

# Oil and Gas, Natural Resources, and Energy Journal

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Volume 2 | Number 3  
2016 SURVEY ON OIL & GAS


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September 2016

## Michigan

M. Vafa Barissi

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### Recommended Citation

M. V. Barissi, *Michigan*, 2 OIL & GAS, NAT. RESOURCES & ENERGY J. 211 (2016),  
<http://digitalcommons.law.ou.edu/onej/vol2/iss3/10>

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*Oil and Gas, Natural Resources, and Energy Journal*

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VOLUME 2

NUMBER 3

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## MICHIGAN



*M. Vafa Barissi\**

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\* The author would like to thank and credit John Ferrell, summer associate with Steptoe & Johnson PLLC, for his contributions to this survey.

### *I. Introduction*

This year Michigan finalized and approved its regulatory requirements for operations placed under a vacuum, and saw minimal developments in oil and gas common law.

### *II. Administrative Law*

The Michigan Public Service Commission approved specific requirements for an Antrim Shale natural gas well, pool, or field operating under a vacuum, as set forth in Case No. U-16230.<sup>1</sup> These requirements were put in place in order to provide the appropriate regulatory framework for applications filed under Mich. Admin Code, R 460.867 (Rule 17).<sup>2</sup> The requirements set forth in Case No. U-16230 concern the following: appropriate documentation, operational issues, proper notice, reporting, and approval procedures.<sup>3</sup> These requirements shall apply to all current and future natural gas wells produced from the Antrim Shale formation that are placed under vacuum.<sup>4</sup>

### *III. Common Law*

#### *A. Leasing*

The Court of Appeals of Michigan (the “Court”) considered whether the granting of an oil and gas lease on city-owned property violated the rights of citizens to vote on public park transfers under Mich. Comp. Laws section 117.5(1)(e).<sup>5</sup> The City of Rochester Hills entered into a lease for the development of oil and gas underlying two city parks and a cemetery.<sup>6</sup> Cities do not have the power to sell parks, cemeteries, or any part thereof, except where the park is not required under an official master plan of the city.<sup>7</sup> The Court specifically analyzed if entering into an oil and gas lease constituted a “sale”. The Court defined a “sale” as a transfer in title; and concluded that a lease constitutes less than a

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1. Case No. U-16230 (Oct. 27, 2015).

2. *Id.*

3. *Id.*

4. *Id.*

5. Don't Drill Hills, Inc. v. City of Rochester Hills, No. 324717, 2016 WL 1178263 (Mich.Ct.App. Mar. 24, 2016).

6. *Id.* at \*1.

7. MICH. COMP. LAWS § 117.5(1)(e) (2016).

full transfer of title.<sup>8</sup> The Court went further in stating that the common understanding of the term “park” encompasses only the surface, and does not include subsurface oil and gas.<sup>9</sup>

#### *B. Riparian Rights*

The Court considered whether traditional riparian rights extend to artificial bodies of water.<sup>10</sup> The City of Adrian entered into an oil and gas lease covering property that included Lake Adrian, an artificial lake created by the damming of a creek.<sup>11</sup> The plaintiff contended that it should share in the royalty payments of the lease as they owned property that abutted Lake Adrian.<sup>12</sup> The plaintiff asserted that it acquired riparian rights under Michigan's Inland Lakes and Streams Act, Mich. Comp. Laws § 281.951.<sup>13</sup> The Court disagreed with plaintiff and stated that riparian rights do not attach to land that abuts an artificial watercourse.<sup>14</sup> The Courts rationale was that it would be inequitable to grant riparian rights to an artificial watercourse when the watercourse exists solely because of another's labor.<sup>15</sup>

#### *IV. Conclusion*

This past year saw minimal developments in Michigan oil and gas law. However, the recent regulatory framework put in place by the Michigan Public Service Commission provided much needed guidance in the effective development of Michigan's most significant oil and gas play, the Antrim Shale formation.

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8. *Don't Drill Hills, Inc.*, 2016 WL 1178263, at \*5.

9. *Id.* at \*6.

10. *Lake Adrian Developers, LLC v. City of Adrian*, No. 322511, 2015 WL 9258088 (Mich.Ct.App. Dec. 17, 2015).

11. *Id.*

12. *Id.*

13. *Id.*

14. *Id.* at \*2.

15. *Id.*