



THE INAUGURAL ENERGY ISSUE

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The *West Virginia Law Review* is proud to announce the publication of its Inaugural Energy Issue. As the West Virginia University College of Law continues to establish itself as the leader in energy and sustainable development legal education, the *West Virginia Law Review's* Energy Issue will provide an annual discussion of cutting-edge legal issues across the varying sectors of energy practice. The unique convergence of energy, environmental, and natural resource issues in the Appalachian region provides the Energy Issue with unprecedented access to thoughtful and practical scholarship on developing energy law and policy.

An Energy and Sustainability Roadmap for West Virginia



James M. Van Nostrand opens the Energy Issue by laying out a comprehensive plan for repositioning West Virginia's energy policy. His article discusses the potential in West Virginia for integrated resource planning, energy efficiency, renewable energy portfolio standards, renewable energy development, and increased natural gas demand. The article's final recommendations seek to place West Virginia on a sustainable energy path both environmentally and economically.

Mr. Van Nostrand is currently an Associate Professor and Director of the Center for Energy and Sustainable Development at the WVU College of Law. Before becoming a professor, he spent 22 years in private energy practice with large law firms based in the Pacific Northwest.

A Review of the Implied Covenant of Development in the Shale Gas Era



George A. Bibikos analyzes case law in Pennsylvania, West Virginia, and Ohio regarding implied covenants of development in oil and gas leases. He emphasizes relevant judicial factors present in the shale gas context and identifies some scenarios in which lessors may assert claims. The article provides a forward-looking viewpoint as courts sort out the disputes over the implied development covenant.

Mr. Bibikos is a Partner in the Harrisburg, PA office of K&L Gates LLP and serves as Adjunct Professor of Oil & Gas Law at Widener Law School. His practice focuses on oil and gas law, energy and natural resource development, environmental and regulatory counseling, public utility and administrative law.

Viability of Arbitration Clauses in West Virginia Oil and Gas Leases: It Is All About the Lease!!!



Phillip T. Glyptis covers a topic specific to West Virginia with his discussion of arbitration clauses. He points out that recent West Virginia Supreme Court decisions have called into question the validity of arbitration provisions in oil and gas leases. Due to the increased litigation between landowners and operators regarding this issue, he argues that the Court should provide more guidance to ensure sustained oil and gas development.

Mr. Glyptis is Of Counsel with Steptoe & Johnson PLLC and concentrates his practice on complex litigation. He focuses on energy litigation and professional liability, including the defense of medical professionals and long-term care facilities.

Upstream Oil and Gas Legal Frameworks: Brazil and the United States Compared



Gabriela M. Engler Pinto provides an international energy discussion by offering a comparative analysis of oil and gas exploration and production regimes in Brazil and the United States. She explores the contrast between private and public ownership of hydrocarbons with particular emphasis on the dichotomy between national and international oil companies. Energy law is increasingly globalized in nature and the author presents the Energy Issue with a valuable recognition of this fact.

Ms. Engler Pinto is a Brazilian lawyer who specializes in the legal and regulatory aspects regarding the participation of the private sector in infrastructure with experience in sectors such as highways, railroads, ports, airports, and others. She works at a boutique law firm in Rio de Janeiro, Brazil.



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Mayfly Mayday: the West Virginia Legislature Attempts to Redefine Compliance with the Narrative Water Quality Standards through Senate Bill 562

Robert G. McLusky and **Aaron S. Heishman** chronicle the use of narrative water quality standards to challenge the issuance of surface coal mining and water discharge permits under the Clean Water Act. The authors outline the Clean Water Act's structure and purpose, traditional development of new water quality standards, and the current battle over sensitive aquatic insect protection and restrictions on the conductivity of surface mine water discharges. The final argument seeks a more pragmatic balance between environmental protections and the needs of West Virginia's coal industry.



Mr. McLusky is a Member at Jackson Kelly PLLC in Charleston, WV. His practice focuses on environmental litigation and client counseling. For the past 12 years, he represented the coal industry in landmark mountaintop mining cases and water permitting and compliance issues.

Mr. Heishman is an associate at Jackson Kelly PLLC in Charleston, WV. He primarily assists coal industry clients in acquiring permits under the Clean Water Act, complying with the terms of those permits, and defending those permits against legal challenges.

Significant and Substantial: The History and Continuing Evolution of one of the Mine Safety and Health Administration's Principal Enforcement Tools



Maxwell K. Multer provides a historical and modern day review of "significant and substantial" violation enforcement by the Mine Safety and Health Administration. He fills a longstanding void on the origins and evolution of significant and substantial determinations while also analyzing recent Mine Safety and Health Review Commission decisions. The discussion points out questions arising from those recent decisions and notes that the scope of significant and substantial analysis may have been broadened.

Mr. Multer is an associate with the law firm of Dinsmore & Shohl, LLP. He assists clients in the natural resources industry, with an interest in energy and workplace safety litigation. Mr. Multer previously published in the Securities Regulation Law Journal and regularly writes and presents on mine safety litigation.

A Fresh Look at an Old Tort: Litigating Slander of Title in Mineral Disputes



J. Zak Ritchie rounds out the Energy Issue by constructing a West Virginia practitioner's guide to slander of title in mineral litigation. His focus includes underlying policy considerations, the slander of title action and its elements, differing state court treatment of the action, frequent defenses, and a survey of factual scenarios giving rise to slander of title suits. This guide will prove useful to practitioners and scholars alike as courts deal with the implications of increased oil and gas activity in Appalachia.

Mr. Ritchie is a law clerk to the Honorable Stephanie D. Thacker of the United States Court of Appeals for the Fourth Circuit. He previously served as a law clerk to the Honorable John T. Copenhaver of the United States District Court for the Southern District of West Virginia in 2011-12.