

A new green resource

How coal bed methane can be the answer to green energy **Interviewed by Dale W. Hlaves**

Mention methane gas to a farmer and you think of emissions from cows. Mention it to a miner and the first reaction is danger. But, what if methane gas was not only the source of a new industry of natural gas but also one of the greener sources of energy, as well?

“Up until about 25 years ago, coal bed methane (CBM) was considered to be more of a nuisance than an actual resource,” says William Schmitt, an officer of Greensfelder, Hemker & Gale, whose practice includes representing clients in the coal, oil and gas industries. “It was considered unwanted, unusable and unsafe; a dangerous part of the mining process.”

Smart Business talked to Schmitt about how all of that has changed today as the country looks for additional sources of energy.

How has extracting methane gas from coal beds changed in the last 25 years?

CBM is a component of the coal itself. It is found in actual underground seams of coal as well as in the rooms and passageways of coal mines that have been mined out.

Due to the development of appropriate technologies, the actual recovery of this gas as an industry began primarily in the western states and has more recently emerged as a significant industry in the coalfields of the Midwest and the eastern United States. Of course, this coincides with the increasing demands for natural gas and the fact that natural gas is considered to be ‘greener.’

How much methane gas is used today as an energy source?

I think it’s safe to say that today more than 10 percent of the natural gas produced is methane gas. While there are other sources of methane gas, a substantial portion of that percentage is CBM gas.

What are some of the legal issues involved in extracting methane gas?

One of the initial and most important issues in extracting CBM has been the



William Schmitt
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ownership of the gas. That is, who has the right to recover the gas or transfer that right of recovery to a third party?

For example, where the owner of the surface land has deeded or leased the right to mine the coal, and perhaps has conveyed the oil and gas rights to another party, who has the rights to the CBM? Both of these parties may claim the right to recover the gas. In addition, the surface owner may claim that he or she still owns the right to the CBM, as it was never intended to be deeded or leased to the other owners of the mineral rights.

Some courts have decided these issues by attempting to determine the intent of the parties at the time these mineral interests were deeded or leased. This is interesting because most of these deeds/leases are very old and the development of CBM is of relatively recent vintage so that the parties to these transactions probably never even contemplated the possibility of CBM.

There has been a tendency by the courts to hold that the right to recover the CBM belongs to the holder of the coal rights since methane is really part of the coal. However, the decisions of the courts have not been uniform from state to state.

What happens to the water used to extract CBM?

To release CBM from underground, first the pressure has to be reduced by removing the underground water so that during the drilling process both the gas and the water moves through the coal beds and eventually up the wells. And we are talking about a lot of water. Once this discharge is on the surface, it raises a variety of legal and environmental concerns.

This water often has a high salt content, which can effect soil and plant life, including agricultural crops. If it’s discharged into rivers and streams, there are arguments that it can pose a danger to fish and other aquatic life in the area.

In addition, since the removal of this underground water can reduce the amount of available groundwater, there have been claims by rural landowners that CBM recovery has reduced the water available to their wells, forcing them to drill deeper or find alternative sources of water.

Any other thoughts?

Perhaps as a result of CBM recovery, and as other technologies develop, there is an increasing interest in the question of who owns the voids created underground after the coal has been removed and the mine closed. Is the empty space owned by the coal operator or does it revert to the owner of the surface land? These voids could serve a valuable purpose as a storage container for usable materials or a permanent disposal site for environmentally undesirable substances such as carbon dioxide.

As is typical with any emerging industry or technology, identifying and resolving the legal issues lag behind the industry or technology themselves.. <<

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