

Oil and Gas, Natural Resources, and Energy Journal

Volume 7 | Number 2

The 2021 Survey on Oil & Gas

December 2021

Illinois

Joseph Negaard

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Recommended Citation

Joseph Negaard, *Illinois*, 7 OIL & GAS, NAT. RESOURCES & ENERGY J. 307 (2021), <https://digitalcommons.law.ou.edu/onej/vol7/iss2/5>

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*Joseph Negaard**

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* Joseph Negaard is an associate at Steptoe & Johnson PLLC and practices in the firm's Bridgeport, West Virginia office. Joseph is licensed in Pennsylvania and West Virginia and concentrates his practice in the area of energy law.

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I. Introduction

The following is an update on Illinois' legislative activity and case law relating to oil and gas and mineral law from August 1, 2020, to July 31, 2021 ("Update Period").

II. Legislative and Regulatory Developments

A. Legislative Developments

1. The Clean Energy Jobs Act

No major state legislation affecting the oil and gas industry was passed during the Update Period. However, the Clean Energy Jobs Act ("CEJA"), a comprehensive clean energy bill, remains before the Illinois General Assembly.¹ CEJA failed to pass during both the regular session and a special two-day session in June 2021 because, in part, CEJA supporters and the Governor could not reach an agreement with lawmakers opposing CEJA, organized labor, and coal interests on the phasing out of coal and natural gas powerplants.

CEJA seeks to incentivize "renewable development and other carbon-reducing policies, such as energy efficiency, beneficial electrification, and peak demand reduction, while ensuring that the benefits and opportunities of a carbon-free future are accessible in economically disadvantaged communities, environmental justice communities, and communities of black, indigenous, and people of color."² CEJA includes policies to "ensure a just and responsible phase out of fossil fuels from the power sector,"³ "remove the equivalent of more than 1,000,000 gasoline and diesel-powered vehicles from our roads,"⁴ "transition all vehicle fleets operated by or on behalf of public agencies to full electric power,"⁵ "phase out carbon dioxide emitting power plants by 2030,"⁶ and "stimulate the economic and environmental well-being of communities disproportionately impacted by

1. See H.B. 0804, 102nd Gen. Assemb., (Ill. 2021); S.B. 1718, 102nd Gen. Assemb., (Ill. 2021).

2. H.B. 0804, 102nd Gen. Assemb., (Ill. 2021) Article 1 pg. 2

3. H.B. 0804, 102nd Gen. Assemb., (Ill. 2021) Article 1 pg. 3

4. *Id.*

5. *Id.*

6. H.B. 0804, 102nd Gen. Assemb., (Ill. 2021) Article 1 pg. 5

the historical operation of, and recent or expected closures of, fossil fuel power plants and coal mining operations.”⁷

B. Regulatory Updates

There were no notable regulatory changes during the Update Period.

III. Judicial Developments

A. Illinois’ Rule of Capture Applies to Coal Mine Methane Extracted with a Vacuum Pump

In *Finite Resources, Ltd. v. DTE Methane Resources, LLC*, coal mine owners brought a state court action in the United States District Court for the Southern District of Illinois.⁸ The plaintiff mine owners alleged that the vacuum permit holders used a vacuum pump to cause drainage of coal mine methane (“CMM”) from the owners’ mine.⁹ The defendant vacuum permit holders filed a motion for summary judgment. The defendants argued that the plaintiffs do not have an absolute and unconditional right to the CMM, pursuant to Illinois’ rule of capture.¹⁰ Plaintiffs argued that although the rule of capture may apply to coal bed methane (“CBM”), there is a distinction between CBM and CMM.¹¹ More specifically, Plaintiffs argued that CMM refers to methane which has already been extracted from the coal as result of mining and has settled in the mine void after extraction. In contrast, CBM refers to methane which has been adsorbed or trapped within a coal seam.¹² The plaintiffs also argued that the rule of capture only applies to the natural migration of methane gas and not to the use of artificial means such as a vacuum pump.¹³

The court rejected plaintiffs’ arguments. The court reasoned that while it is true that natural gas becomes personal property after it is produced, and remains personal property, even if it’s injected into underground storage reservoirs, gas found in mine voids has never been produced or reduced to

7. *Id.*

8. This case is currently pending on appeal before the U.S. Court of Appeals for the Seventh Circuit. Arguments are set for Thursday, November 4, 2021 at 9:30. The docket number for the appeal is 21-1512.

9. *Finite Res., Ltd. v. DTE Methane Res., LLC*, No. 19-CV-802-SMY, 2021 WL 1150252 (S.D. Ill. Feb. 22, 2021).

10. *Id.* at 3.

11. *Id.*

12. *Id.*

13. *Id.* at 4.

possession by someone above the ground and is not personal property.¹⁴ Therefore, methane gas found in the mine voids is still part of the coal estate and subject to the rule of capture.¹⁵ The court also found no authority to support the plaintiff's argument that the use of a vacuum pump as an artificial means for extraction negated the application of the rule of capture. The court found the recent Pennsylvania Supreme Court decision in *Briggs v. Southwestern* well-reasoned and persuasive on this point.¹⁶ In *Briggs*, the court found that the "rule of capture applies even where devices such as pumps are used to bring the mineral to the surface and thereby reduce the production of neighboring wells."¹⁷

Consequently, the court held that the rule of capture applies, the plaintiffs do not own the CMM nor are they entitled to it, and defendants are entitled to summary judgment.¹⁸

14. *Id.* at 3.

15. *Id.*

16. *Id.* at 4.

17. *Id.* See also *Briggs v. Southwestern Energy Production Co.*, 224 A.3d 334 (Pa. 2020).

18. *Id.* at 4.