

Alert: Shale Gas Litigation – Coming Soon to a Court Near You?

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A [March 9 McGlinchey Client Alert](#) examined a federal court decision arising in the State of Pennsylvania. In *Berish v. Southwestern Energy Production Company*, the court refused to grant summary judgment in a suit seeking recovery of damages allegedly resulting from hydraulic fracturing in natural gas shale formations. The court rejected Plaintiffs' contention that such hydraulic fracturing was an "abnormally dangerous" activity. Two Louisiana plaintiff's attorneys, Danny Becnel, Jr. and Richard Arsenault, appeared as co-counsel in the Pennsylvania lawsuit. This Client Alert discusses a new case filed in Colorado – also seeking damages allegedly resulting from drilling activities involving shale gas.

Shale Reservoirs and Hydraulic Fracturing

Natural gas production from hydrocarbon-rich shale formations, known as "shale gas," is a rapidly expanding trend in onshore domestic oil and gas exploration and production today. Shale gas production is taking place in regions of the country that previously have seen little or no oil and gas production.

Shale reservoirs often have poor natural permeability for the transmission of oil or gas to the well, and these reservoirs therefore require a technology that will increase their permeability through some form of stimulation. The process of hydraulic fracturing (fracking) uses mainly water at very high pressure to create cracks or fractures in an underground formation. This allows additional pathways for the flow of oil or gas to the well. Small particles called proppants (typically silica sand) are mixed with the fracking water and are carried along with the water into the newly created fractures. When the high-pressure water is withdrawn, the proppants remain to prop open the fractures. In addition to copious amounts of water, various chemicals are usually added to the hydraulic fracturing water. The addition of friction reducers allows fracturing fluids and proppants to be pumped to the target zone at a higher rate and reduced pressure than if water alone were used. Other additives include biocides to prevent microorganism growth and to reduce biofouling of the fractures, oxygen scavengers and other stabilizers to prevent corrosion of metal pipes, and acids that are used to remove drilling mud damage within the near-wellbore area. (Source, *Modern Shale Gas Development in the United States: A Primer*, U.S. Department of Energy).

Fracking has been around for almost as long as modern oil and gas drilling. Many years ago, the U.S. Environmental Protection Agency (EPA) studied fracking and [found it to be safe in the context of coal bed mining](#). With the significant increase in natural gas shale drilling, however, the practice has become

controversial. The controversy arises out of the large amounts of water and the chemicals used in the fracturing process. EPA [recently has released a draft plan](#) to further study hydraulic fracturing.

The *Strudley* Complaint

Strudley v. Antero Resources Corporation involves three natural gas well locations in which multiple deep wells were drilled into the Piceance Basin in Colorado, one of the thickest and richest oil shale deposits in the world. Wells in the Piceance Basin were directionally drilled and used hydraulic fracturing to extract the natural gas.

The plaintiffs, residents of Silt, Colorado, allege that the defendants conducted oil and gas exploration within approximately one mile of their residence and water supply well. Plaintiffs claim that they were forced to abandon their home as a result of the toxic and hazardous contamination coming from the wells.

The Complaint alleges that hydrogen sulfide and a variety of other toxic hydrocarbons and combustible gases were discharged and contaminated the air, ground and aquifer near their home, and particularly the ground water well used as their water supply. Plaintiffs claim contamination of water supplies, exposure to hazardous substances, personal and physical injuries, loss of the use and enjoyment of their residence and the quality of life; fear of future physical illnesses; and past and future costs for medical care, alternative living quarters, and alternative sources of water.

The plaintiffs allege causes of action in negligence, negligence *per se*, nuisance, strict liability, and trespass. They seek compensatory damages, punitive damages, diminution of value of the property, the cost of future health monitoring, litigation fees and costs, including attorneys' fees, and to provide any further relief that the Court may find appropriate. Plaintiffs also ask the Court to establish medical monitoring trusts funds.

Similar allegations and demands have commonly surfaced in Louisiana in the context of "legacy" oilfield lawsuits following the 2003 Louisiana Supreme Court decision in *Corbello v. Iowa Production*. Lawsuits such as *Berish* and *Strudley* are different in that they are directed at new drilling practices in our nation's burgeoning natural gas plays. One of the largest of these plays is the Haynesville Shale formation in northwest Louisiana.

For more information, please contact one of our Environmental Attorneys.