

Before the

**132nd General Assembly
The Ohio Senate
Energy and Natural Resources Committee
The Honorable Troy Balderson
Chair**

testimony regarding

**Senate Bill 236
(Affected Mine)**

**Presented By:
Matthew Hammond
Senior Vice President
Ohio Oil & Gas Association**

January 31, 2018



Chairman Balderson, Vice Chairman Jordan, Ranking Member O'Brien and members of the Senate Energy and Natural Resources Committee, thank you for the opportunity to testify in support of Senate Bill 236. I am Matt Hammond and I serve as the Senior Vice President of the Ohio Oil & Gas Association (OOGA).

The Ohio Oil & Gas Association is a statewide trade association representing 2,100 members who explore for, develop and produce Ohio's crude oil and natural gas resources. Our membership consists of people who professionally represent all phases of the exploration and production (E&P) process and all sizes of producers, from small independents to major oil companies. The OOGA has represented Ohio's oil and gas producing industry since 1947.

SB 236 is necessary and long sought-after legislation that will provide clarity for the oil and gas industry by eliminating ambiguity in Ohio statute. The legislation creates a definition for an "affected mine", establishes a new commission where all interests are represented, which creates a balanced adjudication process, and moves the judicial jurisdiction to the Franklin County Court of Common Pleas, where many other judicial proceedings are considered. Establishing clarity in the law is critical to streamlining oil and gas development, opening additional acreage for development, and increasing capital investment in Ohio. This includes royalty payments to landowners who are awaiting their economic opportunity to have their oil and gas minerals developed.

Since the creation of oil and gas law in 1963, the intent related in our relationship to the coal industry has been to **protect** miner safety. No one should drill a well through a coal mine. SB 236 does not change this intent nor does it do anything to impact the safety of coal miners. Safety for both industries is paramount. However, with no current statutory definition of an affected mine the intent of law is being abused.

Over time, coal interests have essentially claimed that an "affected mine" is obvious; you know it when you see it, coal interests supersede all others as the superior mineral, and no legal definition is required. When a coal operator objects to an oil and gas permit, the result, more often than not is that, the oil and gas permit is denied by the ODNR. The only appeal by statute to this denial falls to the Ohio Reclamation Commission- a body rooted solely in coal development and not knowledgeable of oil and gas operations.

Sensible persons in each industry recognize that a balancing of the rights and obligations of each industry is necessary. The owner of one thin, shallow coal seam, that was deeded away in the early 1900's, should not have the right to veto development of the multitude of all deeper hydrocarbon producing formations. What is more, the ancestors who deeded the coal away did not understand the future impacts of longwall mining. Additionally, nearly all of these deeds state the landowner has the direct right to penetrate the coal seam to reach their oil and gas minerals.

Ohio Revised Code Section 1509.08 provides that upon filing of an application for a drilling permit in a coal-bearing township, the Division of Mineral Resources Management (DMRM) will provide to the owner of any “affected mine” notice and an opportunity to object to the location described in the oil and gas permit. The DMRM Chief has an obligation to propose an alternative location. However, since “affected mine” is not defined by statute or rule, all parties do not have clarity and certainty as to what may or may not be an affected mine.

One legal case did provide such clarity. In the case of *Redman vs. Ohio Department of Industrial Relations*, a dispute between oil and gas and coal interests on what is an affected mine, the courts ruled in favor of the coal interests, which many of you have likely read or heard about in recent weeks.

What you likely have not heard is that while the coal interests won the case, the courts did state that the term “affected mine” also include land which **“has had extensive, well-defined mining plans developed and where future mining has been thoroughly planned for and evolved to the point of realization”**. The Courts essentially required a three-pronged legal test be present for an affected mine: 1.) actual extensive plans 2.) showing mining will occur 3.) in the near future.

This statement provided in the *Redman* decision is the basis for the definition in SB 236- have a permit and a real mining plan showing you will be mining the coal in the near future.

DMRM has also been inconsistent when they notify coal operators of an oil and gas well permit application. One producer filed for a permit that was less than 1,000 feet from coal reserves, but yet no notice was sent to the coal operator. Conversely, there are examples where DMRM will notify a coal operator that was over eight miles away from the proposed location of the oil and gas well. Current guidance from DMRM is to notify any coal operator that could possibly be “affected” up to 10 miles away from the proposed well location. This lack of consistency from DMRM is also a part of the problem.

Over the years, there have been many examples where coal operators have obstructed oil and gas operations, particularly with conventional producers. Many conventional producers have invested large sums of money in acreage positions only to be told later by a coal operator that there is no location within their acreage position they can go where the coal interest won’t object. As a result, conventional producers have had to walk away from their acreage positions, in some cases a lost investment of hundreds-of-thousands of dollars. Since these minerals cannot be developed, landowners have had their minerals stranded in the ground.

Today, large-scale, horizontal development is taking place in eastern Ohio. Utica development has been a driver of the state and local economy- creating jobs, producing cheap, reliable energy, and generating wealth in the form of signing bonuses and royalty payments to Ohioans. In 2016 Utica Shale horizontal wells produced over \$3 billion in value, despite record low commodity prices.

The oil and gas industry employed over 190,000 direct and indirect jobs in Ohio in 2016, which employ both union and non-union workers. The coal industry employed an estimated 33,000 direct and indirect jobs.

Additionally, shale development has already generated over \$40 million in ad valorem tax payments and it is projected that the industry will pay between \$200-\$250 million in ad valorem payments over the next ten years. The ad valorem tax goes directly to local governments, primarily schools, in an area of the state that needs the economic development and tax base the most. The economic facts the coal industry has so readily relied upon to position themselves as the superior mineral over the years have flipped.

Ohio landowners have also been benefiting from shale development and have a lot to lose with the current state of the regulatory environment. An overwhelming majority of eastern Ohio surface owners own their minerals outright, generating great economic opportunity for Ohioans who have been sitting on a massive oil and gas reservoir. Conversely, most, if not all coal is severed from the land estate, often from agreements made a century ago. The result is that innumerable landowners are prevented from benefiting from their property rights by having the oil and gas reserves developed that underlie their holdings. At the same time, landowners receive no royalties from the production of coal.

It is the very producers developing the Utica Shale that are also seeking clarity in the law, much like Ohio's conventional producers have been for decades. Oil and gas producers employ people with experience working in or around the coal industry. It is the responsibility of these employees to engage with coal operators to determine a safe and suitable location for an oil and gas well. Since early Utica development in 2011, this issue has had peaks and valleys, as oil and gas companies struggle to build a consistent and coordinated working relationship with the coal industry.

Unfortunately, the situation has worsened in the past couple of years. Oil and gas producers now see a total roadblock to development of some of their acreage, unless they are willing to pay a steep price. As oil and gas producers work to find a suitable drilling location, they find that coal operators will object to nearly any well permit, even if they don't own the coal or have the legal authority to mine the coal.

When coal operators inform an oil and gas producer that they will object to permits, producers will ask for mining plans for evidence of future mining activity in an effort to help establish a new location. The "mine plans" that are produced in these meetings are the furthest thing from a real mine plan with a real future to mine coal (as was expected by the *Redman* decision). The mine plans are conceptual with no firm intent to mine the coal in question. All while oil and gas producers are sitting in the same room with a realized plan to drill an oil and gas well.

All oil and gas producers need to do to avoid an objection from the coal company is to write a six-figure check to the coal operator, up to as much as \$500,000 or more for a permit, and the problem is solved. The sums of money requested far overvalue the coal that could possibly be

impacted, but also put a price tag on miner safety, which is the original intent of the term “affected mine”. Their actions amount to extortion, which is permissible due to the ambiguity in the law. Ohio law should not allow one industry to leverage another for economic gain.

The coal interests claim that since there are only a few objections to oil and gas permits that SB 236 isn't necessary. We disagree. The reason there are few objections is because oil and gas producers recognize no real benefit or use of company resources to proceed with a permit application, knowing that the coal operator will object, and in any related appeals process with a commission stacked with coal interests. Oil and gas producers simply give up, go back to their drill schedule and try to find another location to drill that is not near possible coal reserves. Looking only at the number of objections skews reality and does not tell the whole story.

The coal industry has also referenced in materials an appeal to an objection by a coal company in 2017 to the Reclamation Commission. Here, Chesapeake Exploration tried to permit a well location after numerous discussions with Rosebud Mining. Rosebud objected to the well permit, and Chesapeake appealed to the Reclamation Commission. Chesapeake did not withdraw their appeal because they realized that Rosebud's objection was “well-founded”. Chesapeake withdrew their appeal because, as they explained to the Reclamation Hearing Officer and Rosebud's legal counsel, the location was no longer suitable due to a pipeline being constructed through the proposed pad location. Due to negotiations and delays from objections and appeals, the pipeline company chose not to wait any longer and built a line through the pad location.

While the main purpose of SB 236 is to create certainty as to what is an affected mine, the bill also addresses bringing balance to the adjudication process. SB 236 proposes a new, balanced commission that takes into account all interested parties to an affected mine- the oil and gas industry, the coal industry, and landowners. There has not been one case where the Reclamation Commission has voted in favor of the oil and gas industry. The Reclamation Commission's perfect record in supporting the coal industry is astounding. Thus, the need for a reset and implementation of a fair commission to adjudicate appeals is needed.

As detailed in SB 236, a new, balanced commission made up of two members of the Reclamation Commission, two members of the Oil and Gas Commission, and one representative of the farming community is appropriate. Again, this presents a view point from all parties involved and preserves the original intent of the law- protecting coal miners.

Recently compounding the issue is the Coal Association's amendment achieved in H.B. 64, the 2015 Biennium Budget Bill, which allows the coal operator to only obtain 67% of the coal reserves to be included in a mining permit. This provision greatly expands the area over which a coal operator could potentially claim an adverse effect and, thus hinder oil and gas development. It also aggravates the degradation of oil and gas prospects over time since it is likely large prospective areas will be off limits (for decades, if not forever) as a possible, but not necessarily tangible coal mine is potentially developed on lands that the coal operator may not presently own the coals reserves. However, by pushing this provision into law, the coal industry

has inadvertently teed up the affected mine issue. Now that coal's reach extends into no-man's land, the law begs yet again for a clear definition.

As was asked during Sponsor Testimony, the system is clearly broken, vague, and inconsistently applied. Government must intervene to provide a legislative repair. In fact, government has had a direct impact on this issue for decades. Therefore, government needs to help bring resolution to the issue. The "affected mine" issue has been plaguing the oil and gas industry for decades. Now, with large-scale horizontal development and large investments being made in Ohio, it is at a critical tipping point and begs for clarity in the law.

We fail to understand why any party, no matter the interest, would object to a clear definition to a regulatory term that is the pivot point between competitors to the resource base. Why do they like vagueness in the law? Senate Bill 236 shines a bright light on this vagueness by creating certainty and allowing both oil and gas and coal to be extracted safely and efficiently. This encompasses the spirit of the *Redman* case, Ohio law on what constitutes an affected mine, and is the core of Senate Bill 236.

Thank you once again Chairman Balderson and members of the committee for the opportunity to speak in support of Senate Bill 236. I am happy to answer any questions at this time.