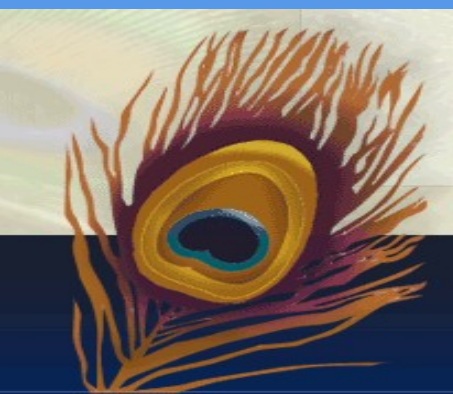




SAFELY AND EFFICIENTLY EXECUTING A LONGWALL MINE PLAN OVERLYING THE MARCELLUS AND OTHER SHALE PLAYS

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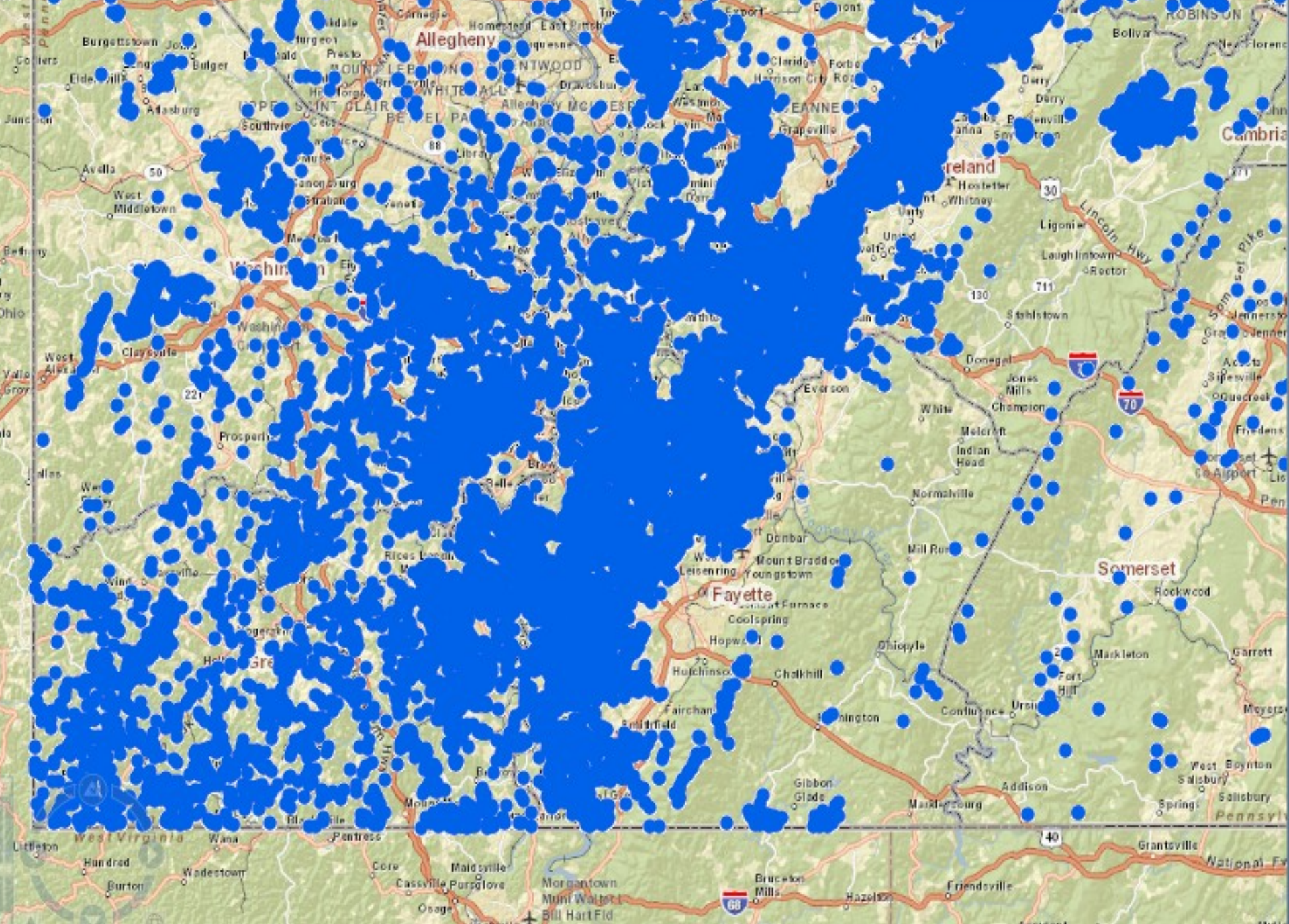
Preliminary Issues & Permitting Your Longwall

Prior to taking any formal action -

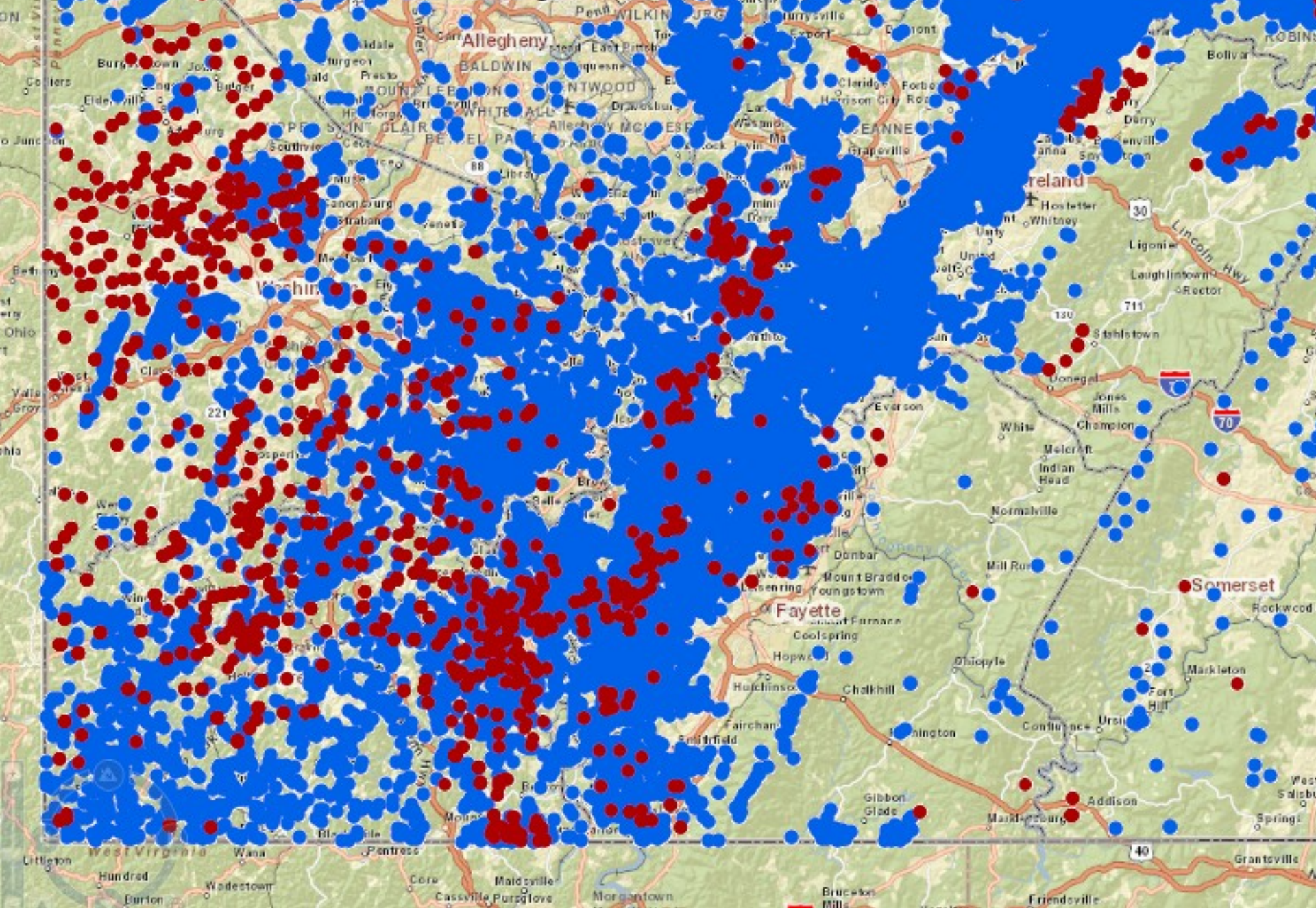
- Review possible life-of-mine plan for each longwall within reserves
- Establish with as much detail as reasonably possible LW panel lengths, face widths, development entry design and location, areas where O&G wells would be acceptable (e.g., areas where no mining projected, pillar areas, etc)
- However, do not "commit" to mine plan projections (longwall panel dimensions, etc) that you are not entirely comfortable with

Submitting for Longwall Coal Mining Permit

- Identify location of all existing permitted or registered oil or gas wells for which are located within 125 feet of mining operations and provide notice to the permittee, owner, or agent of the owner of the well – 25 Pa Code §86.31(e)
 - Abandoned and Non Registered Wells – Absolute right to enter upon the surface and plug
 - Norman T. George, et ux., v. Consolidation Coal Company, No. 1, In Equity, Greene County, 1989 (Greene County Court of Common Pleas held that Consolidation Coal Company could not be enjoined from entering onto the property of the surface owner to plug an abandoned oil and gas well located thereon); see also Consolidation Coal Company v. Vandruff, No. 7, In Equity, Washington County, 1992, rev'd on other grounds, 537 Pa 142, 641 A.2d 1161
 - Permitted and Registered Wells – No established right to enter upon the surface and plug – *Contrast* American Energy Corporation, et al. v. Charles Datkuliak, et al. Monroe County Ohio Case No 2007-162 & 153; on appeal 7th Dist. Ct of Appeals, Ohio Case No 07-MO-3



Source: <http://www.depgis.state.pa.us/PaOilAndGasMapping/>



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Submitting for Longwall Coal Mining Permit

- Identify location of all existing permitted or registered oil or gas wells for which are located within 125 feet of mining operations and provide notice to the permittee, owner, or agent of the owner of the well – 25 Pa Code §86.31(e)
- Written comments or objections on the permit application must be submitted within 30 days after the last publication of the newspaper advertisement placed by the applicant – 25 Pa Code §86.32
- The well permittee, owner or agent of an owner of an oil or gas well who receives a notice required by §86.31(e) may, within the response period, provide the Pennsylvania Department of Environmental Protection (Pa DEP), a description of the measures the well permittee, owner or agent believes are necessary to minimize damage, destruction or disruption of services provided by the oil or gas well which may be caused by the proposed mining activities – 25 Pa Code §86.32
- The owner or operator of an oil and gas well who receives a notice required by §86.31(e) may, in writing, request that the Pa DEP hold an informal conference on an application for a permit – 25 Pa Code §86.34

R

from an O&G Operator



Scenarios Affecting Mine Plan

- Well proposed in abandoned area of active mine
- Well proposed in abandoned mine not connected to active mine
- Well proposed in mining reserves with economic impact
- Well proposed in mining reserves with specific mine plan
- Well proposed into planned longwall gate abutment (pillar permit)
- Well proposed into planned or existing interior barrier
- Well proposed into planned or existing perimeter barrier

from an O&G Operator

- Determine whether to oppose the proposed well location – may be able to mine safely without impacting
- Determine if well permit application complies with the applicable law:
 - Oil & Gas Development Law of 2012 (Act 13)
 - Coal and Gas Resource Coordination Act (Act 214) – *if applicable*
 - Oil and Gas Conservation Law – *if applicable*
- File with Pa DEP written objections within 15 days of receipt of well permit application in specific detail as outlined in 25 Pa Code §78.21, *et seq.*
- File with Pa DEP a written request for a conference under 3212(b) and 3251 of Act 13 as one having standing and as one having a direct interest in the well permit application as coal owner

Act 13 (Oil & Gas Development Law of 2012) - 58 Pa.C.S.A. § 3201, *et seq.*

§ 3203 (Definitions)

- "Wells" - includes all wells except potable water, degas and landfill
- "Operating Coal Mine" - coal mine that has produced coal within past 12 months, or one producing coal, or one that shall produce coal
- "Outside coal boundaries" - coal acreage assigned to an operating coal mine under a permit issued by PA DEP

§ 3212 (Permit Objections) – Standing to Object

- Proposed well affecting third party surface owner -§3212(a)
- Proposed well within outside coal boundaries of operating coal mine or within 1000 feet beyond (and proposed well or surrounding pillar must at least allegedly unduly interfere with or endanger the mine) -§ 3212(b)
- Proposed well within coal mine already projected and platted but not yet operating or within 1000 feet beyond (and proposed well or surrounding pillar must at least allegedly unduly interfere with or endanger the mine) - § 3212(b)

§ 3251 (Permit Objections) – Standing to Object

- General Umbrella - Any person, including the DEP, which can establish having a direct interest in the well location may, at any time, request that a conference be held to discuss and attempt to resolve by mutual agreement a matter arising under this chapter – §3251(b)

Permit Objections – Standing to Object

Foundation Coal vs. DEP, 993 A.2d 1277 (Pa Cmwlth 2010)

- "Projected and platted" means coal acreage included in a complete CMAP filed by coal operator with Pa DEP
- Foundation was refused 3212(b) legal standing - no CMAP filed
- Was apparently granted 3251 standing
- *NOTE: Key to establishing undue interference is to have established panel widths, panel lengths, no-mining areas, etc*
- *NOTE: No Pa DEP guidance documents found on further meaning of "projected and platted but not yet operating"*

Permit Objections – Objections

- Must file objections under §3212(b) or §3251 with Pa DEP within 15 days of receipt of well plat from gas producer
- Alternative well location(s), if any, that overcomes the objections must be indicated with the objections
- 3212(c) - Within 10 days from service of objections, Pa DEP must hold a conference under §3251 to consider the objections and attempt to agree on well location. § 3251 gives Pa DEP 90 days unless noted otherwise in the statute
- If parties cannot agree, Pa DEP decides location as near as possible to originally proposed location without unduly interfering with or endangering the mine

What to Include in Objections

25 Pa Code § 78.24 - outlines required specifics of what must be included in the objections filed with Pa DEP:

- The objections shall be filed in writing and shall contain the following information, if applicable:
 - The name, address and telephone number of the person filing the objection, and the date on which a copy of the plat was received.
 - The name and address of the applicant for the well permit and the name and number of the well.
 - The type of well—for example, oil, gas, injection and the like—that is the subject of the objections.
 - The location of the well in relation to the coal owned or operated by the objecting party.

What to Include in Objections (cont.)

- The objections shall be filed in writing and shall contain the following information, if applicable:
 - The area through which the well will be drilled, specifically:
 - Whether the well will be drilled through a mining area that is projected, platted or permitted, but not yet being operated.
 - Whether the well will be drilled through a perimeter area.
 - Whether the well will penetrate a workable coal seam.
 - Whether the well will be located above an active mine.
 - Whether the well will penetrate an operating mine.

What to Include in Objections (cont.)

- The objections shall be filed in writing and shall contain the following information, if applicable:
 - A copy of the plans, maps or projections of the mining area underlying the proposed gas well showing the location of the proposed well.
 - Whether the owner or operator believes that the well will pose undue interference or endangerment to the mine, and the nature of the threat.
 - The financial impact posed by the well
 - Whether the well will violate the act, the Coal and Gas Resource Coordination Act (58 P. S. § § 501—518) or another applicable law administered by the Department.
 - The objections shall include an alternate location, if possible, on the tract of the well operator that would overcome the objections or at which the interference would be minimized. ***The Department is not bound to consider alternate locations that are proposed after the close of the first conference.*

Act 214 (Coal and Gas Resource Coordination Act of 1984) - 58 P.S. § 501, *et seq.*

§ 502 (Definitions) :

- "Active Coal Mine" - includes workable coal seam extending 5 mining years beyond currently permitted area (i.e., "Permit +5 area")
- "Gas Well" - well producing or capable of producing a gas-oil ratio of more than 100 MCF per barrel of oil
- "Oil Well" - well producing or capable of producing a gas-oil ration of less than 100 MCF per barrel of oil
- "Owner" - one having an economic interest in the coal or the gas

Act 214 (Coal and Gas Resource Coordination Act of 1984) - 58 P.S. § 501, *et seq.*

§ 503 (Applicability; exclusions):

- Does not apply to conservation wells (i.e., wells penetrating Onondaga, *approx.* 3800 feet)
- Does not apply to oil wells, injection wells, storage wells
- Thus, Act 214 applies only to shallow gas wells

Act 214 (Coal and Gas Resource Coordination Act of 1984) - 58 P.S. § 501, *et seq.*

§ 507 (Minimum distance between wells):

- Proposed gas well must be at least 1000 feet from any other "well" broadly defined to be gas, oil, injection, storage

Act 214 (Coal and Gas Resource Coordination Act of 1984) - 58 P.S. § 501, *et seq.*

§ 512 (Coordination of gas well drilling through active coal mines):

- Coal owner of active coal mine may file objections with Pa DEP within 10 days of receiving well plat
- Pa DEP notifies well operator of the objections
- If coal owner and well operator unable to agree on location, then 3 person arbitration panel is selected by parties and their representative arbitrators
- Three member panel meets within 10 days of request by either party
- Parties submit their positions to the panel
- Panel chooses the location at such place as will not endanger the safety of mine workers and allows for maximum recovery of gas and removal of coal while considering the relative coal/gas values
- Pa DEP has power to veto panel's recommendation, for safety concerns, and can mandate panel to choose another location

Oil and Gas Conservation Law of 1961

58 P.S. § 401, *et seq.*

- § 403 (Applicability) - applies only to conservation wells (wells penetrating Onondaga)
- Oil and Gas Conservation Commission may enter enforceable well spacing orders
- Statute does not contain any gas operator/coal operator conflict resolution provisions
- However, gas well permit application must comply with this statute
- Coal operator presumably has right to notify Commission or Pa DEP of violations

Prior to Conference

Prepare and submit a memorandum of law to Pa DEP and O&G operator:

- Assert legal standing under 3212(b) and 3251
- Argue proposed well location unduly interferes with and/or endangers the mine or the mine workers
- Supply acceptable alternative well locations without waiving future damages action
- The main purpose of this proceeding is to control the proposed well location - to have it placed where it will least interfere with projected mine plan
- CAUTION: Do NOT admit alternative well locations will have NO interference with mine plans or will not cause loss or damage to operator

Prior to Conference (Settlement Agreement)

- Attempt to reach an amicable agreement, which should include:
 - Establish specific drilling criteria:
 - Gas Company shall use water, water sprays, drilling soap or other approved drilling fluids while drilling after the surface casing is installed through the coal seam and continue drilling with fluids until the steel coal protection casing is effectively installed and cemented in place below the coal seam in accordance with all rules, regulations, and approvals for the drilling operation.

Prior to Conference (Settlement Agreement)

- Survey location of well and following drilling through the coal seam have gas company conduct a well deviation survey conducted in the well boring from the surface to the drilled depth at the base of the coal seam and shall promptly provide the certified results of the deviation survey to coal company.
- Address future plugging obligations and financial considerations
 - When will mining occur?
 - How and when shall notice be given?
 - Who is responsible for cost of plugging?
 - Will gas company drill replacement well to hold the lease ?
 - What if gas company desires to plug or abandon the well prior to mine thru?
 - Include waiver of damages to the well from mining.

At the Pa DEP Conference

Whether under 3212(b) or 3251:

- Fact witnesses must effectively demonstrate the undue interference and/or danger to mine and mine workers - consider using coal expert
- Have O&G operator expert validate the viability of the alternative well locations

Pa DEP Determinations

- If Pa DEP grants legal standing under 3212(b) or 3251, but grants well permit application over objection, file appeal to EHB and, if available and if needed, petition EHB for supersedeas.
- If Pa DEP denies legal standing under both 3212(b) and 3251, file appeal to EHB and if available and if needed, petition EHB for supersedeas.

NOTE: Based on Pa DEP position in Foundation, it appears unlikely Pa DEP will deny all standing to coal operator where it owns or controls the coal

If DEP Rules Against you...

- If denied any standing by PA DEP and Pa DEP grants permit application over objection, file and prosecute court action

Where to file?

- If Pa DEP is indispensable party, file action under Commonwealth Court - original jurisdiction against well operator and Pa DEP.
- If Pa DEP is not indispensable, file multi-count action in Court of Common Pleas against well operator

What to Allege?

- Count 1 - Request injunction to prevent drilling as unnecessary or "wanton" (per Chartiers Block) interference with coal rights on the basis that there are well locations that create less interference with projected coal operations

KEY: Prove viable alternative gas well locations

What to Allege?

- Count 2 - Request declaratory judgment ordering that if court allows well to be drilled anywhere, O&G operator must suspend O&G operations (per Chartiers Block) in advance of coal extraction, temporarily plug the vertical well to mine-through standards at gas operator's expense, and post a bond with 3rd party surety to protect against damages (per Chartiers Block, Mon-River Consolidated)

QUERY: Is temporary mine-through plug technologically possible?

What to Allege?

- Count 3 - Request damages for coal rendered inaccessible or unmineable by gas well if not plugged to mine through standards in advanced of mining.
- Count 4 - Trespass
- Count 5 - Private Nuisance
- Count 6 - Specific Performance (well plugging in advance of mining)

Property or Contract (Deed) Rights

- Review coal severance deeds to define the property rights relationships among surface owners, coal owner and oil and gas owner
- Upon receipt of any well permit application, check the coal severance deeds for relevant language defining scope of coal estate conveyed
- Check for conveyance of ALL the coal - i.e., without any exception or coal retained
- Check for waiver of ALL damages to landowner arising out of coal extraction operations
- Occasionally, Pittsburgh coal severance deeds contain limits on gas well drilling

Property or Contract (Deed) Rights

- Frequently, Pittsburgh coal severance deeds contain reservations by oil and gas owner to drill through the coal
- Rarely, we find waiver of damages caused to coal (e.g., permanent coal pillar around well) by gas well drilling such as in the Einsig case.
- Also, important to determine if oil and gas or coal was severed first (in time), and to examine carefully the relative rights of the parties in all severance deeds. Normally, in southwestern PA, coal is severed first in time.
- Property or contract rights previously created in deeds continue to exist and are superseded or nullified only to the extent expressly declared in subsequently enacted statutes. Einsig v. Pa Mines Corp, 69 Pa Cmlth 351, 452 A.2d 558, 564 (1982), *citing* Rahn vs.Hess, 378 Pa 264, 279, 106 A2d 461,464, (1954)

Enforcing Property or Contract (Deed) Rights

- Pursue available administrative remedies before utilizing common law remedies since the outcome of the administrative process (i.e., gas well location) will affect what relief the coal operator will seek in the common law action
- However, note that in Allegheny Enterprises, Inc. v. J-W Operating Company, 2014WL 866478 (MD PA), coal operator did NOT pursue any admin remedies under Act 13, Act 214 or otherwise before filing court action.
- Regardless of the outcome of the administrative remedies (i.e., whether the coal operator is granted or denied standing under §3212(b) and/or §3251), the coal operator has its property or deeds rights to enforce. (Of course, this may be moot if Pa DEP denies the well permit application or situates the well where the coal operator wants it.)

Enforcing Property or Contract (Deed) Rights

Demand that gas operator post a bond to protect against the damages to the coal:

- Chartiers Block Coal Co v. Mellon, 152 Pa 286, 25 A.597 (1893)
- Allegheny Enterprises Inc. v. J-W Operating Company, 2014 WL 866478 (MD Pa)
- Monongahela River Consol. Coal & Coke Co v. Greensboro Gas Co., 20 Pa. D. 320 (1910)

Chartiers Block Coal Co v. Mellon, 152 Pa 286, 25 A.597 (1893)

- Distinguishes between "wanton" (meaning unnecessary) interference by gas operator and "necessary" interference by gas operator of coal operations
- Unnecessary or "wanton" interference is enjoined, however necessary interference by the gas well will not be enjoined, but gas producer liable for damages to coal owner for coal rendered inaccessible by the well
- Coal operator may require gas producer to suspend gas operations during coal extraction operations (if such can be done to avoid unnecessary interference with the coal operations or be liable for damages to coal owner).
- Gas producer required to post \$10K future damages bond to protect coal operator
- NOTE: Given advent of administrative process since 1893, Pa DEP now determines if a location is "wanton" (i.e., unduly interferes with the coal operations) and selects a non-wanton location (or if none, denies the permit), instead of the court. Otherwise, Chartiers remains controlling law.

Monongahela River Consol. Coal & Coke Co v.
Greensboro Gas Co.,
20 Pa. D. 320 (1910)

- Mon River Consol sued in Fayette County Court of Common Pleas for injunction to prevent O&G producer from drilling certain gas wells through Mon River's coal mine, mainly for safety reasons
- Court refused to grant permanent injunction, but ordered gas operator to drill wells in accordance with very specific safety criteria set forth by court
- Court also ordered gas operator to post \$10K surety bond to pay ALL damages that coal operator might legally recover because of the gas wells NOW drilled or which would HEREAFTER be drilled. Citing Chartiers Block

Allegheny Enterprises Inc. v. J-W Operating Company, 2014 WL 866478 (MD Pa)

- Coal operator sued gas operator in state court in multi-count complaint including declaratory judgment action, conversion, interference with contractual relations, and interference with coal interests. Case transferred to federal court based on diversity jurisdiction
- NOTE: Coal operator had NOT filed any permit objections and apparently did not participate at all in the Pa DEP gas well permitting process. Court did not hold that coal operator had to first exhaust its administrative remedies.
- "... Chartiers Block lives on side-by-side with statutes since enacted...", citing Belden and Blake, 969 A.2d 532 (Pa 2009)
- "...the Court holds as a general matter that an oil and gas lessee must compensate the owner of an above-located coal estate for otherwise useful coal rendered inaccessible by oil and gas drilling."
- Court cited 1910 Mon River Consolidated case requiring gas operator to post \$10K so that coal owner could collect damages from gas producer

Einsig v. Pennsylvania Mines Corporation, 69 Pa Cmlth. 351, 452 A.2d 558 (1982)

- NOTE: This case decided when the Gas Operations Well-Drilling Petroleum and Coal Mining Act was PA's main oil and gas statute, but the pertinent language of this Act was *basically* preserved and incorporated into Act 214, the Oil and Gas Act of 1984, as well as Act 13 (2012 Oil and Gas Development) law currently in force. Thus, Einsig remains instructive.
- This case well explains, relies on, and validates the continued efficacy of Chartiers Block, except that Pa DEP rather than court of equity determines if a well will unduly (unnecessarily) interfere with or endanger the mine
- Pa DEP determines if there is "undue" interference with the coal mining operations. "Undue" is the same as "wanton" under Chartiers Block.

Einsig v. Pennsylvania Mines Corporation, 69 Pa Cmlth. 351, 452 A.2d 558 (1982)

- Undue interference decision by Pa DEP cannot be based on which entity (coal operator or gas operator) will lose more money by the existence or non-existence of the well. Pa DEP can only decide if well can be drilled safely and at the location that causes the least interference with the coal operations
- None of the statutes enacted since Chartiers Block nullify the property rights acquired by coal owner in the severance deed and its chain of title.
- Even if permit issued to gas well operator to drill O&G well through coal seam, coal operator may per Chartiers Block prosecute common pleas action against gas well driller for damages caused by any coal rendered inaccessible by the well (provided coal owner has not waived such rights in the chain of title).
- NOTE: Pa Mines Corp had no damage action available against the gas operator since in the 1973 coal severance deed, damages caused by the gas well to the coal mine (i.e., required coal pillar around the well) were expressly waived by the coal owner in the deed.

Co, 20 Pa D & C 3rd, 67 (1981)

- Surface owner sued R&P in Quiet Title claiming title to remaining coal under his property on the theory that all said coal rights had reverted to surface owner
- Explaining Chartiers Block, the Indiana Court of Common Pleas said the Chartiers Block court ruled that the owner of the coal had a right to damages, "for every necessary interference with it" by the surface owner or someone claiming under him.

American Energy Corporation, et al. v. Charles Datkuliak, et al.
Monroe County Ohio Case No 2007-162 & 153; on appeal 7th Dist.
Ct of Appeals, Ohio Case No 07-MO-3

- 1922 coal severance deed - granted rights to mine "all" coal with full damage waiver. Grantors expressly reserved right to drill for O&G but did not "except" or retain title to any coal
- Prior to AEC filing this suit, gas well was drilled through the coal
- AEC sued in common pleas court for DEC action, injunction, specific performance, conversion, trespass, and private nuisance
- Trial Court held that AEC had a clear right to mine all coal, gas well sterilizes coal, and the O&G drilling reservation does not diminish AEC's right to mine all of its coal
- Trial Court ordered landowner to plug the well (apparently at landowner expense) and enjoined landowner from interfering from AEC's right to mine all of its coal

American Energy Corporation, et al. v. Charles Datkuliak, et al.
Monroe County Ohio Case No 2007-162 & 153; on appeal 7th Dist.
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- On appeal, appellate court technically dismissed the action as moot since well was plugged and coal mined before appeal heard, but court proceeded with extensive discussion upholding trial court's decision
- The reservation of an easement in the severance to drill through the coal does not diminish or compromise the coal owner's right to mine ALL of its coal, if that is what the coal owner purchased
- If the gas operator interferes with coal operator's ability to mine its coal, the coal operator is entitled to damages
- Appellate court cited approvingly to and quoted extensively (but did not rely on) Chartiers Block. Court simply emphasized that "all" coal means "all" coal

