/614.227.8871 at fmerrill@bricker.com.