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THE SHALE PLAY TODAY



News & Insights from the Marcellus and Utica Shales



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Dept. of Labor Wage & Hour Enforcement to Focus on Shale Employers

The U.S. Department of Labor ("DOL") Wage and Hour Division ("WHD") **announced in December of 2012** the recovery of \$187,165.00 of wages for 69 employees as part of its multi-year ongoing enforcement initiative focused on vendors performing services for the fracing and pipeline industry. Following an audit by the DOL, the employees in question were found not to be eligible for the "professional" exemption to the overtime requirements. The employees primarily worked collecting samples for environmental monitoring.

The federal wage/hour law under the Fair Labor Standards Act ("FLSA") includes the requirement to pay "non-exempt" employees time and one half of their "regular rate" for work in excess of 40 hours in a work week. The shale gas industry in the tri-state region (e.g. Ohio, Pennsylvania and West Virginia) can generate complex wage/hour issues due to the around-the-clock nature of certain of its operations and the variety of skills and occupations providing services. Therefore, prudent employers will exercise extra measures of diligence to ensure compliance with wage and hour matters.

What Can an Employer Do In the Face of the Ongoing Initiative?

Employers may consider having an internal audit performed. The internal audit would address the following topics:

In The News



Spilman Assists in Transition of Site from Steelmaking to Shale Gas

by **Arch W. Riley, Jr.**
Wheeling, W.Va.

Spilman was recently involved in the representation of **Hackman Capital Partners, LLC** in its purchase of the former Wheeling Corrugating Plant in Beech Bottom, W.Va. Hackman Capital purchased the site from RG Steel, Wheeling, LLC. Hackman Capital also worked in conjunction with the Business Development Corporation ("BDC") of the Northern Panhandle. The non-profit organization took title to the real estate following the auction of the real property and equipment in the RG Steel bankruptcy case. Hackman Capital will continue to work with the BDC to develop and lease the site.

"Beech Bottom" was one of the last steel manufacturing facilities of RG Steel, which filed for chapter 11 bankruptcy in Delaware in May of 2012, to be sold. Hackman Capital, a Los Angeles-based private equity real estate investment firm, was the winning bidder at the auction for the onsite equipment.

[Read more.](#)



Natural Gas Fueling Stations Coming to I-79 in W.Va. and Pa.

An exciting development in the implementation infrastructure to support natural gas vehicles (NGV) was announced recently. New NGV

- **Record keeping:** Computer based payroll systems will contain the information necessary to meet most WHD requirements. Time worked and bonus calculation records should be kept as part of the pay records. Pay records should be kept for a minimum of 3 years.
- **Employee vs. Independent Contractor:** Practices in the oil and gas industry often are at odds with the test used by the WHD to determine who is an employee and who is an independent contractor. Specific arrangements with independent contractors in areas such as training, welding and environmental monitoring are potential areas for review. The use of an independent contractor should be well documented.
- **Exempt vs. Non-Exempt:** The exemptions from the overtime requirements which are often at issue in the shale industry include whether the employee meets the criteria to be exempt under the "salaried basis," "professional," "executive" or "administrative" categories. Determining if the employee meets the exemption criteria can be extremely fact intensive.
- **Compensable Time:** A major area of litigation in recent years has centered on what should be considered to be time worked--and therefore compensable--and counted toward overtime hours. This includes the use of cell phones and computers outside of normal working hours. Travel time can also be an issue in circumstances where the employer provides a company vehicle and allows the employee to take the vehicle home after work. The employer should have a written policy on the use of take-home vehicles to insure that the commute from home to work is not compensable.

Be Aware That Noncompliance with the FLSA Can Result In Considerable Costs!

The FLSA has provisions for doubling the amount of unpaid wages and overtime, attorney fees and for a special form of class action. When current or former employees hire private counsel to prosecute FLSA claims, the employer can expect a class action suit for double damages going back three years under the FLSA, as well as a companion claim of violations of the applicable state wage payment law and state overtime law. State laws are often used because some state law provisions are actually more favorable to the employee than the FLSA. Such is the case in matters including the use of class actions, the scope of exemptions and the calculation of overtime.

[Read the full article on our website.](#)

fueling stations will be sited along I-79 in West Virginia and Pennsylvania, thanks to an investment by IGS Energy. This is a significant step in expanding retail and consumer demand for natural gas that will be supplied from nearby sources deep within the Marcellus and Utica Shales.

[Learn more here.](#)



Peak Year for Oil & Gas Deals in 2012

It was a banner year for oil and gas deals in 2012 in the Marcellus & Utica Shale Plays, as well as across the U.S. As reported in the Pittsburgh Post-Gazette, a study tallied merger and acquisition activity at \$5.23 billion in the Marcellus Shale and \$1.27 billion in the Utica Shale.

[Read more.](#)



WVU Gets Geo-Software Grant from Schlumberger

Start with a university positioned in the heart of shale gas territory. Add \$18 million worth of geology and geophysics software. What do you get? Innovation and useful research, plus a primed workforce - at least that's what oil & gas services giant Schlumberger appears to be aiming toward, as reported in this recent [AP story](#). For additional details check out the story on the [WVU Today site](#).



Chesapeake Energy to Work with EPA on Testing at Active Fracing Site

Chesapeake Energy is collaborating with the Environmental Protection Agency (EPA) to conduct extensive testing in and around an active hydraulic fracturing well site. An EPA official said in recent media reporting that the agency and Chesapeake are close to agreeing upon a specific location within the Marcellus Shale for the testing.

The testing will encompass water sampling prior to drilling, as well as post-drilling. Both parties hope the project will produce a foundation of useful data and information to quell public controversy and to address underlying issues and misgivings. In our opinion, if the project moves ahead and is successfully completed, it marks a huge step forward for the shale gas industry. The schedule calls for a report to be released in 2014.

[Read more.](#)



Marcellus Shale Team Member



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Mr. Riley has a wealth of experience in commercial bankruptcy law and related commercial areas of law including secured transactions, asset acquisitions, turnarounds and workouts, real estate and surety law. He has represented buyers of oil and gas interests in bankruptcy court. In addition, he has served for many years as a community leader of Wheeling, WV, which lies in the heart of the natural gas liquids-rich Marcellus Shale. Mr. Riley presently serves as a member of the Wheeling Municipal Planning Commission. Click [here](#) to read his full professional biography.

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