

Coal Mine Methane/Doctrine of Correlative Rights: Federal Appellate Court Addresses Whether a Vacuum Pump Can Be Utilized for Extraction



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The United States Court of Appeals for the Seventh Circuit (“Seventh Circuit”) addressed in an August 11th Opinion a question regarding the extraction of coal mine methane. See *Finite Resources, Ltd., et al. v. DTE Methane Resources, et al.*, 2022, WL 3274105.

The question considered was whether the doctrine of correlative rights prohibits the use of a vacuum pump to extract coal mine methane.

Plaintiffs Finite Resources, LTD., Southern Cross Energy, LLC, and Durango Group, Inc. (collectively “Finite”) filed a Complaint in the United States Court (Illinois) against DTE Methane Resources, LLC and Keyrock Energy, LLC (collectively, “DTE”) challenging their use of a vacuum pump to extract methane from a coal mine. DTE’s coal mine is stated to abut Finite’s property.

The basis for Finite’s challenge was its argument that the doctrine of correlative rights prohibits the use of a vacuum pump to extract coal mine methane.

The United States District Court concluded under the rule of capture that Finite did not own the gas (i.e., it could not be owned until extracted). It further held because Finite’s claim depended on gas ownership, that it was proper to grant summary judgment for DTE.

The litigation involves an abandoned coal mine in Franklin County, Illinois. Coal mine methane gas is released from coal and surrounding strata due to the mining activities. Coal mine methane has become a commercially valuable resource.

DTE is stated to have drilled two wells on its section of the Orient #1 Mine to extract coal mine methane. It obtained a vacuum permit from the Illinois Department of Natural Resources (“IDNR”) to undertake the activity. A vacuum pump was used until 2012 by DTE and then it assigned its operations to Keyrock.

Finite was stated to have determined a number of years later that DTE had obtained a vacuum permit to extract coal mine methane from the wells on the Orient #1 Mine property. This discovery was made after a shut-in test indicated that coal mine methane had been extensively drained from the mine.

Finite petitioned IDNR for a compulsory unitization to require that the coal mine methane production be ratably shared. IDNR denied the request and Finite sued in state court for conversion, trespass, accounting, and common law unitization. An injunction was also sought to enjoin the use of a vacuum pump.

DTE removed the case to federal court and they were granted summary judgment.

Finite appealed.

The Seventh Circuit notes that the rule of capture:

. . . allows an owner to extract gas from their property without restraint, it limits the “correlative” rights of neighboring owners. That’s where the doctrine of correlative rights comes in. The doctrine of correlative rights protects adjoining landowners by permitting them to “go and do likewise.”

Further, as the Seventh Circuit notes, this doctrine also imposes a duty on owners not to waste natural resources intentionally or negligently as to injure their neighbor.

Finite argued on appeal that they do not claim ownership rights in the coal mine gas. Instead, it argued that DTE’s use of a vacuum pump violates their correlative rights because it causes damage or waste.

The Seventh Circuit rejected this contention, stating that the IDNR in issuing a vacuum permit considers the owners’ correlative rights. DTE was noted to have maintained the permit for a decade with the approval of the state agency tasked with regulating oil and gas – i.e., the IDNR.

Finite argues that, to the extent this issue is unclear, the Seventh Circuit should certify the question to the Illinois Supreme Court. While the Seventh Circuit acknowledges that the Illinois Supreme Court has not yet addressed the issue, it did not find the case proper for certification. It based this conclusion partially on the fact that although Finite argues that the doctrine of correlative rights purportedly prevents the use of a vacuum pump (i.e., negating the rule of capture), the IDNR’s actions and other sources suggest otherwise.

A copy of the Opinion can be downloaded [here](#).