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Office of General Counsel  
United States Department of Commerce

IMPROVING THE LEGAL ENVIRONMENT FOR BUSINESS WORLDWIDE

## CBM Regulation & Dispute Resolution

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## State Review Boards

### West Virginia:

- Passed legislation in 1994 creating the Coal Bed Methane Review Board
- Board is comprised of a panel of experts in coal, gas engineering, and geology.
- Weighs factors such as how experienced a driller is and how cost-effectively the driller can drill the well to ensure that the drilling does not inflict injury to coal mining operations
- Energy Development Corporation v. Moss : absent specific language to the contrary or other indicia of the parties' **intent**, an oil and gas lease does not give the oil and gas lessee the right to drill into the lessor's coal seams to



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## State Review Boards

### Virginia:

- Passed legislation in 1994 on oil and gas creating Oil and Gas Board
- Maximizes exploration and development of natural gas and oil
- Can enter spacing and pooling orders
- Provides for the maximum recovery of coal
  - While the State wants to exploit as much natural gas as possible, it also wants to preserve the mineability of coal mines.
- Coal bed methane drill operators must get signed consent



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## Lessons learned from

### British Columbia:

### Canada

- In 2003, BC legislated that CBM was a natural gas.
  - Overlapping lease holders are encourage to negotiate access on their own.
  - If they cannot reach agreement, the government appoints a 3 member panel to recommend a resolution.
- Legislation applied retroactively to avert litigation.
  - Prior to implementation of the law, the BC government had several rounds of negotiations with parties who would be affected by the retroactivity component.
- Coal bed methane operators are encouraged to engage and consult with First Nation tribes before commencing drill operations.



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## Lessons learned from

### Alberta: Canada

- 28 split-title proceedings were brought before the Alberta Energy and Utilities Board
  - In 2007, the panel ruled that CBM was a natural gas
- The proceedings were appealed to the Alberta Courts
  - In 2012, the Supreme Court confirmed the Board's ruling
- In response to the split-title litigation, Alberta Energy organized a Multi-Stakeholder Advisory Committee (MAC).
  - The MAC assessed how to improve CBM regulatory framework.
- In 2010, legislature amended oil and gas law to define CBM as natural gas.



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## “Eastern” vs “Western”

### “Eastern Rule” :

- CBM is a component of coal
- Public Policy dictates optimal mining safety therefore CBM production and coal mining are best left to a single entity
- Energy Development v. Moss(WV): absent specific language of the parties’ **intent**, a general oil and gas lease does not include CBM

### “Western Rule”:

- Owner of gas and oil estate may have rights to CBM as it is a form of natural gas
- Carbon County v. Union Reserve Coal Co (Mont): Deed in question conveyed all coal and coal rights, but was silent as to gas. Court determined it was not the **intent** of the parties to convey CBM.



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## Indonesia

### Regulation No. 36 of 2008

- CBM projects are controlled by Production Sharing Contracts (PSCs)
- Priority to develop CBM is given to oil and gas contractor
  - The oil and gas contractor has the right of first refusal to submit a proposal
  - If the coal operator submits a proposal first, then the Ministry of Energy must notify the oil and gas contractor, and allow it to submit a proposal.
  - If the oil and gas contractor does not submit a proposal within 6 months, then the coal contractor is allowed to proceed with the CBM proposal
- In open areas, no preferential right is given

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- In areas with only oil and gas or only coal, the incumbent contractor



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## Australia

### Joint Coal-Oil and Gas Industry Study and Proposal

- Original legal framework implemented in 2004
- New proposal
  - Coal tenure holder to have right of way to develop coal deposits, subject to:
    - Notice periods and confirmation requirements
    - Compensation for lost CBM production where the coal licensee truncates the notice period
    - Compensation for impacts on certain existing gas infrastructure
    - Right of first refusal for CBM tenure holders to any inadvertent CBM produced in the joint area
  - Ongoing obligation for overlapping coal and CBM tenure holders to exchange relevant information
  - Tenure holders will be free to negotiate other arrangements as an alternative to legislative defaults



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## Australia

### Rolling Abandonment Model

- “Initial Mining Area”: minimum area representing 10 years of safe and efficient coal mining operations.
- “Future Mining Area”: area within which the coal licensee intends to commence and carry out mining in the future (contiguous with initial mining area)
- “Simultaneous Operations Zone”: area around the initial mining area in which CBM licensees may operate subject to prescribed safety requirements
- CBM operators have 10 years from notice to abandon initial mining area
  - Coal licensee may truncate Notice Period (for which compensation is required)
- If the coal operations are underground, the coal licensee must allow a CBM licensee access to the initial mining area provided there are no impacts on the safe and efficient mining of the coal