



# LEGISLATIVE & REGULATORY UPDATE

By Nikolas Tysiak, Legislative and Regulatory Chairman

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Welcome back, I hope everyone had an excellent holiday season. As always, the period covering December and January is usually the slowest time of year regarding judicial and legislative activity, and this year is no exception. Just one case of interest from Ohio, and some minor administrative code revisions in Pennsylvania.

Ohio Public Works Commission v. Barnesville, 2022-Ohio-4603. The village of Barnesville, OH, purchased about 104 acres of land as an “open space” project in connection with the Clean Ohio Conservation Fund, which is administered by the Ohio Public Works Commission (“OPWC”) in 2002. As part of the deal, OPWC required that Barnesville take deeds for the lands with certain covenants and restrictions, including a limitation on the use of the purchased lands, restricting the use of the property for the stated purposes, and empowering the OPWC to enforce the covenants and restrictions with various penalties attached. Barnesville subsequently leased the oil and gas under the lands at issue to Antero Resources in 2012, without the consent of OPWC. The Ohio Supreme Court found that the actions of Barnesville in regard to the oil and gas rights violated the transferability restriction imposed by the OPWC, overruling the 7th District Court of Appeals. However, the Supreme Court also determined that the lease to Antero violated the use restriction imposed by OPWC as part of the overall transaction and affirmed the appropriateness of injunctive relief in enforcing such restrictions, including an injunction deeming the oil and gas lease unenforceable. Consequently, the Supreme Court affirmed the decision of the 7th District Court of Appeals’, remanding the case for further consideration, accordingly.

Pennsylvania has amended several administrative code sections regarding VOC emissions control requirements arising custody transfer from the wellhead to transmission or storage. See 25 Pa. ADC § 129.121 – 129.140. Additionally, there were revisions to the permits required in the disturbance of waterways and watersheds. See 58 Pa. ADC § 51.61.

There is nothing else to report this time. Until next time, we are always interested in hearing from the membership, so please do not hesitate to reach out to us.

Regards,

Nik Tysiak  
Chair – Legislative and Regulatory Committee

