

WEEKLY HIGHLIGHTS AT-A-GLANCE**FEDERAL – Regulatory**

- **BLM Onshore Orders.** On October 17, the BLM announced the finalization of Onshore Orders 3, 4 and 5. According to the BLM, these rules are “designed to ensure the accurate measurement, proper reporting, and accurate recordkeeping of oil and gas produced from Federal and Indian leases in order to ensure that the royalties due are paid.” [Read more](#). Access each of the rules (43 CFR 3173 – Site Security; 43 CFR 3174 – Oil Measurement; and 43 CFR 3175 – Gas Measurement) and their designated fact sheets [here](#).
- **BLM Mineral Transfer – Montana.** On October 17, the BLM published a notice in the Federal Register ([81 FR 71529](#)) announcing that the Montana Department of Natural Resources and Conservation has filed a petition for classification and application to obtain public lands and mineral estate in lieu of lands to which the State was entitled, but did not receive under its Statehood Act. Under Section 7 of the Taylor Grazing Act of 1934, the BLM proposes to classify sufficient acreage of public lands/minerals in Montana for title transfer to the State to satisfy this obligation to the State. Of the area proposed for State Indemnity Selection, 10,560 acres are designated as greater sage-grouse General Habitat Management area. [Read more](#).
- **BLM Leasing Plans – New Mexico.** Federal resource planning for New Mexico's embattled Chaco Canyon region will consider the effects of oil and gas development on both public and tribal lands. On October 20, the BLM announced that the Bureau of Indian Affairs will join the BLM to expand an ongoing resource management planning process to include tribal lands. Chaco Canyon has been at the center of heated debate for years as oil and gas development inches closer to ancient tribal artifacts and modern communities. The agency has been working on an updated Resource Management Plan since 2014 and has approved new shale development in the meantime by performing individual environmental assessments that build on the existing environmental impact statement. [Read more](#).
- **BLM Lease Sale – Ohio.** The BLM has scheduled a lease sale for 1,600 acres of public land in the Wayne National Forest's Marietta Unit for this December, dealing a blow to area environmentalists who oppose oil and gas drilling on the national forest. On October 14, Dean Gettinger, district manager of the Northeastern States District of the BLM, signed a finding of no significant impact for drilling on 40,000 acres in the Marietta Unit, which covers parts of Washington, Noble and Monroe counties, northeast of

Marietta. Oil and gas companies so far have filed expressions of interest to drill for natural gas on 18,000 of those acres, with 1,600 acres contained in the first round of land entering the lease program. [Read more](#). Access the BLM Notice [here](#).

- **BLM Eastern States Online Lease Sale.** The BLM Eastern States Office has posted the proposed list of parcels for the upcoming quarterly competitive oil and gas lease sale, scheduled for December 13, 2016. The online auction will feature thirty-five parcels, totaling 1,676.29 acres, to be offered for lease in Arkansas (1 parcel, 35.57 acres), Mississippi (1 parcel, 40.03 acres) and Ohio (33 parcels, 1,600.69 acres). [Read more](#).
- **BLM Western States Online Lease Sale.** On October 13, the BLM announced that it would hold four more online lease sales in December. The agency is moving Montana's sale, originally set for October 18, and the Colorado sale set for November 10, to online auctions on December 8, 2016. A sale in Utah, originally scheduled for November 15 will be held on December 13. [Read more](#). Access the BLM announcement [here](#).
- **EPA Emissions Guidelines.** On October 20, the EPA released emissions guidelines for the oil and gas industry. In its report, [Control Techniques Guidelines for the Oil and Natural Gas Industry](#), the agency defines which technologies are reasonable for oil and gas systems to reduce emissions of volatile organic compounds, and while not actually a rule in itself, it still provoked a polarized response from both environmentalists and the oil and gas industry. American Petroleum Institute Senior Director Howard Feldman said the EPA should have waited until it was done collecting information from the industry about methane leaks before issuing this guidance, so the technology guidelines are better informed. [Read more](#).

FEDERAL – Judicial

- **Arbitration Clauses – Pennsylvania.** (from Welborn Sullivan Meck & Tooley, P.C.) The arbitration clause in an oil and gas lease is likely not the most hotly negotiated term or even one that the parties think twice about. However, recent litigation in Pennsylvania should serve as a reminder to lessors and lessees to be aware that a poorly drafted arbitration clause may lead to unwanted litigation. Recently, the United States Supreme Court denied a petition to review in [Chesapeake Appalachia, LLC v. Scout Petroleum, LLC](#), 809 F.3d 746 (3d. Cir. 2016) *cert. denied* (Oct. 3, 2016), a case addressing whether an arbitration clause used in numerous oil and gas leases covering lands in the Marcellus Shale region of Pennsylvania permitted class arbitration and whether the issue of class arbitrability is one for the courts or for the arbitrators to decide. [Read more](#).

STATE – Legislative

- **Employee Misclassification – Michigan.** (Update to 9/26/16 Weekly Report) The Senate Commerce Committee approved a substitute version of SB 645, the Employee

Misclassification Act, on October 20, and recommended a full floor vote on the measure. The new version strips away many of the factors listed for determining whether a worker is an employee or an independent contractor, and instead relies on the Internal Revenue Service's [20-factor test](#) for determinations. [Read more.](#)

- **Oil and Gas Regulations – Michigan.** On October 19, Rep. Peter Lucido (R) introduced HB 5958, which was referred to the Committee on Energy Policy. The bill amends existing law to create the Oil and Gas Commission within the Department of Environmental Quality. Among other provisions, the Commission will respond to complaints of regulatory violations, make findings regarding unit operations, and develop rules, regulations, and department policies. [Read more.](#) (See details below.)
- **Methane Controls – Michigan.** On October 19, Rep. Jeff Irwin (D) introduced HB 5974, which was referred to the Committee on Energy Policy. The bill amends existing law to require methane control or capture systems on an oil and gas well, and sets forth penalties for violation. [Read more.](#)
- **Methane Reporting – Michigan.** On October 19, Rep. Jeff Irwin (D) introduced HB 5975, which was referred to the Committee on Energy Policy. The bill amends existing law to identify and set toxicity levels for relevant gases at the well and provides a directive for test result reporting. [Read more.](#)
- **Methane Flaring – Michigan.** On October 19, Rep. Sarah Roberts (D) introduced HB 5979, which was referred to the Committee on Energy Policy. The bill amends existing law to state that the operator of an oil and gas well shall not use flaring as a method to control methane emissions. [Read more.](#)
- **Strategic Plan and Land Use – Michigan.** On October 20, [SB 39](#), introduced in 2015, was passed by the Senate. The bill would amend various parts of the Natural Resources and Environmental Protection Act to, among other provisions, require the Department of Natural Resources (DNR) to consider access to and use of public land and oil and gas industry operations on that land before designating or classifying the land, and require the DNR to consider a request to sell or lease public land if such decision would result in an economic benefit to the state. [Read more.](#) On the same day, [SB 40](#), which makes changes to the Land Exchange Facilitation Fund, also passed the Senate. [Read more.](#)

STATE – Regulatory

- **Oil and Gas Regulations – Colorado.** On October 13, Boulder County commissioners held a [public hearing](#) on proposed changes to local regulation over oil and gas operations. The draft regulations would impose monitoring of operations for potential leaks, change the permit application process, require landowner notices, and impose new setback provisions. The proposed rules come in the wake of the May 2016,

Colorado Supreme Court decision in [City of Fort Collins v. Colo. Oil and Gas Ass'n](#) (Case No. 15SC668), which held that rules limiting drilling in the cities of Longmont, which is in Boulder County, and Fort Collins to the north were “invalid and unenforceable” because local regulations cannot trump state law, which effectively nullified local rules banning hydraulic fracturing or imposing drilling moratoriums. The Board of County Commissioners has now charged the county staff to prepare revisions and updates to the oil and gas provisions in the Land Use Code that the commissioners hope to have in place when the current moratorium expires November 18, 2016. [Read more.](#)

STATE – Judicial

- **New Regulations – Pennsylvania.** On October 13, the Marcellus Shale Coalition sued the state over [new oil and gas regulations](#), arguing that several of its provisions are costly, unclear and unlawful, and conflict with other statutes. In *Marcellus Shale Coalition v. Pa. Dep't Env'tl. Protection, Pa. Commw. Ct.* (Case No. 573 MD 2016), the Coalition alleges that the Chapter 78a regulations “contain sweeping and far-reaching changes” that “significantly, substantially, immediately and unreasonably burden” the industry. The group is seeking injunctive relief and an immediate stay of the rules “to avoid an injury that cannot be compensated by damages.” According to Bloomberg, the new rules, which “are the state’s first specific regulations that address hydraulic fracturing”, could increase operational costs for producers by up to \$2 million per well, and according to the Coalition, would have little environmental benefit. [Read more.](#)

INDUSTRY NEWS FLASH:

◆ **U.S. shale play production stabilizes.** According to the U.S. Energy Information Administration, the steep slide in oil production across major U.S. shale plays is moderating as drillers send more machines back into the oil patch. Several firms have said they’d increase oil field spending and boost drilling activity if crude rose to between \$50 and \$60 a barrel. Barclays Bank noted that some U.S. oil explorers could see “double digit” growth in oil production without taking on new lines of credit if domestic crude prices stayed above \$50 a barrel. [Read more.](#)

ELECTION ALERT:

🗳️ **Environmental groups tell Hillary Clinton to avoid Colorado Gov. John Hickenlooper as the next Secretary of the Department of the Interior.** In an [October 15 letter](#) to the Democratic presidential nominee, multiple environmental groups expressed their resistance to the candidate’s possible selection of the Governor to head up the agency should she win the election. The group opposes Hickenlooper’s appointment to an agency that controls the BLM and management of federal land resources due to his advocacy of the oil and gas industry and his opposition to local control over oil and gas operations. [Read more.](#)

State-by-State Legislative Session Overview

Massachusetts, New Jersey and Pennsylvania are in regular session. The **District of Columbia** Council is also in regular session.

Michigan is in recess until November 9. **Ohio** and the **United States** Congress are in recess until November 15. **Illinois** is in recess until November 15 and is expected to convene a veto session on that day. **California** is in final recess until November 30 and is scheduled to adjourn sine die on that day; the legislature will convene its 2017 legislative session on December 5.

Nevada adjourned a special session related to a financing proposal to fund construction of a 65,000 seat stadium on October 14. [SB 1/Chapter 2](#), which contains the proposal, was approved by Republican Gov. Brian Sandoval on October 17.

Alaska Independent Gov. Bill Walker has 20 days from presentment, Sundays excluded, to act on legislation or it becomes law without signature. **Delaware** Democratic Gov. Jack Markell and **New York** Democratic Gov. Andrew Cuomo have 10 days from presentment to act on legislation or it becomes law without signature. **Illinois** Republican Gov. Bruce Rauner has 60 days from presentment to act on legislation or it becomes law without signature.

New Mexico Republican Gov. Susana Martinez has until October 26 to act on legislation from the second special session or it is pocket vetoed.

Nevada Republican Gov. Brian Sandoval had acted on all legislation from the second special session as of October 17.

The following states are currently holding interim committee hearings: [Alabama](#), [Alaska](#), [Arizona](#), [Arkansas](#), [Colorado](#), [Connecticut](#), [Delaware](#), [Georgia House](#) and [Senate](#), [Hawaii](#), [Idaho](#), [Illinois](#), [Indiana](#), [Iowa](#), [Kansas](#), [Kentucky](#), [Louisiana](#), [Maine](#), [Maryland](#), [Minnesota](#), [Mississippi House](#) and [Senate](#), [Missouri House](#) and [Senate](#), [Montana](#), [Nebraska](#), [Nevada](#), [New Hampshire House](#) and [Senate](#) (committee hearings published in calendar), [New Mexico](#), [New York Assembly](#) and [Senate](#), [North Carolina](#), [North Dakota](#), [Oklahoma House](#) and [Senate](#), [Oregon](#), [Rhode Island](#), [South Carolina](#), [Tennessee](#), the [Texas House](#), [Senate](#) and [Joint](#), [Utah](#), [Vermont](#), [Virginia](#), [Washington](#), [West Virginia](#) and [Wyoming](#).

The following states are currently posting bill draft requests/prefiles for the 2017 session: [Alabama House](#) and [Senate](#), [Colorado](#), [Florida Senate](#), [Kentucky](#), [Montana](#), [Nevada](#), [New Hampshire](#), [North Dakota](#), [Oklahoma House](#) and [Senate](#), [Utah](#), [Virginia](#) and [Wyoming](#) (draft requests appear on individual committee pages).

Oil and Gas

General Oil and Gas

Michigan [HB 5958](#) was introduced by Rep. Jeremy Moss, D-Southfield, on October 19 and referred to the House Energy Policy Committee. This bill would create the Oil and Gas

Commission within the Department of Environmental Quality. The role of the commission would be to oversee the issuance, denial, revocation, suspension or modification of permits, the promulgation of rules and the development of department policies. The commission would be made up of the director of the department and two individuals representing commerce, two representing local units of government, two health professionals with academic and technical expertise in the toxicology of air or water containments, two individuals with academic and technical expertise in geology or hydrology, two individuals representing private environmental protection organizations, and three individuals representing the general public. The members of the commission would be selected by the governor, and would have to be approved by the Senate. If enacted, this bill would take effect 90 days after enactment.

DISCLAIMER: Links and/or information from non-governmental sources provided in this report may be among the many sources available to you. This report does not endorse nor advocate for any particular attorney or law firm, or other private entity, unless expressly stated. Any legal information contained herein is not legal advice. Links are provided for reference only and any cited outside source information is derived solely from material published by its author for public use.