



THE SHALE PLAY TODAY



News & Insights from the Marcellus and Utica Shales

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Aggregation: Common Sense Prevails & EPA Loses Major Clean Air Act Decision

On August 7, 2012, the United States Court of Appeals for the Sixth Circuit in [Summit Petroleum Corp. v. United States EPA, et al.](#), Case Nos. 09-4348/10-4572, dealt the United States Environmental Protection Agency ("EPA") a major setback in its efforts to aggregate multiple, often disperse, emitting units in the oil and natural gas industry as a single stationary source - thus subjecting them to more stringent controls under the Clean Air Act ("CAA"). EPA had concluded that Summit Petroleum Corporation's ("Summit") natural gas sweetening plant and approximately 100 production wells spread out over approximately forty-three square miles should be "aggregated" to constitute a single stationary source subject to the CAA Title V permitting program as a "major source." Despite the physical separation of multiple emission sources, EPA concluded that Summit's activities were "adjacent" based on a theory of functional relatedness - relying on factors such as the "nature of the relationship between the facilities" and the "degree of interdependence between them." The Sixth Circuit agreed with

In The News



Pa. PUC Begins Enforcement of Portions of Act 13

by [Kevin M. Eddy](#)
Pittsburgh

Despite the Commonwealth Court's recent decision striking down Act 13's limits on municipalities enacting zoning ordinances more restrictive than the state's uniform requirements, the Pennsylvania Public Utility Commission ("PUC") has begun enforcement of Act 13's impact fee provisions. Specifically, the PUC has started to review some municipalities' ordinances that seek to regulate drilling activity.

Click [here](#) to read more.



Marcellus Shale Activity Boosts W.Va. Construction Industry

Although the number of construction jobs has dropped nationwide in almost half of all metropolitan areas in the past year, the opposite is true for the city of Charleston and the state as a whole. West Virginia-based construction companies are claiming up to 30 percent of their work volume is based in Marcellus Shale activity.

Summit that EPA's reliance on functional relationship to define the term "adjacent" was unreasonable and contrary to the plain meaning of the term and remanded the matter to "EPA to determine whether Summit's sweetening plant and sour gas wells are sufficiently physically proximate to be considered 'adjacent' within the ordinary, i.e., physical and geographical, meaning of that requirement."

The CAA regulations relevant to the "aggregation" determination cite the following factors to consider in determining what emission units should be aggregated as a single stationary source: (1) whether the activities belong to the same industrial grouping; (2) whether the activities are under common control of the same person or entity; and (3) whether the activities are located on one or more contiguous or adjacent properties. 40 C.F.R. § 52.21(b)(6). The first two factors do not usually generate much debate. However, EPA's reliance on evaluating the functional relationship to determine "continuous" or "adjacent" has pushed the limits of common sense - and at least in this case, EPA pushed too far.

Read the full article on our [website](#).

Click [here](#) to read more.



Marcellus Shale Soon to Surpass Haynesville as Most Productive Natural Gas Field in U.S.

Serious drilling in the Marcellus Shale only began five years ago, but the sheer volume of gas coming out of the region is catapulting it to the number one natural gas production spot. Experts believe it will be the top-producing region for years to come.

Click [here](#) to read more.



ANGA Video Refutes Shale Gas Drilling Myths

America's Natural Gas Alliance has posted an informative, balanced video that takes a look at some myths surrounding the natural gas industry and answers some general questions that a large portion of the public may have.

"ANGA gets it right! Finally, the misinformation artfully seeded by 'Gasland' is analytically debunked."

-[Michael J. Basile](#), Managing Member

Click [here](#) to view the video.



Useful Resource: Pre-Drill Water Supply Surveys

The Pennsylvania-based Marcellus Shale Coalition recently released "Recommended Practices: Pre-Drill Water Supply Surveys". The publication lays out simple guidelines for oil and gas operators.

Click [here](#) to view the guidelines.

Featured Shale Team Member

Niall A. Paul (Charleston)

Niall is leader of The Battle Group, Spilman's high-risk litigation strike force. In that role he has obtained numerous jury verdicts for





clients and successfully litigated more than one hundred disputes, including environmental and toxic tort claims. Recently, his litigation team has defeated plaintiffs' claims in various groundwater contamination and medical monitoring actions on behalf of a variety of energy and manufacturing clients. Click [here](#) to read his full professional biography.

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