



October 18-19, 2017  
Hilton Lexington/Downtown  
Lexington, Kentucky

# **Kentucky Mineral Law Conference**

*Energy & Mineral Law Foundation*



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# Program Schedule

## Wednesday, October 18

7:30 – 9:00 a.m. **Registration and Continental Breakfast**

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

- Erin E. Magee, EMLF President, *Jackson Kelly PLLC*, Charleston, WV
- R. Clay Larkin, Program Chair, *Bingham Greenebaum Doll LLP*, Lexington, KY

9:00-10:15 a.m. **Electric Utility Rate Regulation Issues Impacting Utility Fuel Usage**

The conference opens with an overview of the role of fuel in the electric utility industry, including the demand for electric power by retail customers and the trends in the industry. Panelists will review the expected procurement of fuel, including selection of fuels from their perspectives, and describe how electric utility regulation impacts the procurement and use of fuel to generate electric power. Also included will be a discussion of the electricity market in Ohio, which was deregulated in 1999 – meaning electricity generation, distribution and transmission were separated. With the decline in coal use and the advent of the shale boom, there has been an effort to “re-regulate” in Ohio and return to the regulated monopoly model. A significant policy debate on the issue has garnered national attention and pitted traditional electric utilities against independent power producers, many of whom are seeking to site natural gas power plants in Ohio and surrounding states due to the abundance of natural gas from the shale plays in Appalachia.

- Kendrick R. Riggs, Moderator, *Stoll Keenon Ogden PLLC*, Louisville, KY
- Delbert D. Billiter, Manager, Fuels Risk Management, *LG&E and KU Energy LLC*, Louisville, KY
- David A. Owens, Vice President of Coal & Gas Services, *Tennessee Valley Authority*, Knoxville, TN
- Dylan F. Borchers, *Bricker & Eckler LLP*, Columbus, OH

10:15 – 10:30 a.m. **Break**

10:30 – 11:30 a.m. **Solar Comes to Coal Country**

Solar projects are now being developed or in operation in the heart of fossil fuel territory by utilities, independent power producers and industrial users. This panel presentation will discuss the legal and regulatory framework applicable to solar power generation and transmission. Implementation of utility “community solar” projects and development of large scale solar farms by independent operators will be discussed, as will their impact on fossil fuel generation, the grid, and electric rates and structures. The panelists will also examine the legal, political and practical effects of solar development in an area of the country that is still largely dominated by non-renewable fuels.

- Warren J. Hoffmann, Moderator, *Frost Brown Todd LLC*, Lexington, KY
- David Crews, Senior Vice President of Power Supply, *East Kentucky Power Cooperative, Inc.*, Winchester, KY
- Lynda M. Hill, *Frost Brown Todd LLC*, Nashville, TN
- Ryan Johns, Vice President, *Berkeley Energy Corporation*, Pikeville, KY



Magee



Larkin



Riggs



Owens



Borchers



Hoffman



Crews



Hill



Johns

11:30 – 1:00 p.m. **Luncheon with Guest Speaker**

1:00 – 2:00 p.m. **Rare Earth Minerals – Who Gets to Recover Them and How?**

Why is this important? Rare earth metals are used in many devices such as computer memory, DVDs, rechargeable batteries, cell phones, catalytic converters, magnets, medical equipment, fluorescent lighting and much more. With growing interest in the economic recovery of rare earth elements related to coal mining, this session will cover emerging legal questions related to ownership, regulation, and permitting for rare earth recovery, and provide detailed context regarding the potential for rare earth resource extraction (e.g., refuse, acid mine drainage sludge, coal combustion byproducts), the extent of the resource, and estimates of the relative costs of extraction or recovery.

- Allyn G. Turner, *Steptoe & Johnson PLLC*, Charleston, WV
- Gary D. Holland, *Steptoe & Johnson PLLC*, Charleston, WV
- Paul F. Ziemkiewicz, Ph.D., Director, *Water Research Institute, West Virginia University*, Morgantown, WV

2:00 – 2:45 p.m. **Regulatory Reform: Now What?**

Regulatory reform initiatives are not new, but this time it's serious. President Trump campaigned on a promise to remove regulatory burdens that impede economic growth, and since taking office the Administration has issued a series of executive orders and put in place an accountable regulatory budget system aimed at carrying out these objectives. But how is it all supposed to work? What strategies can your industries employ to ensure your issues get attention? This presentation will address the 2017 executive orders and directives on regulatory reform, including an explanation of EO 13771, "Reducing Regulation and Controlling Regulatory Costs" ("One in Two Out" EO) issued Jan. 30, 2017, and an "inside the beltway" update on agency actions to implement these orders and directives, as well as what these changes mean for the energy sectors. Also provided will be an update on the status of regulations of primary interest to energy industry sectors that will be implicated by the new initiatives, and practical steps businesses and trade associations can take to manage a complex process successfully. The presentation will include insights on the workings of the Office of Management and Budget (OMB)'s Office of Information and Regulatory Affairs, which is responsible for regulatory reform "gatekeeping."

- Karen C. Bennett, *Clark Hill PLC*, Washington, DC

2:45 – 3:00 p.m. **Break**

3:00 – 4:00 p.m. **Access to Capital – Creative Financing Options**

Commodity price uncertainty in the coal, natural gas, and oil sectors in recent years has transformed the energy landscape. Collapsing commodity prices and resulting unsustainable debt levels have led numerous energy companies to undergo both in and out-of-court restructurings. We will examine market trends and developments in the restructuring space, with a focus on the type of relief obtained and resulting debt terms. We will also explore the current state of the energy loan market and the types of financings clearing the market in the "new normal" commodity price environment. Our discussion will span a number of sectors, including coal, oil and gas E&P, oilfield services, and midstream.

- Darin W. Schultz, *Vinson & Elkins LLP*, Houston, TX
- David S. Meyer, *Vinson & Elkins LLP*, New York, NY

4:00 – 5:00 p.m. **Putting Your Best Face Forward: Managing Your Social Media Presence (1 hour ethics)**

This presentation will engage the audience in an interactive discussion of the ethical pitfalls that lawyers can encounter in connection with social media. The presenters will use a common hypothetical involving the oil and gas industry to analyze ethical issues that implicate the ABA Rules of Professional Responsibility in two scenarios: (1) Twitter feuds between counsel, and (2) the preservation of potentially relevant evidence on social media.

- Stephen D. Daly, *Manko, Gold, Katcher, Fox LLP*, Bala Cynwyd, PA
- Bryan P. Franey, *Manko, Gold, Katcher, Fox LLP*, Bala Cynwyd, PA



Turner



Holland



Ziemkiewicz



Bennett



Schultz



Meyer



Daly



Franey

5:00 – 6:00 p.m. **Corporate Counsel Roundtable**

This interactive panel discussion will offer insight into the unique role of in-house counsel and their relationships with outside counsel. Gain an understanding of the factors an in-house counsel considers when making the decision to retain outside counsel and the qualities that matter in the selection process. Hear from current in-house counsel about their experience, expectations, and the characteristics that foster a successful working relationship between the business client, the in-house counsel, and outside counsel during an engagement.

- Eric R. Waller, Moderator, General Counsel, *Armstrong Energy Inc.*, St. Louis, MO
- Jessica B. Brisendine, Assistant General Counsel, *EQT Corporation*, Pittsburgh, PA
- Jacqueline B. Ponder, General Counsel, *Solar Sources Mining, LLC*, Indianapolis, IN
- Tyson D. Schwerdtfeger, Corporate Counsel, *Alliance Coal, LLC*, Tulsa, OK
- Joseph A. Tarantelli, Managing Attorney, *Chesapeake Energy Corp.*, Oklahoma City, OK
- Kathryn S. Wilson, General Counsel, *Natural Resource Partners L.P.*, Houston, TX

6:00 – 7:30 p.m. **Hosted Reception**

## Thursday, October 19, Breakout Session A

7:00 – 8:30 a.m. **Continental Breakfast**

8:00 – 8:50 a.m. **A Year in the Courtroom for Oil and Gas**

As usual, the year has been a busy one in oil and gas litigation. Despite a slowdown in regional leasing and drilling operations over the past few years, many Marcellus and Utica states continue to produce record amounts of oil and gas. Accordingly, new disputes continue to arise creating a dynamic area of law that should be monitored closely. This session will focus on some of the major oil and gas litigation in developments in Pennsylvania, West Virginia, Ohio, and Kentucky, including, for example, state/local preemption issues, dormant mineral acts, and royalty litigation.

- Travis L. Brannon, *K&L Gates LLP*, Pittsburgh, PA
- Lucas Liben, *Reed Smith LLP*, Pittsburgh, PA

8:50 – 9:40 a.m. **The Rise of NGO Litigation in Response to the Trump Presidency**

As the Trump administration acts to roll back the Obama environmental legacy through executive orders and other initiatives, various non-governmental organizations have sought to challenge and stall those efforts. This presentation will identify and analyze the status of recently filed cases by NGOs and their potential impact on the regulatory landscape, including cases currently filed in federal courts.

- Kevin K. Douglass, *Babst Calland*, Pittsburgh, PA

9:40 – 10:00 a.m. **Break**

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 6 through 28; first post is at 1:05 each race day.

There is no racing Monday or Tuesday.



Photo by Jeff Rogers, courtesy of the Lexington Convention and Visitors Bureau.



Waller



Brisendine



Ponder



Schwerdtfeger



Tarantelli



Wilson



Brannon



Liben



Douglass

10:00 – 11:00 a.m.

**From Fracking to FERC to Finland: A Case Study of the Rover Pipeline and an Analysis of Federal Regulations and Market Factors Impacting Interstate Transportation and Export of Liquefied Natural Gas**

This session explores the federal regulations affecting the transport of natural gas from the well site, across state lines, to liquefied natural gas (LNG) terminals, and the market factors and regulations affecting LNG exports. The Federal Energy Regulatory Commission (FERC) reviews applications for the location, construction and operation of natural gas pipelines, and ensures that the applicant will comply with Department of Transportation (DOT) Standards after a pipeline has been constructed. Pre-filing procedures can expedite the approval process by allowing the FERC to become involved with scoping and resolving environmental issues prior to the applicant filing its application. Jenna DiFrancesco will present a case study of the Rover Pipeline, which extends hundreds of miles through Pennsylvania, Ohio and West Virginia, beginning with the steps by which its proponents utilized pre-filing procedures through current completion of Phase 1 of the pipeline project. Jennifer Beresky will explore the types of agency regulations currently in place affecting the export of LNG, and how greater exports would affect the Appalachian Basin. With increasing global energy demand, the ability for the U.S. to become a top exporter of LNG is of paramount importance for national security and our position in the global economy, with direct benefits to the natural gas industry in the Appalachian Basin. A brief market analysis will be included, and special attention given to the impact U.S.-Russian relations may have on the industry. Both speakers will explore the potential impact of policy changes on future interstate pipelines and exports of LNG.

- Jennifer L. Beresky, *Burns White LLC*, Pittsburgh, PA
- Jenna R. DiFrancesco, *Burns White LLC*, Pittsburgh, PA



Beresky



DiFrancesco



Ramsey



Pack



Beverage

11:00 a.m. – Noon

**Common Purchase and Sale Agreement Terms as Seen Through the Eyes of a Title Attorney**

This interactive presentation will examine commonly used terms and definitions in oil and gas Purchase and Sale Agreements and how these terms affect a due diligence review, both as it relates to ownership and value. We will discuss how the same terms can vary in applicability in different jurisdictions as well as meeting the “defensible title” standard set forth in most Purchase and Sale Agreements. We will also explore the potential implications of drafting agreements affecting property outside of the jurisdiction in which the drafting attorney generally practices.

- Angela C. Ramsey, *Lewis Glasser Casey & Rollins PLLC*, Charleston, WV

## Thursday, October 19, Breakout Session B

7:00 – 8:30 a.m.

**Continental Breakfast**

8:00 – 8:50 a.m.

**Hot Topics in Employment Law**

This session provides an update on recent developments in employment law in the Appalachian Basin. Timely topics such as accommodations for medical marijuana, GPS tracking of employees, and drug testing will be discussed. You will also learn about recent case law governing arbitration agreements.

- Ashley C. Pack, *Dinsmore & Shohl LLP*, Charleston, WV

8:50 – 9:40 a.m.

**Workplace Safety and Health: An Overview of Where We Have Been and Where We May Be Heading**

The major federal agencies charged with regulation and enforcement authority in the mining and other industries in the U.S. have changed the playing field over the past eight years. Will the past define our future with MSHA and OSHA? Is there any light at the end of the tunnel to ensure effective workplace safety and health practices and enforcement that are founded in common sense and are sustainable to employers and employees alike? This presentation will address significant regulation, policy, case law and a modest wish list for the future.

- Laura E. Beverage, *Jackson Kelly PLLC*, Denver, CO

9:40 – 10:00 a.m.

**Break**

10:00 – 11:00 a.m. **Trump’s “War on Clean Energy”?**

Over the past several years, more electricity generating capacity has been added in the U.S. from wind and solar combined than from any other fuel source. Many clean energy advocates worry that steps taken by the current administration will reverse this trend. Harkening back to the claimed Obama “War on Coal,” this presentation examines actions under the new administration that may undermine advances in the deployment of clean energy. These include withdrawing the U.S. from the Paris Climate Accord; planning to roll back the Clean Power Plan; attempting to undo Obama-era regulations that limit methane emissions and surface mining operations; ending a moratorium on coal mining on public lands; pursuing a study of the national grid that many fear is designed to show that renewable energy is unreliable; calling for significant budget and staff cuts at the DOE’s Office of Energy Efficiency and Renewable Energy and the National Renewable Energy Laboratory; ending loan and grant programs that support renewable energy R&D; revisiting Bureau of Land Management guidelines designed to ease the deployment of renewable energy on public lands; “scrubbing” government web sites of references to climate change and renewable energy, demoting or reassigning agency climate scientists, and suppressing or altering agency reports on the effects of climate change; and utilizing the U.S. seat on the UN Green Climate Fund to promote the construction of “clean coal” power plants. This presentation looks at the status of these proposals and considers the impact that each may have on the deployment of clean energy. Collectively, they may put to the test the notion that regulations and government support rather than economic conditions have been the primary driver in the growth of renewable energy.

■ Professor Mark L. (Buzz) Belleville, *Appalachian School of Law*, Grundy, VA



Belleville



Harvey

11:00 – Noon **SMCRA at 40 (Surface Mining Control & Reclamation Act)**

This presentation will review the status of numerous issues important to today’s coal industry, including the Applicant Violator System, the buffer zone rule, endangered species, conductivity, selenium, federal oversight, “not-started” permits and recent activities by ENGOs (environmental non-government organizations).

■ M. Shane Harvey, *Jackson Kelly PLLC*, Charleston, WV

Noon **Kentucky Mineral Law Conference Adjourns**

# Enjoy Lexington

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.

See nearly 50 breeds of horses, plus museums, art galleries, shows and demonstrations at the 1,200-acre Kentucky Horse Park or take a Horse Farm Tour where you can meet four-footed celebrities in their own homes. You won’t believe the lifestyle of the area’s most famous residents!

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. Located next to the company’s brewery at the corner of Maxwell and Cross Streets, 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.

You can visit four period Historic Homes of the area’s most famous citizens — Mary Todd Lincoln, Henry Clay, John Hunt Morgan and Joseph Bryan, a grand-nephew of Daniel Boone.

Many fine restaurants are within walking distance of the Hilton; ask the concierge for directions. Or go to <http://beyondgrits.com/> to discover some of Lexington’s finest restaurants 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!

Request a free visitors guide — [www.visitlex.com/about/visitor-guide/](http://www.visitlex.com/about/visitor-guide/)





## Yes, I want to attend the Kentucky Mineral Law Conference

The full conference registration includes all program materials in electronic format online, continental breakfasts, Wednesday lunch, refreshment breaks and hosted reception on Wednesday. Registrants choosing to have program materials in loose-leaf binder at the time of the program for an additional \$65 should mark that choice on the registration form.

Registration fees	Conference through Oct. 1	Conference after Oct. 1
Non-member Registration Fee .....	\$590 .....	\$650
EMLF Member .....	\$425 .....	\$475
Government and Young Lawyer (3 years or less) .....	\$325 .....	\$375
Law Students and Retirees .....	\$100 .....	\$100
Printed Program Materials (Conference Registrants Only) .....	\$ 65 .....	\$ 65

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      \$ \_\_\_\_\_

Hard Copy Notebook         \$ \_\_\_\_\_

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 580 minutes of continuing education, including 1 hour of ethics. In states which calculate 50 minutes as a CLE hour, this will be 11.6 hours of CLE. In states which calculate 60 minutes for a CLE hour, this will be 9.6 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 10. 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 10 receive materials and a \$100 credit toward a future program.

### Three ways to register

- If registering online, go to [www.emlf.org](http://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

*Conference hotel information is on the back page*



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

## **Kentucky Mineral Law Conference**

**October 18-19, 2017  
Hilton Lexington/  
Downtown  
Lexington, KY**

### **Conference Hotel**

Accommodations for the conference are at the Hilton Lexington/Downtown, 369 West Vine Street, Lexington, KY 40507. The room rate is \$159 plus tax, currently at 13.4 percent, for reservations made through September 24 or sell out.

Call 1.859.231.9000 or toll free 1.877.539.1648 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. Or go to the EMLF website — [www.emlf.org](http://www.emlf.org) — for a link to online registration.

With a stay at Hilton Lexington/Downtown, you'll be centrally located in Lexington, steps from Lexington Visitors Center and Lexington Convention Center. This hotel is within close proximity of Victorian Square Mall and Lexington Opera House. Enjoy recreational amenities such as an indoor pool and a fitness center. Additional features include gift shops/newsstands, wedding services, and a television in the lobby.

Grab a bite at one of the hotel's three restaurants, or stay in and take advantage of room service (during limited hours). Quench your thirst with your favorite drink at a bar/lounge. Featured business amenities include a 24-hour business center, express check-out, and dry cleaning/laundry services. A roundtrip airport shuttle is complimentary at scheduled times.

### **Save the Date!**

■ *June 17-19, 2018*  
39th Annual Institute  
Nashville, TN