

LEX LOCI

APRIL 2014

*"O, wind, if winter comes,
can spring be far behind?"*

Percy Bysshe Shelley



Northern
Kentucky
Bar
Association

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To its boosters, hydraulic fracturing, commonly called fracking, heralds an energy independent America with lower energy costs leading to a boom for industry and commerce. Its detractors see fracking as a perfect way to foul huge numbers of irreplaceable aquifers and watersheds and continue burning more fossil fuels.

Most coverage of these controversies centers on other parts of the United States, but fracking is very much a part of the Commonwealth's energy industry. The first shale gas well was drilled in Floyd County in 1892 and hydraulic fracturing was introduced in the 1960's. Technological improvements in fracturing and horizontal drilling have made shale gas an attractive energy resource.

The Kentucky Waterways Alliance estimates there are 6,000 shale gas wells producing between 50 and 70 billion cubic feet of gas annually in Kentucky. Most of those wells are located in the Big Sandy gas field in eastern Kentucky and the remainder in the New Albany shale formation in western Kentucky.

While a simple Google search for "hydraulic fracturing" or "fracking" will yield many pages of relevant hits, those more interested in legal or technical information are better served by starting their research on federal and state agency websites. Before commencing research on this topic, it should be noted that the regulation of hydraulic fracturing is currently a mix of federal and state law, with considerable disagreement as to whether sole federal or state control would be most effective. It should also be noted that hydraulic fracturing is currently exempt from the provisions of some federal environmental laws, such as the Safe Drinking Water Act.

It should be noted at the outset that Kentucky has thus far been spared one of the most controversial aspects of fracking in other parts of the country, namely, the use of toxic chemicals in fracking fluid. Fracking in Kentucky is done using a mix of nitrogen, water, and sand-making treatment or disposal of the water much

less problematic than in other shale gas fields.

The United States Environmental Protection Agency ("EPA") has a fairly comprehensive website that provides information on the various laws and federal regulations pertaining to fracking. The page also links to data the EPA is gathering as part of a large multi-year study of hydraulic fracturing and its potential impact on drinking water resources. The final study is expected to be released for public comment sometime in 2014.¹ Another great resource for objective information is the U.S. Geological Survey's hydraulic Fracturing homepage.² It links to a recent USGS report linking the disposal of large volumes of fracking fluid in deep wells to several recent earthquakes, which has raised concerns among property owners and insurance companies.

Kentucky-specific statutes, regulations, and information is available on the Kentucky Department for Natural Resources/ Division of Oil and Gas.³ There is a treasure of technical data available from the Kentucky Geological survey at the University of Kentucky.⁴

An easy way to discover and track current legislative activities throughout the United States is the National Conference of State Legislatures' Fracking Update page.⁵ The site contains references to bills and laws but the researcher will need to go the states' own legislature sites for the full-text.

For the researcher who prefers to curl up with a good book rather than an iPad, the ABA has just published, *Beyond the Fracking Wars: A Guide for Lawyers, Public Officials, Planners, and Citizens*. The book acts as an introduction to the technologies of unconventional drilling, the structure of the oil and gas industry, and the legal and regulatory infrastruc-



ture underlying the current shale gas boom. It features case studies from around the country, has an international chapter, and is designed "to be a practical guide for attorneys and citizens who are figuring out what this type of energy development means for themselves and their communities."⁶ As America seeks to balance demand for energy against demand for a clean safe environment, unconventional means of extracting energy like hydraulic fracturing will need to be placed in a legal framework that balances the risks posed against the rewards promised. Obtaining reliable legal and scientific information should be a first step in the development of a lo-

cal, state, and federal legal infrastructure that accounts for both.

Professor Heard received a Bachelor of Arts degree from Taylor University in Upland Indiana, a Master of Library Science from Indiana University at Bloomington and a Juris Doctor from Chase College of Law.

¹ <http://www2.epa.gov/hydraulicfracturing>

² <http://www.energy.usgs.gov/OilGas/UnconventionalOilGas/HydraulicFracturing>

³ <http://www.oilandgas.ky.gov>

⁴ <http://www.uky.edu/KGS>

⁵ www.ncsl.org/research/energy/regulating-hydraulic-fracturing-legislation

⁶ Call Number: KF1849.A2 B49 2013 (Chase Law Library)

MARK YOUR CALENDAR

2014 Northern Kentucky Volunteer Lawyers Pro Bono Awards Luncheon

Thursday, May 15, 2013
11:45 a.m. – 1:30 p.m.

Summit Hills Country Club
Crestview Hills, KY

Featured speaker:
Tom Rouse, President
Kentucky Bar Association

CASA of Kenton & Campbell Counties, Inc.



CASA

Court Appointed Special Advocates
FOR CHILDREN

Partnered with the Northern Kentucky Bar Association
YOUNG LAWYERS SECTION
AND
WOMEN LAWYERS SECTION

Presents:

The 2nd Annual Superhero Run for Kids 5K Run/Walk

Saturday, April 12th at 8:30 a.m.
Devou Park, Covington, Kentucky
www.casakentonky.org

Please sign up for the event to show your support. Superhero costumes are encouraged.
An award for the best overall NKBA Team* will be presented.

Law firms or NKBA members interested in sponsoring the race or participating,
please contact Jenna Overmann at (859) 757-4234 or jovermann@dofamilylaw.com

*NKBA Team is a team which consists of two or more NKBA members.