Proponent Testimony on Senate Bill 236

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Chairman Balderson, Vice Chair Jordan, Ranking Member O'Brien, and members of the Senate Energy and Natural Resources Committee, thank you for allowing me to testify on Senate Bill 236. My testimony will provide one example of how the current regulatory system provides uncertainty for oil and gas operators in coal bearing townships.

My name is Bruce Levengood. I am the President of Sound Energy Company, Inc., based in Dover, Ohio. My company is small in size (about seven employees) and operates in eastern Ohio. Our oil and gas production assets are largely in coal bearing townships and I find myself dealing with potential "affected mines" often.

One case in point pertains to 237 acres of land Sound Energy leased for oil and gas production. The lease included a continuous drilling clause whereby the acreage is earned by drilling wells based on agreed time table and an option to earn acreage by producing two wells which the landowner had used previously for himself.. In August, 2011, we decided to drill two other wells on this acreage to comply with the expiration of the next drilling date of March 11, 2012. We began discussion with coal regarding the location for our next two wells in August 2011. We could not get any answers about our inquiry of locations or alternate locations. Finally, in January, 2012, I had mailed a formal request to the coal interest in the area regarding my plans to drill the next well. I had included a waiver for the coal interest to sign and a payment in an amount equal to a previous deal we had done. Previously, my company had paid a total of $21,000, based on the value of the coal being "sterilized", to obtain two waivers from this coal interest. On January 18, 2012 I received a letter along with my payment from the coal interest rejecting the offer, claiming that the well would affect their mining plan, result in the loss of coal reserves, and increase the cost of mining. Incidentally, according to ODNR documents, this coal interest had not been issued a valid coal permit in this area until February, 2012 and to my knowledge this mine has not opened or ever operated

I decided to file the oil and gas permits on the next two wells that February. Once filed, the coal interest objected to the permits, citing an affected mine. ODNR then asked the coal interest for more information to substantiate their objection, presumably to see if it was "well-founded" as under Ohio law. Before the determination of an affected mine was made, the time period under the lease to commence drilling these wells expired. The landowner refused to extend the lease and, as a result, my company lost the unearned acreage of the lease and the right to monetize the conventional and unconventional (shale) resources. My company has experienced substantial financial loss due to the loss of this acreage.

Operationally, since a substantial block of my acreage (over 2,000 acres) is located in this affected mine, the underlying oil and gas mineral rights are being prevented from development allowing a mine that doesn't exist to "sterilize" my oil and gas development. We also have thousands of acres located in coal bearing townships where planning future development of oil and gas is left uncertain due the ambiguous application of what an affected mine is.

Unfortunately, I am not alone. One of the shale companies we had an agreement with to develop our shale resource, hired a coal consultant in March, 2013 and began negotiations with a couple of coal interests for drilling locations. The asking price was $500,000. After much discussion, considering alternate locations and analysis, the price settled between $235,000 to $475,000 per location.

These actions are destroying the economics for development. The negotiations were intense and lasted until May, 2014 when the oil and gas company threw in the towel and surrendered. After coming to Ohio, investing millions of dollars for a resource play that they ultimately were unable to tap, they were stunned to find themselves bludgeoned by such a one-sided, uneven playing field as they never before had encountered. My company and our landowner partners were denied the benefit of having our shale resources developed.

In addition, good friends of mine, Alan and Sarah Tipka of A.W. Tipka Oil and Gas, Inc., had a similar experience. Back in 2005, Tipka had acquired over 17,000 acres of land in Belmont and Monroe counties to drill oil and gas wells. The mineral interest owners of this land had deeded away to the #8 coal seam. However, the right to drill and produce the underlying oil and gas was reserved by these landowners.

As you can imagine, in August, 2005 when Tipka applied to drill 5 conventional wells, the coal interest in question objected, claiming that they had an “affected mine”, with plans to longwall mine the coal in the next 10 to 15 years. However, the #8 coal seam was thin in this area and no coalmines existed in the immediate area during this time.

After a lengthy regulatory and legal battle that lasted a few years, Tipka was forced to cancel all 17,000 acres of oil and gas leases and returned the minerals back to the landowners. Tipka paid lease expenses, legal fees, and other court expenses with no ability to recoup their costs with oil and gas production. Landowners were also denied the chance to obtain royalty payments and free house gas from the resulting oil and gas production. The most egregious action, however, is that 13 years later, there is no evidence of a single longwall coal mine in the area where Tipka proposed to drill their wells despite the coal interest’s 2005 claims to the contrary.

These issues are exactly the type of issues that Senate Bill 236 addresses. The examples above demonstrate the regulatory uncertainty for oil and gas operators in locating wells in and around coal mines. This uncertainty has led to oil and gas development being hindered and even blocked in Ohio’s coal bearing townships.

If I rightfully obtain oil and gas leases in coal bearing townships, I must be provided the opportunity to explore where the minerals are located – so long as miner safety is adhered to. If my well was to be in an “affected mine”, then the coal interest by law should provide an alternate location for me to drill my well. Since there is no definition in Ohio law of an affected mine, coal interest have blocked development for reasons outside of safety using the language as an instrument to impede orderly development of other valuable commodities and competing interests in Ohio – oil and natural gas. As a result, small oil and gas companies and landowners have been damaged.

I come before you today to ask that you – the state legislature - bring balance back to this process. Define an affected mine, based upon the legal definition as contained in the current version of Senate Bill 236, and provide clarity to the current state of oil and gas operations in coal bearing townships.

Thank you once again, Chairman Balderson and members of the committee, for allowing me the opportunity to testify before you today. I will now make myself available for any questions, should the members of the committee have them.