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## Michigan

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## MICHIGAN



*M. Vafa Barissi\**

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*I. Introduction*

This year, the Michigan courts upheld the previous institution of the Mackinac Straits Corridor Authority, despite opposition to the underlying pipeline project. Michigan Legislature updated an administrative rule in hopes of ensuring safe underground drinking water. Although this year saw a slew of executive and state orders in response to the COVID-19 pandemic, as well as a dramatic drop in oil and gas prices, the substantive oil and gas law in Michigan suffered no considerable effect.

*II. Legislation*

*A. Pending Legislation*

*2019 S.B. 702 Environmental protection; air pollution; methane from oil or gas wells; require control or capture of.*

This bill, introduced on January 8, 2020, requires the installation of a methane control or capture system that can reduce fugitive methane emissions by 99%.<sup>1</sup>

*III. Administrative Law*

*A. Fresh and Mineral Water Defined*

The Michigan Department of Environment, Great Lakes, and Energy’s (EGLE) Oil, Gas, and Minerals Division (OGMD) announced an update to the Oil and Gas Operations administrative rules under Part 615 which became effective Oct. 18, 2019. The adoption of the revised rule intends to improve Michigan’s program for protecting underground sources of drinking water. The new rule defines “fresh water” as “water that contains

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1. S.B. 702, 100th Leg., Reg. Sess. (Mich. 2020).

less than 1000 milligrams per liter of total dissolved solids.”<sup>2</sup> Additionally, OGMD added “mineral water” to the new rule and defined it as “water that contains 1000 milligrams per liter or more of total dissolved solids.”<sup>3</sup>

The previous version defined fresh water as “water that is free of contamination in concentrations that may cause disease or harmful physiological effects and is safe for human consumption.” The new rules provide additional safeguards and tools to protect Michigan’s drinking water and safely regulate Class II injection wells.<sup>4</sup>

#### IV. Common Law

##### A. Michigan Court of Appeals Upholds Law Creating Mackinac Straits Corridor Authority

After Michigan’s Attorney General argued that the 2018 law which created the Mackinac Straits Corridor Authority (MSCA) was unconstitutional because the title of the law did not match the body of the law, the Michigan Court of Appeals ruled that the law was constitutional on June 11, 2020.<sup>5</sup> Michigan legislature created the Mackinac Straits Corridor Authority to oversee the construction and management of a utility tunnel created to modernize the Enbridge oil and gas pipeline through the Straits of Mackinac. The oversight, however, meets appreciable opposition from Michigan’s Governor.<sup>6</sup>

##### B. Michigan Court of Appeals Interprets Preemption of Pipeline Safety Act

Stemming from an alleged nuisance claim brought under Michigan state law, Sunoco filed a motion for summary disposition arguing that the federal Pipeline Safety Act (PSA) preempted plaintiffs’ complaint. Sunoco argued that the PSA’s preemption provision required plaintiffs to plead a federal standard of care because of the interstate nature of the pipelines and facilities at issue.<sup>7</sup> The court of appeals found that the PSA does expressly

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2. Mich. Admin. Code r. 324.102(s) (2020).

3. Mich. Admin. Code r. 324.102(z) (2020).

4. Michael Cornelius, *Updates to Oil and Gas Operations Rules Finalized, Moving State One Step Closer to UIC Primacy*, MICH. OIL & GAS ASS’N: NEWS (Nov. 1, 2019), [http://www.michiganoilandgas.org/updates\\_to\\_oil\\_and\\_gas\\_operations\\_rules\\_finalized\\_moving\\_state\\_one\\_step\\_closer\\_to\\_uic\\_primacy](http://www.michiganoilandgas.org/updates_to_oil_and_gas_operations_rules_finalized_moving_state_one_step_closer_to_uic_primacy).

5. *Enbridge Energy, LP v. State*, No. 351366, 2020 WL 3106841, at \*6 (Mich. Ct. App. June 11, 2020).

6. S.B. 1197, 99th Leg., Reg. Sess. (Mich. 2018).

7. *Davis v. Sunoco Pipeline Ltd.*, No. 346729, 2020 WL 3397386, at \*1 (Mich. Ct. App. June 18, 2020).

preempt all state and local laws affecting pipeline safety.<sup>8</sup> However, based on the specific facts, the court found that the regulation in question did not relate to pipeline safety and merely had an insubstantial and incidental effect on them, which did not undermine Congress's intent in enacting the PSA.

*C. Michigan Court of Appeals Rules on Statute of Frauds and Third-Party Beneficiary for an Oil and Gas Contract*

Landowner relief is inapplicable under a breach of an oil and gas contract when they rely on an agreement that does not satisfy the statute of frauds.<sup>9</sup> Chesapeake Energy Corporation contracted for leases for mineral rights with multiple landowners.<sup>10</sup> The court divided the landowners into two groups: Group A and Group B. Group A signed a letter of intent with Chesapeake which stated that the parties agreed to execute a separate lease, whereas Group B did not.<sup>11</sup> Because Group B did not sign an agreement with Chesapeake, the court of appeals rejected their claims.<sup>12</sup> Further, the court found that Group A letters of intent did not deem Group B as third-party beneficiaries.<sup>13</sup>

*D. Michigan Court of Appeals Denies Mining Rights to Leaseholder After Foreclosure*

The Michigan Court of Appeals found that a leaseholder's rights under a mineral lease terminate by foreclosure and sale of the mortgaged property where the lease rights derive from, noting that, "upon the foreclosure sale, any lease rights acquired after execution of the mortgage are extinguished, and the purchaser receives full title and rights originally obtained by the mortgagor."<sup>14</sup>

Although this case dealt with property rights involving a sand and gravel lease, the same principle applies to oil and gas leases. The main issue being the plaintiff lessee's rights to mine the sand and gravel from a property previously mortgaged to JP Morgan. Upon property foreclosure, JP Morgan

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8. *Id.* at \*4.

9. *Murray v. Chesapeake Energy Corp.*, No. 346062, 2020 WL 1333084, at \*7 (Mich. Ct. App. Mar. 19, 2020).

10. *Id.* at \*1.

11. *Id.* at \*1-3.

12. *Id.* at \*4-6.

13. *Id.* at \*9.

14. *White v. Riness*, No. 347924, 2020 WL 3397395, at \*2 (Mich. Ct. App. June 18, 2020).

sold the property to new owners after a sheriff's sale.<sup>15</sup> The court found that the foreclosure proceedings extinguished the plaintiff's rights in the sand and gravel lease. The court relied on Mich. Comp. Laws Ann. § 600.3236 which states that unless a redemption of the foreclosed property occurs, the new grantee receives "all the right, title, and interest *which the mortgagor had at the time of the execution of the mortgage.*" Therefore, the foreclosure sale extinguishes any lease rights acquired after the mortgage's execution, and the purchaser receives full title and rights originally obtained by the mortgagor.<sup>16</sup>

#### *V. Conclusion*

This year saw minimal developments in oil and gas law.

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15. *Id.* at \*1.

16. *Id.*